

**FIFTH AMENDED AND RESTATED FRANCHISE AGREEMENT
BETWEEN
THE CITY OF THOUSAND OAKS AND
NEWBURY DISPOSAL COMPANY**

TABLE OF CONTENTS

RECITALS	
ARTICLE 1.	DEFINITIONS
ARTICLE 2.	REPRESENTATIONS AND WARRANTIES OF THE CONTRACTOR
ARTICLE 3.	TERM OF AGREEMENT
ARTICLE 4.	FRANCHISE AND PERMIT SYSTEM
ARTICLE 5.	COLLECTION, PROCESSING AND DISPOSAL SERVICES
ARTICLE 6.	OTHER COLLECTION RELATED SERVICES, STANDARDS AND AGREEMENTS
ARTICLE 7.	RECORDS AND REPORTS
ARTICLE 8.	FEES
ARTICLE 9.	SERVICE RATES AND PERFORMANCE REVIEW
ARTICLE 10.	INDEMNITY, INSURANCE, BOND
ARTICLE 11.	CITY'S RIGHT TO PERFORM SERVICE
ARTICLE 12.	DEFAULT AND REMEDIES
ARTICLE 13.	OTHER AGREEMENTS OF THE PARTIES
Exhibit A	Scope of Services
Exhibit B	Map of Zones
Exhibit C	Performance Bond
Exhibit D	Certificate of Insurance
Exhibit E	2013 Solid Waste Rate Schedules
Exhibit F	Solid Waste Rate Calculation Methodology
Exhibit G	Quarterly Report Form

**FIFTH AMENDED AND RESTATED FRANCHISE AGREEMENT
BETWEEN
THE CITY OF THOUSAND OAKS AND
NEWBURY DISPOSAL COMPANY
FOR COLLECTION, PROCESSING AND/OR DISPOSAL OF SOLID WASTE,
GREEN WASTE AND RECYCLABLE MATERIALS
AND STREET SWEEPING SERVICES**

THIS AGREEMENT is made and entered into as of this June 25, 2013 , by and between the City of Thousand Oaks (hereinafter "the City") and Newbury Disposal Co., (hereinafter "Contractor").

RECITALS

This Agreement is entered into with reference to the following facts and circumstances:

Whereas, the City is empowered under Section 7 of Article XI of the California Constitution to make and enforce, within its limits, all police and sanitary ordinances and regulations not in conflict with general laws;

Whereas, in the exercise of its police powers, the City may determine the best means in its possession to protect the public health and safety; and

Whereas, pursuant to the California Public Resources Code, the City is authorized to determine aspects of Solid Waste handling which are of local concern and the means by which such services are to be rendered under terms and conditions prescribed by the City Council by resolution or ordinance, including the provision of Solid Waste collection, processing and disposal services on an exclusive or non-exclusive basis and with or without competitive bidding;

Whereas, pursuant to California Public Resources Code Section 40002, the City Council of the City of Thousand Oaks has determined that public health, safety and well-being require that franchises and permits be granted to qualified Contractors for Solid Waste collection, recycling, disposal and processing services in residential, commercial and industrial areas within the City of Thousand Oaks; and

Whereas, Title 6, Chapter 2 of the Municipal Code establishes standards for the collection and disposal of Solid Waste and collection and processing of Green Waste and Recyclable Materials, and the City Council has determined that these services are to be performed in the City in accordance with the provisions of the Municipal Code; and

Whereas, Title 7, Chapter 8 of the Municipal Code requires the implementation of Best Management Practices to reduce the discharge of pollutants in stormwater to the maximum extent practicable; and

Whereas, street sweeping is a Best Management Practice that reduces the discharge of pollutants in stormwater by collecting and recycling Solid Waste, Green Waste and Recyclable Materials that are deposited upon streets; and

Whereas, the City Council declares its intent to maintain reasonable rates for collection, transportation, processing and disposal of Solid Waste, Green Waste and Recyclable Materials generated within City limits; and

Whereas, the California Integrated Waste Management Act of 1989 (AB 939) requires the City to divert, through a combination of source reduction, recycling, and composting programs, 50 percent of its Solid Waste from landfill disposal by the year 2000; and

Whereas, recycling street sweeping debris increases the diversion of Solid Waste from landfill disposal; and

Whereas, uniformity in the type and frequency of collection services, means of collection and transportation, type of equipment used, and the nature, location, reporting information and extent of providing Solid Waste services within the City are vital for compliance with statutory requirements set forth by this legislation; and

Whereas, pursuant to provisions contained in Title 6, Chapter 2 of the Municipal Code, the City Council may issue franchises and permits to those parties meeting set criteria, and, so long as these franchises and permits remain in effect, the collection of materials provided for herein may be made only in accordance with the terms and conditions thereof; and

Whereas, the City Council has determined, in granting this Agreement, that the public health, safety and well-being make it necessary that this Agreement be awarded to the Contractor on an exclusive basis without competitive bidding in order to provide waste handling and street sweeping services to its citizens in the manner determined by the City Council to best protect the public health and safety and achieve necessary levels of recycling and landfill diversion; and

Whereas, the City Council has determined that it is in the best interests of the City to use local contractors to provide the services described herein; and

Whereas, on February 9, 2010, the City Council approved a residential Franchise Agreement with Newbury Disposal Co. with a residential term through June 30, 2018; and

Whereas, on June 30, 2012, Section 3.2A of the Agreement provides for an extension of the term of the Agreement for three (3) additional years; and

Whereas, on June 26, 2012 the City Council approved an additional amendment to the Franchise Agreement which extended the June 30, 2012 automatic extension point to June 30, 2013; and

Whereas, the City and Contractor have agreed on rate adjustments and residential service improvements that will benefit all City residential customers in exchange for the three year residential franchise term extension through June 30, 2021; and

Whereas, the City Council passed a resolution on June 25, 2013, declaring its intent to grant the residential franchise term extension, and authorizing the execution and delivery of this Agreement;

THEREFORE,

THE PARTIES AGREE TO THE FOLLOWING:

ARTICLE I. DEFINITIONS

For the purposes of this Agreement, unless listed below, capitalized words used in this Agreement shall have the same meanings as defined in Title 6, Chapter 2, of the Thousand Oaks Municipal Code. If any words or phrases are not defined in this Article or in the Code, such terms shall have the meaning applied to them in the California Integrated Waste Management Act of 1989, as amended, California Public Resources Code Section 40000 et seq. Whenever reference is made herein to any portion of this Chapter, any other ordinance, resolution or regulation of the City of Thousand Oaks, or any law of this State, the reference shall be deemed to apply to all amendments and additions heretofore or hereafter made. In addition, all of the Exhibits to this Agreement are hereby incorporated by reference as though fully set forth within.

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

“Agreement” means this amended and restated franchise agreement.

“Appendix” means an appendix to this Agreement, as the same may be amended or modified from time to time in accordance with the terms hereof.

“Applicable Law” means any law, rule, regulation, requirement, guideline, permit, action, determination or order of any Governmental Body having jurisdiction, applicable from time to time to the Agreement Services; the Operating Assets; the

siting, design, acquisition, permitting, construction, equipping, financing, ownership, possession, shakedown, testing, operation or maintenance of any of the Operating Assets; or any other transaction or matter contemplated hereby (including any of the foregoing which concern health, safety, fire, environmental protection, labor relations, mitigation monitoring plans, building codes, non-discrimination and the payment of minimum wages, and further including the Code (and the County Integrated Waste Management Plan)).

“Best Management Practice” means the collection of written activities, practices, policies and procedures prepared and proposed by a responsible party, and then approved by the Director, to prevent or reduce, to the maximum extent that is technologically and economically feasible, the discharge of pollutants to the storm drain system which might be generated from any site in the City.

“CEQA” means the California Environmental Quality Act, codified at Cal. Pub. Res. Code §21000 et seq. as amended or superseded, and the regulations promulgated thereunder and as set forth in the California Code of Regulations, Title 14.

“Change in Law” means any of the following events or conditions which has a material and adverse effect on the performance by the parties of their respective obligations under this Agreement (except for payment obligations), or on the siting, design, permitting, acquisition, construction, equipping, financing, ownership, possession, management, operation or maintenance of the Operating Assets or providing the Franchise Services or other matters to which Applicable Law applies:

(1) the enactment, adoption, promulgation, issuance, modification, or written change in administrative or judicial interpretation on or after the Effective Date of any Applicable Law;

(2) the order or judgment of any Governmental Body, on or after the Effective Date, to the extent such order or judgment is not the result of willful or negligent action, error or omission or lack of reasonable diligence of the City or of the Contractor, whichever is asserting the occurrence of a Change in Law; provided, however, that the contesting in good faith or the failure in good faith to contest any such order or judgment shall not constitute or be construed as such a willful or negligent action, error or omission or lack of reasonable diligence; or

(3) the denial of an application for, delay in the review, issuance or renewal of, or suspension, termination, interruption or imposition of a new or more stringent condition in connection with the issuance, renewal or failure of issuance or renewal on or after the Effective Date of any Legal Entitlement to the extent that such denial, delay, suspension, termination, interruption, imposition or failure materially and adversely interferes with the performance of this Agreement, if and to the extent that such denial, delay, suspension, termination, interruption, imposition or failure is not the result of willful or negligent action, error or omission or a lack of reasonable diligence of the City or of the Contractor, whichever is

asserting the occurrence of a Change in Law; provided, however, that the contesting in good faith or the failure in good faith to contest any such denial, delay, suspension, termination, interruption, imposition or failure shall not be construed as such a willful or negligent action, error or omission or lack of reasonable diligence.

“City” means the City of Thousand Oaks, a California municipal corporation.

“City Facility” means any building or other site owned, leased or used regularly and significantly and the space therein occupied by more than 75 percent by employees or Contractors of the City, and excludes those portions of such facilities used by others.

“City Manager” means the City Manager of the City, or his or her designated representative, or any employee of the City who succeeds to the duties and responsibilities of the City Manager.

“Code” means the Thousand Oaks Municipal Code.

“Containers” means Containers and any other bin or receptacle used by Customer in connection with the Franchise Services, as specified in Code Section 6-2.502.

“Contractor” means Newbury Disposal Company.

“Director” means the Public Works Director of the City or his or her designated representative, or any employee of the City who succeeds to the duties and responsibilities of the Public Works Director.

“Effective Date” has the meaning specified in Section 3.1 of this Agreement.

“Event of Default” has the meaning specified in Article 12 of this Agreement.

“Extension Date” has the meaning specified in Section 3.2 of the Agreement.

“Fees-and-Costs” means reasonable fees and expenses of employees, attorneys, architects, engineers, expert witnesses, Contractors, consultants and other persons, and costs of transcripts, printing of briefs and records on appeal, copying and other reimbursed expenses, and expenses of any Legal Proceeding.

“Franchise Services” means all of the duties and obligations of the Contractor under this Agreement.

“Franchise Waste” means all Solid Waste, Green Waste, Recyclable Materials and Street Sweeping debris collected pursuant to this Agreement.

“Franchise Year” means the calendar year beginning on January 1, and ending on the following December 31 and the last Franchise Year shall begin on the January 1 preceding the last day of the Term of this Agreement and end on such last day of the Term.

“Governmental Body” means any federal, State, county, city or regional legislative, executive, judicial or other governmental board, agency, authority, commission, administration, court or other body, or any officer thereof acting within the scope of his or her authority.

“Gross Revenue” means all monetary amounts actually collected or received by Contractor for the provision of Franchise services pursuant to this Agreement. The term Gross Revenue, for purposes of this Agreement, shall not include revenues generated from the sale of recyclable material (including Department of Conservation rebates), or other revenues from state and local government accounts.

“Insurance Requirement” means any rule, regulation, code, or requirement issued by the City of Thousand Oaks or any body having similar functions or by any insurance company that has issued a policy with respect to the Operating Assets or the Franchise Services.

“Legal Entitlement” means all permits, licenses, approvals, authorizations, consents and entitlements of whatever kind and however described which are required under Applicable Law to be obtained or maintained by any person with respect to the Operating Assets or the performance of any obligation under this Agreement or the matters covered hereby.

“Loss-and-Expense” means any and all loss, liability, obligation, damage, delay, penalty, judgment, deposit, cost, claim, demand, charge, tax, or expense, including all Fees-And-Costs.

“Minimum Service” for residential Customers shall be defined as one Container (maximum size of 33 gallons) for solid waste and one Container (maximum size of 64 gallons) for recyclable materials.

“Operating Assets” means all real and personal property of any kind, which is owned, leased, managed or operated by or under contract to the Contractor for providing the Franchise Services, including without limitation the facility, Containers, vehicles, transfer stations, maintenance and storage facilities, materials recovery facilities, composting facilities, administrative facilities, and other equipment, machinery, parts, supplies and tools.

“Overdue Rate” means the maximum rate of interest permitted by the laws of the State, if applicable, or the rate charged by the Bank of America, N.A. or any successor or assignee as its base rate, plus 1 percent, whichever is lower.

“Private Street” means a residential road owned and maintained by a Home Owners or Property Owners Association and used for vehicular travel by the members of the Association and those having express or implied permission from the members of the Association, but not by other members of the public. “Private Street” does not include parking lots, driveways, private alleys or any other privately maintained surface for vehicular travel that was not constructed in accordance with the City “Road Design and Construction Standards”.

“Rate” means the charge to the Customer for services provided by the Contractor as specified in the Agreement.

“Recovered Product” means Recyclable Materials that are recovered by the Contractor for recycling, reuse or resale.

“Scope” means the range of activities and operations of the Contractor within the City to the extent that range of activities and operations is reasonably required to be undertaken by the Contractor in order to carry out its obligations as delineated by this Agreement and Exhibits to this Agreement.

“State” means the State of California.

“Street” means a way or place of whatever nature maintained by the City and open to the use of the public for purposes of vehicular travel.

“Street Sweeping Services” means the process of removing debris and cleaning Streets, Private Streets and other specified locations at times, frequencies, and in a manner consistent with the provisions of the Agreement,

“Subcontractor” means every person (other than employees of the Contractor) employed or engaged by the Contractor or any person directly or indirectly in privity with the Contractor (including every subcontractor of whatever tier) for any portion of the Franchise Services, whether for the furnishing of labor, materials, equipment, supplies, services or otherwise.

“Tax” means any tax, fee, levy, duty, impost, charge, surcharge, assessment or withholding, or payment in lieu thereof, and any related interest, penalties or additions to tax.

“Term” has the meaning specified in Article 3 of this Agreement.

“Uncontrollable Circumstance” means any act, event or condition, whether affecting the Operating Assets, the City, or the Contractor, to the extent that it materially and adversely affects the ability of either party to perform any obligation under the Agreement (except for payment obligations), if such act, event or condition is beyond the reasonable control of the party relying thereon as

justification for not performing an obligation or complying with any condition required of such party under this Agreement; provided, however, that the contesting in good faith or the failure in good faith to contest such action or inaction shall not be construed as willful or negligent action or a lack of reasonable diligence of either party. Uncontrollable Circumstances shall include, but not be limited to:

- (1) an act of God (but not including reasonably anticipated weather conditions for the geographic area of the City), hurricane, landslide, lightning, earthquake, fire, explosion, flood, sabotage or similar occurrence, acts of a public enemy, extortion, war, blockade or insurrection, riot or civil disturbance;
- (2) a Change in Law;
- (3) the failure of any appropriate Governmental Body or private utility having operational jurisdiction in the area in which the Operating Assets are located to provide and maintain utilities, services, water and sewer lines and power transmission lines to the Operating Assets, which are required for the performance of the Franchise Services and which results in a delay or curtailment of the performance of the Franchise Services;
- (4) pre-emption of materials or services by a Governmental Body in connection with a public emergency or any condemnation or other taking by eminent domain of any portion of the Operating Assets; and
- (5) strikes, work stoppages or other labor disputes or disturbances by third parties over whom the City or the Contractor have no control occurring with respect to any activity performed or to be performed by the Agreement or any of the Contractor's Subcontractors.

It is specifically understood that none of the following acts or conditions shall constitute Uncontrollable Circumstances:

- (1) general economic conditions, interest or inflation rates, currency fluctuations or changes in the cost of fuel, commodities, supplies or equipment;
- (2) changes in the financial condition of the City, the Contractor or any of its affiliates or any subcontractor affecting their ability to perform their obligations;
- (3) consequences of errors, neglect or omissions by the Contractor, any of its affiliates or any Subcontractor of any tier in the performance of the Franchise Services;
- (4) union work rules, requirements or demands which have the effect of increasing the number of employees employed in connection with the Operating Assets or otherwise increase the cost to the Contractor of operating and maintaining the Operating Assets or providing the Franchise Services;
- (5) strikes, work stoppages or other labor disputes or disturbances occurring with respect to any activity performed or to be performed by the Contractor or any of the Contractor's Subcontractors in connection with the Operating Assets or the Franchise Services;
- (6) any failure of any subcontractor to furnish labor, materials, service or equipment for any reason (other than an Uncontrollable Circumstance);

- (7) equipment failure;
- (8) any impact of prevailing wage law, customs or practices on the Contractor's operating costs; or
- (9) the imposition on the Contractor of any fines, penalties or similar impositions by any applicable regulatory agency or other governmental authority, including but not limited to the California Department of Resources Recycling and Recovery , the U.S. Environmental Protection Agency, and OSHA.

"Unprofitable Recovered Product" refers to Recovered Products collected by the Contractor for which the cost of diversion (including transportation from the Contractor's yard and marketing costs) would exceed the cost of landfill disposal.

ARTICLE 2. REPRESENTATIONS AND WARRANTIES OF THE CONTRACTOR

2.1 Corporate Status

Contractor is a corporation duly organized, validly existing and in good standing under the laws of the State of California. It 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.

2.2 Corporate Authorization

Contractor has the authority to enter into and perform its obligations under this Agreement. The board of directors, partners, proprietors of Contractor (or the shareholders if necessary) have taken all actions required by law, the Contractor's articles of incorporation, its bylaws or otherwise to authorize the execution and delivery of this Agreement. The persons signing this Agreement on behalf of Contractor have authority to do so. This Agreement constitutes the legal, valid and binding obligation of the Contractor, enforceable against the Contractor in accordance with its terms except insofar as such enforcement may be affected by bankruptcy, insolvency, moratorium and other laws affecting creditors' rights generally.

2.3 No Litigation

There is no action, suit or other proceeding as of the Effective Date, at law or in equity, before or by any court or governmental authority, pending or, to the Contractor's best knowledge, threatened against the Contractor which is likely to result in an unfavorable decision, ruling or finding which would materially and adversely affect the validity or enforceability of this Agreement or any such agreement or instrument entered into by the Contractor in connection with the transactions contemplated hereby, or which would materially and adversely affect the performance by the Contractor of its obligations hereunder or by the Contractor under any such other agreement or instrument.

2.4 No Legal Prohibition

The Contractor has no knowledge of any Applicable Law in effect on the Effective Date prohibiting the performance by the Contractor of this Agreement and the transactions contemplated hereby.

2.5 No Conflict

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

2.6 Information Supplied by the Contractor

The information supplied by the Contractor in all submittals made in connection with the negotiation and award of this Agreement is correct and complete in all material respects.

ARTICLE 3. TERM OF AGREEMENT

3.1 Effective Date

The Effective Date of this Agreement shall be July 1, 2013.

3.2 Term

The Term of this Agreement shall commence on the Effective Date. The residential agreement shall terminate June 30, 2021, subject to Sections 3.2A, 3.2B and 3.2C below.

A. First Automatic Extension. Subject to the provisions of Section 3.2C, on June 30, 2018, (the first residential "Extension Date"), the residential Agreement shall be automatically extended for three (3) additional years, commencing on July 1, 2021 and terminating June 30, 2024.

B. Second Automatic Extension. Subject to the provisions of Section 3.2C, on June 30, 2021 (the second "Extension Date"), the residential Agreement shall be automatically extended for three (3) additional years, commencing on July 1, 2024 and terminating June 30, 2027.

C. Right of Parties to Avoid Automatic Extension. Either party shall have the right to avoid any of the automatic extension provisions of this Section as follows:

(1) in order to avoid the automatic extension pursuant to Sections 3.2A or 3.2B as described above, the party wishing to avoid the extension shall provide written notice to the other party prior to the applicable Extension Date;

(2) upon delivery of such notice, this Agreement shall not be extended by operation of the provisions of Sections 3.2A or 3.2B, and shall terminate on the termination date in effect as of the date of the notice, without further extension.

3.3 Conditions to Effectiveness of Agreement

The obligation of City to permit this Agreement to become effective and to perform its undertakings provided for in this Agreement are subject to the satisfaction of each and all of the conditions set out below, each of which may be waived in whole or in part by City.

A. Accuracy of Representations. The representations and warranties made by Contractor in Article 2 of this Agreement are true and correct on and as of the Effective Date.

B. Absence of Litigation. There is no litigation pending on the effective date in any court challenging the award or execution of this Agreement or seeking to restrain or enjoin its performance.

C. Effectiveness of City Council Action. The City's Resolution No. _____ approving this Agreement shall have become effective pursuant to California law prior to the Effective Date.

ARTICLE 4. FRANCHISE AND PERMIT SYSTEM

4.1 Grant of Franchise; Scope of Franchise

A. Grant of Exclusive Franchise. Subject to Article 3.3, City hereby grants to Contractor, on the terms and conditions set forth herein, the Exclusive Franchise, right and privilege to collect, remove and dispose of, in a lawful manner, Solid Waste, Green Waste and Recyclable Materials accumulating in the City in Zone 2 that are required to be accumulated and offered for collection to the Contractor in accordance with the City's Municipal Code, for the Term of and within the scope set forth in this Agreement.

B. Scope of Franchise. The Contractor shall have the exclusive right to collect Franchise Waste pursuant to the Scope of Services outlined in Exhibit A, under the terms and conditions of the City Municipal Code, in Zone 2. The Agreement also provides for Street Sweeping Services, which are to be provided by the Contractor as an additional consideration for this Agreement.

C. Acceptance of Franchise. By its executed acceptance hereof the Contractor accepts the franchise, license and privilege so granted by the City on

and subject to the terms and conditions contained herein and in the Code, and agrees to perform all of the duties and obligations of a franchisee under the Code.

4.2. Exclusions

The collection, removal, processing and/or disposal of Franchise Waste shall be authorized solely to the exclusive Contractor except as indicated in Title 6, Chapter 2, of the Code. Specifically, the franchise, license and privilege granted in Article 4.1A hereof shall not give the Contractor any right or responsibility with respect to any materials exempted under subsections 1 through 7 of Code Section 6-2.302(c). Nothing in this Agreement shall be construed to prohibit the City from issuing Non-Exclusive Franchise Agreements through the City Manager to Contractors in accordance with Code Section 6-2.302.

4.3 Waiver of Prior Rights by Contractor

In consideration of the grant of this Agreement by the City, the Contractor waives any other rights or claims which it may have to provide Franchise Waste collection, transportation, processing, handling or disposal services in the City, including rights or claims under any prior grant of franchise, contract, license, or permit issued or granted by the City or any other Governmental Body.

Specifically, the City and the Contractor each agree that the provisions of Section 49520 of the Act do not and shall not apply to this Agreement, and each hereby waives any rights it may have by virtue thereof.

4.4 Termination of Prior Franchises and Agreements

The Contractor and the City acknowledge that, (1) this Agreement constitutes the sole existing agreement between the parties, (2) this Agreement supersedes any prior franchises, agreements or arrangement between the City and the Contractor, its predecessors and affiliates, and (3) any and all such prior franchises, agreements or arrangements between the City and the Contractor, its predecessors or affiliates are hereby terminated, except for any provisions thereof specifically identified therein as surviving termination or pursuant to which, either the Contractor or the City, their predecessors or affiliates, have indemnified each other or any other indemnified party for any damages, liabilities, losses or expenses incurred by such indemnified party in connection with the performance or non-performance of such prior agreements or arrangements.

ARTICLE 5. COLLECTION, PROCESSING AND DISPOSAL SERVICES

5.1 General

A. Operating Assets. The work to be done by Contractor pursuant to this Agreement shall include the furnishing of all labor, supervision, equipment, materials, supplies, and all other items necessary to perform the services required. Contractor shall acquire, provide and maintain without any compensation in excess of that specified in Article 9 hereof at its own cost and

expense Operating Assets which in number, nature and capacity, shall be sufficient to enable the Contractor to provide the Franchise Services in accordance with the terms hereof and of the Code. Contractor shall perform its work in a thorough and professional manner so that the residents and businesses within the City are provided reliable, courteous, and high-quality service at all times.

If any useful part of the Operating Assets shall be damaged or destroyed, the Contractor shall, as expeditiously as may be possible, commence and diligently undertake the repair or replacement of the damaged property so as to restore the same to use to the extent required to perform the Franchise Services in accordance with this Agreement.

B. Rules and Regulations of City Manager. The City Manager shall have the power to establish rules and regulations relating to the accumulation, collection, recycling and disposal of Franchise Waste not inconsistent with the provisions of this Agreement and the Code, providing such rules and regulations are found to be reasonably necessary by the City Manager for enforcement of the provisions of this Agreement, or any and all Applicable Laws, and for the preservation of the public peace, health and safety. The Contractor agrees to comply with any and all such rules and regulations, subject to the provisions of Article 9 hereof relating to adjustments in the Rate as a result of Change in Law.

5.2 Collection and Street Sweeping Services

A. Service Provided. Contractor shall provide the services as described in Exhibit A, incorporated herein by reference.

B. Collection Routes. The Contractor shall establish and maintain collection routes in such manner to provide for the uniform and efficient collection of Franchise Waste on a Monday through Saturday basis. The Contractor shall not schedule collection on Sundays, except as authorized by the City Manager. At all Premises requiring more than one (1) collection per week, the Contractor shall schedule collections as arranged with the Customer.

C. Route and Collection System Revisions. The parties acknowledge that the collection charge has been established based on the routing system and the collection system in effect as of the Effective Date. The City shall have the right at any time to direct the Contractor to change, amend, modify or otherwise revise the routing and collection system currently utilized; provided, however that the allowable rates shall be increased or decreased in an amount equal to any increased or decreased costs resulting from such amendment, modification or revision of the routing and collection system to the extent provided in Article 6.4 hereof. The Contractor also may request the City to approve any such revision the Contractor may propose. The City's approval of any such request shall not be unreasonably withheld. Upon such direction or approval by the City, the

Contractor shall notify all affected Customers at least seven (7) days prior to implementing the revision.

D. Route Books and Maps. The Contractor shall prepare route books and maps for each route, which outline specific routing information regarding the daily collection of Franchise Waste and provision of Street Sweeping services. The books and maps shall be kept current and made available to the City Manager for inspection and copying.

E. Hours of Service. It is the City's intent that all collection activities occur in an efficient manner, minimizing impacts on commercial customers and on residential neighborhoods. The Contractor shall not schedule collection from any Residential Premises any day earlier than 7:00 a.m., or later than 7:00 p.m. The City Manager or designee may change the collection times as required by the needs of the Customers, Contractor, and in consideration of the impact of collection activities on nearby residents and businesses. Street Sweeping hours are as described in Exhibit A of the Agreement.

F. Holidays. Collection of Franchise Waste, including the provision of Street Sweeping services, shall not be required on any day of the year recognized by the disposal and/or processing facility utilized by the Contractor as a holiday and where collection service will not be provided until the following day, excluding Sunday; collections throughout the City shall become current within one (1) week thereafter.

G. General. The City Manager will establish the collection location for all Containers. The Contractor is responsible for the collection of all Franchise Waste placed for collection in a legal manner, at all such designated collection locations. The Contractor shall immediately notify the City Manager of any condition at or near any collection location creating a safety hazard or accessibility problem. Upon authorization by the City Manager, the Contractor shall discontinue collection for any such location until the safety hazard or accessibility problem is corrected.

H. Enclosures. Where the collection location is within an enclosure constructed pursuant to the requirements of the City Manager, the Contractor shall be responsible for the removal and replacement of all Containers placed therein. The Contractor shall use sufficient care in the handling of such Containers so as to prevent any damage to the enclosure, the enclosure doors, and adjacent facilities or improvements. The Contractor shall repair at its own expense, and within 30 working days after notification from the City Manager, any such enclosure or adjacent facilities or improvements damaged by the Contractor.

I. Record of Non-Collection. When any Franchise Waste set out for collection is not collected by the Contractor, the Contractor shall leave a tag at least 2-7/8" by 5-3/4" indicating the reasons for such non-collection. This

information shall either be in writing or by means of a check. The Contractor shall maintain, at its place of business, a logbook listing all such circumstances in which collection is denied. The logbook shall contain the names of the Premises involved, the date of such tagging, the reason for non-collection, and the date and manner of disposition of each case. The log shall be kept so that it may be conveniently inspected by the City Manager upon request. The log relating to any particular tagging shall be retained for a period of one (1) year following such tagging.

J. Clean Up. The Contractor shall undertake all obligations imposed by Code Section 6-2.601(f) relating to spills and clean-up. The Contractor shall cause all spills of Franchise Waste occurring during the collection process to be cleaned up immediately upon the occurrence of the spill. These obligations shall also apply to spills and releases of petroleum fluids from Contractor vehicles. Contractor shall close all gates after making collections and shall avoid crossing private or public planting areas.

K. Additional Collection. As consideration for the Agreement, Contractor shall respond to all calls from the City Manager regarding spilled or illegally dumped waste on City property, during regular work hours and, in emergencies, at night, and on weekends. Contractor shall collect and deliver such waste to the appropriate disposal or processing site. In such cases, contractor may seek reimbursement from the City at 80 percent of regular rate. Amounts received by the Contractor pursuant to this Article shall not be included in gross revenues for purposes of calculation of the Franchise Fee or Solid Waste Management Fee.

L. Material Transfer. Contractor shall not transfer loads from one vehicle to another on any public street, unless it is necessary to do so because of mechanical failure or accidental damage to a vehicle.

5.3 Containers

A. Specifications. As directed by the City, Contractor shall provide Containers of sufficient number and capacity to perform the work required under the Agreement. Containers shall incorporate use of recycled content to the maximum extent possible. The City shall designate the type, size and other specific physical requirements for Containers. The Contractor shall not be required to collect Franchise Waste from Containers not conforming to City requirements. Any such direction of the City pursuant to this Article either requiring the purchase of containers by the Contractor in excess of, or modification to, of those in place as of the Effective Date shall constitute a change in scope pursuant to Article 6.4.

B. Container Content Information. All Contractor-provided Containers shall bear information describing correct materials for collection, proper method for Customer to place materials for collection, and text stating that no hazardous

materials may be included in Containers, including information about proper hazardous waste disposal. Recyclable Materials Containers shall additionally have anti-scavenging information. City shall approve all design and artwork for container information.

C. General Requirements. After emptying any Container, the Contractor shall replace the Container in an upright position, and shall make a reasonable effort at maintaining Container closure at all times by covering with a closefitting lid, at the place where such Container was placed for collection. The Contractor shall handle Containers and lids in a manner so as to prevent damage, loss or spillage, and shall not throw Containers after emptying them. The Contractor shall repair or replace, at its own expense, within five (5) working days, any Container damaged by the Contractor.

D. Improper Loading or Placement of Containers. The Contractor may decline to collect any Franchise Waste that (1) has not been properly loaded into Containers, (2) has been overloaded in Containers by weight or volume, or (3) has been compacted or otherwise placed, kept or accumulated in a manner such that the Franchise Waste will not, of its own weight, fall out of the Container in which it is placed when such Container is turned upside down. The Contractor may also decline to collect any Franchise Waste if the Container in which it is contained has been placed (1) in a location the Contractor cannot readily access with its Operating Assets, or (2) in a manner which would otherwise prohibit the safe pickup thereof.

E. Container Replacement. The Contractor shall provide repair and replacement of containers for Recyclable Materials to the extent provided in Section 6-2.602 of the Code.

5.4 Hazardous Waste

If Contractor determines that waste placed in any container for collection or delivered to any facility is Hazardous Waste, Designated Waste or other waste that presents a hazard to Contractor employees or may not legally be disposed of at a Class 3 disposal facility, Contractor shall have the right to refuse to collect such waste. In such an event, the Generator will be contacted by the Contractor and given written information about proper disposal of these materials. If the Generator cannot be reached, the Contractor shall, prior to leaving Premises, leave a correction card securely attached to the container indicating the reason for refusal to collect the material and information about proper disposal of these materials. If the material could possibly result in imminent danger to persons or property, the Contractor shall notify the Ventura County Fire Department immediately, using the 911 number and the Ventura County Environmental Health Department. If there is no imminent danger, the Contractor will notify the City of any Hazardous Waste or Designated Waste left at any Premises in the quarterly report. If the waste is collected for disposal and/or delivered to the disposal site before its presence is detected, the Contractor shall arrange for its proper

disposal. The Contractor shall afterwards make a good faith effort to identify the Generator of the waste and recover the cost of disposal from them. This cost, as well as any associated costs, including but not limited to material handling, cleanup and disposal, shall be chargeable to the Generator.

5.5 Processing

A. General. In order to maximize diversion of Franchise Waste in accordance with the requirements of the Act, Contractor shall process, broker, or deliver Green Waste and/or Recyclable Materials, including Street Sweeping debris, to a processing facility, at Contractor's expense, and in a manner satisfactory to the City and in accordance with all federal, state and local laws and regulations. Contractor shall not dispose any uncontaminated source separated Recyclable Material collected from Customers in a landfill which it has agreed to recycle, without advance written notice to and approval from the City Manager.

B. City Election to Utilize Designated Processing Facility.

Notwithstanding the foregoing, the City shall have the right to direct the Contractor to use a designated site or facility for the processing of all or a portion of the Franchise Waste collected by the Contractor pursuant to this Agreement. The purpose of this Article is to acknowledge the exclusive right of the City to determine the means, method, extent, cost, owner, builder, operator and terms of any processing service or facility to be employed to achieve greater and/or more cost-effective recycling, or diversion of City Franchise Waste than is achievable utilizing the processes and/or facilities currently utilized by the Contractor as of the Effective Date; provided, however, that nothing in this Agreement shall be deemed to limit the right of the City and the Contractor to agree that the Contractor shall undertake and be responsible for any such additional processing, and to make appropriate modifications to this Agreement in connection therewith, in accordance with Article 6.4 hereof. In the event that the City elects to designate a particular site or facility for the process of all or a portion of the Franchise Waste collected by the Contractor, the Contractor shall alter, modify and change its collection and routing system and methodology as and to the extent directed by the City in connection with such additional processing activities. The allowed rates charged by the Contractor shall be adjusted in accordance with Article 9.4 to reflect all collection and transportation cost increases and cost savings occasioned by any such alteration, modification or change.

C. California Integrated Waste Management Act Indemnification.

Contractor hereby agrees and guarantees that it will undertake the processing activities and diversion programs described in Exhibit A. Contractor hereby binds itself to protect, defend with counsel approved by the City and the Contractor, and indemnify the City against all fines or penalties sought or imposed by the California Department of Resources Recycling and Recovery, or its successor, in the event the source reduction and recycling goals of the Integrated Waste Management Act of 1989, as amended, are not met by the City as a result of the

failure by the Contractor to undertake the programs and activities described in Exhibit A, or as amended. This indemnification is based on State regulations existing on January 1, 1994, and the plans contained in the City's Source Reduction and Recycling Elements, as amended. Should these regulations or plans be amended, then the Contractor's indemnification extends only to the extent that, but not less than the extent that, the source reduction and recycling goals contained in the regulations in effect on January 1, 1994, and in the Source Reduction and Recycling Element are not met. The obligation of the Contractor to pay any fines resulting from Contractor's non-performance during the Term of this Agreement shall survive expiration of this Agreement.

D. AB 341 Assistance.

Contractor shall make good faith efforts to assist the City to implement the requirements of AB 341, including the education, outreach and monitoring requirements of the Mandatory Commercial Recycling law. On or before October 1, 2013, Contractor shall submit to City for review and approval, a plan to provide such assistance, and more specifically, to implement a public education plan, identify all customers subject to the requirements of AB 341, provide periodic on-site visits to such premises to offer and promote recycling services and attempt to resolve any logistical detriments to providing service, and notify and request assistance from the City for potential follow up action where there is a repeated refusal to implement recycling services. City agrees to provide reasonable assistance to Contractor in implementing the plan and program, including preparing a letter for distribution to customers regarding AB 341 requirements, and occasional participation by City personnel in meetings with customers who repeatedly refuse to implement recycling services.

5.6 Disposal

A. Disposal Facility. Contractor shall provide for disposal of collected Solid Waste at a City-approved disposal site in a manner satisfactory to the City and in accordance with all federal, State and local laws and regulations at no additional cost to the City.

B. Disposal Location. The City shall have the right during the Term hereof to designate the disposal facility, in its sole and absolute discretion. The City shall notify the Contractor in writing of any changes in or additions to the disposal facility. The Contractor shall comply with the requirements, rules and regulations of the owner or operator of the disposal facility, provided, however, that the Contractor shall be entitled to adjustments to the collection charge determined in accordance with Article 9.4 or its performance obligations hereunder to the extent necessary to reflect:

(1) any requirements, rules or regulations relating to the designated disposal facility which are more burdensome than those in effect at the designated disposal facility on the Effective Date; or

(2) any increased costs resulting from the designation by the City of a specific disposal site.

C. Disposal Records. The Contractor shall keep and maintain for a period of seven (7) years such logs, records, manifest, bills of lading or other documents as the City Manager may deem to be necessary or appropriate to confirm compliance by the Contractor with this Agreement and shall retain all weight slips or other call information provided to the Contractor's drivers by the owner or operator of the designated disposal facility.

5.7 Employees; Uniform

The Contractor shall take all steps necessary to ensure that its employees performing collection services conduct themselves in a professional manner, and as quietly as possible. All such employees shall at all times of employment be dressed in clean uniforms with suitable identification and with the employee's name on the shirt front. The style and appearance of employee uniforms shall be subject to the approval of the City Manager.

5.8 Vehicle and Equipment Identification and Appearance

A. Vehicle and Equipment Identification. The Contractor's name, phone number and vehicle or equipment number shall be visibly displayed on both sides of its vehicles or other collection equipment used by the Contractor as required by the Code and Contractor shall include vehicle safety signs on rear of truck. No other signs or markings shall be placed on Contractor vehicles or other collection equipment without the prior approval of the City Manager except signs or markings relative to use of such equipment including traffic safety signs or markings or instructions regarding filling or placement of collection bins

B. Vehicle Specifications, Maintenance and Appearance. All vehicles used by the Contractor in providing the Franchise Services shall be maintained as required by the Code. Vehicles shall be registered with the Department of Motor Vehicles of the State of California, shall be approved by the City Manager, shall be kept clean and in good repair, and shall be uniformly painted. Vehicles used to collect or transport Franchise Waste shall be kept covered at all times except when such material is actually being loaded or unloaded or when the vehicles are moving along a collection route in the course of collection. Any cover or screen shall be so constructed and used that Franchise Waste shall not blow, fall or leak out of the vehicle onto the street. Franchise Waste collection vehicles shall be washed at least once every seven (7) days and cleaned and painted as required to maintain a like-new appearance. No advertisement or other display shall be carried on any Franchise Waste collection vehicle without the written approval of the City Manager. All Contractor vehicles used in connection with this Agreement may be inspected and approved by the City on a yearly basis. In addition, the Contractor shall have "BIT" inspections conducted by the California Highway

Patrol bi-annually and shall provide the results of such inspection to the City Manager within 10 days of receipt. . Vehicles utilized for the provision of Street Sweeping Services shall be as described in Exhibit A of this Agreement.

5.9 Other Wastes

The City acknowledges that this Agreement is granted only with respect to those services described in Article 4 hereof and does not include the collection, transportation, processing or disposal of Hazardous Waste or Medical Waste or any other materials exempted pursuant to Code Section 6-2.302. This Agreement does not, however, limit the right of the Contractor to provide any such other services. If the Contractor elects to provide any such other services, it shall not be governed by the terms of this Agreement, but shall be subject to Applicable Law.

5.10 Special Services

The Contractor shall have the right, but not the obligation, to provide additional special services requested by any Customer directly related, and ancillary, to any of the other Franchise Services authorized hereunder. The nature and terms of any such special services shall be approved in advance by the City Manager and compensation to the Contractor therefore shall be paid by the Customer at rates set by City Council resolution. The City agrees to adjust the rates for special services to reflect any fees or taxes imposed from time to time by the City.

5.11 Service Coordinator

The City and the Contractor each shall designate in writing on or immediately following the Effective Date a person ("Service Coordinator") to transmit instructions, receive information and otherwise coordinate service matters arising pursuant to this Agreement. The City's Service Coordinator initially shall be the City Manager. Either party may designate a successor or substitute Service Coordinator at any time by written notice to the other party.

The Contractor Service Coordinator shall supervise customer needs with regard to Container replacement, promotional literature distribution, communication with homeowner associations, public area recycling needs, media relations and review of development plans with regard to space allocation requirements for refuse and recycling enclosures.

ARTICLE 6. OTHER COLLECTION RELATED SERVICES, STANDARDS AND AGREEMENTS

6.1 Billing

A. Billing Schedule and Format. At the City's direction, the Contractor shall prepare, mail and collect bills (or shall issue written receipts for cash payments) for Franchise services provided by Contractor under this Agreement. Billing shall not be permitted more than 15 days prior to the initiation of collection service

period. Bills shall not be subject to late notification or charges until 30 days following the closing day of the service period. Billings shall be placed in an envelope at least 22 square inches in size and shall include a return envelope for each billing period. Contractor shall include e-mail address on all billing notices and shall accept on-line payments. City may assume billing responsibilities by providing no less than 180 days' written notice to Contractor. Any direction of the City to undertake billing shall constitute a change in scope pursuant to Article 6.4.

B. City Information. Billings shall include sufficient space on the statement to accommodate up to 20 typed characters as specified by the City. City shall have the right to revise the billing format, provided that reasonable notice is given.

C. City Fees. Contractor shall bill for City franchise and Solid Waste Management Fees at the rates established by City Council resolution. Billings shall not identify City fees as separate items on statements.

D. Record Retention. The Contractor shall maintain copies of said billings and receipts, each in chronological order, for a period of four (4) years after the date of service for inspection by City. The Contractor may, at its option, maintain those records in any manner, provided that the records can be preserved and retrieved for inspection and verification in a timely manner.

E. Delinquent Accounts and Discontinuation of Service. The provisions of Code Section 6-2.401(C) and Exhibit E shall apply to billing generally, including penalties for late payments and collection of delinquent accounts. The Contractor may discontinue service to a Customer who is delinquent in paying for services rendered no earlier than 60 days after the last day of the billing period or that date on which the billing for the service period is delivered to the customer, whichever is later. For this purpose, delivery of the billing shall include the date such billing is deposited by to Contractor into the U.S. Mail. The Contractor shall notify the Customer and the City Manager or designee in writing of its intent to discontinue service not less than 10 business days before such discontinuation shall occur.

6.2 Public/Customer Service

A. Office Location. Contractor shall maintain a business office in the City, or such other location as the City Manager approves, for purposes of carrying out its obligations under this Agreement.

B. Office Hours. Contractor's office shall be open to the public, at a minimum, from 8:00 a.m. to 4:30 p.m. Monday through Friday. The office may be closed on weekends and holidays; however, Contractor providing service to City for weekend and holiday programs must schedule staff who are readily available 8am-1pm on Saturday and by pager or answering service on Sundays and holidays.

C. Office Equipment. Equipment shall be appropriate for efficient service and record-keeping, and shall include a computer, facsimile machine, telephone answering service or machine for after-business hour calls, computerized accounts receivable and billing system and other equipment as is reasonably required given the nature of the Contractor's operation.

D. Availability of Representatives. A representative of the Contractor shall be available during office hours to communicate with the City Manager or the public in person and by telephone. A 24-hour immediate response emergency number must be made available to City Manager for Franchise Services.

E. Telephone Service. Contractor shall maintain a telephone system at its office during business hours and shall install telephone equipment sufficient to handle the volume of calls typically experienced on the busiest days.

(1) If the office is located outside the City, Contractor must ensure that all telephone calls to it from locations within the City are billed as local calls and advertised as toll-free, unless an exception is granted by City Manager.

(2) If Customer is unable with reasonable effort to reach Contractor's office by phone, or is subject to waiting time on hold of more than two (2) minutes prior to reaching a customer service representative, the City may require that the Contractor install additional telephone lines, hire additional customer service representatives, or make other customer service improvements.

(3) Contractor shall establish an e-mail address that shall be used for customer service in resolving customer concerns. E-mail address shall be listed on all billing notices or envelopes.

F. Computer System Compatibility. The City currently supports IBM-type computer hardware systems Windows operating system, Word, Access, Excel, dBase and GIS software. To ensure compatibility, after the Effective Date, the Contractor shall not acquire computer hardware or software for maintenance of City records that are not compatible with City computer systems. In the event that the Contractor changes its computer system from that utilized on the Effective Date, it shall take all action and bear all expense necessary to assure that the replacement computer system continues to be fully compatible with that of the City and is capable of receiving, storing and processing all data which the City may reasonably request or which is or may be in the future required to be delivered in electronic form hereunder. Such obligation shall include, as necessary in the circumstance, the replacement or upgrading of the other data processing and other computer equipment.

6.3 Service Complaints, Complaint Log and Complaint Reimbursement

A. General. Contractor shall be responsible for the prompt and courteous attention to, and prompt and reasonable resolution of, all complaints within 24 hours, weekends and holidays excepted, provided, however, that if the complaint

is of a nature that cannot be resolved within 24 hours, the Contractor shall resolve the complaint as soon as practicable and shall provide written notification, on request by City staff, as to the complaint resolution.

B. Failure to Collect. If a complaint involves a failure to collect Solid Waste from a Premises on a scheduled collection date and when Franchise Waste is properly placed for collection, Contractor shall collect the Solid Waste in question within a 24 hour period of its receipt of notice from a Customer or the City Manager of a failure to provide Franchise Waste collection service as required by the terms of this Agreement, Sundays and holidays excepted, provided it has been delivered for collection in accordance with the Code.

C. Log. Contractor shall record in a designated log all complaints, noting the name and address of complainant, date and time of complaint, nature of complaint, and nature and date of resolution. This log shall be available for inspection by the City Manager during the Contractor's regular office hours. Copies thereof and copies of all complaints shall be furnished to the City Manager upon request. This complaint log shall be retained by the Contractor for the Term. In addition, Contractor shall compile a summary statistical table of the complaint log, in a format satisfactory to the City, and submit the report to City with each quarterly report.

D. Complaint Reimbursement. Customers contacting the City with a complaint regarding Contractor service will be directed to Contractor for complaint resolution. In the event that the Contractor cannot resolve the complaint and the Customer contacts the City for resolution, Contractor shall reimburse the City for all reasonable labor and materials directly expended by the City in resolving legitimate service-related complaints from Customers in such cases where the complaint is resolved against the Contractor. The City shall invoice the Contractor for such costs, indicating the name and address of the Customer, nature of complaint, amount of time spent, hourly rates for employees involved, and materials required to resolve the complaint. Payment to the City shall be due within 30 days of receipt of invoice.

6.4 City's Right to Change Scope of Work

A. General. Subject to the provisions of this Article, the City shall have the right to direct the Contractor to undertake reasonable changes in the scope of operations contemplated by this Agreement. Such changes may include, but are not limited to, the implementation of additional programs designed to increase waste diversion in the City, such as the curbside collection of additional materials, such as household batteries, organic wastes and other materials. In the event the City directs the Contractor to implement such a change in operations, the provisions of this Article 6.4 shall apply.

B. Contractor Proposal. In the event the City elects to direct the Contractor to undertake a change in the scope of operations (a "Change in Scope"), the City shall give the Contractor written notice thereof. The Contractor shall prepare a proposal relating to the implementation of the Change in Scope within 30 days of receipt of such notice from the City (or such longer period as may be reasonably necessary to prepare the proposal, if such proposal cannot reasonably be prepared within 30 days). The proposal shall contain detailed information relating to the implementation of the Change in Scope, and shall include the following:

- (1) a description of the equipment and/or operational modifications that will be required to implement the Change in Scope;
- (2) an estimate of the amount of all costs to be incurred by the Contractor in connection with the Change in Scope, if any;
- (3) a projected implementation schedule;
- (4) the Contractor's proposed adjustment to the rates; and
- (5) any other information which may be requested by the City in the notice to the Contractor.

In addition to the information described above, the Contractor may also propose other modifications to this Agreement, including an extension to the Term of the Agreement if the Contractor believes that such an extension would be advisable or required to effectuate the City's directive.

C. City Review. The City shall review the proposal submitted by the Contractor, and may by written notice to the Contractor propose changes or modifications to any part of the proposal. The Contractor shall respond in a timely manner to any proposed modifications. Such modifications may include revisions to the cost elements of the Contractor's proposal.

D. Implementation. Upon agreement by the City and the Contractor on the final proposal of the Contractor, revised to reflect modifications proposed by the City, the City may direct, and the Contractor shall undertake and complete, the implementation of the Change in Scope. The allowed rates charged by the Contractor shall be revised to the extent provided in the final proposal, as accepted by the City.

E. City's Right to Undertake Change of Scope. In the event the Contractor and the City are unable to agree on revisions to the Contractor's proposal relating to the implementation of the Change in Scope within a reasonable period of time after conducting good faith negotiations with respect thereto, the City shall have the right to undertake and complete the Change in Scope. Such work may be performed by City employees or City Subcontractors. In the event the City elects to proceed under this subsection, it shall provide notice of its election to the Contractor together with a description of the manner in which the City intends to proceed with the Change in Scope.

6.5 Title to Solid Waste, Green Waste, Recyclable Material and Street Sweeping Debris

It is expressly understood that all Solid Waste, Green Waste, Recyclable Materials and Street Sweeping debris collected become the property of the Contractor, provided that the City in its sole discretion may elect to retain ownership of all or select portions of the Solid Waste, Green Waste and Recyclable Materials collected by notifying the Contractor in writing. Said notice shall only affect the ownership of such material collected by Contractor after the giving of said notice and shall not be applied retroactively.

6.6 Marketing of Recovered Materials

A. Marketing Responsibilities. The Contractor shall, on and after the Effective Date, continue its marketing activities of Recyclable Materials and source-separated Green Waste, collected by the Contractor in the secondary materials market and secure purchase commitments on a continuing basis. Revenues or other consideration derived from the sale or barter of Recyclable Materials shall be the property of the Contractor. Throughout the Term of this Agreement, the Contractor shall:

(1) not market or dispose of marketable Recyclable Materials and source-separated Green Waste for use in any manner which will not result in maximum feasible diversion credit under the Act without the approval of the City;

(2) not, in its sales and pricing arrangements, market, or sell Recyclable Materials and source-separated Green Waste on terms or conditions which favor or produce a benefit to the Contractor, any guarantor, any other municipal or private customers of the Contractor, or any affiliate or any facility customer to the detriment of the City;

(3) use its best efforts to investigate, research, develop and maintain the secondary materials market for Recyclable Materials and source-separated Green Waste collected by the Contractor;

(4) maintain complete and accurate records of all sales and transportation accounts and transactions until at least the first anniversary of the last day of the applicable Franchise Year (or such longer period as may be appropriate to account for any dispute then pending);

(5) furnish the City promptly upon request copies of any agreements for which the Contractor sells Recyclable Materials and source-separated Green Waste;

(6) take all reasonable steps to minimize downgrades and rejections of Recyclable Materials and source-separated Green Waste collected by the Contractor.

B. Profitable Recovered Products. The Contractor shall be entitled to retain for its own account all of the revenues or other consideration derived from the sale or barter of Recycled Materials and source-separated Green Waste produced from the processing of Solid Waste without payment or credit to the City.

C. Unprofitable Recovered Products. The Contractor shall bear the entire risk of, and have sole and absolute responsibility for, marketing for recycling and re-use all Unprofitable Recovered Products. Without limiting the generality of the foregoing, the Contractor shall bear all transfer, transportation, handling, storage and disposal costs, charges, taxes and liabilities associated with the marketing and disposal of unprofitable recovered products in accordance with this subsection. If necessary in connection with its covenants under this subsection, the Contractor shall make any payments and assume any liabilities, in either case without limitation as to amount, which may be required from time to time to induce recovered product purchasers to receive and assume possession and ownership of Unprofitable Recovered Products, including all transportation and other related costs. The unavailability of profitable markets for the sale of Recyclable Materials and source-separated Green Waste shall not constitute an Uncontrollable Circumstance hereunder. The agreements of the Contractor in this subsection shall apply notwithstanding the content, composition or character (physical, chemical or otherwise) of Solid Waste delivered to a facility for processing hereunder. In the event that, for any 12 month rolling period, either:

(1) costs incurred by the Contractor to meet its obligations under this Section materially increase from the levels applicable as of the Effective Date (without a corresponding increase in the revenues to the Contractor resulting from the sale of Recovered Products); or

(2) revenues to the Contractor resulting from the sale of Recovered Products materially decrease from the levels applicable as of the Effective Date (without a corresponding reduction in the costs incurred by the Contractor under this Section); then the Contractor shall be entitled to an adjustment of the rates to the extent provided in Article 9.4, or relief from providing the recycling services which caused the circumstances described in (1) or (2) of this Section.

In addition to the petition, the Contractor or the City shall propose any modifications to then-current recycling, diversion and marketing activities which the Contractor or the City believe might reasonably minimize or eliminate any rate adjustment that may be required. In the event that the City disagrees with the proposed rate adjustment, the provisions of Articles 12.7 and 12.8 shall apply.

D. Assurance of Recycling or Re-Use. As part of its quarterly operating reports submitted pursuant to Article 7.4 hereof, the Contractor shall certify on a form provided by the City that all Unprofitable Recovered Materials marketed or disposed of by the Contractor have been transferred to the secondary materials market in a sale, donation or payment for disposal transaction for recycling or re-use purposes, and have been diverted from landfill in a manner which will entitle the City to waste diversion credit for such materials in accordance with the Act. The Contractor shall use its best efforts to assure that any Unprofitable Recovered Products marketed through brokers, distributors or intermediaries other than the end-user are ultimately used for recycling or re-use purposes by an end-user, and shall furnish evidence satisfactory to the City that such is the case. The Contractor shall not utilize any sites for the interim storage of Unprofitable

Recovered Products other than its own properties without the City's advance written consent which may be withheld in the City's sole discretion.

6.7 Non-Discrimination

The Contractor shall not discriminate nor permit discrimination by any of its officers, employees, agents and representatives against any person because of age, race, color, religion, national origin, sex, sexual orientation or physical or mental disability. The Contractor will take all actions reasonably necessary to ensure that applicants are considered for employment, and that employees are treated during employment, without regard to their age, race, color, religion, national origin, sex, sexual orientation or physical or mental disability. Such action shall include, without limitation, recruitment and recruitment advertising; layoff or termination; upgrading, demotion, transfer, rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor shall impose the non-discrimination provisions of this Article by contract on all Subcontractors hired to perform work related to performance of its obligations hereunder and shall take all reasonable actions necessary to enforce such provisions. The Contractor will post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this non-discrimination clause.

6.8 Change in Collection Schedule; Holiday Schedule

Contractor shall submit in writing to the City Manager any proposed change in collection operations resulting in a change of the day on which collection occurs. City's approval will not be withheld unreasonably. Contractor will not permit any Customer to go more than six (6) days without collection as a result of a schedule change. Contractor shall provide at least 30 days written notice to Customer in advance of change in collection schedule, and place at least two (2) advertisements in a paper of general circulation at least two (2) weeks in advance. Contractor shall provide all Customers with a written holiday schedule at least once a year, as part of the billing process, and shall post the holiday schedule on Contractor's website.

6.9 Report of Accumulation of Solid Waste; Unauthorized Dumping

Contractor shall direct its field employees to note the addresses of any Premises at which Solid Waste is accumulating and is not being delivered for collection, and the address, or other location description at which Solid Waste or hazardous waste has been dumped in an apparently unauthorized manner. Contractor shall deliver the address or description to City within three (3) working days of such observation.

6.10 Review of Billings

Contractor shall review its billings to all Customers. The purpose of the review is to determine that the amount which the Contractor is billing each Customer is correct with regard to the level of service (i.e., frequency of collection, size of container, location of container) at the rates approved by City Council resolution.

The Contractor shall review Customer accounts not less than annually and provide a written certification to the City that all such billing is correct. Upon request of the City, the Contractor shall provide reasonable substantiating documentation with respect thereto.

6.11 Inspection of Facilities

Designated City representatives shall have the right to observe, inspect and review Contractor operations and enter Premises for the purposes of such observation and review during normal business hours with two (2) hours prior telephone, e-mail or facsimile notice.

6.12 Street Sweeping Evaluations

The City may require periodic evaluations of Contractor's Street Sweeping services. Evaluations will be conducted solely at the behest of and paid for by the City. Where deficiencies are noted, Contractor shall provide City with a written response outlining Contractor's plan to implement improvements to Street Sweeping services. If the deficiencies are determined to be excessive and ongoing, the City may charge the Contractor the actual costs of performing the evaluations. Prior to charging the Contractor, the City will send a minimum of two written notices informing the Contractor that the current level of service is not acceptable and must be corrected within 30 days. In the event that the deficiencies were not adequately corrected the City will send a third notice indicating that the Contractor will be charged for ongoing evaluations until the deficiencies are corrected and the Contractor has performed satisfactorily for three consecutive months. These charges would not be eligible for reimbursement. City may also make regular unannounced inspections of sites. If a swept area is deemed to be below acceptable performance standards, the location(s) shall be re-swept at Contractor's expense.

6.13 Street Sweeping

Contractor shall furnish all labor, equipment, materials, and supervision necessary to perform Street Sweeping Services in accordance with terms and conditions of this Agreement.

ARTICLE 7. RECORDS AND REPORTS

7.1 Purpose

Contractor shall keep and preserve, during the Term of this Agreement, full, complete, and accurate financial and accounting records, pertaining to cash, billing and disposal transactions for the franchise area, prepared on an accrual basis in accordance with generally accepted accounting principles. These records and reports are necessary for the City to properly administer and monitor the Agreement and to assist the City in meeting the requirements of the Act. The Contractor shall keep and preserve, during the Term of this Agreement, and for a period of not less than four (4) years following expiration or other termination hereof, full, complete and accurate records as indicated in the Agreement.

The Contractor shall provide all data and statistical information that the City Manager deems to be necessary to demonstrate compliance with current or future federal, state, or local law, regulation, order or permit. Such records shall be subject to audit and inspection, for the primary purpose of reviewing billing operations, accounts receivable and disposal fee charges, by the City and its authorized officers, agents or employees, at any reasonable time at the Contractor's principal office. The gross receipts derived from the Franchise Services under this Agreement, whether such services are performed by the Contractor or by a Subcontractor or Subcontractors, shall be recorded as revenues in the accounts of the Contractor. Contractor shall be given at least 30 days notice of any change in reporting requirements.

If, as a result of a City-sponsored audit, it is determined that a Contractor has underpaid the City by five percent or more, the Contractor shall assume all reasonable costs of that portion of the audit pertaining to the Contractor's company. The Contractor shall reimburse the City for this audit cost.

7.2 Customer Accounts

Customer account lists shall be maintained and updated annually, in a manner that clearly identifies the number of Customers by Generator classification within the City. Upon request by the City Manager, Contractor, at its own cost and expense, shall provide a mailing list and/or mailing labels of all Customers by Generator classification, up to two times per Franchise Year.

7.3 Annual Reports

The Contractor shall furnish complete annual financial statements of the Contractor to the City Manager, with a copy to the Director of Finance. Such financial statements shall include a balance sheet, statement of earnings, and a statement of cash flows. The financial statements shall be reviewed by independent public accountants acceptable to the City. Such review shall be in accordance with Statements on Standards for Accounting and Review Services issued by the American Institute of Certified Public Accountants and shall include such accountants' review report, and in such form, as required under these standards. All reports shall be submitted with a certification signed by an officer or principal of the Contractor that, to the best of his/her knowledge, information is correct and executed under penalty of perjury.

Contractor shall submit the following information annually, and in writing, no later than February 1:

- A. Name and address of Contractor;
- B. If a firm, partnership, corporation, or sole proprietorship, the name of said firm, partnership or corporation, or sole proprietorship, and the names and addresses and percent of ownership of all members, officers or sole proprietors of the same;

- C. The address of Contractor's yard where vehicles, Containers, and other equipment and maintenance operations are located;
- D. The number of collection vehicles to be used in each zone and the make, model, year, description and license number of all trucks used in each zone;
- E. Routes by streets to be followed in each zone;
- F. Days for service in each zone on each route;
- G. California Highway Patrol Inspection Reports for each collection vehicle, as required by State law;
- H. An updated contingency plan, demonstrating the Contractor's arrangements to provide vehicles and personnel to maintain uninterrupted service during mechanical breakdowns, and in case of natural disaster or other emergency;
- I. Certification that all training and safety programs required by Applicable Law have been completed and, if requested by the City, supporting documentation;
- J. All reports or other material adversely reflecting on the Contractor's performance under this Agreement, submitted by Contractor to, or received by Contractor from, the United States or California Environmental Protection Agency, the California Department of Resources Recycling and Recovery, Cal/OSHA, and any other federal, state or local agency;
- K. A report of traffic citations received by employees in the City during the collection and transportation of Solid Waste, Green Waste and recyclable material during the previous year on a form provided by the City;
- L. Narrative report and samples of all Customer education and publicity materials for the past year;
- M. Written certification that account billing during the previous year has been reviewed, that all such billing is correct and that all billed amounts conform to City rate guidelines as defined in Article 9.
- N. Such other facts or information as the City Manager may reasonably require.

7.4 Quarterly Reports

Contractor shall submit quarterly written reports at its expense and in a format acceptable to the City. The method, timing and content of quarterly reports may be modified by City Manager as determined necessary by City Manager for program administration. All reports shall be submitted with a certification signed by an officer or principal of the Contractor that, to the best of his/her knowledge, information is correct and executed under penalty of perjury. Contractor agrees to submit such reports and information electronically, in a method and format compatible with the City's computers, if requested by the City Manager. Quarterly reports shall be delivered or postmarked not later than the last business day of the month following the end of each quarter and shall include:

- A. The quantities by weight of Solid Waste, source separated Green Waste and source separated Recyclable Materials collected.
- B. Each disposal site used during the quarter with tonnage taken to each site.

- C. Each processing site used during the quarter with tonnage taken to each site and residual Solid Waste.
- D. The average price received or paid during the quarter for each type of recyclable material.
- E. Set-out and participation rates for recycling programs.
- F. Hazardous Waste inadvertently collected during the quarter, including Customer address (if known), quantity and type of material, and final disposition of Hazardous Material.
- G. List of delinquent accounts, new accounts and non-subscribing accounts in its zone.
- H. Weight and other pertinent information regarding special collection programs during the quarter (community events and newspaper and cardboard collection bins).
- I. By a methodology to be mutually agreed upon by the City and the Contractor, weight or volume of Solid Waste, source separated Green Waste and Recyclable Material collected from City sites listed in Exhibit A.
- J. Summary report of Customer complaint log in a format acceptable to the City, including complaint resolution and customer phone #.

7.5 Diversion Information

The Contractor shall furnish the City with quarterly and annual reports setting forth all information required under the Act or otherwise by the City pertaining to the recycling and diversion of Franchise Waste collected by the Contractor. The report shall be prepared in the form required by the Act, and shall categorize recycling activity in the manner required by the Act.

7.6 Street Sweeping Service Reporting

A. Quarterly. Contractor will provide to the Director quarterly electronic reports no later than the 30th day following the close of the quarter in a format compatible with City computers that identify routes swept, route miles swept, total miles swept, dates swept, quantity of street sweeping debris collected and amount diverted from landfill disposal, volume of water used from hydrants within the City water system service area, and citizen complaints and the resolution of each complaint.

B. Immediate. Items that interfere with the driver's ability to sweep adjacent to the curb or gutter and immovable objects such as construction debris and areas of impaired vertical or horizontal clearance such as trees on private or public property shall be immediately reported to the Director. A sweeper operator that observes the discharge of pollutants to the street or storm drain system shall immediately report the nature and location of the pollutant discharge to their supervisor. Upon such notification, Contractor shall immediately notify the Director of the pollutant discharge.

C. Compliance Reporting. Contractor is responsible for maintaining any forms needed for compliance with applicable regulations including but not limited to California Regional Water Quality Control Board and California Department of Resources Recycling and Recovery regulations.

7.7 Cooperation With Waste Studies

Contractor agrees to cooperate with the City in waste studies.

7.8 Failure to Report; Late Reporting Fees. The refusal, failure or neglect of Contractor to file any of the reports required, or to provide required information to the City, or the inclusion of any materially false or misleading statement or representation by Contractor in such report shall be deemed a material breach of the Agreement, and shall subject Contractor to fines and all legal remedies which are available to the City under the Agreement, or otherwise.

Reports must be hand-delivered or postmarked not later than the last business day of the month following the end of each quarter. For hand-delivered reports, the Contractor must request and receive a receipt or time stamp with the exact date report is received by the City Finance Director or designee. Reports submitted after this date shall be subject to a fee of up to \$100 per day for each day after the due date, unless such delay is attributable to City requested changes. If the delay is due to extenuating circumstances as determined by City, Contractor must request approval in writing from the City Manager or designee at least five (5) business days prior to the date on which the fees and reports are due. City shall contact notify Contractor within three (3) business days of receiving request for submission delay as to whether delay will be permitted.

7.9 Inspection of Operations and Records by City

Contractor shall make available to the City for examination the records maintained pursuant to this Article as may be necessary to assist the City in meeting its obligations under the Act, or as amended. Designated City representatives shall have the right to inspect or review the financial statements, income tax returns, payroll tax reports, specific documents or records required pursuant to this Agreement, or any other records or reports of the Contractor reasonably necessary to evaluate annual reports, rate review applications and the Contractor's performance provided for in this Agreement.

ARTICLE 8. FEES

8.1 Solid Waste Management Fee

In consideration of the Exclusive Franchise provided for in Article 4 of this Agreement, Contractor shall pay to City a Solid Waste Management Fee set by City Council resolution, pursuant to this Agreement. City may adjust the amount of the Solid Waste Management Fee by resolution. The amount of such fee as applied to Residential Service is \$0.60/month for each Residential Customer serviced.

8.2 Franchise Fee

A. General. In consideration of the Exclusive Franchise provided for in Article 4 of this Agreement, Contractor shall pay to City a Franchise Fee as a percent of the Gross Revenue received by the Contractor from Franchise services provided in the City pursuant to this Agreement, less the City Solid Waste Management Fee. The City Council may adjust the amount of the Franchise Fee by resolution. For calendar years 2013 and 2014, the Franchise Fee shall be eight (8) percent. For calendar year 2015 and thereafter, the Franchise Fee shall be nine (9) percent.

B. Franchise Equivalency Payment. For calendar year 2014, Contractor shall pay an amount equal to 1% of the Gross Revenue received by the Contractor from Franchise services provided in the City pursuant to this Agreement, less the City Solid Waste Management Fee.

8.3 County Surcharge Parity Fee

In addition to the other amounts described herein, the Contractor shall be obligated to pay to the City a County Surcharge Parity Fee. This fee shall be \$1.65/ton times the number of tons of Franchise Waste generated from residential and commercial accounts and disposed by the Contractor at any landfill other than Simi Valley Landfill (SVL).

8.4 California Integrated Waste Management (CIWMP) Fee

Contractor shall remit to City \$0.45/ton for Franchise Waste generated from residential and commercial accounts in the City and disposed by Contractor at a landfill, solid waste disposal facility, transfer station or processing station either inside or outside Ventura County. CIWMP Fee will not apply to any Recovered Products.

8.5 Time and Method of Payment; Late Fees

Solid Waste Management Fees, Franchise Fees, County Surcharge Parity Fees and CIWMP Fees shall be computed and paid on the basis of receipts each calendar month, for services rendered. County Surcharge Parity Fees shall be computed as described in Article 8.3 of this Agreement. Contractor shall prepare and mail such remittance on a quarterly basis to the Finance Director, and such remittance shall be hand-delivered or postmarked no later than the last business day of the month following the end of each quarter. For hand-delivered remittance, the Contractor must request and receive a receipt or time stamp with the exact date remittance is received by the City Finance Director or designee.

The remittance will be accompanied by a report, prepared in a format acceptable to City Manager, setting forth the basis, and calculations used for computing the amount due. The figures used shall be taken from the general books of account of the Contractor.

If Contractor fees to the City are not paid by the date set by this Agreement, then in addition to the fees, the Contractor shall pay a penalty in an amount of one percent of the total amount due, if fees are one (1) through 10 days late; and 10 percent of the total amount due if fees are more than 10 days late, except to the extent that such lateness is due to extenuating circumstances as determined by City.

In addition, the Contractor shall pay interest on all unpaid fees at the rate of six (6) percent per annum or the legal rate allowed, whichever is less, from the date the fees were due and payable to the date actually paid.

If the delay is due to extenuating circumstances, Contractor must request approval in writing from the City Manager or designee at least five (5) business days prior to the date on which the fees and reports are due. City shall contact notify Contractor within three (3) business days of receiving request for submission delay as to whether delay will be permitted.

8.6 Taxes and Utility Charges

The Contractor shall pay all Taxes lawfully levied or assessed upon or in respect of the Operating Assets or the Franchise Services, or upon any part thereof or upon any revenues of the Contractor therefrom, and provide and pay the cost of all utilities necessary for the operation of the Operating Assets and the provision of the Franchise Services, when the same shall become due.

8.7 Disputes

In the event of any disputes between the Contractor and the City with respect to fees described in this Article, the City shall provide the Contractor with written objection within 180 days of the receipt of the report described in Article 7, indicating the portion of the report that is being disputed and providing all reasons then known to the City for its objection to or disagreement with such amount. If any such amount is adjusted in the City's favor pursuant to agreement, mediation, legal proceeding, or otherwise, the Contractor shall pay the amount of such adjustment to the City, with interest thereof at the Overdue Rate from the date such disputed amount was due the City to the date of payment in full of such amount. Nothing contained in this subsection shall limit the authority of any authorized officer of the City or any other governmental agency to raise a further objection to any amount billed by the Contractor pursuant to an audit conducted pursuant to Applicable Law. In the event that the Contractor prevails in the dispute, the Contractor shall have the right to recover from the City its reasonable costs incurred in connection with the dispute resolution procedure.

ARTICLE 9. SERVICE RATES AND PERFORMANCE REVIEW

9.1 Contractor's Rates

A. General. Contractor shall perform the responsibilities and duties described in this Agreement in consideration of the right to charge and collect from

Customers for collection, processing disposal and Street Sweeping services rendered, at rates fixed by the City in accordance with the Code and the provisions of this Agreement. Contractor shall not charge fees other than those approved by City Council resolution. Contractor acknowledges the City is not responsible for payment of any sums under this Agreement except as expressly provided for as payable by the City hereunder. The rates currently in effect are those established by the City, and attached as Exhibit E. Excess revenues collected due to over-billings shall be refunded within 30 days to the Customer(s) over-billed. Revenue shortfalls due to under-billings shall be the responsibility of the Contractor.

B. Initial Rates. For the period from the Effective Date through December 31, 2013, the Contractor shall be permitted to charge the rates and fees in effect as of the Effective Date, which are those described in Exhibit E.

C. Subsequent Rate Adjustment. The rates permitted by the Contractor in each calendar year period shall be determined on or before November 1 in each year preceding the year in which the rates are to be effective by utilizing the adjustment methodology contained in Exhibit F, as modified as follows: For calendar year 2013, there shall be no increase in residential service rates. For calendar year 2014, residential service rates shall be reduced by one percent (1%) from the prior year's rates. For calendar year 2015, the Escalating Index described in Exhibit F-1(a) for residential service shall be reduced by fifty percent (50%) from that which would normally be calculated as part of the residential rate adjustment process.

D. Other Adjustments.

(1) Street Sweeping. Contractor has the obligation to fund the provision of street sweeping services. At the same time, it is the intent of the parties to provide for service rates that are reasonably adequate to compensate Contractor for street sweeping service costs. As of the Effective Date, the cost to provide street sweeping service costs within the Franchise Area at the level described in this Agreement for a period of one year is \$140,904. This amount is expected to increase or decrease consistent with the rate adjustment methodology contained in Section 9.1 C and Exhibit F. Street sweeping service costs include, among other things, the physical provision of services, as well as reporting, management, oversight, and reasonable profit. The total allowable cost for reporting, management, oversight and reasonable profit shall not exceed 10% of total street sweeping service costs. On September 1 of each year, commencing on September 1, 2012, Contractor shall submit a report showing revenue allocated on a monthly basis for the provision of street sweeping services from residential customers (\$1.00 per month per customer) and commercial customers (including roll-off and bin service) (7.5% of the charge after subtraction of City Franchise Fee and Solid Waste Management Fee) for the previous twelve month period ending on June 30, compared with the estimated cost set forth above, as adjusted by the rate adjustment methodology contained in Section 9.1 C and Exhibit F. Should

the allocated revenues exceed the estimated street sweeping service costs, as adjusted, Exhibits E and F shall be adjusted effective January 1, 2014 (or any succeeding January 1) to decrease customer rates to align the estimated street sweeping service costs for the next calendar year with allocated revenues. Should the estimated street sweeping service costs, as adjusted, exceed the amount of allocated revenues, Exhibits E and F shall be adjusted effective January 1, 2014 (or any succeeding January 1) to increase customer rates to align the estimated street sweeping service costs for the next calendar year with allocated revenues.

(2) Special Charges. Commercial Contractor may assess special charges only as provided for in the Rate Schedules, provided that written notification and justification, where indicated in Exhibit E, is provided to the City Manager or designee in advance of the assessment of the charges and City Manager or designee approval is received.

(3) Other Rate Adjustments. In addition to the adjustment pursuant to Article 9.1C above, the rate shall also be adjusted to fully reflect:

(a) Changes in the scope of work directed by the City in accordance with Article 6.4;

(b) Increases or decreases in the tipping fee payable for the disposal of Franchise Waste;

(c) Increases or decreases resulting from the occurrence of Uncontrollable Circumstances; and

(d) Increases or decreases in the Solid Waste Management Fee, the Franchise Fee, the CIWMP Fee and the County Surcharge Parity Fee. The actual amount of any increases or decreases due to the foregoing reasons shall be determined in accordance with Article 9.4 or Exhibit F as applicable.

9.2 Performance Standards and Damages

In the event that the City becomes aware of any of the violations described below, the City Manager shall provide written notice thereof to the Contractor. In the event that the same violation occurs one or more times within 12 months after the date of the initial notice, the Contractor shall pay to the City liquidated damages in the amount of \$100 for the first subsequent violation (after the initial notice described in the preceding sentence) and \$500 for any further subsequent violations within that period. The City Manager's decision to levy any such charge shall not be deemed an election of remedies but shall be cumulative with any other remedies provided for in this Agreement. The City Manager's decision to not levy any such charge shall not be deemed a waiver of any breach by the Contractor under this Agreement.

Violations shall include:

(1) Failure to correct a missed service within (24) hours (except Sundays and holidays) of notice to the Contractor of the missed service.

(2) Noise substantially in excess of that reasonably required resulting from performance of Contractor collection operations.

(3) Failure to log Customer complaint.

(4) Failure to submit Customer complaint log to City.

- (5) Collection outside authorized hours unless alternative collection hours have been approved in writing by City Manager or designee.
- (6) Demonstrated discourteous behavior by particular employee.
- (7) Failure to respond (Sundays and holidays excepted) to complaint within 24 hours.
- (8) Use of refuse vehicle for Recyclables Material collection for five (5) consecutive collection days.
- (9) Failure to provide Customer with a City-approved written correction notice clearly defining the proper materials preparation for collection by Contractor, including the reason for non-collection if service was not rendered due to Customer error.
- (10) Failure to clean up spills on Customer property or City street right of way caused by the collection process.
- (11) Non-use of trash truck screen or cover to prevent material from being blown onto street.

The City Manager shall give the Contractor written notice of charges levied pursuant to this Article. Contractor may appeal imposition of charges by filing a letter within 10 days of receipt of notice of charges, indicating the basis for such appeal. Any such damages shall be added to the next quarterly Solid Waste Management Fee payable by Contractor to the City.

9.3 Performance Review

At the City's sole option, the City may hold a public meeting each year at which the Contractor shall be present and shall participate, to review the Contractor's quality of service, including Customer complaints, and the Contractor's compliance with the reporting requirements of this Agreement. Within 30 days after the public meeting, the City may issue a report as to the adequacy of performance and quality of service.

9.4 Interim Rate Adjustment

In the event of a circumstance which might result in an adjustment to the permitted rates pursuant to Article 9.1(D), the Contractor may apply to the City for consideration of an interim rate adjustment. In such event, the Contractor shall submit to the City a detailed application for the interim rate adjustment, specifying the amount of the adjustment requested, the reason therefore, and including any supporting information or other information reasonably requested by the City. The City shall respond to the application within 30 days of its submission by the Contractor. The Contractor shall provide any additional information requested by the City during the 30-day review period. Such response may consist of an approval of the application as submitted, a rate adjustment different from that proposed by the Contractor, or a denial of the application; provided, however, that the City acknowledges that the Contractor shall be entitled to corresponding rate adjustments to the extent provided in Article 9.1(C). In the event the City denies the application or proposes a rate adjustment different from that applied for by the Contractor, the City shall provide written reasons therefore. In the event that the

Contractor disagrees with the response of the City, the Contractor may submit the dispute to resolution in accordance with Article 12.7 and 12.8.

9.5 Publication of Proposed Rate Change

The Contractor shall provide written notice to Customers of rate changes in a form approved by the City Manager within 30 days of written notification to the Contractor of adoption of such rates by the City. The notice may be provided as part of a regular billing.

9.6 Rate Adjustment At Request of the City in Certain Circumstances

The City shall have the right to an adjustment in the applicable Rates hereunder in accordance with this Section 9.6 in the event that the City demonstrates that the rates provided for comparable services pursuant to this Agreement generally exceed an amount equal to 110 percent of the average of the rates for comparable services in (i) all of the other cities in Ventura County, (ii) unincorporated areas of Ventura County immediately adjacent to the City, and (iii) the Cities of Westlake Village, Calabasas and Agoura Hills; (such average rates referred to herein as the "Average Rates"); provided, however, that for purposes of calculating the Average Rates pursuant to this section, the rates in the city or unincorporated areas with the lowest rates and the highest rates shall not be counted; and further provided, that for purposes of calculating the Average Rates pursuant to this section any portion of any rates which constitute "Franchise Fees" or similar fees which are required to be paid to the jurisdiction by waste haulers shall not be included in the rates.

In the event that rates provided for hereunder exceed 110 percent of the Average Rates, the rates provided for hereunder shall be reduced to an amount equal to 110 percent of the Average Rates, provided however, in no event shall the rates provided for hereunder be reduced below the rates in effect as of the Effective Date. In addition, if rates are adjusted pursuant to this Section, thereafter, such rates shall not be escalated pursuant to Section 9.1(C) to the extent that such escalation would cause the rates hereunder to exceed 110 percent of the Average Rates. In the event that the City believes that the provisions of this Section are applicable, it shall notify the Contractor in writing. Such response may include, but not be limited to, the Contractor's review of the City's calculation of the average rates as well as the City's determination of "comparable services" in the jurisdictions included in the Average Rate determination. After receipt by the City of the Contractor's response, the City and the Contractor shall meet and confer to discuss the applicability of this Section and the appropriate level of rate adjustment, if any. If the City and the Contractor cannot agree on the appropriate level of rate adjustment (if any) after a period of 60 days after receipt by the City of the Contractor's response, the Contractor shall have the right to appeal the City's determination of the appropriate level of rate adjustment to the City Council.

ARTICLE 10. INDEMNITY, INSURANCE, BOND

10.1 Indemnification

In consideration of the terms and provisions of this Agreement, Contractor shall indemnify, relieve, release, defend, hold harmless and forever discharge the City and its officers, agents, employees, attorneys, administrators, affiliates, representatives, servants, insurers, successors, heirs and each of them, of and from any and all claims, rights, debts, liabilities, demands, obligations, liens, promises, acts, agreements, costs and expenses (including, but not limited to, attorneys' fees and costs), damages, actions and causes of action, of whatever kind or nature (including without limitation, any statutory, civil or administrative claim), whether known or unknown, suspected or unsuspected, fixed or contingent, apparent or concealed, in any way based on, arising out of or related to or connected with or related to Contractor's services pursuant to this Agreement except to the extent attributable to City's own active negligence or willful misconduct. The provisions of this subsection shall survive termination of this Agreement.

10.2 CERCLA Indemnification

A. The Contractor shall indemnify, defend with counsel approved by the City and the Contractor, protect and hold harmless the City, its officers, employees, agents, assigns and any successor or successors to the City's interest from and against all claims, actual damages (including but not limited to special and consequential damages), natural resource damage, punitive damages, injuries, costs, response remediation and removal costs, losses, demands, debts, liens, liabilities, causes of action, suits, legal or administrative proceedings, interest, fines, charges, penalties and expenses (including but not limited to attorney's and expert witness fees and costs incurred in connection with defending against any of the foregoing or in enforcing this indemnity) of any kind whatsoever (collectively "Liabilities") paid, incurred or suffered by, or asserted against, City or its officers, employees, agents or Contractors arising from or attributable to any repair, cleanup or detoxification, or preparation and implementation of any removal, remedial, response, closure of other plan (regardless of whether undertaken due to governmental action) concerning any Hazardous Waste at any place where Contractor stores or disposes of Franchise Waste pursuant to this Agreement to the extent that such claims, damages, costs, losses, demands, debts, liens, liabilities, causes of action, suits, legal or administrative proceedings, interest, fines, charges, penalties and expenses are caused by any of the following: (1) the negligence or willful misconduct of the Contractor; (2) the collection, handling, processing, or disposal by the Contractor of any materials or waste, including hazardous substances or materials, which are not collected pursuant to this Agreement; (3) the failure of the Contractor to undertake hazardous waste and materials training procedures required by law with respect to its employees or Subcontractors; or (4) the improper or negligent handling, processing or disposal by the Contractor of hazardous waste or materials which (I) the Contractor

inadvertently collects pursuant to this Agreement and (ii) which the Contractor identifies as Hazardous Waste prior to its disposal. The Contractor shall not, however, be required to reimburse or indemnify the City and its officers, agents, employees, attorneys, administrators, affiliates, representatives, servants, insurers, successors, and heirs to the extent any such claims, damages, costs, losses, demands, debts, liens, liabilities, causes of action, suits, legal or administrative proceedings, interest, fines, charges, penalties and expenses are due to the active negligence or other wrongful conduct of such party. The City acknowledges that the mere presence of household Hazardous Waste in the Franchise Waste which is collected by the Contractor pursuant to this Agreement shall not constitute negligence, unless Contractor actually knew or should have reasonably known under the circumstances of the existence of the Hazardous Waste before collection.

B. The indemnification by the Contractor in this Section 10.2 shall be limited to Liabilities resulting from services rendered by the Contractor during the Term of this Agreement or the term of any prior franchise agreement between Contractor and the City, it being specifically understood that any liabilities attributable to the Contractor's actions prior to August 4, 1994 are excluded from the indemnification in this Agreement.

C. The foregoing indemnity is intended to operate as an agreement pursuant to 42 U.S.C. Section 9607(e) and California Health and Safety Code Section 25364, to insure, protect, hold harmless, and indemnify the City from liability in accordance with this section. The provisions of this subsection shall survive termination of this Agreement.

10.3 Insurance

A. Minimum Scope of Insurance

Coverage shall be at least as broad as:

(1) Insurance Services Office form covering Commercial General Liability coverage ("occurrence" form).

(2) Insurance Services Office form covering Automobile Liability, ("any auto") and appropriate endorsement. A combined single liability policy is acceptable.

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

B. Minimum Limits of Insurance. Contractor shall maintain limits no less than:

(1) Commercial General Liability: \$3 million each occurrence limit for bodily injury, personal injury and property damage (which policy may have an aggregate annual limit, but in an amount of no less than \$5 million).

(2) Automobile Liability: \$2 million combined single limit per accident for bodily injury and property damage.

(3) **Workers' Compensation and Employers Liability:** Workers' compensation limits as required by the Labor Code of the State of California and Employers Liability limits of \$1 million per accident.

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

D. Other Insurance Provisions. The policies are to contain, or be endorsed to contain, the following General Liability and Automobile Liability Coverages provisions:

(1) The City, its officials, employees and volunteers are to be covered as "Additional Insured" with respect to: liability arising out of activities performed by or on behalf of the Contractor; products and completed operations of the Contractor; Premises owned, leased or used by the Contractor; or vehicles owned, leased, hired or borrowed by the Contractor. The coverage shall contain no special limitations on the scope of protection afforded to the City, its officials, employees or volunteers;

(2) The Contractor's insurance coverage shall be primary insurance as respects the City, its officials, employees and volunteers. Any insurance or self-insurance maintained by the City, its officials, employees or volunteers shall be in excess of the Contractor's insurance and shall not contribute with it;

(3) Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the City, its officials, employees or volunteers; and

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

E. Workers' Compensation and Employers Liability Coverage. The insurer shall agree to waive all rights of subrogation against the City, its officials, employees and volunteers for losses arising from work performed by the Contractor for the City.

F. All Coverages. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after sixty (60) days (or if 60 days is not commercially available, such lesser notice as may be commercially available, but, in no event to be less than 30 days) prior written notice by certified mail, or a 10 day prior written notice if the reason for cancellation is non-payment of premiums, return receipt requested, has been given to the City.

G. Acceptability of Insurer. The insurance policies required by this Article shall be issued by an insurance company or companies authorized to do business

in the State of California and with a rating in the most recent edition of Best's Insurance Reports of size category VII or larger and a rating classification of A or better.

H. Verification of Coverage. Contractor shall furnish the City with certificates of insurance and with original endorsements affecting coverage required by this clause. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf to the event commercially practicable. The certificates and endorsements are to be on forms provided by the City as set forth in and are to be received and approved by the City as set forth in Exhibit D before work commences. The City reserves the right to require complete, certified copies of all required insurance policies, at any time.

I. Subcontractors. Contractor shall include all Subcontractors as Additional Insured under its policies or shall furnish separate certificates and endorsements for each subcontractor. All Coverages for Subcontractors shall be subject to all of the requirements stated herein.

J. Required Endorsements

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

Sixty (60) days prior written notice shall be given to the City of Thousand Oaks in the event of cancellation, reduction in coverage, or non-renewal of this policy. If 60 days is not commercially available, such lesser notice shall be given as may be commercially available, but, in no event to be less than 30 days prior written notice, or a 10-day prior written notice if the reason for cancellation is non-payment of premiums, shall be given to the City. All notices shall be sent by certified mail, return receipt requested. Such notice shall be sent to:

Public Works Director
City of Thousand Oaks
Public Works Department
2100 Thousand Oaks Boulevard
Thousand Oaks, CA 91362

(2) The Commercial General and Automobile Liability policies shall contain endorsements in substantially the following form:

(a) "Sixty (60) days prior written notice shall be given to the City of Thousand Oaks in the event of cancellation, reduction in coverage, or non-renewal of this policy. If 60 days is not commercially available, such lesser notice shall be given as may be commercially available, but, in no event to be less than 30 days prior written notice, or a 10-day prior written notice if the reason for cancellation is non-payment of premiums, shall be given to the City. All notices shall be sent by certified mail, return receipt requested.

Such notice shall be sent to:

Public Works Director
City of Thousand Oaks
Public Works Department
2100 Thousand Oaks Boulevard
Thousand Oaks, CA 91362

(b) "The City of Thousand Oaks, its officers, employees, and volunteers are listed 'Additional Insured' on this policy.:

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

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

K. Delivery of Proof of Coverage. Simultaneously with the execution of this Agreement, Contractor shall furnish the City certificates of each policy of insurance required hereunder, in form and substance satisfactory to City (Exhibit D). Such certificates shall show the type and amount of coverage, effective dates and dates of expiration of policies and shall have all required endorsements. If the City requests, copies of each policy, together with all endorsements, shall also be promptly delivered to City. Renewal certificates will be furnished periodically to City to demonstrate maintenance of the required Coverages throughout the Term.

L. Other Insurance Requirements

(1) In the event any services are delegated to a subcontractor, the Contractor shall require such subcontractor to provide statutory workers' compensation insurance and employer's liability insurance for all of the subcontractor's employees engaged in the work in accordance with Article 10.3.A.3. The General and Automobile liability insurance required by Article 10.3.A.1 and Article 10.3.A.2 shall cover all Subcontractors or the subcontractor must furnish evidence of insurance provided by it meeting all of the requirements of this Article 10.3.

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

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

10.4 Faithful Performance Bond. Simultaneously with the execution of this Agreement, Contractor shall post with the City Clerk, a cash performance bond, surety performance bond or authorized letter of credit with language approved by the City Attorney in an amount identified in Exhibit C. The bond shall be furnished by a corporate surety or financial institution authorized to do business in the State of California, payable to the City of Thousand Oaks. The bond shall be conditioned upon the full and faithful performance by the Contractor of obligations under the applicable provisions of this chapter and shall be kept in full force and effect by the Contractor throughout the life of the exclusive or non-exclusive franchise or permit and all renewals thereof.

ARTICLE 11. CITY'S RIGHT TO PERFORM SERVICE

11.1 General

In the event that the Contractor, due to Uncontrollable Circumstances or for any reason whatsoever, fails, refuses or is unable to collect, transport or dispose of any or all Solid Waste, Green Waste and Recyclable Materials which it is required by this Agreement to collect and transport, or to perform Street Sweeping Services, at the time and in the manner provided in this Agreement, for a period of more than 48 hours, or if in any lesser time period Franchise Waste should accumulate in the City to such an extent, in such manner, or for such time that the City Manager or City Council should find that such accumulation endangers or menaces the public health, safety or welfare, then the City Manager shall have the right, but not the obligation, upon 24 hour prior written notice to Contractor during the period of such emergency:

- (1) to perform, or cause to be performed, such services itself with its own or other personnel without liability to Contractor; and/or
- (2) to take possession of any or all of Contractor's Operating Assets used or useful in the collection and transportation of Franchise Waste and to use such property to collect and transport any Solid Waste, Green Waste and Recyclable Materials generated within the City which Contractor would otherwise be obligated to collect and transport pursuant to this Agreement.

Notice of the Contractor's failure, refusal or neglect to collect and transport Solid Waste may be given orally by telephone to the Contractor at its principal office and shall be effective immediately. Written confirmation of such oral notification shall be sent to Contractor within 24 hours of the oral notification.

Contractor further agrees that in such event:

- (1) it will fully cooperate with City to effect the transfer of possession of property to the City for City's use.

(2) it will, if City so requests, 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, all free of any and all costs or expenses to the City.

(3) the City may immediately engage all or any personnel necessary or useful for the collection and transportation of Solid Waste, Green Waste and Recyclable Materials including, if City so desires, employees previously or then employed by Contractor. Contractor further agrees, if City so requests, to furnish to the City at the cost and expense of the Contractor, the services of any or all management and office personnel employed by Contractor whose services are necessary or useful for Solid Waste collection and transportation operations and for the billing and collection of fees for these services.

(4) the City may take possession of and use all of the Operating Assets for the above-mentioned purposes. If the City so uses the Operating Assets, the City shall pay the Contractor fair market rental for the use of such Operating Assets less any increased costs incurred by the City as a result of the Contractor's failure to perform. The City may in such circumstances operate the Operating Assets with municipal employees, or cause the Operating Assets to be operated by Subcontractors to the City.

(5) it shall reimburse the City for any and all costs and expenses incurred by the City in taking over possession of the Operating Assets and in the collection, transportation and disposal of Franchise Waste in such manner and to such an extent as would otherwise be required of the Contractor under the terms of this Agreement, which costs and expenses are in excess of the amount that the Contractor would have been entitled to charge the Customers for providing services. In such event the City shall submit a reimbursement statement to the Contractor. Each statement shall list such costs and expenses, and the reimbursement shall be made no later than 10 days from and after each such submission. In the event the reimbursement is not made, the City may draw upon any security required to be maintained under this Agreement.

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

If the interruption or discontinuance in service is caused by any of the reasons listed in Article 12.5, the City shall pay to Contractor the reasonable rental value of the equipment and facilities, possession of which is taken by the City, for the period of the City's possession, if any, which extends beyond the period of time for which Contractor has rendered bills in advance of service, for the class of service involved.

Except as otherwise expressly provided in the previous paragraph, Contractor agrees and stipulates that the City's exercise of its rights under this Article:

(1) does not constitute a taking of private property for which compensation must be paid;

(2) will not create any liability on the part of City to Contractor; and

(3) does not exempt Contractor from the indemnity provisions of Article 10.1 and Article 10.2, which are meant to extend to circumstances arising under this Article, provided that Contractor is not required to indemnify City against claims and damages arising from the negligence of City officers, employees and agents in the operation of collection vehicles during the time the City has taken possession of such vehicles.

11.2 Duration of City's Possession

City has no obligation to maintain possession of Contractor'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 Contractor. The City's right to retain temporary possession of Contractor's property, and to provide collection services, shall continue until Contractor can demonstrate to the City's satisfaction that it is ready, willing and able to resume such services or until suitable arrangements can be made for the provision of collection services, which may include the award of an agreement to another waste hauling company.

ARTICLE 12. DEFAULT AND REMEDIES

12.1 Events of Default

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

A. Non-Compliance. Failure or refusal of the Contractor to perform any material term, covenant, obligation or condition contained in this Agreement other than a failure or refusal described below, except that no such failure or refusal shall give the City the right to terminate this Agreement under this Article unless:

(1) the City has given prior written notice to the Contractor, stating that a specific failure or refusal to perform exists which will, unless corrected, constitute a material breach of this Agreement on the part of the Contractor and which will, in its opinion, give the City a right to terminate this Agreement for cause under this Article unless such default is corrected within 10 days; and

(2) the Contractor has neither challenged in an appropriate forum the City's conclusion that such failure or refusal to perform has occurred or constitutes a material breach of this Agreement nor corrected or diligently taken steps to correct such default within such 10 day period from receipt of the notice given pursuant to the clause (1) of this subsection (but if the Contractor shall have diligently taken steps to correct such default within a reasonable period of time, the same shall not constitute an Event of Default for as long as the Contractor is continuing to take such steps to correct such default).

B. False Representation. Any material representation or disclosure made to City by Contractor in connection with or as an inducement to entering into this Agreement or any future amendment to this Agreement, which proves to be false or misleading in any material respect as of the time such representation or

disclosure is made, whether or not any such representation or disclosure appears as part of this Agreement;

C. Seizure. There is a seizure or attachment (other than a pre-judgment attachment) of, or levy affecting possession on, the operating equipment of Contractor, including without limit its vehicles, maintenance or office facilities, or any part thereof of such proportion as to substantially impair Contractor's ability to perform under this Agreement and which cannot be released, bonded, or otherwise lifted within 48 hours excepting weekends and holidays;

D. Insolvency. Contractor files a voluntary petition for debt relief under any applicable bankruptcy, insolvency, debtor relief, or other similar law now or hereafter in effect, or shall consent to the appointment of or taking of possession by a receiver, liquidator, assignee (other than as a part of a transfer of equipment no longer useful to Contractor or necessary for this Agreement), trustee (other than as security for an obligation under a deed of trust), custodian, sequestrator (or similar official) of the Contractor for any part of Contractor's operating assets or any substantial part of Contractor's property, or shall make any general assignment for the benefit of Contractor's creditors, or shall fail generally to pay Contractor's debts as they become due or shall take any action in furtherance of any of the foregoing;

E. Court Resolution. A court having jurisdiction shall enter a decree or order for relief in respect of the Contractor, in any involuntary case brought under any bankruptcy, insolvency, debtor relief, or similar law now or hereafter in effect, or Contractor shall consent to or shall fail to oppose any such proceeding, or any such court shall enter a decree or order appointing a receiver, liquidator, assignee, custodian, trustee, sequestrator (or similar official) of the Contractor or for any part of the Contractor's operating equipment or assets, or orders the winding up or liquidation of the affairs of Contractor;

F. Failure to Provide Performance Assurance. Contractor fails to provide reasonable assurances of performance as required under Article 12.6;

G. Unauthorized Transfer. There is a transfer or assignment of rights or obligations from the Contractor to any other person, as described in Article 13.5, without the prior written approval of the City Council;

H. Failure of Deliveries to Designated Disposal Facility. The failure by the Contractor for any reason, without any requirement of notice or cure opportunity, to deliver Franchise Waste to the designated disposal facility;

I. Missed Collections. The failure of the Contractor, except as may be excused by Uncontrollable Circumstances (or failure of the Customer to appropriately deposit Containers for collection), to make at least 99.9 percent of the gross number of scheduled collections of Solid Waste in any Franchise Year;

J. Failure to Provide Financial Security. The failure of the Contractor to provide or maintain the Performance Bond pursuant to Article 10.4 hereof, without any requirement of notice or cure opportunity;

K. Failure to Comply With Law. The failure of the Contractor to comply with applicable law within five (5) business days of notice of violation thereof.

12.2 Right to Terminate Upon Default; Waiver, Costs

A. Right to Terminate. Upon a default by Contractor, the City shall have the right to terminate this Agreement and revoke the Franchise as provided in the Code.

B. Waiver of Defenses. Subject to the provisions of this Agreement relating to Uncontrollable Circumstances, the Contractor acknowledges that it is solely responsible for providing the Franchise Services described herein, and hereby irrevocably and unconditionally waives the following defenses to the payment and performance of its obligations under this Agreement: any defense based upon failure of consideration, contract of adhesion, impossibility or impracticability of performance, commercial frustration of purpose, or the existence, non-existence, occurrence or non-occurrence of any foreseen or unforeseen fact, event or contingency that may be a basic assumption of the Contractor with regard to any provision of this Agreement.

C. Enforcement Costs. The Contractor agrees to pay to the City all fees and expenses reasonably incurred by or on behalf of the City in enforcing payment or performance of the Contractor's obligations hereunder if such non-performance results in an Event of Default by the Contractor.

12.3 Possession of Property Upon Termination

In the event of termination for default, the City shall have the right to take possession of any and all of Contractor's land, equipment, and other property used or useful in the collection and transportation of Solid Waste, Green Waste and Recyclable Materials and the billing and collection of fees for these services and to use such property in accordance with Article 11 herein. This Section 12.3 shall survive termination of this Agreement. The City shall have the right to retain the possession of such property until other suitable arrangements can be made for the provision of collection services, which may include the award of an agreement to another waste hauling company. If the City retains possession thereof after the period of time for which Contractor has already been paid by means of bills issued in advance of providing service for the class of service involved, the Contractor shall be entitled to the reasonable rental value of such property, which shall be offset against any damages due the City for the Contractor's default. Contractor shall furnish the City with immediate access to all of its business records related to its billing of accounts for services.

12.4 City's Remedies Cumulative; Specific Performance

A. The City's right to terminate this Agreement under Article 12.2 and to take possession of the Contractor's properties under Article 12.3 are not exclusive, and the City's termination of the Agreement shall not constitute an election of remedies. Instead, they shall be in addition to any and all other legal and equitable rights and remedies the City may have.

B. The Contractor acknowledges that the City intends to rely on the Contractor to provide Franchise Waste collection, transportation, disposal, recycling, handling, street sweeping and other services hereunder for the protection of the public health, safety and welfare, and that therefore the City may enforce any action for specific performance the Contractor's obligations hereunder to provide the Franchise Services on the terms and conditions provided herein.

C. No action of the City or Contractor pursuant to this Agreement (including, but not limited to, any investigation or payment), and no failure to act, shall constitute a waiver by either party of the other party's compliance with any term or provision of this Agreement. No course of dealing or delay by the City or Contractor in exercising any right, power or remedy under this Agreement shall operate as a waiver thereof or otherwise prejudice such party's rights, powers and remedies. No single or partial exercise of (or failure to exercise) any right, power or remedy of the City or the Contractor under this Agreement shall preclude any other or further exercise thereof or the exercise of any other right, power or remedy.

D. In no event shall either party hereto be liable to the other or obligated in any manner to pay to the other any special, incidental, consequential, punitive or similar damages based upon claims arising out of or in connection with the performance or non-performance of its obligations or otherwise under this Agreement, or the material inaccuracy of any representation made in this Agreement, whether such claims are based upon contract, tort, negligence, warranty or other legal theory.

12.5 Excuse from Performance

A. Performance Excused. Except as otherwise specifically provided in this Agreement, neither the Contractor nor the City shall be liable to the other for any failure or delay in the performance of any obligation under this Agreement (other than any payment at the time due and owing) to the extent such failure or delay is due to the occurrence of an Uncontrollable Circumstance.

B. Notice, Mitigation. The party experiencing an Uncontrollable Circumstance shall notify the other party by telecommunication or telephone and in writing, on or promptly after the date the party experiencing such Uncontrollable

Circumstance first knew of the commencement thereof, followed within two days by a written description of:

(1) the Uncontrollable Circumstance and the cause thereof (to the extent known);

(2) the date the Uncontrollable Circumstance began and the cause thereof, its estimated duration, the estimated time during which the performance of such party's obligations hereunder will be delayed;

(3) the estimated amount, if any, by which the Rates may need to be adjusted as a result of such Uncontrollable Circumstance;

(4) its estimated impact on the other obligations of such party under this Agreement; and

(5) potential mitigating actions which might be taken by the Contractor or City and any areas where costs might be reduced and the approximate amount of such cost reductions. Each party shall provide prompt written notice of the cessation of such Uncontrollable Circumstance. Whenever such act, event or condition shall occur, the party claiming to be adversely affected thereby shall, as promptly as reasonably possible, use its best efforts to eliminate the cause therefore, reduce costs and resume performance under this Agreement. While the delay continues, the Contractor or City shall give daily notice to the other party updating the information previously submitted.

C. Impact on Rates. If and to the extent that Uncontrollable Circumstances interfere with, delay or increase the cost of providing the Franchise Services in accordance herewith, the Contractor shall be entitled to an increase in the Rates as provided herein or an extension in the schedule for performance equal to the amount of the increased cost or the time lost as a result thereof. The proceeds of any insurance available to meet any such increased cost shall be applied to such purpose prior to any determination of cost increases payable under this subsection. Any cost reductions achieved through the mitigating measures undertaken by the Contractor upon the occurrence of an Uncontrollable Circumstance shall be reflected in a reduction of the amount by which the Rates would have otherwise been increased or shall serve to reduce the Rates to reflect such mitigation measures, as applicable.

D. Default. The partial or complete interruption or discontinuance of Contractor's services caused by one or more of the events described in this Article shall not constitute a default by Contractor under this Agreement. Notwithstanding the foregoing, however:

(1) the existence of an excuse from performance will not affect the City's rights under Article 11.1; and,

(2) if Contractor is excused from performing its obligations hereunder for any of the causes listed in this Article for a period of thirty (30) days or more, other than as the result of third party labor disputes where service cannot be provided for reasons described earlier in this Article, the City shall nevertheless have the right, in its sole discretion, to terminate this Agreement by giving 10 days' notice, in which case the provisions of Article 12.3 will apply.

12.6 Right to Demand Assurances of Performance

If Contractor is the subject of any labor unrest including work stoppage or slowdown, sick-out, picketing or other concerted job action, appears in the reasonable judgment of City to be unable to regularly pay its bills as they become due, or is the subject of a civil or criminal judgment or order entered by a federal, state, regional or local agency for violation of an environmental law, and the City Manager believes in good faith that Contractor's ability to perform under the Agreement has thereby been placed in substantial jeopardy, the City may, at its option and in addition to all other remedies it may have, demand from Contractor reasonable assurances of timely and proper performance of this Agreement, in such form and substance as the City Manager believes in good faith is reasonably necessary in the circumstances to evidence continued ability to perform under the Agreement. If Contractor fails or refuses to provide satisfactory assurances of timely and proper performance in the form and by the date required by City, such failure or refusal shall be an event of default for purposes of Article 12.1.

12.7 Forum for Dispute Resolution

It is the express intention of the parties that all legal actions and proceedings related to this Agreement or to any rights or any relationship between the parties arising therefrom shall be solely and exclusively initiated and maintained in courts of the State of California or the United States of America having appropriate jurisdiction.

12.8 Non-Binding Mediation

A. Either party hereto may give the other party written notice of its determination to resolve any dispute arising hereunder by mediation. Such notice shall specify a date and location for a meeting of the parties hereto, at which such parties shall attempt to resolve such dispute. In the event that such dispute cannot be resolved by the parties hereto within 30 days, such dispute shall be referred to an independent mediator (selected in accordance with this Article) for advice and non-binding mediation. If the independent mediator is unable, within 30 days, to reach a determination as to the dispute that is acceptable to the parties hereto, the matter may be referred by either party to legal proceedings. The parties shall equally share the cost of any mediation.

B. The independent mediator shall be a mediator or other professional with substantial experience in the solid waste management area, and shall be selected by mutual agreement of the parties. If the parties cannot agree on an independent mediator, each party will select a mediator, and the two mediators so selected will jointly select the independent mediator. In the event that an independent mediator cannot be selected within 30 days by the use of this process, either party may refer the underlying dispute to legal proceedings.

ARTICLE 13. OTHER AGREEMENTS OF THE PARTIES

13.1 Relationship of Parties

The parties intend that Contractor shall perform the services required by this Agreement as an independent Contractor engaged by City and neither as an officer or employee of the City nor as a partner of or joint venturer with the City. Nothing in this Agreement shall be deemed to constitute or to create any fiduciary relationship between the parties. Neither party to this Agreement shall have any responsibility whatsoever with respect to services provided or contractual obligations or liabilities assumed by the other party hereto, whether accrued, absolute, contingent or otherwise, or whether due or to become due.

No employee or agent or Contractor shall be or shall be deemed to be an employee or agent of the City. Except as expressly provided herein, Contractor shall have the exclusive control over the manner and means of conducting the collection, processing and disposal services performed under this Agreement, and all persons performing such services. Contractor shall be solely responsible for the acts and omissions of its officers, employees, Subcontractors and agents. Neither Contractor nor its officers, employees, Subcontractors and agents shall obtain any rights to retirement benefits, workers' compensation benefits, or any other benefits that accrue to City employees by virtue of their employment with the City.

13.2 Compliance with Law

A. General. In providing the services required under this Agreement, Contractor shall at all times, at its sole cost, comply with all applicable laws of the United States, the State of California, County of Ventura and the City of Thousand Oaks and with all applicable regulations promulgated by federal, state, regional or local administrative and regulatory agencies, now in force and as they may be enacted, issued or amended during the Term. The Contractor shall keep all records indicating compliance required by the Federal Immigration and Control Act of 1986 and shall make such records available for inspection by the City Manager upon request.

B. No Relief From Obligations. Nothing herein shall be construed to relieve the Contractor of any obligations imposed by Applicable Law, including, but not limited to, the Code. In the event of any inconsistency between the Code and this Agreement, the more stringent provision shall apply.

13.3 Governing Law

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

13.4 Jurisdiction

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

13.5 Assignment

A. Approval. Except as provided in Article 13.6, neither party shall assign its rights nor delegate or otherwise transfer its obligations under this Agreement to any other person without the prior written consent of the City Manager. The provisions contained in the Code, Section 6-2.308, or as amended, shall apply to any such assignment or transfer. The Contractor acknowledges that, among other things:

(1) the direct ownership of the Contractor by persons residing in the general vicinity of the City; and

(2) the relative importance to the Contractor of the Franchise in light of the Contractor's overall operations are significant inducements to the City in entering into this Agreement, and that the absence of either (1) or (2) on the part of any assignee or transferee proposed by the Contractor could serve as reasonable grounds for the City's refusal to consent for any assignment or transfer of the Franchise under the Code.

B. Maintenance of Corporate Existence. The Contractor covenants that during the Term of this Agreement it will maintain its corporate existence, will not dissolve or otherwise dispose of all or substantially all of its assets, and will not take any other action which would materially impair the ability of the Contractor to perform the Franchise Service.

C. Consolidation, Merger, Sale, Transfer and Change in Control. The Contractor shall not, without the prior written consent of the City, consolidate with or merge with another entity, or permit one or more other entities to consolidate with or merge into it unless the successor is the Contractor and the net worth of the Contractor upon such consolidation, merger or acquisition, calculated in accordance with generally accepted accounting principles, is not less than the net worth of the Contractor immediately prior to such consolidation or merger. In order to determine if the Contractor is the successor, the corporate management of the restructured or merged corporation will be the primary consideration. If the corporate management of the successor corporation is materially different from the management of the Contractor prior to the merger or consolidation, then the City's approval will be required, pursuant to this Section, and the transfer fee specified in subsection (E) will be applicable. The City shall respond to any request by the Contractor to effectuate an activity described in this subsection within 60 days of receipt from the Contractor of any information requested by the City relating to such activity. The City's consent under this subsection shall not be unreasonably withheld. Approval rights of the City specified in this Subsection C

shall be in addition to and not in substitution for any approval rights granted elsewhere in this agreement or in the Code.

D. City Fees. Contractor shall pay to City the reasonable cost for administrative staff time and attorney fees to investigate the suitability of any proposed assignee, and to review, evaluate and process any documentation required as a condition for approving any such assignment.

E. Transfer Fee. In the event that an assignment is approved by the City pursuant to Subsection A, or a consolidation, merger, sale, transfer or change in control is approved by the City pursuant to Subsection C, or any other such actions are approved by the City pursuant to this agreement or pursuant to the Code, the Contractor (or transferee) shall be required to pay to the City a transfer fee which shall be equal to (x) 3 percent of the annual gross revenues generated in the previous Franchise Year by the Contractor being transferred, from customers in the City multiplied by (y) the number of years then remaining until the expiration of the Agreement (including any extensions of the Agreement with respect to which the City's right to avoid extension has expired). No transfer shall become effective until the transfer fee described in the preceding sentence has been paid in full. Notwithstanding the foregoing, the City shall have the right to waive payment of the transfer fee in the event that the City determines that the transfer is in the best interests of the City. Reasons for such determination may include, but not be limited to, the fact that the transferee is a local business. The Contractor shall not be entitled to an adjustment in the rates, in order to cover the cost of the transfer fee.

13.6 Subcontracting

Contractor shall not engage any Subcontractors for the provision of Franchise Services without the prior written consent of the City. Notwithstanding the foregoing, City hereby acknowledges and consents to the subcontracting of Street Sweeping Services to Venco Power Sweeping, Inc.

13.7 Parties in Interest

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

13.8 Waiver

The waiver by either party of any breach or violation of any provisions of this Agreement shall not be deemed to be a waiver of any breach or violation of any other provision nor of any subsequent breach or violation of the same or any other provision. The subsequent acceptance by either party of any monies becoming due hereunder shall not be deemed to be a waiver of any pre-existing or concurrent breach or violation by the other party of any provision of this Agreement.

13.9 Contractor's Investigation

The Contractor has made an independent investigation of the conditions and circumstances surrounding the Agreement and the work to be performed by it.

13.10 Notice

All notices, demands, requests, proposals, approvals, consents and other communications which this Agreement requires, authorizes or contemplates all, except as provided in Article 11.1, be in writing and shall either be personally delivered to a representative of the parties at the address below or be deposited in the United States Mail, first class postage prepaid, addressed as follows:

City:	Contractor:
Jay T. Spurgin, Public Works Director City of Thousand Oaks Public Works Department 2100 Thousand Oaks Blvd. Thousand Oaks, CA 91362	James Harrison, Principal Newbury Disposal Company Box 4009 Ventura, CA 93003

The address to which communications may be delivered may be changed from time to time by a notice given in accordance with this Section.

Notice shall be deemed given on the day it is personally delivered or, if mailed, three (3) days from the date it is deposited in the mail.

13.11 Representatives of the Parties

References in this Agreement to the "City" shall mean the City Council and all actions to be taken by the City shall be taken by the City Council. The City Council may delegate, in writing, authority to the City Manager and may permit such officials, in turn, to delegate in writing some or all of such authority to subordinate officers. The Contractor may rely upon actions taken by such delegates if they are within the scope of the authority properly delegated to them.

The Contractor shall designate in writing a responsible officer who shall serve as the representative of the Contractor in all matters related to the Agreement and shall inform the City in writing of such designation and of any limitations upon his or her authority to bind the Contractor. The City may rely upon action taken by such designated representative as actions of the Contractor unless they are outside the scope of the authority delegated to him or her by the Contractor as communicated to the City.

13.12 Actions of the City in its Governmental Capacity

Nothing in this Agreement shall be interpreted as limiting the rights and obligations of the City in its governmental or regulatory capacity, or as limiting the right of the Contractor to bring any legal action against the City, not based on this

Agreement, arising out of any act or omission of the City in its governmental or regulatory capacity.

13.13 Notice of Litigation

Each party shall deliver written notice to the other of any legal proceeding to which it is a party and which questions the validity or enforceability of this Agreement or any other related agreement executed by the City or the Contractor or any Legal Entitlement issued in connection herewith.

13.14 Further Assurances

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

13.15 Binding Effect

This Agreement shall bind and inure to the benefit of the parties hereto and any successor or assignee acquiring an interest hereunder consistent with the provisions hereof.

13.16 Emergencies – Exception

Notwithstanding the other performance provisions of the Agreement, the City recognizes that situations will arise in which the performance requirements of this Agreement cannot be met by the Contractor because of an emergency situation. At such times, the public health, safety and welfare become paramount and the Contractor shall have the right under this Agreement to take the then appropriate steps that a reasonable Contractor confronted with the same situation, would take in like circumstances. Before taking action in response to an emergency situation, the Contractor will first attempt to contact a designated representative of the City to advise that person of the emergency and the proposed action. If a designated representative of the City cannot be reached, or if there is not time to reach such person, Contractor shall take appropriate action as in Contractor's best judgment is required, and then Contractor shall contact such City representative after the emergency action is taken and advise said City representative of the emergency and the action taken.

13.17 Uncontrollable Circumstances – Exception

Notwithstanding the other performance provisions of the Agreement, the City recognizes that situations will arise in which the performance requirements of that Agreement cannot be met by the Contractor because of Uncontrollable Circumstances. At such times, Contractor shall have the right under this Agreement to take the then appropriate steps, that a reasonable person confronted with the same situation, would take in like circumstances. Before taking action in response to an Uncontrollable Circumstance, Contractor will first attempt to contact a designated representative of the City to advise that person of the Uncontrollable Circumstance and the action proposed to be taken. If a

designated representative of the City cannot be reached, or if there is not time to reach such person, Contractor shall take appropriate action as in Contractor's best judgment is required and then Contractor shall contact such City representative after the action, caused by the Uncontrollable Circumstance, is taken and advise said City representative of the Uncontrollable Circumstance and the action taken.

13.18 Right to Review

The exercise of any administrative decision that causes the Contractor to suffer a penalty or fine or liquidated damage or forfeiture pursuant to this Agreement by an officer or employer of the City of Thousand Oaks, where that decision involves administrative discretion or personal judgment, shall be subject to the provisions of Title I, Chapter 4 of the Code. In exercising any such administrative discretion or personal judgment pursuant to this Agreement, the City officer or employee exercising that discretion or judgment shall provide the contracting party with notice of rights pursuant to Title 1, Chapter 4 of the Code.

13.19 Entire Agreement

This Agreement, including the exhibits, represents the full and entire Agreement between the parties with respect to the matters covered herein. Nothing in this Agreement is intended to confer on any person other than the parties hereto and their respective permitted successors and assigns hereunder any rights or remedies under or by reason of this Agreement.

13.20 Section Headings

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

13.21 References to Laws

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

13.22 Interpretation

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

13.23 Amendment

This Agreement may not be modified or amended in any respect except by a writing signed by the parties. The Contractor acknowledges that, because of the extended term of this agreement, prior to its expiration, the City may determine that it is necessary or desirable to amend this Agreement prior to its expiration. Contractor agrees that, in the event that the City desires any amendment to the Agreement and

so notifies the Contractor, the Contractor shall meet with the City to discuss such amendments proposed by the City and to negotiate such amendments in good faith.

13.24 Severability

If any clause, provision, subsection, section or article of this Agreement shall be determined to be invalid by any court of competent jurisdiction, then the parties hereto shall:

(1) promptly meet and negotiate a substitute for such clause, provision, section or article which shall, to the greatest extent legally permissible, effect the intent of the parties therein;

(2) if necessary or desirable to accomplish item [1] above, apply to the court having declared such invalidity for a judicial construction of the invalidated portion of this Agreement;

(3) negotiate such changes in, substitutions for or additions to the remaining provisions of this Agreement as may be necessary in addition to and in conjunction with items [1] and [2] above to effect the intent of the parties in the invalid provision. The invalidity of such clause, provision, subsection, section or article shall not affect any of the remaining provisions hereof, and this Agreement shall be construed and enforced as if such invalid portion did not exist.

13.25 Counterparts

This Agreement may be executed in counterparts each of which shall be considered an original.

13.26 Reserved

13.27 Gender and Plurality

Words of the masculine gender mean and include correlative words of the feminine and neuter genders and words importing the singular number mean and include the plural number and vice versa.

13.28 Persons

Words importing persons include firms, companies, associations, general partnerships, limited partnerships, trusts, business trusts, corporations, non-profit corporations and other legal entities, including Governmental Bodies, as well as individuals.

13.29 Reference to Days

All references to days herein are to calendar days, including Saturdays, Sundays and holidays, except as otherwise specifically provided.

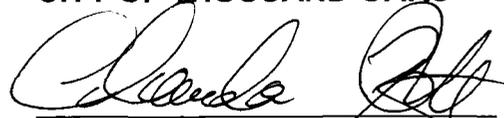
13.30 Exhibits

Each of Exhibits identified below are attached hereto and incorporated herein and made a part hereof by this reference.

- Exhibit A Scope of Services
- Exhibit B Map of Zones
- Exhibit C Performance Bond
- Exhibit D Certificate of Insurance
- Exhibit E 2013 Solid Waste Rate Schedules
- Exhibit F Solid Waste Rate Calculation Methodology
- Exhibit G Quarterly Report Form

IN WITNESS WHEREOF, City and Contractor have executed this Agreement as of the day and year first above written.

CITY OF THOUSAND OAKS



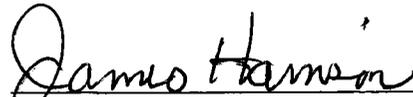
Claudia Bill-de la Peña, Mayor

ATTEST:



Linda D. Lawrence, City Clerk

NEWBURY DISPOSAL CO.

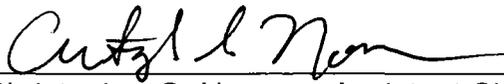


James Harrison, Principal



Myron Harrison, Vice President

**APPROVED AS TO FORM:
Office of City Attorney**



Christopher G. Norman, Assistant City Attorney

APPROVED AS TO ADMINISTRATION:



Scott Mitnick, City Manager

EXHIBIT A-1

RESIDENTIAL SCOPE OF SERVICES

1.1 Solid Waste Collection Service

At no additional cost and expense, Contractor shall collect and dispose of all Solid Waste generated at residential Premises within its zone, not less than once per week, unless another collection schedule is approved by the City Manager. Contractor shall provide appropriate Containers (minimum size: 33 gallons) for collection of Solid Waste.

1.2 Recyclable Materials Collection Service

At no additional cost and expense, Contractor shall collect and process source separated Recyclable Materials including, but not limited to, plastic, glass containers, newspaper, metal containers, plastic grocery bags, cardboard, athletic shoes and mixed paper generated at residential Premises within its zone not less than once per week. The City reserves the right to require collection of additional materials. At no additional cost and expense, Contractor shall provide appropriate Containers (minimum size: 64 gallons) for collection of Recyclable Materials.

1.3 Green Waste Collection Service

At no additional cost and expense, Contractor shall collect and process source separated green waste such as grass clippings, leaves, branches, weeds and unpainted scrap lumber generated at residential Premises within its zone not less than once per week. The City reserves the right to require collection of additional materials. At no additional cost and expense, Contractor shall provide appropriate Containers (minimum size: 64 gallons) for collection of green waste.

1.4 Elderly/Disabled Collection Service

At no additional cost and expense, Contractor shall provide, at the request of the City or of disabled or elderly residents meeting set criteria, collection from backyard or other areas, of Solid Waste, Green Waste and Recyclable Materials. The Contractor shall offer a reduced rate, which, as of the Effective Date, will be three (3) dollars less than the monthly rate at any service level, for residents who are heads of household and are at least 62 years of age. In consultation with the City, the Contractor shall determine and administer the application process.

1.5 Promotion

A. Billing Information. At no additional cost and expense, Contractor will print waste reduction information on bills using text provided by the City.

B. Collection Vehicle Signs. Contractor shall install two recycling information signs on each refuse/recycling truck that the Contractor operates within the City. City to design and produce signs.

C. Other Promotion and New Subscriber Services. Following any refuse rate adjustment, an information letter regarding rates, special fees and the holiday schedule will be mailed to each customer no later than 30 days after City Council approval of the rate adjustment and Contractor, at no additional cost and expense, shall promote general programs through advertisements of at least one-quarter page in size at a minimum of four times each year in a newspaper of general daily circulation, with text as approved by the City. Contractor shall provide a move in/move out brochure and an information packet for all new subscribers; materials shall be provided by the City. Contractor shall allow residents moving into a residence, and subscribers who are moving out of a residence, to place up to 180 gallons of extra refuse at the curb one time only, on the regular collection day, and service this waste manually if necessary.

D. Inserts in Customers Bills

At the City's direction, Contractor, at no additional cost to the City, shall print and mail quarterly (four (4) times per year), one page, double-sided inserts to every residential customer in their regular billing. Content and design to be provided by City.

E. Adopt a Highway Program

Contractor shall "adopt" and maintain, for the duration of the Agreement and at no cost to the City, one segment of the 101 or 23 Freeways within the City for ongoing litter pickup as part of the Cal Trans Adopt a Highway Program.

1.6 Community Clean-Up Program

The Contractor shall collect residential Solid Waste, Green Waste and Recyclable Materials once each year from a designated drop-off site(s) and/or from curbside collection. Contractor shall divert from the landfill as much material as possible. Contractor shall provide each Customer 90 days' written notification prior to the scheduled program date, indicating the date of the service and other pertinent information. In addition to the annual one (1) day Community Clean-Up, Contractor shall sponsor and promote one (1) "extra service" program per year following Christmas for two (2) weeks where residents can place up to 180 gallons of extra refuse at the curb, and service this waste manually if necessary.

Contractor shall provide for the removal of waste debris from public and private properties as reported by the City. Service to include removal of individual items from areas within the franchise zone of each residential hauler. Contractor may seek compensation from the City for such service.

1.7 Bulky Waste Collections From Residential Premises

The Contractor shall collect and remove Bulky Waste generated at any Residential Premises upon the request of any Customer or of the City Manager on behalf of any Customer. The collection of a maximum of four (4) bulky items in any calendar year shall be provided by the Contractor at no additional cost and expense. A customer may request one collection, or may request two collections, with the total bulky items

request not to exceed four (4) items. For subsequent collections in any Franchise Year, the Contractor shall receive compensation from the Customer at the rate for such service approved by City Council resolution.

1.8 Christmas Tree Program

Contractor shall collect and recycle Christmas trees curbside when trees are placed in the green waste container; residents may also leave trees with solid waste containers for landfill disposal. The City may contract with one or more Contractors for drop-off site collection of Christmas trees. No trees collected in the source-separated curbside program shall be deposited in a landfill unless written authorization is given by the City. At the City's direction, Contractor shall promote program through two (2) advertisements, to be approved by the City, in local newspapers. Contractor shall provide City with a written report of volume and/or weight of Christmas trees collected by January 31 following the collection period.

1.9 Newspaper and Cardboard and Other Recyclables Drop-Off Program

The City may request collection of newspaper, cardboard and/or other recyclables at drop-off sites in the City. All such materials shall be recycled and none shall be deposited for disposal unless written authorization is given by the City. Contractor shall be responsible for collection and processing of other Recyclable Materials and disposal of incidental Solid Waste deposited at each site. Contractor shall be responsible for servicing each location at least twice each week if necessary and for maintaining cleanliness of site, including application of container content information and prompt removal of graffiti.

2.0 Public Area Collection

Contractor providing bin service shall, at no additional cost or expense, provide Solid Waste bins, and Solid Waste collection service from barrels not to exceed 60 gallons in capacity placed on public right-of-way at no more than 30 locations designated by the City on an as-needed basis.

At direction of the City, Contractor shall, at its own cost and expense, provide Recyclable Materials collection service for materials separated from Solid Waste from no more than 35, 35-gallon recycling containers in public locations designated by the City.

2.1 Compost Bin and Motor Oil Receptacle Distribution Program

The City shall purchase, promote and sell at cost, and the Contractor shall, at no additional cost and expense, store, promote and distribute, a maximum of 500 compost bins and 500 reusable motor oil collection receptacles each calendar year to Customers within its zone. City shall provide informative labels and educational information to accompany receptacles.

2.2 Container Content Information

For all Containers provided to the Customer by the Contractor, Contractor shall provide and affix to such Containers at no additional cost and expense information about container contents with text approved by the City.

2.3 Free E- Waste Drop off at Contractor Facilities

Contractor shall designate one facility (either at their corporation yard or their major recycling facility) located in Ventura County for drop off of electronic waste. Contractor shall provide drop-off collection services at this facility for residential customers to bring in electronic waste and items containing cathode ray tubes, at no cost to City or customer.

2.4 Household Batteries Drop-Off Program

Contractor shall, at no additional cost and expense, collect household batteries, including but not limited to, ni-cad, alkaline, lead acid, lithium, button, rechargeable, and other non-alkaline batteries, at drop-off sites within City limits. All batteries collected shall be recycled or disposed in a manner approved by the City. Contractor shall be responsible for collection and processing of batteries and disposal of incidental Solid Waste deposited at each site. Contractor shall be responsible for servicing each location as necessary and for maintaining cleanliness of site, including application of container content information and prompt removal of graffiti.

2.5 School Education Sessions

At City's direction, Contractor, at no additional cost, shall offer twice per year recycling and environmental education related sessions to students at each public middle school within the City limits, including Sycamore Canyon School.

2.6 Organics Collection Feasibility Study

Exclusive Residential Solid Waste Contractors shall prepare a joint feasibility study on expanding curbside collection to include residential vegetable trimmings and food scraps. Study shall be due no later than March 1, 2014.

2.7 Free Antifreeze, Batteries, Oil and Paint (ABOP) Drop off at Contractor Facilities

If Contractor owns or operates a licensed ABOP recycling facility in Ventura County, Contractor shall allow City residents to drop off accepted materials during regular operating hours at no cost to City or participant.

2.8 AB 341 Recycling Goal Guarantee

Contractor shall use commercially reasonable efforts to assist City to comply with Public Resources Code Section 41780, and to achieve a City-wide diversion goal of 75%. In determining City-wide diversion, City and Contractor agree to cooperate in good faith to develop representative per capita disposal calculations, as appropriate.

Contractor shall provide documentation to City within sixty (60) days of the end of each calendar year stating and supporting that calendar year's diversion rate for Solid Waste generated within Contractor's Franchise Area.

If City fails to comply with Public Resources Code Section 41780 or has a continued inability to achieve its 75% diversion goal due to Contractor's failure to implement the diversion and public education programs provided for in this Agreement, Contractor must submit a plan to assist the City to comply with Section 41780, with respect to Solid Waste generated within Contractor's Franchise Area (and in proportion to all Solid Waste generated in the City, the practical ability to achieve diversion, and the relative efforts of other City franchisees or collectors), through, among other things, implementation of applicable portions of City's Source Reduction and Recycling Element and its commercial solid waste recycling program adopted in accordance with Public Resources Code Section 42649.3, within one hundred and twenty (120) days of the end of the calendar year. Contractor's plan is subject to approval by the City Manager, and to be approved must constitute a good faith plan to implement applicable portions of City's Source Reduction and Recycling Element and commercial solid waste recycling plan, and provide reasonable assistance to City to comply with Section 41780. Implementation of the plan shall be at Contractor's sole cost and expense.

If, following implementation of the plan, City still does not achieve compliance with Section 41780, Contractor shall implement additional programs required to assist the City to comply with Section 41780 (and in proportion to all Solid Waste generated in the City, the practical ability to achieve diversion, and the relative efforts of the other City franchisee), as directed by the City Manager, at its sole cost and expense.

In the event that the State of California alters the requirements of Public Resources Code Section 41780, the City may impose new or additional recycling requirements in accordance with the City's SRRE. Contractor is entitled to a rate adjustment for costs associated with these new or additional recycling requirements.

Exhibit A-2
Street Sweeping Scope of Services

1.1 Street Sweeping Service

A. General. At no additional cost and expense to City, Contractor shall sweep Streets, Private Streets and identified areas.

B. Minimal Impact. Sweeping is to be performed at times that provide the best results with minimal impact to residents and commercial businesses, flow of vehicular traffic, and the public in general.

C. NPDES. Sweeping shall be done in a manner to ensure compliance with all National Pollution Discharge Elimination System (NPDES) mandates.

D. Route. Contractor shall develop a route schedule and map that best accomplishes the above criteria according to the following requirements for sweeping frequency:

(1) The following streets shall be swept a minimum of nineteen (19) times per calendar year (two (2) times per month in October through April and one (1) time per month in May through September):

(a) All public residential streets and bikeways within City limits.

(b) All private residential streets within the City limits. Individual Home Owners Association's may negotiate directly with Contractor for more frequent street sweeping at the Home Owners Association's expense.

(2) The following parking areas shall be swept every week (52 times per calendar year):

(a) Thousand Oaks and Newbury Park Library parking areas

(b) Thousand Oaks Senior and Teen Center parking areas

(c) Cameron Center parking area

(d) 401 and 403 Hillcrest Drive parking area

(e) Transportation Center parking area

(f) Civic Arts Plaza parking area, Dallas Drive, Kavli Theatre loading dock area and the driveway from Conejo School Road to the loading dock area.

(3) The following streets shall be swept every week (52 times per calendar year):

(a) All non-residential streets within City limits

(b) Hill Canyon Wastewater Treatment Plant and street areas from Santa Rosa Road to main gate

(c) Westlake Blvd. south of the 101 Freeway interchange to the City limits

E. Coordination with Trash Collection. Contractor shall make every effort to coordinate street sweeping routes with residential trash collection routes so streets shall be swept the following business day after trash collection.

F. Sweeping Hours of Operation. At no time shall sweeping be conducted before 7:00 a.m. or after the hours of 7:00 p.m. or on Sunday in residential areas without the consent and approval of the Public Works Director. Contractor shall develop a "night shift" sweeping schedule in areas that are exclusively zoned commercial.

G. Special Response. Contractor shall respond to all inquires and requests for special sweeps from the Director. Response time will be within 24 hours except in cases of declared emergencies, accident clean-ups or illicit discharges when response time will be soonest possible not to exceed one (1) hour during regularly scheduled sweeping hours and four (4) hours all other times.

H. Holiday Adjustments. Contractor will adjust sweeping schedule to reflect changes in route due to holidays which result in changes to solid waste collection schedules or days off for street sweeping staff. Contractor will notify the Director of potential changes to the schedule due to holidays at least 30 days in advance and receive prior approval for any changes to sweeping frequencies as noted in Section 1.1.D of the agreement due to holiday schedule adjustments.

I. Transitional Assistance. For the first 90 day of contract, City will designate a City Field Representative (Street Maintenance Supervisor) to work with Contractor's staff in the field to help ensure service meets City's minimum standards and to address issues that arise as the result of the transition of services to Contractor.

1.2 Promotion and Outreach

A. General. With approval of City staff, Contractor shall provide promotional materials as required to publicize street sweeping operations in the community:

B. Notification of Route Changes. Contractor shall notify all residents and businesses along routes of changes to sweeping schedules; Contractor will develop promotional materials and media suitable for inclusion on the City's website to include sweeping schedules route maps and contact information with appropriate links and/or and e-mail addresses;

1.3 Equipment

A. Vehicle Types. Contractor is required to use low-emission or alternative fueled, state-of-the-art, regenerative air, mechanical broom sweepers that are certified to meet all State and Federal Environmental Protection Agency (EPA) and National Pollution Discharge Elimination System (NPDES) compliance mandates.

Sweepers shall be equipped with operational strobe and back-up alarm and shall conform to all applicable safety requirements. All sweeper vehicles cannot exceed nine (9) years in age and must be overhauled at the end of year five (5). The average age of the sweeping fleet cannot exceed seven (7) years. Contractor will maintain vehicles in good operating condition at all times.

B. GPS. All vehicles are to be equipped with GPS tracking devices. Contractor shall furnish to the City at no additional cost or expense any software and equipment necessary for City to track the location of sweeping vehicles in real time and to generate reports as needed.

C. Storage. Vehicles when not in service will be stored at a facility that has been approved by the Director. At no time will vehicles be stored, maintained or repaired in areas not appropriately zoned for said use.

D. Vehicle Maintenance. Equipment shall be maintained in clean appearance and clearly identify the Contractor. All related vehicle equipment shall be maintained in good mechanical condition. Brushes and brooms shall be replaced at regular intervals. Equipment is subject to inspection by City at any time.

E. Available Vehicles. Contractor shall maintain or have access to equipment sufficient to meet all obligations under this agreement

1.4 Sweeping Methods

A. General. Contractor shall make as many passes as are necessary to remove debris including all sand, dirt, rocks, gravel, vegetation, and other sweepable debris from the streets and parking areas during sweeping operations.

B. Permitted Operations. Contractor will operate equipment within manufacturer guidelines and within the following speed limit during sweeping operations: not to exceed 5 mph in residential, bike path, and parking areas and 8 mph in all other areas.

C. Noise Limits. All equipment to be operated in compliance with all applicable noise ordinances. All sweeping shall be conducted as quietly as possible and shall conform to applicable federal, state, county, and City noise level regulations as they now exist or may be amended in the future. The City may conduct random checks of noise emission levels to ensure compliance.

D. Water Usage. Adequate water shall be used at all times to maximize dust control. Contractor shall not discharge liquid waste from sweeper units onto City streets or into the storm drain system.

E. Unsweepable Debris. Unsweepable items that impede sweeping, such as palm fronds, rocks and other debris, shall be removed from the sweeping path and properly disposed of by the operator.

F. Parked Vehicles. Contractor shall not be responsible for areas missed due to parked cars or other personal property blocking sweeping paths. In such case, Contractor must note and report areas missed to City.

1.5 Locations

Contractor is responsible for all sweeping within its franchise area. Contractor may work with other franchisees to coordinate the exchange of areas where such an exchange would be mutually beneficial to all parties. All exchanges require prior approval of the Director.

1.6 Staff

A. General. All staff associated with sweeping operations will be uniformed and have the ability to contact a supervisor from the vehicle. All vehicle operators shall be appropriately licensed to operate sweeping vehicles on public streets and shall obey all applicable traffic laws.

B. Reserves. Adequate reserve staff shall exist to meet all obligations under this agreement.

C. Prevailing Wage. The work described herein may be a “public work”, as defined in Labor Code Section 1771, thus, obligating Contractor to pay prevailing wages under the Labor Code. Contractor agrees to indemnify, defend, and hold City harmless from any claim that prevailing wages should have been paid pursuant to this Agreement, and shall be liable for the payment of the same and any penalties thereon.

D. Additional Staff. One staff person shall be assigned as needed to pick up large debris that impede with sweeper operations.

E. Contact Information. City shall be provided with phone number to contact sweeping supervisor 24 hours per day.

F. Training. All staff shall be trained to recognize illicit discharges and stormwater pollution sources. All staff training will be documented and available for review by the Director upon request.

G. Communications. Contractor shall maintain direct communications with all sweeping equipment and staff in the field. Each sweeper operator shall have the ability to communicate verbal information immediately to their supervisor, City staff, Police and Fire personnel, and for the reporting of pollutant discharge observations.

1.7 Debris

A. General. Contractor is responsible for the disposal of all debris collected in accordance with the terms of the Agreement.

B. Temporary Debris Storage Locations. For a period of three years commencing from the Effective Date, Contractor may off-load debris from sweepers that are used to perform Franchise services into bins located at the City's Municipal Service Center and Lang Ranch Pump Station. Bins shall be of the number, size and type specified by the City. Street Sweeping debris must be removed from the bins at least once per week.

C. Diversion. At a minimum, 80% of sweeping debris collected by the Contractor shall be diverted from landfill disposal and deposited for recycling at a designated processing facility. Diversion and disposal shall meet AB 939 waste diversion requirements and all other applicable regulations. All recyclable materials shall be separated from general waste. Any waste identified as hazardous or potentially hazardous shall be disposed of in compliance with all applicable laws.

1.8 Water Usage

Contractor is responsible for all water usage and associated costs and coordination with individual water purveyors to obtain hydrant meters. Contractor shall operate in accordance with all applicable City and area water agencies' water conservation program requirements. Contractor shall report the volume of water utilized (in Hundred Cubic Feet) from hydrants within the City water system to the Director on a monthly basis (specific date to be determined by City). Contractor will be billed by City for street sweeping water used from the City water system at the City's non-single family residential quantity rate.

1.9 Additional Sweeping Hours

Contractor shall provide an annual 25-hour time bank for unscheduled sweeping and related services. Any unused portion of the 25 hour time bank remaining at the end of each contract year (12 month period from contract anniversary date) will be applied to the subsequent year's time bank and will continue to accumulate for the life of the contract. Upon request of City, unscheduled sweeping includes but is not limited to:

- (1) MSC Projects and Sites
- (2) Non-hazardous Pollutant Discharge Clean up
- (3) Street Fairs and Parades
- (4) Unscheduled Street Repairs
- (5) Scheduled Paving Projects
- (6) City Construction Projects
- (7) Police and Fire Department Call-outs (accident clean up)
- (8) Uncategorized non-scheduled sweeping

2.0 Credit Hours

A. General. Contractor shall provide credit hours for those hours of sweeping not performed due to inclement weather. Credit hours shall be “banked” and available for use by City for specific sweeping projects outside the scope of the established routes and route schedules and beyond additional hours provided in Section 2.0, above. Any unused portion of the Credit hours shall “roll over” at the end of each contract year (12 month period from contract anniversary date) will be applied to the subsequent year.

B. Call Out Rate. Contractor and City shall establish a mutually agreed to “call out” rate for all hours of service requested by City which exceeds the total hours available under Section 2.0 and under Section 2.1.A..

2.1 Additional Bins During Peak Periods

Contractor shall make available to residential and commercial customers up to 15 25-yard roll off bin loads during peak periods of yard waste generation (October through February) to minimize the quantity of materials being left in the streets for pick up by street sweepers.

EXHIBIT C

City of Thousand Oaks Public Works Department

Contractors Bond for Faithful Performance

We, _____, as Surety, and _____, a corporation, (sole proprietorship) (partnership) organized under the laws of the State of California, as principal, on bonds and undertakings are held and firmly bound unto THE CITY OF THOUSAND OAKS as Obligee, in the full and just sum of TWENTY-FIVE THOUSAND DOLLARS (\$25,000) lawful money of the United States of America, to be paid to said Obligee, successors or assigns, to secure and guarantee the faithful performance of principal; for which payment, well and truly to be made, we bind ourselves, our heirs, executors, successors, administrators and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THE ABOVE OBLIGATION is that the Principal seeks a Franchise Agreement with Obligee. The terms and conditions of the parties' obligations are set forth in the Franchise Agreement which is incorporated herein by this reference.

NOW THEREFORE, if the Principal shall satisfactorily perform its obligations under the Franchise Agreement, and fulfill each and every covenant, condition and requirement of the Franchise Agreement, the duration of this bond shall expire on the date that the Franchise Agreement is legally terminated.

The Surety does hereby consent to any and all alterations, extensions of time, or modifications to the Franchise Agreement, the performance of terms and conditions of which are secured by this bond.

Upon the failure of the Principal to timely and faithfully perform any obligation under the Franchise Agreement or to cure any breach of any covenant, condition or requirement, Surety shall immediately pay to Obligee upon demand the penalty sum of TWENTY FIVE THOUSAND DOLLARS (\$25,000).

The liability of the Surety hereunder shall in no event exceed the penal sum of this bond as stated above, regardless of the number of years this bond shall continue in force.

The obligation may be cancelled by the Surety by giving SIXTY (60) days notice in writing of its intention to do so to the Obligee, and the Surety shall be relieved of any

further liability under the bond SIXTY (60) days after receipt of said notice by the Obligee, except for defaults occurring prior thereto.

Sealed with our seals and dated this _____ day of _____, 20_____ .

Surety: _____ Principal: _____

By: _____ By: _____

By: _____ By: _____

Address: _____ Address: _____

Telephone number: _____ Telephone number: _____

Signatures must be notarized.

EXHIBIT D

ACORD™ CERTIFICATE OF LIABILITY INSURANCE		DATE (MM/DD/YY)
PRODUCER	THIS CERTIFICATE IS ISSUED AS MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.	
	INSURERS AFFORDING COVERAGE	
INSURED	INSURER A:	
	INSURER B:	
	INSURER C:	
	INSURER D:	
	INSURER E:	

COVERAGES

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INS R LTR	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS
	GENERAL LIABILITY				EACH OCCURRENCE \$
	<input type="checkbox"/> COMMERCIAL GENERAL LIABILITY				FIRE DAMAGE (Any one fire) \$
	<input type="checkbox"/> CLAIMS MADE <input type="checkbox"/> OCCUR				MED EXPENSE (Any one person) \$
					PERSONAL & ADV INJURY \$
					GENERAL AGGREGATE \$
	GEN'L AGGREGATE LIMIT APPLIES PER:				PRODUCTS-COMP/OF AGG \$
	POLICY <input type="checkbox"/> PRO- JECT <input type="checkbox"/> LOC <input type="checkbox"/>				
	AUTOMOBILE LIABILITY				COMBINED SINGLE LIMIT (Ea accident) \$
	<input type="checkbox"/> ANY AUTO				\$
	<input type="checkbox"/> ALL OWNED AUTOS				BODILY INJURY (Per person) \$
	<input type="checkbox"/> SCHEDULED AUTOS				BODILY INJURY (Per accident) \$
	<input type="checkbox"/> HIRED AUTOS				PROPERTY DAMAGE (Per accident) \$
	<input type="checkbox"/> NON-OWNED AUTOS				\$
	GARAGE LIABILITY				AUTO ONLY-EA ACCIDENT \$
	<input type="checkbox"/> ANY AUTO				OTHER THAN EA ACC \$
					AUTO ONLY: AGG \$
	EXCESS LIABILITY				EACH OCCURRENCE \$
	<input type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE				AGGREGATE \$
	<input type="checkbox"/> DEDUCTIBLE \$				\$
	<input type="checkbox"/> RETENTION \$				\$
	WORKERS' COMPENSATION AND EMPLOYERS LIABILITY				WC STATU- TORY LIMITS
					OTHER
					E.L. EACH ACCIDENT \$
					E.L. DISEASE - EA EMPLOYEE \$
					E.L. DISEASE - POLICY LIMIT \$
	OTHER				

DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/EXCLUSIONS ADDED BY ENDORSEMENT/SPECIAL/PROVISIONS

CERTIFICATE HOLDER	ADDITIONAL INSURED; INSURER LETTER:	CANCELLATION
		SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL _____ DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES.
		AUTHORIZED REPRESENTATIVE

EXHIBIT D

IMPORTANT

If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

DISCLAIMER

The Certificate of Insurance on the reverse side of this form does not constitute a contract between the issuing insurer(s), authorized representative or producer, and the certificate holder, nor does it affirmatively or negatively amend, extend or alter the coverage afforded by the policies listed thereon.

Exhibit E - 1
City of Thousand Oaks Solid Waste Collection Rates
Residential Service - Exclusive Franchise
Effective Date - January 1, 2012

Basic Service

Weekly collection of one cart (64 gallon) for solid waste, \$29.05 /mo.
one cart (96 gallon) for yard trimmings and one cart
(64 gallon) for recyclables.

Service Options:

Trash cart exchange: trade 64 for 96 gallon cart \$3.00 /mo.
Additional 64 gallon trash cart \$5.00 /mo.
Additional 96 gallon trash cart \$8.00 /mo.

Additional 96 gallon yard trimmings cart \$3.50 /mo.

Recyclables cart exchange: trade 64 for 96 gallon No charge
Additional 64 gallon recyclables cart No charge
Additional 96 gallon recyclables cart \$3.00 /mo.

Limited Service - without yard trimmings service

Weekly collection of one cart (33 gallon) for solid waste, \$23.02 /mo.
and one cart (64 gallon) for recycling.

Limited Service - with yard trimmings service

Weekly collection of one cart (33 gallon) for solid waste, and one cart \$27.57
(96 gallon) for yard trimming and one cart (64 gallon) for recycling.

Service changes - customer may change service levels one time
during the first Franchise Year at no charge.

Additional service changes: \$5.00

Multi-family dwelling unit (individual billing)

\$25.16 /mo.

Multi-family dwelling unit (centralized billing)

\$22.03 /mo.

Multi-family dwelling units receive one cart (64 gallon) for solid waste
and one cart (64 gallon) for recyclables collection. Yard trimmings
collection is not included for multi-family dwelling units.

Senior Discount

\$3.00 /mo.

Residents who are heads of household and are at least 62 years of age
may receive the discount at any service level by application to the Contractor.

Special Charge (Maximum)

- 1) Move-in/move-out fee \$15.00
- 2) Delinquency charge for non-payment of account 5% of monthly charge
- 3) Returned check charge \$10.00
- 4) Stop service/restart fee \$5.00
- 5) Extra item pick-up \$3.00 /bag
\$5.00 /cart service (same day)
- 6) Freon service Fee \$10.00 /unit
- 7) Lost or damaged cart charge \$50.00

Exhibit F - 1(a)

RATE ESCALATION METHODOLOGY - RESIDENTIAL

The "Escalating Component" of the then current rates shall be multiplied by the "Escalation Index". The "Escalating Component" of the rates shall be equal to (x) the full rates minus (y) the portion of each rate attributable to the sum of (i) the Solid Waste Management Fee plus (ii) the Franchise Fee plus (iii) the Landfill Tipping Fee Component. The Escalation Index shall be equal to 100% of the percentage change in the Consumer Price Index - All Urban Consumers for the Los Angeles - Orange - Riverside Area between August of the year prior to which the calculation is made and August of the year in which the calculation is made. For calendar year 2013, there shall be no increase in residential service rates. For calendar year 2014, residential service rates shall be reduced by one percent (1%) from the prior year's rates. For calendar year 2015 the Escalating Index will be reduced by fifty percent (50%) from that which would normally be calculated as part of the residential rate adjustment process.

Escalating Component Calculation

Collection Rate

Less Solid Waste Management Fee - _____

Rate subject to Franchise Fee

Less Franchise Fee - _____
[(Rate subject to Franchise Fee/1.08)(0.08)]*

Rate less City Fees

Less Landfill Tipping Fee Component - _____

Escalating Component _____

* Based on the current Franchise Fee of 8%

Exhibit F - 1(b)

RATE ESCALATION METHODOLOGY - RESIDENTIAL

Rate Adjustment Calculation

EC	=	Escalating Component
EI	=	Escalation Index
LTFC	=	Landfill Tipping Fee Component
FF	=	Franchise Fee
SWMF	=	Solid Waste Management Fee
FRPBK	=	Franchise payback
ACR	=	Adjusted Collection Rate

Calculation Worksheet

Line 1 EC	(1)	<u>(17.19) (1.0190) = 17.5166</u>
Line 2 LTFC	(2)	<u>(8.66) (1.0190) = 8.8245</u>
Line 3 Subtotal	(3)	<u>26.3412</u>
Line 4 FF	(4)	<u>2.1073</u>
Line 5 SWMF	(5)	<u>0.6000</u>
Line 6 ACR	(6)	<u>\$29.05</u>

There are two parts to the rate adjustment process. The rate adjustment is determined by the application of the Escalation Index to both the Escalating Component and the Landfill Tipping Fee Component.

- (1) The Escalation Index is first applied to the Escalating Component.
- (2) The Escalation Index is then be applied to the LTFC.
- (3) Subtotal of lines 1 and 2.
- (4) Percentage is applied to subtotal on line 3 (currently 8%).
- (5) Fee as established by the City.
- (6) Sum of lines 3 through 6.

The Escalation Index shall be the CPI change from August to August.

Exhibit F - 1(c)

City of Thousand Oaks
 Components of 2012 Residential Rates

Rate Components	Basic Service	Limited Service (No green waste)	Limited Service (w/ green waste)	Multi-family (Indiv. billing)	Multi-family (Cent. billing)
Collection Rate	29.05	23.02	27.57	25.16	22.03
Solid Waste Management Fee	0.60	0.60	0.60	0.60	0.60
Rate Subject to Franchise Fee	28.45	22.42	26.97	24.56	21.43
Franchise Fee [(Above Rate/1.08)(8%)]	2.11	1.66	2.00	1.82	1.59
Rate Less City Fees	26.34	20.76	24.98	22.74	19.84
Landfill Tipping Fee Component	8.82	6.83	8.38	7.50	6.54
Escalating Component	17.52	13.93	16.60	15.24	13.30

Exhibit G - Quarterly Report Form

**QUARTERLY SOLID WASTE REPORT TO THE CITY OF THOUSAND OAKS (CTO)
EXCLUSIVE FRANCHISE**

Company Name: _____

Quarter Ending: _____

Line #	Description	Residential (R)	Commercial Bin (C)	Commercial Roll-Off (RO)
1	Number of customers			
	a. Residential: Total # of customers for quarter	_____	N/A	N/A
	b. Commercial: Average # of monthly customers for quarter	N/A	_____	_____
2	Gross revenue received from CTO franchise area	_____	_____	_____
3	Solid Waste Management Fee due to CTO ⁽¹⁾	_____	_____	_____
4	Adjusted revenue (Line 2 - Line 3)	_____	_____	_____
5	Franchise Fee due to CTO (Line 4/1.08 x 8%)	_____	_____	_____
6	Tons from CTO to:			
	a. Simi Valley L/F	_____	_____	_____
	b. Calabasas LF	_____	_____	_____
	c. Toland LF	_____	_____	_____
	d. Other LF:	_____	_____	_____
	e. Total tons to landfills	_____	_____	_____
	f. A-1 Scrap	_____	_____	_____
	g. BLT	_____	_____	_____
	h. Calwood	_____	_____	_____
	i. Del Norte/Paradise	_____	_____	_____
	j. Gold Coast Recycling & Transfer	_____	_____	_____
	k. Golden State Fibers	_____	_____	_____
	l. Simi Base	_____	_____	_____
	m. Simi L/F - Concrete/Dirt	_____	_____	_____
	n. Simi Valley Recycling	_____	_____	_____
	o. Yard Waste	_____	_____	_____
	p. Other:	_____	_____	_____
	q. Total tons recovered	_____	_____	_____
7	County Surcharge Parity Fee due CTO (Lines 6b thru 6d x \$1.65)	_____	_____	_____

8	CIWMP Fee (Line 6e x \$0.45)			
9	Subtotal (Line 3 + Line 5 + Line 7+ Line 8)			
10	Total amount due to CTO (Line 9, Columns R + C + RO) ⁽²⁾			

- (1) Solid Waste Management Fee
 - Residential Fee..... Line 1a x \$0.60
 - Commercial Bin and Roll-Off Fee..... Line 2/1.0825 x 8.25%

(2) Payment due by the last business day of the month following the end of the calendar quarter.
Late fees will be assessed per Exclusive Franchise Agreement.

Prepared by: _____
Company representative

Date: _____