

TO: James L. App, City Manager
FROM: Doug Monn, Public Works Director
SUBJECT: Paso Robles Waste Disposal and Paso Robles Roll-Off, Inc.
Revised Franchise Agreement
DATE: February 5, 2013

NEEDS: For the City Council to approve a new franchise agreement for solid waste collection and roll-off services.

FACTS:

1. In 1993, the City entered into new franchise agreements with Paso Robles Waste Disposal and Paso Robles Roll-Off, Inc. to continue providing garbage/recyclable collection as well as roll-off services.
2. Both franchise agreements have been amended over the years to extend the term, adjust service fees, and align with changed regulations, etc.
3. On August 11, 2011, the City Council received an audit report on Paso Robles Waste Disposal/Paso Robles Roll-Off. A key recommendation was to negotiate new franchise agreement terms that reflect best management practices.
4. On February 7, 2012, the City Council formed an Ad Hoc Committee to participate in franchise agreement negotiations.
5. Negotiations culminated in the attached proposed agreement.

ANALYSIS AND
CONCLUSION:

Key aspects of the proposed agreement are:

1. Paso Robles Waste Disposal/Paso Robles Roll-Off is granted the exclusive right to collect refuse in the City in exchange for payment of an initial franchise fee of 10% of gross revenues and increasing to 11.5% over time.
2. Franchise fees will apply to revenues from recyclables (phased in over time).
3. Level of service to customers is to be maintained with increased emphasis on enrolling customers into the curbside recycling program.
4. Service rate adjustment will be evaluated over the coming year.
5. Term extends through December 2022 with a possible 5 year extension.
6. Audits are to be conducted every three years.

Of particular importance to Paso Robles Waste Disposal/Paso Robles Roll-Off was the term of the agreement (i.e. sufficiently long to satisfy lenders when purchasing equipment and making other significant business investments such as a compressed natural gas fueling station). Of particular importance to the City and customers was a franchise fee that covers public costs and maintains level of service. Both Paso Robles Waste Disposal/Paso Robles Roll-Off and the Ad Hoc Committee members Councilman Steinbeck and Councilman Hamon recommend this agreement.

POLICY

REFERENCE: Economic Strategy; 2009 Landfill Master Plan; 2011 Solid Waste Franchise Contracts Financial and Operational Audit.

FISCAL

IMPACT: Current franchise fee revenue is approximately \$530,000 per year. This agreement is projected to increase revenues to \$685,000 per year over the term. Franchise fee revenues help offset the City's solid waste service costs. The 2011 audit noted that if franchise fee revenues did not increase, the City's solid waste fund would be facing a deficit in the near term.

- OPTIONS:
- a. Accept the Ad Hoc Committee's recommendation and authorize the City Manager to enter into the attached franchise agreement.
 - b. Amend, modify, or reject the above option.

* * *

ATTACHMENT: "Exclusive Franchise Agreement for Collection and Handling of Solid Waste Between the City of El Paso de Robles and Paso Robles Waste Disposal, Inc."

**EXCLUSIVE FRANCHISE AGREEMENT
FOR COLLECTION AND HANDLING OF SOLID WASTE
BETWEEN THE CITY OF EL PASO DE ROBLES
AND
PASO ROBLES WASTE DISPOSAL, INC.**

THIS AGREEMENT FOR THE COLLECTION AND HANDLING OF SOLID WASTE (“Agreement”) is made and entered into this _____ day of February 2013, by and between the CITY OF EL PASO DE ROBLES, a municipal corporation of the State of California, (“CITY”), and PASO ROBLES WASTE DISPOSAL, INC., doing business as PASO ROBLES WASTE & RECYCLE, a California corporation organized under the laws of the State of California (“CONTRACTOR”). CITY and CONTRACTOR are individually referred to as “Party” and collectively referred to as the “Parties”.

R E C I T A L S

WHEREAS, the Legislature of the State of California, by enactment of the California Integrated Waste Management Act of 1989 (California Public Resources Code Section 40000 *et. seq.*) (“AB 939”), has declared that it is in the public interest to authorize and require local agencies to make adequate provisions for solid waste handling within their jurisdictions to meet the goals and requirements of AB 939 and Senate Bill 1016;

WHEREAS, pursuant to California Public Resources Code Section 40059(a)(2), CITY has determined that in order to protect the public health and safety of the residents and business within the City of El Paso de Robles, it is appropriate to provide for solid waste collection and disposal by a private waste hauler as an alternative to providing such services through public resources; and to that end has determined that an exclusive franchise be awarded to a qualified company for the handling of solid waste and recyclable materials and other services to meet the goals and requirements of AB 939 and Senate Bill 1016; which franchise can be appropriately integrated into and function as part of the solid waste system provided by CITY;

WHEREAS, Public Resources Code Section 40059 permits CITY to impose terms and conditions on the award of a solid waste franchise if, in the opinion of the governing body, the public health, safety and well-being require the imposition of those terms and conditions;

WHEREAS, CONTRACTOR has represented and warranted to CITY that it has the experience, responsibility, and qualifications to provide Solid Waste handling services and Recyclable Materials handling services, as defined in Public Resources Code Section 49505 and as described herein;

WHEREAS, the City Council of CITY has determined that CONTRACTOR, by demonstrated

experience, reputation and capacity is qualified to continue to exclusively provide for the collection of solid waste within the corporate limits of CITY and to transport such Solid Waste to places of processing and disposal, which may be designated in accordance with this Agreement, and CITY and CONTRACTOR desire that CONTRACTOR be engaged to perform such services on the terms and conditions set forth in this Agreement;

WHEREAS, the City Council of CITY has determined that the public health, safety and well being of its residents require that Solid Waste collection, processing and disposal, including but not limited to the frequency of collection, the means of collection and the transportation, scope of services, charges and fees, location and extent of such services be governed by and provided under an exclusive solid waste franchise agreement;

WHEREAS, Parties hereto desire to enter into this Agreement for the purpose of replacing and superseding all prior agreements and understandings between the Parties, including but not limited to the "Exclusive Franchise Agreement Solid Waste Collection Services" dated December 7, 1993, as amended, to accurately reflect the rights and obligations of the CITY and CONTRACTOR solely as set forth in this Agreement; and

WHEREAS, the effectiveness of this Agreement is expressly contingent upon the termination of the "Exclusive Franchise Agreement Solid Waste Material Roll Off Box Services" by and between the CITY and Paso Robles Roll-Off, Inc, dated November 3, 1993, as amended (the "Roll-Off-Agreement") and shall replace and supersede the Roll-Off Agreement; and

WHEREAS, the CITY established the reasonableness of CONTRACTOR'S costs based on independent financial and operational audits conducted in July 2011; and

WHEREAS, the City Council of CITY further declares its intention of maintaining reasonable rates for collection, processing and disposal of Solid Waste within CITY;

NOW, THEREFORE, in consideration of the respective and mutual covenants and promises contained and made in this Agreement, and subject to all the terms and conditions of this Agreement, the Parties agree as follows:

1. DEFINITIONS

Definitions shall be as listed in **Exhibit A**.

2. GRANT OF EXCLUSIVE CONTRACT

Except as otherwise provided in this Agreement, CITY grants to CONTRACTOR during the term of this Agreement the exclusive right and privilege to collect and transport Solid Waste produced, generated, kept and/or accumulated within City limits as those limits may exist at any time during the term of this Agreement, the Refuse portion of which shall be transported to the Paso Robles Municipal Solid Waste Disposal Site (“Disposal Facility”). In addition, CITY grants to CONTRACTOR during the term of this Agreement the exclusive right and privilege to collect and transport Recyclable Materials and Green Waste to a Processing Facility and/or Material Recovery Facility.

During the term of this Agreement, either Party may propose that an Alternative Facility be used by CONTRACTOR if such change would benefit Customers. The Parties agree to meet and confer to determine if the proposed change should be made. If a Party objects to a proposed Alternative Facility, it shall provide the basis for its objections in writing to the other Party.

Limitations to the scope of this exclusive contract are listed in **Exhibit B**.

3. FRANCHISE FEE

In consideration of this Agreement and the permit and franchise given CONTRACTOR under this Agreement, CONTRACTOR shall pay to CITY as an administration and franchise fee as a percent of CONTRACTOR’S and Affiliated Companies’ Gross Revenues for services provided under this Agreement as follows:

- 10% from the Effective Date to the earlier to occur of (i) the first (1st) anniversary of the Effective Date, or (ii) the first (1st) adoption by the City Council of new Service Rates after the Effective Date;
- Thereafter, 11% until the earlier to occur of (i) the date that is 18 months after the Effective Date, or (ii) the date that the first increase in Service Rates becomes effective;
- Thereafter, 11.5%.

Service Rates currently in effect were adopted by the CITY Council on July 1, 2008, per Resolution 08-097 and are listed in **Exhibit D**. **Exhibit D** shall be updated as revised Service Rates are adopted by CITY Council throughout the term of this Agreement.

The applicable franchise fee shall apply to the sum of Gross Revenues and gross revenues from the Sale of Recyclable Materials as follows:

<u>Time Frame</u>	<u>Revenues Subject to Franchise Fee</u>
Effective Date through 12/31/13	Gross Revenues + 0% from Sale of Recyclable Materials

1/1/14 to 6/30/15	Gross Revenues + 33% from Sale of Recyclable Materials
7/1/15 to 12/31/16	Gross Revenues + 66% from Sale of Recyclable Materials
1/1/17 and after	Gross Revenues + 100% from Sale of Recyclable Materials

CONTRACTOR understands and acknowledges that the CITY is undertaking a financial analysis of all solid waste activities and that the findings of that analysis may require an adjustment of the franchise fee percentage noted above. The annual Service Rate Adjustment per Section 9.b will take any such change in franchise fee into account.

4. CONTRACTOR RESPONSIBILITY

CONTRACTOR agrees to perform all of its obligations under this Agreement for the term of this Agreement. CONTRACTOR shall furnish all of the labor and equipment necessary for the collection, processing and disposal of all Solid Waste subject to the terms, conditions and provisions of this Agreement. CONTRACTOR represents that it has the professional and technical personnel required to perform the services in conformance with such terms, conditions and provisions of this Agreement. CONTRACTOR shall perform all services under this Agreement in a skillful and competent manner, consistent with the standards generally recognized as being employed by professionals in the same discipline in the State of California.

5. TERM OF AGREEMENT

The initial term of this Agreement shall commence upon execution of this Agreement (the “Effective Date”), and shall expire as of 11:59 p.m. on December 31, 2022. No later than the sixth (6th) anniversary of the Effective Date, CONTRACTOR shall place into operation a Green Waste and Organic Processing Facility of sufficient capacity to process the Green Waste and Organics that it collects pursuant to this Agreement. On the date that the proposed Green Waste and Organics Processing Facility receives all necessary permits and initiates operation in accordance with all laws and provided that the Green Waste and Organics Processing Facility is operational within five years of the Effective Date, the term of this Agreement shall be extended (without further action by the Parties) for an additional five year period.

Nothing in this section shall be construed as limiting CITY's right to terminate this Agreement for cause.

6. WASTE DIVERSION

CONTRACTOR agrees that within six (6) months of the date of this Agreement, it will submit to CITY for its approval a written recycling plan to achieve and maintain the diversion goals and requirements established by Applicable Law throughout the term of this Agreement. The CONTRACTOR will make a good faith effort to enforce the approved recycling plan and

make adjustments as needed to help assure CITY waste diversion levels comply with Applicable Law.

7. SCOPE OF SERVICES

a. General

CONTRACTOR shall provide Refuse, Recyclable Material, Green Waste, and Organic Waste collection, transportation, processing and disposal services within CITY in accordance with the terms of this Agreement. CONTRACTOR shall not be required to provide such services for Special Waste as listed in **Exhibit C** or Hazardous Waste or Sharps or Universal Waste under this Agreement, except to the extent provided herein. CONTRACTOR may provide such services for Special or Hazardous Waste or Sharps or Universal Waste if contracted to do so by Customers under separate written contracts negotiated between CONTRACTOR and the Customer generating such Special or Hazardous Waste or Sharps or Universal Waste, provided that CONTRACTOR obtains all necessary permits and performs in accordance with Applicable Law.

Unless otherwise approved by CONTRACTOR, only Containers, Bins, Commercial Bins, Roll-Off Bins, and Litter Containers are authorized to be used by Customers for the deposit of Solid Waste. All cleaning of such Bins and Containers shall be completed in full compliance with all Applicable Laws, including any requirements of the National Pollution Discharge Elimination System.

While engaged in activities authorized or required by this Agreement, CONTRACTOR's employees and agents shall be attired in suitable and acceptable clothing or, where appropriate, uniforms, to include CONTRACTOR'S insignia/logo. All CONTRACTOR's employees shall make collections as reasonably quiet as possible and shall avoid unnecessary disturbance. CONTRACTOR and its employees shall not trespass or loiter on Customers' property and shall use due care in entering and exiting such property, using paved walks or surfaces where practicable. CONTRACTOR shall exercise due care when handling Containers and shall not cause the Containers to be thrown or dropped during collection services. CONTRACTOR's employees shall replace Containers upright once emptied and shall clean up any Solid Waste spilled during the collection process.

CONTRACTOR shall be responsible for any damage to any property if proven to be the result of the CONTRACTOR's vehicles exceeding the legal maximum weight limits of the State of California or the CONTRACTOR's negligent operation of the vehicles. CONTRACTOR shall be responsible for damage to public and private utilities, and shall repair or replace such damaged utilities, if proven, to the satisfaction of the CITY, to be caused by the inattention, carelessness or negligence of CONTRACTOR.

CITY reserves the right to construct any improvement or to permit construction in any street or alley which may have the incidental effect of preventing CONTRACTOR from driving

an established collection route, in which event CONTRACTOR will adjust its route without cost adjustment therefor. Any route changes adopted by CONTRACTOR shall ensure that no Customer is left without collection services for more than six consecutive days.

b. Residential Service

- i. Single-Unit Residential - CONTRACTOR shall, as frequently as negotiated with Customer but in no event less than once per week, collect Refuse, Recyclable Materials, and Green Waste which has been placed, kept or accumulated in Containers provided by CONTRACTOR. CONTRACTOR shall make three (3) Containers available to each Single-Unit Residential Customer: one for Refuse, one for Recyclable Materials, and one for Green Waste. The Containers provided by CONTRACTOR shall be 40 gallons in size or smaller unless a different size is requested by a Customer. CONTRACTOR shall make available additional Containers to any Customer who requests additional Containers, at the rates set forth in **Exhibit D**. CONTRACTOR and CITY may negotiate alternative Green Waste containers or collection methods if requested by Customers unable to accommodate a typical Green Waste container.

Such Containers shall be placed at or near the curbside in a location serviceable by automated side loader trucks unless prior arrangements have been made. Containers shall be placed out for collection prior to CONTRACTOR'S normal weekly collection time. CONTRACTOR shall not be required to collect Containers which do not conform to the provisions of this Agreement.

Between December 25th and January 9th, CONTRACTOR shall collect non-flocked Christmas trees that are placed curbside, without stands. Non-flocked trees placed curbside before December 25th and after January 9th shall be cut by Customer into lengths suitable for disposal with other Green Waste.

Commencing on the Effective Date, CONTRACTOR shall bill Single-Unit Residential Customers for Solid Waste curbside collection service, and, if applicable, additional Containers, at the rates set forth in **Exhibit D**. CONTRACTOR shall not receive compensation, including sign-up or similar charges, from Single-Unit Residential Customers in addition to the rates set forth in **Exhibit D**, except for Special Services.

- ii. Multi-Unit Residential - CONTRACTOR shall, as frequently as negotiated with Customer but in no event less than once per week, collect the Refuse, Recyclable Materials, and Green Waste which have been compacted or otherwise placed, kept or accumulated in Bins or Containers at Multi-Unit Residential Premises.

Multi-Unit Residential Customers or owners shall be billed by CONTRACTOR at the rates authorized in **Exhibit D**. If a Multi-Unit Residential Customer receives

Container service instead of Bin service, CONTRACTOR shall bill to receive from such Customer the applicable fee set forth in **Exhibit D** for Commercial Containers.

- iii. Hours of Collection - Collection service at Residential Premises shall not start before 6:00 a.m. or continue after 7:00 p.m., subject to change by resolution of the City Council. Collection services to Residential Premises shall not take place on Sundays.

c. Commercial Service

CONTRACTOR shall, as frequently as negotiated with Customer but in no event less than once per week, collect the Refuse and Recyclable Material which have been compacted or otherwise placed, kept or accumulated in Bins or Containers at Commercial Premises. Commercial Customers or owners shall be billed at the rates authorized in **Exhibit D**. If a Commercial Customer receives Container service instead of Bin service, CONTRACTOR shall bill to receive from such Customer the applicable fee set forth in **Exhibit D** for Commercial Containers. Except for Special Services, CONTRACTOR shall charge Commercial Customers only those charges provided for in **Exhibit D**. Following collection of Solid Waste from a Bin, CONTRACTOR shall return the Bin to its enclosure or customary location with the lid closed.

- i. Hours of Collection - Collection service at Commercial Premises may not start earlier than 5:00 a.m. for Premises located more than five hundred feet from any Residential Premises, or 6:00 a.m. for Premises located five hundred or fewer feet from any Residential Premises, or continue after 7:00 p.m., except as is specifically approved in writing by the City Manager or his designee.
- ii. Recycling Program - CONTRACTOR shall provide suitable Containers for collection of Recyclable Materials from each commercial Customer and collect and recycle the Recyclable Materials collected from such Customers.
- iii. Organic Waste - Within six months of CITY's request and provided that an Organic Waste processing facility becomes operational within a fifty (50) mile radius of El Paso de Robles, the CONTRACTOR shall propose an Organic Waste collection and recycling program for restaurants, resorts, country clubs and golf courses, grocery stores, special events and other appropriate participants. The proposal shall include a means of providing participating Customers with Containers or Bins as necessary for the segregation and storage of Organic Waste to be recycled; preparation, production, and distribution of educational materials to potential participants in the designated Organic Material program; information on projected tonnage, number of routes, productivity, number of stops, number of participating Customers, labor hours, costs and other pertinent data, as may be required by CITY, in a format approved by CITY. CITY may require submission of additional information from CONTRACTOR as necessary or desirable in order to evaluate, or have agents of the CITY evaluate, the productivity, cost, benefits and potential diversion opportunity of the program and to report data to state and federal agencies. If approved, Organic Waste collected by

CONTRACTOR shall be delivered to a permitted facility for recycling and composting and CITY shall use its best efforts, at CONTRACTOR's expense, to seek a rate adjustment, subject to all requirements of law, to cover the costs of such program.

d. Roll-Off Service

CONTRACTOR shall provide solid waste materials collection via roll off box containers with commercial bulk pickup charges at a rate established by City Council (**Exhibit D**) and for Customers desiring the hauling of materials which cannot due to size, quantity, or type of material be collected as part of regular pickup. Such special hauling services may be provided through individual contract with Customers.

e. Diversion.

i. No Commingling - CONTRACTOR shall not commingle, in the vehicles or otherwise, any Refuse with any Recyclable Materials or Green Waste, or any Refuse, Recyclable Materials or Green Waste with each other when collected by CONTRACTOR, unless otherwise specifically authorized in writing by CITY. CONTRACTOR shall not be deemed to have violated this Section where such materials were commingled prior to collection by CONTRACTOR.

ii. Processing

(1) Facility Selection CONTRACTOR shall transport and deliver all Recyclable Materials and Green Waste collected within the CITY to a Processing Facility, provided that Recyclable Materials may first be delivered to a Material Recovery Facility for separation from Refuse. Separation of Recyclable Materials shall be performed at the proposed Paso Robles Municipal Solid Waste Disposal Site Material Recovery Facility so long as there is capacity to do so.

(2) Weighing and Record Requirements CONTRACTOR shall ensure that, at a minimum, all materials shall be weighed prior to or upon delivery to a Processing Facility or Composting Facility, and all weight and related delivery information recorded. CONTRACTOR shall use its best efforts to facilitate CITY's ability to review any recordings or videotapes made by the Processing Facility or Composting Facility of the weighing and delivery of materials by CONTRACTOR. If the Processing Facility or Composting Facility denies CITY access to review such recordings and/or videotapes or any other record, CITY and CONTRACTOR shall discuss the viability of taking materials to a different Processing Facility or Composting Facility, as the case may be.

(3) Recyclable Materials Specifications CITY is not responsible for the quality of Recyclable Materials delivered to or rejected by the Processing Facility. CITY

makes no warranty, either express or implied, with respect to the Recyclable Materials, including but not limited to warranties of merchantability and fitness for a particular purpose.

- (4) Disposal of Residue CONTRACTOR shall dispose of any and all residue remaining from the processing of Recyclable Materials by CONTRACTOR and any non-processable materials at the Paso Robles Municipal Solid Waste Disposal Site in accordance with Applicable Law.
 - iii. Compliance with Construction and Demolition Waste Diversion Ordinance - CONTRACTOR shall comply with the requirements of the City's Construction and Demolition Waste diversion ordinance, as such ordinance may be adopted or amended, and shall assist Customers with compliance by diverting Construction and Demolition materials to the maximum extent feasible and by providing receipts for all materials collected.
 - iv. Marketing - CONTRACTOR shall market all Recyclable Materials collected within the CITY to provide for the highest level of income and maximum waste diversion. Green Waste shall be processed to ensure diversion credit to the maximum extent feasible. CONTRACTOR shall update its marketing and diversion programs to stay current with market conditions.
 - v. Indemnification. – To the extent permitted by Public Resources Code section 40059.1, and to the extent noncompliance is caused by CONTRACTOR's breach of or noncompliance with a provision of this Agreement, CONTRACTOR agrees to protect and defend CITY, with counsel selected by CONTRACTOR and approved by CITY, such approval not to be unreasonably withheld, to indemnify and hold harmless CITY from and against all fines or penalties imposed by the California Integrated Waste Management Board if the diversion goals specified in the California Public Resources Code are not met by the CITY with respect to the Solid Waste collected by CONTRACTOR under this Agreement.
- f. Collection on Holidays

If the day of collection on any given route falls on a Holiday or a day on which the Disposal Facility utilized by CONTRACTOR is closed, CONTRACTOR may provide collection service for such route on the next workday following such Holiday or Disposal Facility closure day or shall provide such collection service on such Holiday or Disposal Facility closure day. If the Disposal Facility is closed to CONTRACTOR on any holiday other than Christmas, CONTRACTOR shall be permitted to dispose of solid waste at any other landfill in compliance with all Applicable Laws.

g. Provision and Replacement of Containers and Bins

CONTRACTOR shall replace any Bin or Container that is severely damaged or has jagged or sharp edges and shall repair or remove such damaged Bin or Container from future use by CITY or CONTRACTOR. Upon request of any Customer for a Bin or Container to replace one that has been damaged or destroyed, CONTRACTOR shall provide such Bin or Container without cost to the Customer or to CITY if the damage to the Bin or Container was caused by CONTRACTOR, or if it cannot be determined who cause the damage. CONTRACTOR shall provide all Bins to Customers including, without limitation, the CITY, who obtain Bin service.

If necessary, CONTRACTOR shall replace existing Bins, Commercial Bins, Roll-Off Bins, and Litter Containers with clean and freshly painted replacements as often as necessary to provide quality service to Customers.

h. Clean Collection Practices

CONTRACTOR shall not cause or permit the private property or CITY streets or property to be littered with trash or other debris because of CONTRACTOR's activities under this Agreement. CONTRACTOR shall clean up any such trash or debris in the immediate vicinity of any Container and/or storage area that results from collection services under this Agreement.

8. OTHER SERVICES OF CONTRACTOR

a. Neighborhood Clean-up Week

CONTRACTOR shall provide neighborhood-wide cleanups such that each Residential Customer may participate at least once a year. During each event, Residential Customers within the designated neighborhood(s) may place household waste curbside for free disposal by CONTRACTOR. Each Residential Customer shall be entitled to place a maximum of seven (7) items of Bulk Household Waste for curbside pickup during each cleanup event. CONTRACTOR shall not be charged a tipping fee at the Disposal Facility for solid waste collected during Neighborhood Clean-up Week Events.

b. Special Services

CONTRACTOR shall offer to its Customers manual "pull out" service for Commercial Bins, including opening and closing of enclosure doors for additional Special Service fee under a separate contract to be negotiated between the Customer and CONTRACTOR.

In addition to the exclusions set forth in Section 2 to the exclusive rights and privileges granted to CONTRACTOR in this Agreement, nothing in this Section shall prohibit a Customer from calling upon a third party to render a specific Special Service in the event that

CONTRACTOR, following that Customer's request for CONTRACTOR to perform a specific Special Service, is either unwilling or unable to perform that Special Service.

CONTRACTOR shall bill and receive fees for performance of Special Services as agreed upon in separate contracts between CONTRACTOR and each Customer requesting such Special Service, e.g., "hand rollouts," special entries and/or exits and "long backouts."

c. Cooperation

CONTRACTOR shall cooperate with CITY on any and all customary and reasonable waste composition studies, at no additional cost to CITY.

d. Illegal Dumping

CONTRACTOR shall collect and deliver to the Disposal Facility up to four (4) tons of spilled or illegally dumped Solid Waste associated with up to ten (10) events per Contract Year. If CITY requests collection of such Solid Waste prior to 10:00 a.m., CONTRACTOR shall make the collection the same day (weekends and Holidays excepted). If CITY requests collection after 10:00 a.m. on a given day, CONTRACTOR shall make the collection no later than the next day (weekends and Holidays excepted). Basis of compensation to the CONTRACTOR for more clean-up events or tonnage collection shall be based on roll-off service rate for Paso Robles then in effect. In the event that CITY requests CONTRACTOR to collect illegally dumped Solid Waste that appears to be on private property, CONTRACTOR shall not be required to collect the Solid Waste in question until permission has been secured from the property owner. In such event, CITY and CONTRACTOR shall cooperate to obtain permission from the property owner.

e. Waste Stream Audits

Twice annually, CONTRACTOR shall conduct waste stream audits of no fewer than ten (10) Commercial Customers generating a significant amount of Solid Waste. The Customers selected for audits shall be mutually agreed upon by CITY and CONTRACTOR. The waste stream audits shall analyze the quantity and composition of the waste stream for each Customer, and shall recommend practices and techniques for improving the diversion rate of each Customer's waste stream.

f. Hazardous Waste

CONTRACTOR shall use Reasonable Business Efforts to ensure that CONTRACTOR does not collect any Hazardous Waste and does not cause the delivery to or the disposal of Hazardous Waste at any Processing Facility, Composting Facility or Disposal Facility or Organic Waste facility used by CONTRACTOR under this Agreement. If CONTRACTOR inadvertently delivers materials to any Processing Facility, Composting Facility Disposal Facility, or Organic

Waste facility which comprise Hazardous Waste and CONTRACTOR cannot or fails to remove it, CONTRACTOR shall arrange for its proper disposal in accordance with Applicable Law. CONTRACTOR shall use Reasonable Business Efforts to recover the costs of such disposal from the Customer which generated such Hazardous Waste and failed to identify it for collection as part of the Household Hazardous Waste pickup program (if one is in operation pursuant to this Agreement, as it may be amended), if the Customer can be identified, and charge such cost to such Customer. If CONTRACTOR delivers Hazardous Waste to any Processing Facility, Composting Facility or Disposal Facility, CONTRACTOR shall promptly notify the City, the local fire department, the San Luis Obispo County Integrated Waste Management Authority, and the San Luis Obispo County Health Department, providing the name, address, and telephone number of the collector and the facility or Premises from which the Hazardous Waste was collected, the type and quantity of the Hazardous Waste, and the location and method of final disposition of Hazardous Waste.

g. Customer Outreach

CONTRACTOR shall use Reasonable Business Efforts to ensure that Customers are informed in a timely manner about new service programs or the introduction of new elements in services required by the CONTRACTOR and approved by the City. CONTRACTOR shall inform Customers of such changes through a public awareness plan, which shall include direct mailings and/or local advertising, prior to the implementation of such changes.

CONTRACTOR shall use Reasonable Business Efforts to outreach and educate the public on the importance of recycling and separating Solid Waste, specifically to enroll more Multi-Unit Residential and Commercial customers in recycling programs.

h. Allowance for City Waste Disposal

As additional consideration for this Agreement, CONTRACTOR agrees to that up to 2,500 tons per year of Solid Waste collected at Litter Containers, City Facilities and Events, neighborhood clean ups, Other Waste Generated by CITY, and/or CITY-requested illegal dump clean-ups shall be disposed of at the Paso Robles Municipal Solid Waste Disposal Site free of tipping fee charge. Tonnage so identified to the landfill operator by Roll-Off Bin identifier number or other acceptable means will be accepted free of tipping fee charge up to the limit stated above.

9. BILLING AND PAYMENTS

a. Collection

All amounts due and payable to CONTRACTOR from Residential and Commercial Customers under this Agreement shall be solely billable by CONTRACTOR. CONTRACTOR shall retain full responsibility for prosecuting any collection actions involving Customers, including, without limitation, referral to collection agencies or instituting legal proceedings.

b. Service Rate Adjustments

CONTRACTOR'S Maximum Service Rates are as specified in **Exhibit D** of this Agreement, and are firm and fixed until such time as new Maximum Service Rates are adopted by the CITY. CONTRACTOR shall be entitled to a fair and reasonable return for the services that it provides under the terms of this Agreement, however CONTRACTOR shall not be entitled to any compensation that is not listed in **Exhibit D**. CITY intends to propose revised Maximum Service Rates in Fiscal Year 2012/13 and shall follow the procedures set forth in Article XIII D, Section 6(b), of the California Constitution. The adopted service rates may be adopted in up to five year blocks.

On or before April 1, 2014, and annually thereafter during the term of this Agreement, CONTRACTOR shall deliver to CITY financial information for the specific services performed under this Agreement for the preceding Contract Year.

Requests for Service Rate Adjustment above and beyond the CITY's adopted rate schedule may only be considered if CONTRACTOR bears the cost of compliance with Article XIII D, Section 6(b), of the California Constitution and CITY procedures per Section 17.c of this Agreement and upon successful adoption of revised Service Rates. Requests for Service Rate Adjustments shall be accompanied by satisfactory evidence that:

- the method used to allocate revenues and expenses among the CONTRACTOR and its Affiliated Companies is commensurate with actual services provided by such entities under this Agreement;
- wages, Retirement Benefits, Deferred Compensation, and other employee benefits are commensurate with such wages and benefits provided within the industry throughout California;
- profit sharing contributions and/or bonuses to officers and employees have been excluded from consideration;
- depreciation schedules are consistent among the CONTRACTOR, and its Affiliated Companies, accurately reflect equipment and other assets that are used to provide services under this Agreement, and are consistent with Generally Accepted Accounting Principles then in effect;
- rent and other related party transactions are no greater than then-current market conditions;

- discretionary non-essential capital improvements such as non-essential remodeling, non-essential retrofitting of existing equipment or vehicles, non-essential equipment replacement, etc. have been excluded from consideration;
- provides other information as reasonably requested by the CITY.

Such evidence will be subject to an audit per Section 17, the cost of which shall be borne by the CONTRACTOR.

If during the term of this Agreement, CITY approves an adjustment in the franchise fee or the tipping fee at the Disposal Facility, which CITY reserves the right to do in its sole discretion, CITY agrees to provide written notice to CONTRACTOR at least one hundred twenty (120) days before the proposed effective date of such adjustment. CONTRACTOR may request that a Service Rate Adjustment be made to take the change in the franchise fee or tipping fee into account. If the requested Service Rate Adjustment is above and beyond the Maximum Service Rates set forth in **Exhibit D**, the provisions set forth above shall apply and the franchise fee or tipping fee, as applicable, shall not be increased until the Service Rate Adjustment is in effect.

10. COLLECTION EQUIPMENT AND PRACTICES

a. Number and Maintenance of Vehicles

CONTRACTOR shall provide an adequate number of vehicles and equipment for the collection, disposal and transportation services for which CONTRACTOR is responsible under this Agreement. All vehicles shall be registered with the Department of Motor Vehicles of the State of California, shall be kept clean, safe, and in good repair and working order, shall keep all collected materials covered during transportation. Such vehicles shall be regularly painted to maintain a professional appearance, and CONTRACTOR shall use Reasonable Business Efforts to regularly clean, wash and maintain vehicles to be free from any leaks, including, without limitation, leaks of hydraulic oil, brake fluid, engine oil, fuel, or transmission fluid. CONTRACTOR's name, phone number and vehicle number shall be visibly displayed on its vehicles.

Contractor shall not load vehicles in excess of manufacturer's recommendations and local, state or federal requirements. Contractor shall implement and maintain an ongoing process to monitor the weight of each load of material collected and identify any loads that exceed the legal load requirements. Any loads that exceed the legal limits shall be reported to the City as part of the quarterly reports and may require CONTRACTOR to pay liquidated damages, as set forth in Section 15 - Liquidated Damages.

b. Clean Air Vehicles

During the term of this Agreement, to the extent required by law, CONTRACTOR shall ensure its collection vehicles are in full compliance with local, State and federal clean air requirements that are in effect or proposed to be adopted, including, but not limited to, the California Air Resources Board On-Road Heavy Duty Diesel Vehicles Regulation as currently proposed to be contained in CCR Title 13, Section 2020 et seq; the Federal EPA's Highway Diesel Fuel Sulfur regulations and any other applicable air pollution control.

11. OFFICE HOURS, SERVICE COMPLAINTS, AND CUSTOMER INFORMATION

a. Local Office and Regular Hours

CONTRACTOR'S office hours shall be, at a minimum, from 8 a.m. to 5 p.m. Monday through Friday, except state or federal holidays. A trained and experienced representative of CONTRACTOR shall be available during office hours for communication with the public at CONTRACTOR'S principal office. CONTRACTOR shall also maintain an emergency telephone number for use during non-business hours.

b. Service Complaints and Dispute Resolution

All billing and service complaints received by CITY from Customers shall be directed to CONTRACTOR. CONTRACTOR shall record all complaints received (including date, name, address and nature of complaint). CONTRACTOR shall make all such records available for inspection by the City Manager or his designee, including the action taken to resolve the complaint. CONTRACTOR agrees to use its best efforts to resolve all such complaints by the business day following receipt of the complaint.

If CONTRACTOR misses a scheduled pickup through no fault of the Customer, it shall provide a special pickup within twenty-four (24) hours (Sundays and Holidays excepted) of notice thereof to CONTRACTOR at no charge to Customer or CITY.

c. Customer Information

CONTRACTOR shall not market, sell, convey, donate or disclose to any person or entity any list with the names or addresses of Customers or information regarding the composition or content of Customers' waste to any entity other than the City or the Integrated Waste Management Authority unless authorized or required by Applicable Law, the CITY or a court of competent jurisdiction.

12. OWNERSHIP OF SOLID WASTE

All Solid Waste collected pursuant to this Agreement shall be the property of the Customer until placed in a Bin or Container for collection pursuant to this Agreement. Ownership of the Solid Waste shall transfer to CONTRACTOR once it is deposited in Containers, Bins set out at the collection point, or CONTRACTOR's vehicles. All Solid Waste shall be collected, transported, and disposed of in accordance with this Agreement and federal, state and local law.

In consideration of the foregoing provisions with respect to ownership of Solid Waste, CONTRACTOR shall maintain all records required by state and federal law regarding source generation, recycling and disposal of said materials, and in a form acceptable to CITY, and shall provide same to CITY upon request, but not less than once per year.

13. INSURANCE, INDEMNIFICATION, AND PERFORMANCE BOND

a. Indemnification of CITY

CONTRACTOR agrees that it shall indemnify and hold harmless CITY, its officers, officials, employees, agents, assigns and any successor or successors to CITY's interest, from and against any and all loss, liability, penalties, claims, demands, actions or suits, of every kind and description, arising or resulting from: (i) the acts or omissions of CONTRACTOR (or any Affiliated Company providing services under this Agreement), its agents, employees or subcontractors, in exercising the privileges granted to it by this Agreement; and (ii) the failure of CONTRACTOR (or any Affiliated Company providing services under this Agreement), its agents, employees and/or subcontractors, to comply in all respects with the provisions and requirements of this Agreement. CONTRACTOR shall, upon demand of CITY, at CONTRACTOR'S sole cost and expense, defend CITY, its officers and/or employees against any and all claims, actions or suits in any legal proceedings, (whether judicial, quasi-judicial, administrative or legislative in nature) brought against CITY, its officers and/or employees arising or resulting from those situations described in (i) and (ii) above. The defense attorney proposed by the CONTRACTOR shall be subject to the CITY's approval.

CONTRACTOR shall indemnify, defend, protect and hold harmless CITY, its officers, officials, employees, agents, assigns and any successor or successors to CITY's interest from and against all claims, actual damages (including but not limited to special and consequential damages), natural resources damages, 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 attorneys' 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 paid,

incurred or suffered by, or asserted against, CITY or its officers, employees or agents arising from or attributable to any repair, cleanup or detoxification, or preparation and implementation of any removal, remedial, response, closure or other plan (regardless of whether undertaken due to governmental action) concerning any Hazardous Waste at any place where CONTRACTOR (or an Affiliated Company providing services under this Agreement) stores or disposes of Solid Waste pursuant to this Agreement. The foregoing indemnity is intended to and shall be construed to operate as an agreement pursuant to Section 107(c) of the Comprehensive Environmental Response, Compensation and Liability Act, "CERCLA", 42 U.S.C. Section 9067(e) and California Health and Safety Code Section 25364, to insure, protect, hold harmless and indemnify CITY from liability.

The foregoing shall not apply to the extent that any costs and damages arise out of the active negligence or willful misconduct of CITY, its agents, employees, officers and contractors.

This Section 13.a. shall survive the expiration of the period during which collection services are to be provided under this Agreement.

Notwithstanding the provisions of this Section, CONTRACTOR shall not be required to appear or act in any litigation based solely upon the negligent acts or omissions of CITY.

b. Insurance

CONTRACTOR shall, for itself and its Affiliated Companies providing services under this Agreement, maintain for the duration of this Agreement insurance coverage as specified in **Exhibit E** for services provided under this Agreement.

c. Performance Bond

Prior to execution of this Agreement, CONTRACTOR shall deposit with CITY either a letter of credit or a performance bond (collectively referred to as "Performance Bond") in the amount of Two Hundred Fifty Thousand Dollars (\$250,000) provided by a surety company with a Best rating of "A" or better and licensed to do business in the State of California. The Performance Bond shall serve as security for the faithful performance of CONTRACTOR of all of the provisions and obligations of this Agreement. Prior to the performance of any work under this Agreement, CONTRACTOR shall submit the form of Performance Bond to CITY for its approval. CONTRACTOR shall renew said surety bond as necessary and file it with CITY at least thirty (30) days prior to the expiration of the bond. If CONTRACTOR deposits a letter of credit with CITY, interest, if any, relating to any cash deposits that may exist with regard to that letter of credit shall accrue to CONTRACTOR.

14. TERMINATION AND OTHER REMEDIES

a. Termination

(1) CITY shall have the right to terminate this Agreement for cause or as a result of a violation of this Agreement by CONTRACTOR by giving written notice to CONTRACTOR of such termination and the violation, and specifying the effective date thereof, at least sixty (60) days before the effective date of such termination. Upon receipt of a notice of termination, CONTRACTOR shall have thirty (30) days to cure or correct the violation of this Agreement specified by CITY. If the CONTRACTOR fails to cure the default within the stated period, the CITY shall have the right to terminate the Agreement. The City Manager shall review CONTRACTOR'S response and refer the matter to the City Council or decide the matter and notify CONTRACTOR of that decision in writing. A decision or order of the City Manager shall be final and binding on CONTRACTOR if CONTRACTOR fails to file a "Notice of Appeal" with City within fifteen (15) days of receipt of City Manager's decision. If CONTRACTOR files a Notice of Appeal, the matter shall be set for hearing by the City Clerk.

(2) If appealed to the City Council, the City Clerk shall give CONTRACTOR, and any other person requesting notice fourteen (14) days written notice of the time and place of the hearing. At the hearing, the City Council shall consider the report of the City Manager indicating the deficiencies, and shall give CONTRACTOR, and any other interested person, a reasonable opportunity to be heard.

(3) Based on the evidence presented at the public hearing, the City Council shall determine by resolution whether this Agreement should be terminated, injunctive relief sought or liquidated damages imposed. If, based upon the record, the City Council determines that CONTRACTOR is in breach of any material provision of this Agreement or any material provision of any applicable federal, state or local statute or regulation, the City Council, in its sole discretion, may terminate forthwith this Agreement, seek injunctive relief or impose liquidated damages, as defined below. The decision of the City Council shall be final and conclusive. CONTRACTOR'S performance under this Agreement is not excused during the period of time prior to the City Council's final determination as to whether such performance is deficient.

b. Remedies Not Exclusive

The rights and remedies of CITY under this Agreement, including the right to make a claim under the Performance Bond deposited with CITY by CONTRACTOR for reimbursement of any costs borne or damages incurred by CITY as a result of a default by CONTRACTOR under this Agreement and the right to perform during an emergency, shall be in addition to any

and all other rights and privileges CITY may have, and shall not be deemed to limit any such other rights or privileges of CITY under this Agreement or by virtue of any law.

c. Procurement of Services Following Termination

In the event this Agreement is terminated in whole or in part as provided in this section, CITY may procure, upon such terms and in such manner as it may determine appropriate, services similar to those terminated.

15. LIQUIDATED DAMAGES

a. General

CITY finds, and CONTRACTOR agrees, that as of the time of the execution of this Agreement, it is impractical, if not impossible, to reasonably ascertain the extent of damages which shall be incurred by CITY as a result of a breach by CONTRACTOR of its obligations under this Agreement. The factors relating to the impracticability of ascertaining damages include, but are not limited to, the fact that:

- i. substantial damage results to members of the public who are denied services or denied quality or reliable service;
- ii. such breaches cause inconvenience, anxiety, frustration, and deprivation of the benefits of the Agreement to individual members of the general public for whose benefit this Agreement exists, in subjective ways and in varying degrees of intensity which are incapable of measurement in precise monetary terms;
- iii. that franchised services might be available at substantially lower costs than alternative services and the monetary loss resulting from denial of services or denial of quality or reliable services is impossible to calculate in precise monetary terms; and
- iv. the termination of this Agreement for such breaches, and other remedies are, at best, a means of future correction and not remedies which make the public whole for past breaches.

b. Performance Standards; Liquidated Damages for Failure to Meet Standards

The Parties further acknowledge that consistent, reliable Solid Waste collection service is of utmost importance to CITY and that CITY has considered and relied on CONTRACTOR's representations as to its quality of service commitment in awarding the franchise to it. The Parties further recognize that some quantified standards of performance are necessary and

appropriate to ensure consistent and reliable service and performance. The Parties further recognize that if CONTRACTOR fails to achieve the performance standards, or fails to submit required documents in a timely manner, CITY and its residents will suffer damages and that it is and will be impractical and extremely difficult to ascertain and determine the exact amount of damages which CITY will suffer. Therefore, without prejudice to CITY's right to treat such non-performance as an event of default under this Section, the Parties agree that the liquidated damage amounts listed in **Exhibit F** represent a reasonable estimate of the amount of such damages considering all of the circumstances existing on the date of this Agreement, including the relationship of the sums to the range of harm to CITY that reasonably could be anticipated and the anticipation that proof of actual damages would be costly or impractical. In placing their initials at the places provided, each Party specifically confirms the accuracy of the statements made above and the fact that each Party has had ample opportunity to consult with legal counsel and obtain an explanation of the liquidated damage provisions at the time that the Agreement was made.

CONTRACTOR
Initial Here _____

CITY
Initial Here _____

c. Procedure for Assessment of Liquidated Damages

CITY may assess liquidated damages for each calendar day or event, as appropriate, that CONTRACTOR is determined to be liable in accordance with this Agreement. Prior to assessing liquidated damages, CITY shall give CONTRACTOR notice of its intention to do so. The notice will include a brief description of the violation or incident of non-performance. CONTRACTOR may review (and make copies at its own expense) all information in the possession of CITY relating to the violation or incident of non-performance. CONTRACTOR may, within ten (10) days after receiving the notice, request a meeting with CITY. CONTRACTOR may present evidence in writing and through testimony of its employees and others relevant to the violation or incident of non-performance. CITY will provide CONTRACTOR with a written explanation of its determination as to each violation or incident of non-performance prior to authorizing the assessment of liquidated damages. The decision of CITY shall be final.

CONTRACTOR shall pay any liquidated damages assessed by CITY within ten (10) days after they are assessed. If they are not paid within the ten (10) day period, CITY may proceed against the Performance Bond required by the Agreement or order the termination of the franchise granted by this Agreement, or both.

16. GENERAL PROVISIONS

a. Force Majeure

CONTRACTOR shall not be in default under this Agreement in the event that the collection, transportation, processing and/or disposal services of CONTRACTOR are temporarily interrupted or discontinued for any of the following reasons: riots, wars, civil disturbances, insurrections, epidemics, hurricanes, earthquakes, floods, acts of God, government orders and regulations, or other similar catastrophic events which are beyond the reasonable control of CONTRACTOR. It is specifically understood that "other catastrophic events" include strikes, lockouts and other labor disturbances. When any of these events interrupt collection, transportation, processing and/or disposal of Solid Waste by CONTRACTOR as required under this Agreement, CITY may elect, in CITY's sole discretion, to exercise its rights in the event of an emergency under paragraph m. of this Section.

b. Annexation

In the event that any community, neighborhood or other territory is hereafter annexed to CITY, Solid Waste collection, transportation, processing, disposal and recycling services shall, if requested by CITY, be immediately provided to such area by CONTRACTOR pursuant to this Agreement, subject to any rights the existing Solid Waste franchisee in such territory may have to continue providing services in such territory. CITY agrees to give all required notice and to do all acts necessary under applicable statutes to accomplish this result as soon as permissible by law.

c. Independent Contractor

It is expressly understood and agreed that CONTRACTOR shall perform all work and services described as an independent contractor and not as an officer, agent, servant or employee of CITY; that CONTRACTOR shall have the exclusive control over the details of the services and work performed hereunder and all persons performing the same; that CONTRACTOR shall be solely responsible for the acts and omissions of its officers, agents, employees, contractors and subcontractors, if any; and that nothing shall be construed as creating a partnership or joint venture between CITY and CONTRACTOR. Neither CONTRACTOR nor its officers, employees, agents nor subcontractors shall obtain any rights to retirement benefits, workers' compensation benefits or any other benefits which accrue to CITY employees.

d. Law to Govern

It is understood and agreed by the Parties that the law of the State of California shall govern the interpretation of this Agreement.

e. Fees and Gratuities

CONTRACTOR shall not, nor shall it permit any agent, employee or subcontractor employed by it to request, solicit, or demand either directly or indirectly, any compensation or gratuity for the collection of Solid Waste otherwise required to be collected under this Agreement. CONTRACTOR shall not, nor shall it permit any agent, employee or subcontractor employed by it to accept any monetary compensation or gratuity for the collection of Solid Waste otherwise required to be collected under this Agreement.

f. Amendment

Except as may otherwise be specifically provided in this Agreement, this Agreement may only be amended or modified by a written agreement duly authorized and executed by both Parties.

g. Assignment and Transferability; Subcontracting

This Agreement is not assignable or transferable in whole or in part by CONTRACTOR, voluntarily, involuntarily, or by operation of law or otherwise except by written amendment to this Agreement signed by both Parties. The CITY has first right of refusal in the event of a contemplated sale of the CONTRACTOR'S business. In addition, the services to be performed by CONTRACTOR pursuant to this Agreement shall not be subcontracted to any third party without the written consent of CITY. Any request made to CITY by CONTRACTOR for approval of an assignment or transfer of this Agreement shall be accompanied by a non-refundable deposit in the amount of \$20,000 to cover CITY's costs, including attorneys' fees, in evaluating the proposed assignee or transferee and the potential benefit or detriment to CITY of the proposed assignment or transfer.

The sale, transfer, assignment or hypothecation of a majority ownership interest in CONTRACTOR after the effective date of this Agreement, including a cumulative sale, transfer, assignment or hypothecation, shall be deemed an assignment within the meaning of this Section and is prohibited in the absence of a written amendment to this Agreement. Transfers of interests among shareholders of CONTRACTOR and placement of an ownership interest in a living trust shall not be deemed an assignment within the meaning of this Section, but distribution of the ownership interest from the living trust to a third party who is not a shareholder shall be deemed an assignment.

Any dispute between the CITY and the CONTRACTOR with respect to a determination of whether a sale, transfer, assignment, subcontracting, or hypothecation of a number of shares or other units of ownership in CONTRACTOR has occurred or will occur shall be subject to

reference pursuant to Code of Civil Procedure Section 638, et seq. with the presiding judge of the San Luis Obispo County Superior Court.

h. Compliance with Applicable Law

CONTRACTOR agrees that it will comply with all provisions of the Applicable Law in place and enacted during the term of this Agreement, including CITY's business license ordinance, Construction and Demolition Debris ordinance, and Road Impact Fee ordinance and will obtain all licenses and permits, and pay all taxes and fees, required under Applicable Law then in effect.

i. Notices

All notices concerning this Agreement shall be in writing and addressed to the respective Party as follows:

To CITY: City of El Paso de Robles
1000 Spring Street
El Paso de Robles, CA 93446
Attention: City Manager

Copy to:
BEST BEST & KRIEGER LLP
500 Capitol Mall, Suite 1700
Sacramento, CA 95814
Attention: Iris P. Yang

To CONTRACTOR: Paso Robles Waste Disposal, Inc.
2951 Wallace Drive
Paso Robles, CA 93446
Attention: President

Copy to:
P. Terence Schubert, Esq.
1254 Marsh Street
San Luis Obispo, CA 93401

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

j. Savings Clause and Entirety

If any provision of this Agreement shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such provision shall not affect any of the remaining provisions of this Agreement.

k. Attorney's Fees

In the event of any claim or action or proceeding brought by either Party against the other under or in connection with the subject matter of this Agreement, the prevailing Party shall be entitled to recover from the losing Party as part of the judgment in such action all reasonable costs, expenses, and attorneys' fees, including those costs, expenses and attorneys' fees incurred in defending any counterclaim or cross-complaint brought in such action and incurred in any appeals, all in such amount as the court shall judge reasonable.

l. Entire Agreement

This Agreement supersedes any previous agreements either oral or written by the Parties and represents the entire understanding between the Parties; provided, however, that this Agreement shall not relieve CONTRACTOR of any financial obligations that may have existed under the former franchise agreements through the effective date of this Agreement.

m. Rights of City to Perform During Emergency

Should CONTRACTOR, for any reason whatsoever, including the occurrence or existence of any of the events or conditions set forth in Section 16.a., fail, refuse or be unable to collect, transport, process and dispose of any or all of the Solid Waste for which it is obligated under this Agreement to collect, transport and dispose of for a period of more than forty-eight (48) hours, and if as a result thereof Solid Waste should accumulate in CITY to such an extent, in such a manner, or for such a time that the City Manager should find that such accumulation endangers or menaces the public health, safety or welfare, then in such event CITY shall have the right, in addition to any other rights under this Agreement or pursuant to law, to take possession of any or all equipment of CONTRACTOR previously used in the collection, transportation, processing and disposal of Solid Waste or which CONTRACTOR would otherwise be obligated to collect and transport pursuant to this Agreement. CONTRACTOR agrees that in such event it will fully cooperate with CITY to effect such a transfer of possession for CITY's use. CONTRACTOR agrees that, in such event, CITY may take possession of and use all of said equipment and facilities without paying CONTRACTOR any rental or other charge, provided that CITY agrees that, in such event, it assumes responsibility for the proper and normal use of such equipment and facilities.

CONTRACTOR further agrees that, in such event, it shall reimburse CITY for any and all costs and expenses, incurred by CITY in taking over possession of the above mentioned equipment and facilities in such manner and to the extent that would otherwise be required of CONTRACTOR under the terms of this Agreement. It is agreed that CITY's exercise of its rights under this Section shall not affect Section 14 of this Agreement.

n. Enforcement of Exclusive Franchise Terms

Suspected violations of the rights and privileges granted to the CONTRACTOR under the terms of this Agreement by third parties shall be investigated by the CONTRACTOR. Prosecution and abatement of any violation of any of the rights granted to CONTRACTOR under this Agreement shall be pursued by CONTRACTOR at no cost to CITY. CITY agrees to cooperate in good faith with CONTRACTOR in CONTRACTOR's abatement efforts.

17. REPORTING, ACCOUNTING, AND AUDITING

a. Quarterly Reports

CONTRACTOR shall make available to the CITY quarterly reports containing detailed audit information including, the number of tons of Refuse collected from Residential and Commercial Premises, Recyclable Material, Green Waste, Organic Waste, Bulk Household Waste, and Construction and Demolition Waste collected and delivered to the Disposal Facility, Processing Facility or Composting Facility and the route number, the vehicle number and CONTRACTOR's weight ticket for each load disposed or processed. Residential and Commercial Collection of Recyclable Materials shall be summarized by commodity and the amount collected. The quarterly reports shall also reflect amounts received by CONTRACTOR from the sale of Recyclable Materials.

CONTRACTOR shall submit written quarterly reports within 30 days of the end of each quarter to the CITY. Quarterly reports shall also include the findings of the Waste Stream Audits per Section 8.e.

b. Annual Reports

CONTRACTOR shall submit annual reports to the CITY on or before November 1st of each year totaling the information contained in the quarterly reports for the prior Contract Year. Upon request, CONTRACTOR shall make an oral presentation of the annual report to the City Council.

Annual Report shall also include a residential and commercial account profile that lists the number of accounts by service level as of the end of the year (e.g., number of 32 or 40-gallon residential accounts; 2-yard commercial solid waste containers. etc.)

CONTRACTOR shall also provide a commercial account subscription profile that provides a complete listing of commercial accounts with Solid Waste, Recycling, Green Waste, Organics and all other service levels listed. The account subscription profile shall also include historical comparative data.

c. Rate Studies

The CONTRACTOR shall prepare rate studies, provide all rate setting calculations, proposals, and substantiation in support of proposed Maximum Service Rate adjustments throughout the term of this Agreement. All such studies and evaluations shall be in accordance with both Article XIII D, Section 6(b), of the California Constitution and CITY procedures. CITY shall review and consider rate proposals, prepare and circulate the protest ballot/hearing notice, conduct the required protest hearing and other required public meetings associated therewith and exercise final approval/denial over proposed rates in accordance with the terms of this Agreement. In accordance with Section 13 of this Agreement, CONTRACTOR shall indemnify and hold harmless the CITY against any legal challenges initiated by third parties, including those associated with Article XIII D, Section 6(b), of the California Constitution.

d. Additional Information

CONTRACTOR shall use Reasonable Business Efforts to incorporate into the reports required by this Section any additional information requested by the CITY. CONTRACTOR shall incorporate into such reports any new reporting information required by Applicable Law.

e. Contractor's Financial Statement

CONTRACTOR shall deliver annual certified audited financial statements and consolidated financial statements of CONTRACTOR and CONTRACTOR's Affiliated Companies providing services under this Agreement, with an opinion prepared by an independent Certified Public Accountant who shall have no financial interest in the business of CONTRACTOR, within one hundred and twenty (120) days of the end of Contract Year. CITY may review the audit plan and work papers of any accountant or auditor whose opinions CONTRACTOR is obligated to deliver to CITY in accordance with this Section. CITY shall hold CONTRACTOR's accounting records and financial statements confidential as described by Section 17.h.

f. Affiliated Companies and Related Entities

CONTRACTOR shall promptly notify CITY of any contracts or informal arrangements between CONTRACTOR and its Affiliated Companies related to the provision of any services under this Agreement, and shall describe such contracts or arrangements in the financial

statements described in Section 17.e. Annual financial statements must disclose any shared resources such as staff, equipment, warehousing and facilities, computer hardware and software, phone systems, fuel, etc. among CONTRACTOR and its Affiliated Companies and other information as necessary to justify the allocation of revenues and expenses. If an Affiliated Company provides any of the services described in this Agreement, CONTRACTOR must provide CITY with information regarding the financial, corporate, and operational relationship between itself and such Affiliated Company.

g. Maintenance and Audit of Records

CONTRACTOR shall accurately maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, and other records or documents relating to this Agreement, or performance under this Agreement, including routing, complete list of Customers, level of Customer's services, Customer complaints, employee training, inventory, maintenance logs, etc. ("Records") for the term of this Agreement plus two (2) years, or any longer period required by Applicable Law. CONTRACTOR shall maintain complete accounting records pertaining to cash receipts, billing and disposal records ("Accounting Records") prepared on an accrual basis in accordance with generally accepted accounting principles for at least three (3) years following the close of CONTRACTOR's fiscal year. CONTRACTOR shall maintain the Accounting Records in a manner that allows for the separate identification of all costs and revenues associated with providing Services hereunder and such costs and revenues shall not be combined, consolidated or in any other way incorporated with those of other operations conducted by CONTRACTOR in locations other than the CITY.

The financial and accounting records of CONTRACTOR (including any Affiliated Company providing services hereunder), shall be subject to audit and inspection for the primary purpose of reviewing contract payments, contract compliance, diversion rates and waste stream composition, compliance with Operating Cost Statement guidelines, reported expenses, billing operations, and accounts receivable by the CITY, its auditors or other agents, at any reasonable time. Such audit or inspection is to take place at the City Hall, if practicable, or at CONTRACTOR's address indicated for receipt of notices.

The CONTRACTOR shall bear the cost of such financial and accounting audits to be conducted every third Contract Year (next audit to be completed following the issuance of the financial statement per Article 17.e for the contract year ending December 2015). If such audit discloses a material breach of this Agreement or an underpayment of the Franchise Fee in excess of five percent (5%) of the amount which should have been paid, CONTRACTOR shall repay such underpayment, together with interest at the rate of seven percent (7%) computed from the date of underpayment. Operational audits of a scope similar to the July 2011 "Solid Waste Franchise Contracts Financial and Operational Audit" shall be conducted not more often than

every third year during the term of this Agreement and the costs of which are to be borne by the CONTRACTOR.

h. Confidentiality

Any report from the Auditor to CITY resulting from the Auditor's review of CONTRACTOR's records shall be distributed in such a way as to protect the confidential nature of any proprietary information of CONTRACTOR, to the extent permitted by law. The Auditor shall make such recommendations as it deems necessary as to the adequacy of CONTRACTOR's data collection methods, and as to the availability and sufficiency of the information, including direct, indirect and joint costs, with respect to any request by CONTRACTOR for increased compensation, and shall furnish CITY with its opinion as to whether an increase or decrease is supported and justified by CONTRACTOR's records.

18. TRANSITION TO NEXT CONTRACTOR

In the event CONTRACTOR is terminated or not awarded an Agreement to continue to provide Collection Services following the expiration or early termination of this Agreement, CONTRACTOR shall cooperate fully with CITY and any subsequent contractors to assure a smooth transition of services described in this Agreement. Such cooperation shall include but not be limited to transfer of computer data, files and tapes; providing routing information, route maps, vehicle fleet information, and list of accounts, service levels and collection schedules; providing a complete inventory of all carts and bins; providing adequate labor and equipment to complete performance of all Collection Services required under this Agreement; coordinating collection of materials set out in new containers if new containers are provided for a subsequent Agreement and providing other reports and data required by this Agreement. The transfer of any carts, bins, vehicles or other assets to the next contractor shall be the subject of negotiations between CONTRACTOR and the next contractor.

Executed:

PASO ROBLES WASTE DISPOSAL, INC.,
a California corporation

By _____
Dale Gomer, President

By _____
Attorney for Paso Robles Waste Disposal, Inc.

CITY OF EL PASO DE ROBLES,
a Municipal Corporation
of the State of California

By _____
Duane Picanco, Mayor

ATTEST:

By: _____
City Clerk

APPROVED AS TO FORM:

By _____
City Attorney

EXHIBIT A DEFINITIONS

Affiliated Company or Affiliated Companies means any business(es) which are directly related to CONTRACTOR by virtue of common ownership interests or common management or is a business which is also owned, controlled or managed by any business or individual which has a direct or indirect ownership interest in CONTRACTOR. As of November 2012, identified Affiliated Companies are Paso Robles Roll-Off, Inc., a California corporation and Paso Robles Country Disposal, a California corporation. All terms of this Agreement shall apply to an Affiliated Company providing services on behalf of CONTRACTOR under this Agreement.

Alternative Facility means a Processing Facility or Material Recovery Facility proposed as an option to an objection by either Party to a previously proposed facility.

Applicable Law means all law, statutes, rules, regulations, guidelines, permits, actions, determinations, orders, or requirements of the United States, State of California, County of San Luis Obispo, CITY, regional or local government authorities, agencies, boards, commissions, courts or other bodies having applicable jurisdiction, including AB 939 and Senate Bill 1016, that from time to time apply to or govern the services provided pursuant to this Agreement or the performance of the Parties' respective obligations hereunder, including any of the foregoing which concern health, safety, fire, environmental protection, labor relations, mitigation monitoring plans, building codes, zoning, non-discrimination, and the San Luis Obispo County Integrated Waste Management Plan. All references herein to Applicable Law include subsequent amendments thereto, unless otherwise specifically limited.

Bins mean Front or Rear Loading Bins and Roll-Off Bins provided by CONTRACTOR for Commercial Premises and Multi-Unit Residential Premises.

Bulk Household Waste means all discarded household waste matter which is too large to be placed in a covered Container including, but not limited to, vehicle tires and/or wheels, furniture, appliances, discarded carpets, discarded mattresses, discarded electronic equipment, residential wastes (including wood waste, tree branches, scrap wood) and similar large items produced from Residential Premises, and is considered Solid Waste for purposes of this Agreement.

City Manager means the City Manager of CITY. The City Manager or his designee is the authorized agent of CITY in enforcing the terms of this Agreement.

Commercial Bins mean Bins which are picked up by CONTRACTOR by means of front-loading or rear-loading apparatus, and which are generally smaller in size than Roll-Off Bins.

Commercial Premises means all properties or points of Solid Waste collection on which there are the following uses: industrial, manufacturing, industrial warehouse, restaurants, wholesale or retail stores, service establishments, professional offices, construction sites, hotels or motels, and other non-residential uses.

Composting Facility means a permitted facility or facilities for the controlled biological decomposition of organic wastes that have been source separated from the CITY's municipal Solid Waste stream, or which have been separated at a centralized facility. As of July 2012, there is no permitted Composting Facility within a 50 mile radius of the CITY.

Construction and Demolition Waste means any waste matter which is a by-product of a construction, demolition, clean-up or remodeling process, wherever occurring within the CITY, and is considered Solid Waste for purposes of this Agreement.

Container means a receptacle designed specifically for the storage and collection of Refuse, which does not exceed 96 gallons in capacity and which has a tight fitting lid. Container includes receptacles provided by CONTRACTOR to Customers for the storage and collection of Solid Waste, Green Waste, and/or Recyclable Material.

Contract Year means any fiscal year of the CITY commencing on July 1 and ending June 30 during the initial and any extended term of this Agreement.

Customer means each person or business directly receiving services from CONTRACTOR at Residential Premises or Commercial Premises.

Deferred Compensation shall mean an arrangement wherein a portion of an employee's income is paid out at a date after which that income is earned such as in the form of a pension, retirement plan, or stock option.

Disposal Facility means the Paso Robles Municipal Solid Waste Disposal Site or other CITY-approved facility for disposing of Refuse and/or residue from a Processing Facility or Composting Facility.

E-Waste means appliances, devices, and other objects containing electronic components, and includes (but is not limited to) computers, computer monitors, cellular telephones, copiers, fax machines, DVD players, VCR's, televisions, printers, microwaves, and toasters.

Green Waste means organic waste generated from any landscape, including grass clippings, leaves, prunings, tree trimmings, pine needles, weeds, branches and brush collected pursuant to this Agreement. As of November 2012, Green Waste is collected and delivered to Buckeye Enterprises Chip & Grind Operation in Paso Robles for mulching and other processing.

Gross Revenues means all revenues received by CONTRACTOR for services that CONTRACTOR and its Affiliated Companies provide under this Agreement including revenue from Customer Service Rates then in effect, roll-off services provided within the CITY, Special Services, payments and/or grants from IWMA and Cal Recycle such as curbside oil grants and CRV payments, and revenue from Special Services. Revenues from the sale of Recyclable Materials, from grants other than IWMA and Cal Recycle, and from the surcharge associated with the land purchase described in Council Resolution No. 06-142¹ are excluded from the calculation of Gross Revenues.

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

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

¹ As of December 2012, this surcharge is \$2.34 per account.

- e. Materials regulated under any future additional or substitute federal, State or local laws and regulations pertaining to the identification, transportation, treatment, storage or disposal of toxic substances or hazardous waste.

If two or more governmental agencies having concurrent or overlapping jurisdiction over hazardous waste adopt conflicting definitions of “hazardous waste”, for purposes of collection, transportation, processing and/or disposal, the broader, more expansive definition shall be employed for purposes of this Agreement. Notwithstanding any provision of this definition to the contrary, for purposes of this Agreement, Universal Waste shall not be considered Hazardous Waste.

Hazardous Waste Facility means a facility which holds all required permits and approvals for acceptance of Hazardous Waste, and which disposes of or processes Hazardous Waste in accordance with Applicable Law.

Holiday means a day officially designated as either a State or Federal holiday, or both.

Household Hazardous Waste means batteries, oil and other petroleum-based products, and antifreeze.

IWMA means the San Luis Obispo County Integrated Waste Management Authority.

IWMA Fee means fees paid to the IWMA for membership, special services and programs, and other charges by the IWMA.

Litter Containers mean Containers owned and maintained by CITY and located at bus benches, bus stops, in parking lots, on CITY sidewalks and other public rights-of-way or on City Facilities and Events adjacent thereto, all within CITY limits.

Material Recovery Facility means a centralized operation where comingled and/or source-separated recyclable material is separated and processed in preparation to meet market specifications for sale.

Maximum Service Rates means the highest solid waste collection rates (by Customer class and container or bin size) and roll-off service rates (by size and tonnage allowance) approved by CITY Council for any given period. Actual rates subsequently set by CONTRACTOR per provisions of this Agreement not to exceed the maximum levels established by the CITY.

Multi-Unit Residential Premises means any building and/or structure, or portion thereof, in CITY which is used for residential housing purposes, irrespective of whether residents are transient, temporary or permanent, and having two (2) or more self-contained living units.

Organic Waste means food waste from kitchens, stores at which food products are sold, and food processing activities. "Organic Waste" excludes Green Waste.

Processing Facility means a facility or facilities for sorting and/or processing commingled or source separated Recyclable Materials and/or Refuse that is legally licensed and permitted to do so. As of November 2012, CONTRACTOR takes CITY Green Waste to Buckeye Enterprises Chip and Grind Facility along Benton Road north of Paso Robles; residential Recyclable Materials to Paso Robles Recycling on Riverside Avenue in Paso Robles and from there materials are transferred to Waste Management's facility in Santa Maria for processing; and commercial Recyclable Materials to Paso Robles Recycling.

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

Recyclable Materials mean materials which have been discarded, thrown away or abandoned by the generator or owner thereof and are commonly collected in recycling programs in Central California, including, but not limited to:

- | | |
|------------------------------------------------------------------------------------|----------------------------------|
| newsprint | Ferrous metals |
| corrugated material | non-ferrous metals |
| high-grade paper and mixed paper | white paper |
| glass | mixed paper |
| aluminum cans | telephone books |
| tin cans | California redemption containers |
| steel and other types of scrap metals | |
| PET polyethylene terephthalate containers ("PET") marked "1" as of the date hereof | |
| high density polyethylene containers ("HDPE") marked "2" as of the date hereof | |
| low density polyethylene containers ("LDPE") marked "4" as of the date hereof | |

This list may be expanded to include any other material for which a recycling market or process is developed and which material is designated by CITY to constitute Recyclable Material during the term of this Agreement. Notwithstanding any other term or provision of this Agreement to the contrary, materials shall be deemed to constitute solid waste within the

meaning of California Public Resources Code Section 40191, and regulated accordingly, whether or not said materials are identified on the foregoing list or may be potentially recyclable, in all cases where the material is mixed or commingled with other types of solid waste, or where a fee, charge, or other form of consideration, regardless of amount, is directly or indirectly solicited or received from the generator in exchange for collection, removal, transportation, storage, processing, handling or disposal services ("fee for service" recycling), whether or not arranged by or through a subcontractor, broker, agent, or affiliate of the provider of such service. As used herein, "generator" includes, without limitation, a property owner, occupant, or his/her contractor.

Refuse shall mean Solid Waste, other than Recyclable Material and Green Waste.

Refuse Rate Index (RRI) shall mean indices published by the United States Department of Labor, Bureau of Labor Statistics.

Residential Premises means and includes all Single-Unit Residential and Multi-Unit Residential sites located within CITY.

Residue shall mean material deemed non-Recyclable or otherwise reusable during sorting and processing.

Retirement Benefits shall mean pensions paid to employees in regular installments upon retirement from service.

Roll-Off Bins mean Bins picked up by CONTRACTOR by means of rear loading winches onto rails. Roll-Off Bins are generally much larger in size than Commercial Bins.

Sharps means medical devices that have needles or other sharp implements as component parts, including but not limited to sharps and sharps used in animal or human patient care, medical research, or clinical or pharmaceutical laboratories, hypodermic, intravenous syringes to which a needle or other sharp is still attached, Pasteur pipettes, scalpel blades, blood vials, other types of broken or unbroken glass (including slides and cover slips) that has been in contact with infectious agents. "Sharps" shall not include those parts of syringes from which sharps are specifically designed to be easily removed and from which sharps have actually been removed, and which are intended for recycling or other disposal, so long as such syringes have not come in contact with infectious agents. As of November 2012, Sharps program in the Paso Robles area is administered by the San Luis Obispo County Integrated Waste Management Authority.

Single-Unit Residential Premises means any building, and/or structure, or portion thereof, in CITY which is used for residential housing purposes, irrespective of whether residents are transient, temporary or permanent, and having one (1) self-contained living unit.

Solid Waste shall mean all putrescible and nonputrescible solid and semi-solid wastes, including:

- | | |
|--------------------------------------------------------------------------------------|-------------------------------------------------|
| Recyclable Materials | industrial wastes |
| Green Waste | commercial wastes |
| Construction and Demolition Waste | manure |
| garbage | discarded home and industrial appliances |
| trash | vegetable or animal solid and semi-solid wastes |
| debris | ash, except as provided below and |
| paper | rubbish |
| organic waste | |
| abandoned vehicles and parts thereof, including tires and wheel rims | |
| dewatered, treated or chemically fixed sewage sludge which is not hazardous waste | |
| other discarded solid and semi-solid wastes not otherwise defined in this Agreement. | |

Special Service are as described in Section 8.(b) of this Agreement.

Special Waste means any waste matter which is a Hazardous Waste, or which requires special handling or processing, including those items set forth on **Exhibit C** attached to this Agreement and incorporated by this reference.

Universal Waste means any waste matter which the State of California classifies as “universal waste,” including but not limited to items and materials listed in 14 CCR 66261.9, as it may be amended, as well as any items listed below not classified by the State of California as “universal waste.” Universal Waste includes, but is not limited to, the following:

- | | |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------|
| E-Waste | Batteries (except automobile batteries) |
| Thermostats | Cathode ray tubes |
| Aerosol cans | |
| Lamps with fluorescent tubes, high intensity discharge lamps, sodium vapor lamps, and other lamps with hazardous waste characteristics | |
| Mercury-containing items, including light switches, pressure gauges, and thermometers | |
| Appliances, devices, and other objects containing electronic components, including (but not limited to) computers, computer monitors, cellular telephones, copiers, fax machines, DVD players, VCR’s, and televisions | |
| Prescription and non-prescription drugs, not including controlled substances | |

EXHIBIT B
LIMITATIONS TO THE SCOPE OF THE EXCLUSIVE CONTRACT

CITY does not grant the exclusive right and privilege to collect or transport the following categories of materials:

- Recyclable Materials or large items that are source separated from Solid Waste by a Customer/generator, for which the waste generator sells or is otherwise compensated by a collector in a manner resulting in a net payment to the waste generator.
- Solid Waste, Recyclable Materials, large items or Green Waste which is removed from any Customer's premises and which is transported personally by the owner or occupant of such premises (or by his or her full-time employees) to a Processing or Disposal Facility.
- Recyclable Materials, Green Waste or large items which are source separated at any premises by the Customer and donated to youth, civic or charitable organizations.
- Containers delivered for recycling under the California Beverage Container Recycling Litter Reduction Act, Section 14500, et seq.
- Green Waste removed from a premises by a gardening, landscaping, or tree trimming company as an incidental part of a total service offered by that company rather than as a hauling service.
- Large items removed from a premises by a property cleanup or maintenance company as an incidental part of the total cleanup or maintenance service offered by the company rather than as a hauling service.
- Animal waste and remains from slaughterhouse or butcher shops for use as tallow.
- By-products of sewage treatment, including sludge, ash, grit and screenings.
- Hazardous Waste regardless of its source.
- Solid Waste, Green Waste, Organic Waste or Recyclable Materials that are removed from a premise by a company through the performance of a service that the CONTRACTOR is not obligated to provide under this Agreement.

EXHIBIT C SPECIAL WASTE

- Flammable waste.
- Residue and debris from the cleanup of a spill or release of chemical substances, commercial products or any other special wastes.
- Contaminated soil, waste, residue, debris and articles from the cleanup of a site or facility formerly used for the generation, storage, treatment, recycling, reclamation or disposal of any other special wastes.
- Dead animals.
- Explosive substances.
- Radioactive materials.
- Materials which have been exposed to highly infectious or contagious diseases, except Sharps.
- Medical waste as defined by State and Federal agencies, except Sharps.
- Sludge waste.
- Waste motor oil.
- Asbestos, including friable materials that can be crumbled with pressure and are therefore likely to emit fibers, being a naturally occurring family of carcinogenic fibrous mineral substances, which may be a Hazardous Waste if it contains more than one percent asbestos.
- Ash residue from the incineration of Infectious Waste described below.
- Hazardous Wastes, explosives, ordnance, highly flammable substances and noxious materials.
- Industrial byproducts, including cement kiln dust, ore process residues and grit or screening removed from a waste water treatment facility.
- Infectious wastes which have disease transmission potential and are classified as Hazardous Wastes by the State Department of Health Services, including pathological and surgical wastes, medical clinic wastes, wastes from biological laboratories, syringes, needles, blades, tubings, bottles, drugs, patient care items such as linen or personal or food service items from contaminated areas, chemicals, personal hygiene wastes, except Sharps.

- Liquid wastes which are not spadeable, usually containing less than fifty percent solids, including food processing wastes, landfill leachate and gas condensate, boiler blowdown water, grease trap and septic tank pumpings, oil and geothermal field wastes, rendering plant byproducts, sewage sludge, and those liquid wastes which may be Hazardous Wastes.
- Radioactive wastes under Chapter 7.6 (commencing with Section 25800) of Division 20 of the California Health and Safety Code, and any waste that contains a radioactive material, the storage or disposal of which is subject to any other State or federal regulation.
- Wastes designated from time to time by the California Integrated Waste Management Board.

* * *

**EXHIBIT D
MAXIMUM SERVICE RATES**

Customer/Service Type	Monthly Service Rate*
Residential	
40 Gal automated at curb	\$26.42
40 Gal automated at yard	\$41.85
40 Gal automated at yard - disabled	\$26.42
60 Gal automated at curb	\$34.57
60 Gal automated at yard	\$50.47
60 Gal automated at yard - disabled	\$34.57
90 Gal automated at curb	\$38.13
90 Gal automated at yard	\$54.78
90 Gal automated at yard - disabled	\$38.13
90 Gal automated duplex	\$43.43
90 Gal automated triplex	\$61.33
Commercial	
32 Gal Cans	
1 can 1 time per week	\$30.15
2 cans 1 time per week	\$44.10
3 cans 1 time per week	\$58.04
4 cans 1 time per week	\$72.00
5 cans 1 time per week	\$85.86
1 can twice per week	\$53.64
2 cans twice per week	\$85.86
3 cans twice per week	\$113.84
4 cans twice per week	\$141.65
5 cans twice per week	\$169.55
40 Gal can, 1 time per week	\$33.36
40 Gal can, twice per week	\$56.84
60 Gal can, 1 time per week	\$48.25
60 Gal can, twice per week	\$90.10
90 Gal can, 1 time per week	\$59.95
90 Gal can, twice per week	\$120.68
1 1/2 Yard	
1 bin, 1 time per week	\$97.12
1 bin, 2 times per week	\$152.82
1 bin, 3 times per week	\$208.52
1 bin, 4 times per week	\$264.24
1 bin, 5 times per week	\$319.95
1 bin, 6 times per week	\$375.66

Customer/Service Type		Monthly Service Rate*
2 Yards	1 bin, 1 time per week	\$113.84
	1 bin, 2 times per week	\$186.19
	1 bin, 3 times per week	\$258.70
	1 bin, 4 times per week	\$330.95
	1 bin, 5 times per week	\$403.47
	1 bin, 6 times per week	\$475.89
3 Yards	1 bin, 1 time per week	\$147.28
	1 bin, 2 times per week	\$250.20
	1 bin, 3 times per week	\$353.38
	1 bin, 4 times per week	\$456.40
	1 bin, 5 times per week	\$559.59
	1 bin, 6 times per week	\$662.67
4 Yards	1 bin, 1 time per week	\$214.08
	1 bin, 2 times per week	\$347.66
	1 bin, 3 times per week	\$481.52
	1 bin, 4 times per week	\$615.29
	1 bin, 5 times per week	\$748.96
	1 bin, 6 times per week	\$882.73

* Maximum Service Rates per Council action; latest action Resolution 08-097 dated July 1, 2008.

Rates Approved for FY 2011

Rates Effective October 1, 2010

Open Top Box Service Garbage and C&D Material Inside the City of Paso Robles

<u>Box Size</u>	<u>Service Fee</u>	<u>Minimum Dump Fees</u>	<u>Taxes & Fees</u>	<u>Total Deposit</u>
10 Yard - Concrete	\$194.98	\$0.00	\$ 3.90	\$198.88
20 Yard	\$194.98	\$95.95	\$ 5.82	\$296.75
30 Yard	\$214.48	\$143.92	\$ 7.17	\$365.57
40 Yard	\$235.93	\$239.87	\$ 9.52	\$485.32

Dump fees at the Paso Robles Landfill are \$46.85 per ton

Compactor Service Inside the City of Paso Robles

<u>Box Size</u>	<u>Service Fee</u>	<u>Minimum Dump Fees</u>	<u>Taxes & Fees</u>	<u>Total Deposit</u>
20 Yard	\$207.92	\$188.67	\$ 4.16	\$400.75
40 Yard	\$228.72	\$188.67	\$ 4.57	\$421.97

EXHIBIT D-11C

EXHIBIT E
Insurance Provisions

Without limiting CONTRACTOR's indemnification of CITY, and prior to commencement of Work, CONTRACTOR (for itself and Affiliated Companies) shall obtain, provide and maintain at its own expense during the term of this Agreement, policies of insurance of the type and amounts described below and in a form satisfactory to CITY.

Workers' Compensation Insurance. CONTRACTOR shall maintain Workers' Compensation Insurance (Statutory Limits) and Employers Liability Insurance (with limits of at least one million dollars (\$1,000,000)).

CONTRACTOR shall submit to CITY, along with the certificate of insurance, a Waiver of Subrogation endorsement in favor of CITY, its officers, officials, agents and employees.

General Liability Insurance. CONTRACTOR shall maintain commercial general liability insurance with coverage at least as broad as Insurance Services Office form CG 00 01, in an amount not less than two million dollars (\$2,000,000) per occurrence, four million (\$4,000,000) general aggregate, for bodily injury, personal injury, and property damage, including without limitation, blanket contractual liability. Such insurance shall be primary with respect to the CITY, its officials, officers, employees, agents, and consultants.

Automobile Liability Insurance. CONTRACTOR shall maintain automobile insurance at least as broad as Insurance Services Office form CA 00 01 covering bodily injury and property damage for all activities of the CONTRACTOR arising out of or in connection with Work to be performed under this Agreement, including coverage for any owned, hired, non-owned or rented vehicles, in an amount not less than one million (\$5,000,000) combined single limit for each accident.

OTHER PROVISIONS OF REQUIREMENTS

Proof of Insurance. CONTRACTOR shall provide certificates of insurance to CITY as evidence of the insurance coverage required herein, along with a waiver of subrogation endorsement for workers' compensation. Insurance certificates and endorsements must be approved by the CITY prior to commencement of performance. Current certification of insurance shall be kept on file with CITY at all times during the term of this Agreement. CITY reserves the right to require complete, certified copies of all required insurance policies, at any time.

Acceptable Insurers. All insurance policies shall be issued by an insurance company currently authorized by the Insurance Commissioner to transact business of insurance in the State of California, with an assigned policyholders' Rating of A- (or higher) and Financial Size Category Class VI (or larger) in accordance with the latest edition of Best's Key Rating Guide, unless otherwise approved by CITY.

Additional Insured Status. General liability policies shall provide or be endorsed to provide that CITY and its officials, officers, employees, agents and consultants shall be additional insureds under such policies. Such insured status shall contain no special limitations on the scope of its protection to the above listed insureds.

Waiver of Subrogation. All insurance coverage maintained or procured pursuant to this agreement shall be endorsed to waive subrogation against the CITY, its officials, officers, employees, and agents or shall specifically allow CONTRACTOR or others providing insurance evidence in compliance with these specifications to waive their right of recovery prior to a loss. CONTRACTOR (for itself and Affiliated Companies) hereby waives its own right of recovery against CITY, and shall require similar written express waivers and insurance clauses from each of its subcontractors.

Notice of Cancellation. CONTRACTOR agrees to oblige its insurance agent or broker and insurers to provide CITY with thirty (30) days notice of cancellation (except for nonpayment for which ten (10) days notice is required) or nonrenewal of coverage for each required coverage.

Enforcement of Contract Provisions (non estoppel). CONTRACTOR acknowledges and agrees that any actual or alleged failure on the part of the CITY to inform CONTRACTOR of non-compliance with any requirement imposes no additional obligation on the CITY nor does it waive any rights hereunder.

Specifications not Limiting. Requirements of specific coverage features or limits contained in this Section are not intended as a limitation on coverage, limits or other requirements, or a waiver of any coverage normally provided by any insurance. Specific reference to a given coverage feature is for purposes of clarification only as it pertains to a given issue and is not intended by any party or insured to be all inclusive, or to the exclusion of other coverage, or a waiver of any type.

Self-insured Retentions. Any self-insured retentions must be declared to and approved by the CITY. CITY reserves the right to require that self-insured retentions be eliminated, lowered, or replaced by a deductible. Self-insurance will not be considered to comply with these specifications unless approved by CITY.

Timely Notice of Claims. CONTRACTOR shall give CITY prompt and timely notice of claims made or suits instituted that arise out of or result from CONTRACTOR's performance under this Agreement, and that involve or may involve coverage under any of the required liability policies.

Additional Insurance. CONTRACTOR shall also procure and maintain, at its own cost and expense, any additional kinds of insurance, which in its own judgment may be necessary for its proper protection and prosecution of the Work.

EXHIBIT F
Liquidated Damages

In addition to other penalties set forth in this Agreement, CONTRACTOR agrees to pay (as liquidated damages and not as a penalty) the amounts set forth below:

Agreement Section	Incident	Amount
2	Solid Waste delivery to unauthorized disposal site	Twice the then-current Paso landfill tipping fee
7.a	Each failure to repair damage to property	\$250
7	Each failure to collect Solid Waste that has been properly set out for collection and which has not been picked up by CONTRACTOR within four days of receiving information that pick up has been missed.	\$150
7 and 8	Each failure to provide number and type of Containers specified (either equal to or larger than size requested)	\$75
8	Each failure to clean up illegally dumped materials within specified timeframe	\$200
7 and 8	Each failure to clean up spills from Solid Waste Containers or to adhere to Clean Collection Practices	\$200
7 and 8	Each occurrence of collecting Solid Waste during unauthorized hours	\$75
10	Each spill or fluid leakage from any collection vehicle used by CONTRACTOR which causes a stain of 0.5 square feet or larger which has not been cleaned up by CONTRACTOR	\$250
7.i	Comingling material	\$50/ton
7	Each failure to weigh and provide records to CITY	\$150
7	Each failure to replace damaged Containers or Bins	\$75
8	Each failure to schedule, provide, and to alert Customers to required Neighborhood Clean-Ups	\$500 per neighborhood
10.a	Overweight trucks	\$250
11	Each failure to initially respond to a Customer complaint within one (1) business day	\$150

Collection Franchise Agmt

Exhibit F

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