

Written materials relating to an item on this agenda that are distributed to the legislative bodies within 72 hours before the item is to be considered at its regularly scheduled meeting will be made available for public inspection at the Library, 251 South "A" Street and the City Clerk's Office, 305 West Third Street during customary business hours. The agenda reports are on the City of Oxnard web site at www.ci.oxnard.ca.us.



AGENDA

OXNARD CITY COUNCIL

*OXNARD COMMUNITY DEVELOPMENT COMMISSION SUCCESSOR AGENCY

*OXNARD FINANCING AUTHORITY

*OXNARD HOUSING AUTHORITY

Regular Meetings

City Council Chambers, 305 West Third Street, Oxnard

March 5, 2013

5:45 P.M.

A. ROLL CALL/POSTING OF AGENDA

*** The Oxnard Community Development Commission Successor Agency, the Oxnard Financing Authority and the Oxnard Housing Authority will not meet because there are no items requiring consideration on this date.**

B. PUBLIC COMMENTS ON CLOSED SESSION ITEMS

At this time, a person may address the legislative body only on matters appearing on the closed session agenda. The presiding officer shall limit public comments to three minutes.

C. CLOSED SESSION - (Please see page 4 for a description of closed session items)

D. OPENING CEREMONIES – 7:00 P.M.

Pledge of allegiance to the flag of the United States.

E. CEREMONIAL CALENDAR

1. SUBJECT: Presentation of a Commendation Designating March, 2013 as "Brain Injury Awareness Month".

F. PUBLIC COMMENTS ON ITEMS NOT ON THE AGENDA (30 Minutes)

At this time, the legislative body will consider public comments for a maximum of thirty minutes. A person may address the legislative body only on matters not appearing on the agenda and within the subject matter jurisdiction of the legislative body. A person not able to address the legislative body at this time because the thirty minutes expires may do so just prior to adjournment of the meeting. The legislative body cannot enter into a detailed discussion or take any action on any items presented during public comments at this time. Such items may only be referred to the City Manager/Executive Director/Secretary for administrative action or scheduled on a subsequent agenda for discussion. Persons wishing to speak on public hearing items should do so at the time of the hearing. The presiding officer shall limit public comments to three minutes.

In compliance with the Americans with Disabilities Act, if you require special assistance to participate in a meeting, please contact the City Clerk's Office at 385-7803. Notice at least 72 hours prior to the meeting will enable the City to reasonably arrange for your accessibility to the meeting.

City of Oxnard internet address: www.ci.oxnard.ca.us.

March 5, 2013

PAGE 2

G. REVIEW OF INFORMATION/CONSENT AGENDA

The members of the legislative body will consider whether to remove Information/Consent Agenda items for discussion later during the meeting.

H. PUBLIC COMMENTS ON INFORMATION/CONSENT AGENDA

At this time, a person may address the legislative body only on matters appearing on the information/consent agenda. The presiding officer shall limit public comments to three minutes.

I. INFORMATION/CONSENT AGENDA

City Clerk Department

1. SUBJECT: Minutes of the Special Meeting of the Oxnard City Council for January 29, 2013; and Minutes of the Regular Meetings of the Oxnard City Council for February 5 and 12, 2013. (001)

RECOMMENDATION: Approve.

Legislative Body: CC

Contact: Daniel Martinez

Phone: 385-7803

City Manager Department

2. SUBJECT: Agreements for City Council Review. (017)

RECOMMENDATION: Pursuant to Ordinance 2835 and Resolution 13,932, approve and authorize the Interim City Manager, to execute the attached agreements/contracts and change orders/amendments in amounts more than \$25,000 but less than \$250,000.

Legislative Body: CC

Contact: Karen Burnham

Phone: 385-7430

Development Services Department

3. SUBJECT: Dedication of Ventura Boulevard East of Santa Clara Avenue and West of Nyeland Avenue for Public Right of Way. (021)

RECOMMENDATION: Adopt a resolution authorizing the Mayor to execute the deed dedicating as public right of way and accepting into the City street system Ventura Boulevard east of Santa Clara Avenue and West of Nyeland Avenue.

Legislative Body: CC

Contact: Cynthia Daniels

Phone: 385-7871

Police Department

4. SUBJECT: Federal Asset Forfeiture Funds. (035)

RECOMMENDATION: Approve a special budget appropriation in the amount of \$225,889 for the use of Federal Asset Forfeiture funds allocated to the City of Oxnard Police Department.

Legislative Body: CC

Contact: Scott Whitney

Phone: 385-7751

Recreation Department

5. SUBJECT: Grant Procurement for Employment Training. (037)
RECOMMENDATION: Adopt a resolution ratifying the City Manager's submission of an application for \$750,000 to Ventura County Workforce Investment (WIB), for a year round youth job training and employment program under the federal Workforce Investment Act (WIA).
 Legislative Body: CC Contact: Efren Gorre Phone: 385-7982

J. TRANSMITTAL OF INFORMATION ONLY ITEMS

K. INFORMATION/CONSENT PUBLIC HEARINGS

L. PUBLIC HEARINGS

M. REPORT OF CITY MANAGER/EXECUTIVE DIRECTOR/SECRETARY

The City Manager/Executive Director/Secretary shall report on items of interest to the legislative body occurring since the last meeting. The legislative body cannot enter into detailed discussion or take action on any item presented during this report. Such items may only be referred to the City Manager/Executive Director/Secretary for administrative action or scheduled on a subsequent agenda for discussion.

N. CITY COUNCIL/HOUSING AUTHORITY/SUCCESSOR AGENCY/FINANCING AUTHORITY
BUSINESS/COMMITTEE REPORTS

City Attorney Department

1. SUBJECT: Removal of Commissioner from the Senior Services Commission. (039)
RECOMMENDATION: Consider, pursuant to Oxnard City Code section 2-35, the removal of Preston Davis from the Senior Services Commission.
 Legislative Body: CC Contact: Alan Holmberg Phone: 385-7483

O. REPORTS

City Manager Department

1. SUBJECT: Approval of Agreement with TKC Enterprises, Inc. (041)
RECOMMENDATION: Approve and authorize the Interim City Manager to execute an agreement with TKC Enterprises, Inc.(6030-12-CM) in the amount of \$50,000 to provide consulting services for the planning, coordination, implementation, permit inspections and security services related to the NFL training camps to be held in Oxnard.
 Legislative Body: CC Contact: Michael Henderson Phone: 385-7950

Phone: 385-7956

- Phone: 385-7475

The Interim City Manager and the City Attorney requested that this item be discussed in closed session under the Brown Act exception of Conference with Legal Counsel – Existing Litigation. The purpose of the closed session is to report to City Council on the status of the litigation.

2. CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION.CC City of Oxnard et al. v. Kennedy Jenks Consultants, et al.

Los Angeles Superior Court, Case No. BC493631

The Interim City Manager and the City Attorney requested that this item be discussed in closed session under the Brown Act exception of Conference with Legal Counsel – Existing Litigation. The purpose of the closed session is to report to City Council on the status of the litigation.

T. ADJOURNMENT

MINUTES

OXNARD CITY COUNCIL

Special Meeting

January 29, 2013

A. ROLL CALL/POSTING OF AGENDA

At 6:04 p.m., the special meeting of the Oxnard City Council convened in the Council Chambers. Councilmembers Tim Flynn, Carmen Ramirez, Bryan A. MacDonald and Dorina Padilla were present. The City Clerk stated that the agenda was posted on Thursday in the Library and City Clerk's Office. Mayor Flynn presided and called the meeting to order. Staff members present were: Daniel Martinez, City Clerk; Karen Burnham, Interim City Manager; Alan Holmberg, City Attorney; Grace Magistrale Hoffman, Deputy City Manager; Christina Aerenlund, Public Information Officer; and Martin Erickson, Special Assistant to the City Manager.

B. PUBLIC COMMENTS

The following individuals provided comments: Martin Jones; Ellen Tracy; William "Bill" Terry; Shirley Godwin; Larry Godwin; Nancy Lindholm; Michael Stubblefield; Steve Buenger; Dick Jaquez; Harold Ceja; Larry Stein and Roy Prince.

C. STUDY SESSION – Strategic Planning Workshop

City Manager Department

1. SUBJECT: Update on 2012 City Council Strategic Planning Workshop Initiatives. (001)
RECOMMENDATION: Receive a report, evaluate and provide comments on the tactical plans, implementation and status of the strategic initiatives identified by the Members of the City Council during the City Council Strategic Planning Workshop held on February 28-29, 2012.

DISCUSSION: The Public Information Officer reviewed the goals and process of the past workshop strategic initiatives.

The Council discussed several issues including: City staffing; local job skills/training programs; transportation issues; housing issues; working with local businesses; public input; budget process, partnerships with other government entities; animal control; closure of the redevelopment agency; enterprise zone; public safety and the format of Council meetings.

Comments were received from: Justin Glenn; Francine Castanon; Bert Perello; Orlando Dozier; Pat Brown; Roy Prince; Michael Stubblefield; Steve Nash and Gloria Roman.

ACTION: The Council provided comments to staff.

2. SUBJECT: Discussion regarding future Strategic Planning Session.
DISCUSSION: The City Council stated a future meeting would be scheduled.

D. ADJOURNMENT

At 9:23 p.m. the City Council concurred to adjourn the meeting.

DANIEL MARTINEZ
City Clerk

TIM FLYNN
Mayor

MINUTES

OXNARD CITY COUNCIL

Regular Meeting

February 5, 2013

A. ROLL CALL/POSTING OF AGENDA

At 5:32 p.m., the regular meeting of the Oxnard City Council convened in the Council Chambers concurrent with Community Development Commission Successor Agency. Councilmembers Tim Flynn, Carmen Ramirez, Bryan A. MacDonald and Dorina Padilla. The City Clerk stated that the agenda was posted on Thursday in the Library and City Clerk's Office. Mayor Flynn presided and called the meeting to order. Staff members present were: Daniel Martinez, City Clerk; Karen Burnham, Interim City Manager; Alan Holmberg, City Attorney; James Cameron, Chief Financial Officer; Curtis P. Cannon, Community Development Director; Martin Erickson, Special Assistant to the City Manager; and Kymberly Horner, Interim Redevelopment Services Manager.

B. PUBLIC COMMENTS ON CLOSED SESSION ITEMS

C. CLOSED SESSION

At 5:35 p.m., the City Council and Successor Agency recessed to a closed session, pursuant to Government Code section 54956.9(a), to confer with its attorneys. The title and case number of the litigation being discussed is SOCMI, LLC, et al. v. City of Oxnard, et al., Ventura County Superior Court Case No. 56-2012-00427637-CU-WM-VTA.

The City Council and Successor Agency also recessed to a closed session, pursuant to Government Code section 54956.9(b)(3)(C), based on existing facts and circumstances, there is significant exposure to litigation against the City and Successor Agency in one potential case based upon a claim for damages filed by Strand Cinemas LLC and Oxnard Theater Group LLC on file in the Office of the City Clerk and available for inspection during normal business hours.

The City Council and Successor Agency also recessed to a closed session, pursuant to Government Code section 54956.9(a), to confer with its attorneys. The title and case number of the litigation being discussed is CRFL Family Apartments, LP v. Ana J. Matasantos, et al. Sacramento Superior Court Case No. 34-2012-80001354

At 6:59 p.m., the closed session concluded.

D. OPENING CEREMONIES

At 7:05 p.m., the regular meeting of the Oxnard City Council reconvened in the Council Chambers, concurrently with the Community Development Commission Successor Agency. The meeting opened with the pledge of allegiance to the flag of the United States, followed by a moment of silence. Mayor Flynn presided. Additional staff members present were: Jeri Williams, Police Chief; Matthew Winegar, Development Services Director; Grace Magistrale Hoffman, Deputy City Manager; Barbara Murray, Library Director; Rob Roshanian, Interim Public Works Director; Cynthia Daniels, Project Manager; Grant Dunne, Environmental Resources Management Analyst; Anthony Emmert, Water Resources Manager; Tom Clock, Systems Administrator; Jason M. Samonte, Traffic Engineer and Ralph Alamillo, Construction Projects Manager.

E. CEREMONIAL CALENDAR

1. **SUBJECT:** Presentation of Employee of the Year.
ACTION: Mayor Flynn presented a check to Andrea Torres, Solid Waste Compliance Specialist, as Employee of the Year. She thanked the Council, City staff and her family.

F. PUBLIC COMMENTS ON ITEMS NOT ON THE AGENDA

The following individuals provided comments: Edgar Mohorko; Harvey Kallen; Steve Nash; Bill Winter; Pete Placencia; Larry Stein; Inez Tuttle; and Abel Magana.

G. REVIEW OF INFORMATION/CONSENT AGENDA

The following individuals provided comments: Library Director (I-2(a & b)); Water Resources Manager (I-2(e)); Systems Administrator (I-3); Construction Projects Manager (I-4); Traffic Engineer (I-5) and Project Manager (I-7).

H. PUBLIC COMMENTS ON INFORMATION/CONSENT AGENDA

The following individuals provided comments: Orlando Dozier (I-7); Bert Perello (I-6) and Chris Salcido (I-7).

I. INFORMATION/CONSENT AGENDA**Development Services Department**

7. **SUBJECT:** Reject Award of Contract to Low Bidder, Del Norte Construction, and Approve Intent to Award Contract to Second Low Bidder, Malibu Pacific Tennis Courts, Inc. for Project Specification No. DS13-09–Victoria Avenue Transit Route Stops Project. (077)
RECOMMENDATION: Move to the meeting of February 12, 2013.
DISCUSSION: The Project Manager reviewed the bid process, construction work to be completed and reasons for rejection.
ACTION: Move to continue I-7 to February 12, 2013. (MacDonald/Flynn) Ayes: Ramirez, MacDonald, Padilla, and Flynn.

City Clerk Department

1. **SUBJECT:** Minutes of the Special Meeting of the Oxnard City Council for December 4, 2012. Minutes of the Regular Meeting of the Oxnard City Council for December 4 and 11, 2012, January 8 and 15, 2013.
RECOMMENDATION: Approve.

City Manager Department

2. **SUBJECT:** Agreements for City Council Review. (035)
RECOMMENDATION: Approve and authorize the Interim City Manager, to execute the attached agreements/contracts and change orders/amendments in amounts more than \$25,000 but less than \$250,000.

3. SUBJECT: Purchase Order for Computers and Peripheral Equipment. (039)
RECOMMENDATION: Approve and authorize the Mayor to execute an amendment to the terms of the Blanket Purchase Order/Change Order (No. 003978) with Compuwave for purchases of computers and peripheral equipment, extending the end date by one year and adding \$325,000, for a total contract amount not to exceed \$550,000.
4. SUBJECT: Approval of Award of Contract for Specification No. GS12-04-Durley Park Building Renovation – Concession Area, Restrooms, Activity Areas & ADA Compliance Renovations-Concession Area, Restrooms, Activity Areas and ADA Compliance. (043)
RECOMMENDATION: 1) Approve the award of Contract to Hansons & Son Construction, Inc. (A-7558) in the amount of \$584,000.00 for GS12-04 for Durley Park Concession Building Renovation located at 850 West Hill Street; and 2) Authorize the Mayor to execute the contract upon receipt of all supporting contract documents.

Development Services Department

5. SUBJECT: Median and Traffic Signal modifications at the intersection of Ventura Road and Devonshire Drive. (073)
RECOMMENDATION: 1) Adopt Project Specification No DS 12-18 for the modification of the existing median and traffic signal at the intersection of Ventura Road and Devonshire Drive; and 2) Approve the special budget appropriation recognizing the Federal grant funding of \$151,560 from the Highway Safety Improvement Program (HSIP), and transferring existing appropriations of Circulation System Improvement Funds in the amount of \$2,083 from project 113101 Traffic Signal at the intersection of Saviers Road and Hill Street to Median and Traffic Signal Modifications project 113107.
6. SUBJECT: Special Budget Appropriation for City-wide Sidewalk Survey. (075)
RECOMMENDATION: Recognize federal grant revenue and appropriate \$177,000 to the project budget for "Citywide Sidewalk Survey."

Fire Department

8. SUBJECT: State Homeland Security Grant. (093)
RECOMMENDATION: 1) Approve the City's receipt of \$41,677 in grant revenue from the State Homeland Security Grant (SHSG) and authorize the Interim City Manager to execute the 2012 Grant Assurances on the City's behalf; and 2) Approve a special budget appropriation in the amount of \$41,677 for Urban Search and Rescue training and equipment.

Police Department

9. SUBJECT: First Amendment to Agreement for Gang Intervention Street Outreach. (097)
RECOMMENDATION: Approve and ratify the Mayor's execution of the First Amendment to the Agreement for Gang Intervention Street Outreach with City Impact (5508-11-PO) to extend the term two years to December 31, 2014 and amend the not to exceed amount by \$180,000 for a total agreement value of \$339,503.

Public Works Department

10. SUBJECT: Fourth Amendment to Agreement for Solid Waste Disposal Services between the City of Oxnard and Waste Management Incorporated, Simi Valley Landfill. (105)
RECOMMENDATION: Removed from agenda.
11. SUBJECT: Resolution for Re-designation of the Ventura County Recycling Market Development Zone. (111)
RECOMMENDATION: Adopt **Resolution No. 14,296** authorizing the City of Oxnard to remain in the Ventura County Recycling Market Development Zone after the Zone's re-designation by the California Department of Resources Recycling and Recovery (CalRecycle).

INFORMATION/CONSENT AGENDA ACTION: Move to approve as recommended with the removal of I-10 (MacDonald/Ramirez) Ayes: MacDonald, Padilla, Flynn and Ramirez.

J. TRANSMITTAL OF INFORMATION ONLY ITEMSFinance Department

1. SUBJECT: Monthly Budget Status Report for the Period Ending December 31, 2012 (Fiscal Year 2012-13). (115)
RECOMMENDATION: Receive Report.
DISCUSSION: Public Comments were received from Larry Stein and Bert Perello.
ACTION: Received and filed.

K. INFORMATION/CONSENT PUBLIC HEARINGSL. PUBLIC HEARINGS

ACTION: Mayor Flynn declared the public hearing open.

DISCUSSION: The City Clerk reported on posting, publication and no written communications were received.

Development Services Department

1. SUBJECT: Certification of East Village Phase III Annexation Final Environmental Impact Report (FEIR) No. 11-01; Approval of Planning and Zoning Permit (PZ) No. 11-610-01 (Annexation) and PZ No. 11-560-01 (Prezoning) for the 107-Acre Parcel Located at 1853 Camino del Sol (APN 214-0-020-595); and PZ No. 12-610-01 (Annexation) of four Right-of-Way (ROW) Segments and/or Parcels on the North Side of the 101/Santa Clara Avenue Interchange. Filed by Maulhardt RF-JW Trust et al c/o Richard Maulhardt, Jr., 1853 Camino del Sol, Oxnard; and City of Oxnard, 300 West Third Street, Oxnard, CA 93030. (131)
RECOMMENDATION: 1) Table a resolution certifying the East Village Phase III Annexation FEIR No. 11-01; 2) Table a resolution of annexation application (PZ 11-610-01) to the Ventura County Local Agency Formation Commission (LAFCo) for reorganization of boundaries for the East Village Phase III property; 3) Table the first reading by title only and subsequent adoption of Ordinance amending the City zone map (PZ No. 11-560-01) for prezoning the East Village Phase III Annexation area; and 4) Adopt **Resolution No. 14,297** of annexation application (PZ 12-610-01) to LAFCo for reorganization of boundaries for four ROW segments and/or parcels on the north side of the 101/Santa Clara interchange.

DISCUSSION: The Development Services Director commented on the proposed annexation and process of properties at 101/Santa Clara interchange and East Village Phase III, traffic improvements, following the 2030 General Plan "Urban Village" concept, other significant impacts and the process to develop the 107 acre parcel.

The following individuals provided comments: Steve Nash; Mitch Kahn; Larry Stein; Harold Ceja; Bert Perello; and Pat Brown.

Lynn Maulhardt and Dean Maulhardt provided comments regarding the history of the 107 site and future development of the property.

The Council discussed: 1) the development process; 2) value of the land with annexation; 3) possible school interest of location; 4) location of future Fire Station; 5) traffic impacts; 6) development requirements if site annexed and 7) development details of the 107 acre site.

ACTION: Close the public hearing. (Flynn/Ramirez) approved unanimously. Moved to table this item. (MacDonald/Padilla) Ayes: MacDonald and Padilla. Noes: Flynn and Ramirez. (motion failed).

Moved to approve part four of the recommendation (Ramirez/Padilla) Ayes: Padilla, Flynn, Ramirez and MacDonald.

Moved to table part one, two and three of the recommendation (Ramirez/MacDonald) Ayes: Flynn, Ramirez, MacDonald and Padilla.

M. REPORT OF CITY MANAGER

1. SUBJECT: Verbal Report on Oxnard Community Development Commission Successor Agency and Status of Redevelopment Activities in the City of Oxnard.

RECOMMENDATION: Receive and consider report.

DISCUSSION: The Community Development Director reported on court action regarding the proposed affordable housing project and the schedule to move the project.

ACTION: Received the report.

The Interim City Manager commented that the Fire Department and Recreation Department would be bringing a report to Council in the near future regarding a possible beach life guard program.

Received comments from Bert Perello.

N. CITY COUNCIL BUSINESS/COMMITTEE REPORTS

The City Council commented on: possible summer youth work program; a gun buy-back program; and efforts to keep local employers such as Hass Automation in the community.

City Clerk Department

1. SUBJECT: Appointments of Citizen Advisory Groups. (251)
RECOMMENDATION: 1) That the Mayor, with approval of the City Council, appoint: (a) eleven members to the Commission on Homelessness; (b) five members to the Library Board; (c) seven members to the Parks and Recreation Commission; (d) three members to the Planning Commission; and (e) nine members to the Senior Services Commission; and 2) That the City Council appoint: (a) seven members to the Community Relations Commission; and (b) two members to the Housing Authority Board of Commissioners.

DISCUSSION: The City Clerk briefly updated the appointment process schedule after the Mayor's election and provided updated information.

Received public comments from Bert Perello and Travis Kelly.

ACTION: Mayor Flynn, with approval of the City Council, appointed:
(a) Commission on Homelessness: Francine Castanon; Clarice Couey; David Courtland; John A. Garcia; Al Jones; Stephen MacIntosh; Darlene Miller; Frank Perez; Peggy Rivera; Rose "Leslye" Stern and Ken Tougas; (b) Library Board: Jean Gentry; Mark Kupperman; Radell Mitchell; John Ragan and Yvette Stein; (c) Parks and Recreation Commission: Johnnie Barber; Edgar Leroy Cobb; Armando Garcia; Paul Lemos; Bedford Pinkard; Gloria M. Postel; and Dale Summersille; (d) Planning Commission: Patrick Mullin; Steven Nash; and Sonny Okada; and (e) Senior Services Commission: Kay Brainard; Preston Davis; Adamelia Esparza; Ron Fischer; Nancy Kobashigawa; Alice Madrid; Nancy Rowe; Alice Sweetland and Lourdes Villareal Yu.
2) The City Council appointed: (a) Community Relations Commission: Mike Baxter; Joseph Castaneda; Orlando Dozier; Travis Kelly; Bruce M. Mitchell; Kenneth Robinson; and Ernest Stein; and (b) Housing Authority Board of Commissioners: Jose Andrade and Francisco Vega.

City Manager Department

2. SUBJECT: Measure O Citizen Oversight Committee Appointments. (259)
RECOMMENDATION: Appoint nine members of the Measure O Citizen Oversight Committee (COC).
DISCUSSION: The Special Assistant to the City Manager reviewed the selection process and function of the committee.

Public comments received from Bert Perello.

ACTION: The City Council appointed Nancy Lindholm; Steven Cripps; Dr. Donald W. Thibeault; Charles Hookstra; Kay Brainard; David H. Garcia; Joe Milligan and Joseph M. Munoz to the Measure "O" Citizen Oversight Committee.

COMMUNITY DEVELOPMENT COMMISSION SUCCESSOR AGENCY

At 10:43 p.m., the concurrent meetings with the Community Development Commission Successor Agency concluded.

O. REPORTS**Public Works Department**

1. **SUBJECT:** Receive a verbal report from HFH Consulting Services, Inc. (HFH) regarding the Del Norte Regional Recycling and Transfer Station (Del Norte Facility).
RECOMMENDATION: Receive and provide direction on a presentation from HFH on the feasibility of the City operating the Del Norte Facility and the status of the Request for Proposals (RFP) process.
DISCUSSION: Bob Hilton of HFH reviewed the background and current description of the Del Norte Facility. Mr. Hilton continued his presentation about key issues of possible City operation of the Del Norte Facility to include relative cost, marketing of recyclable materials, performance, attraction of additional tons and industry practice. He also presented the goals, attributes, terms and conditions of a RFP process to select a private operator for the Del Norte Facility. Mr. Hilton presented a tentative schedule of the RFP process. The Interim Public Works Director and the Environmental Resources Management Analyst along with Mr. Hilton answered questions from City Council regarding relative cost between public and private operator cost, waste to energy technologies, and timeline schedule.

Comments were received from: Gerard Kapuscik and Juan Delgado.

The City Council commented on the time schedule to select a private operator; the process to select the City as the operator; loss of recycling materials; future "waste to energy" projects; private/public labor costs and benefits of the facility to the City.

ACTION: Provide directions and comments to staff.

P. PUBLIC COMMENTS ON REPORTS**Q. APPOINTMENT ITEMS****R. STUDY SESSION****S. PUBLIC COMMENTS ON STUDY SESSION****T. ADJOURNMENT**

At 11:57 p.m., the City Council concurred to adjourn the meeting.

DANIEL MARTINEZ
City Clerk

TIM FLYNN
Mayor

MINUTES

OXNARD CITY COUNCIL

Regular Meeting
February 12, 2013

A. ROLL CALL/POSTING OF AGENDA

At 7:02 p.m., the regular meeting of the Oxnard City Council convened in the Council Chambers concurrent with Community Development Commission Successor Agency and Housing Authority. Councilmembers Tim Flynn, Carmen Ramirez, Bryan A. MacDonald, and Dorina Padilla were present. The City Clerk stated that the agenda was posted on Thursday in the Library and City Clerk's Office. Mayor Flynn presided and called the meeting to order.

B. PUBLIC COMMENTS ON CLOSED SESSION ITEMS

C. CLOSED SESSION

D. OPENING CEREMONIES

The meeting opened with the pledge of allegiance to the flag of the United States by Franky Sedenio Boy Scout Troop 228, followed by a moment of silence. Staff members present were: Danielle Navas, City Treasurer; Daniel Martinez, City Clerk; Karen Burnham, Interim City Manager; Alan Holmberg, City Attorney; Jeri Williams, Police Chief; Michael O'Malia, Interim Fire Chief; Rob Roshanian, Interim Public Works Director; Curtis P. Cannon, Community Development Successor Agency Director; James Cameron, Chief Financial Officer; William "Bill" Wilkins, Housing Director; Grace Magistrale Hoffman, Deputy City Manager; Michael Henderson, General Services Manager; Sue Martin, Planning and Environmental Services Manager; Eric Sonstegard, Police Commander; Deborah O'Malia, Disaster Preparedness Coordinator; Anthony Emmert, Water Resources Manager; Cynthia Daniels, Project Manager; Kymberly Horner, Interim Redevelopment Services Manager; and Jason M. Samonte, Traffic Engineer.

E. CEREMONIAL CALENDAR

1. SUBJECT: Recognition of the Senior Services "Bone Builder" Program.

DISCUSSION: Mayor Flynn recognized Arline Brown and Jo Graham for their work (RSVP Senior Services Division) in the "Bone Builder" program.

F. PUBLIC COMMENTS ON ITEMS NOT ON THE AGENDA

The following individuals provided comments: Ed Ellis; Inez Tuttle; Dan Pinedo; Jeff Chancer; Gerard Kaduscuk; Rene Garcia; Hilario Guerrero; Jeremias Luna; David Gonzalez; and Dick Jaquez.

G. REVIEW OF INFORMATION/CONSENT AGENDA

The comments were received from: City Attorney (I-2(a)); City Treasurer (I-3); Disaster Preparedness Coordinator (I-4); Police Commander (I-6); Interim City Manager (I-8).

H. PUBLIC COMMENTS ON INFORMATION/CONSENT AGENDA

The following individuals provided comments: Dan Pinedo (I-7).

I. INFORMATION/CONSENT AGENDA

City Manager Department

2. SUBJECT: Agreements for City Council Review. (011)
RECOMMENDATION: Approve and authorize the Interim City Manager, to execute the attached agreements/contracts and change orders/amendments in amounts more than \$25,000 but less than \$250,000.

City Treasurer Department

3. SUBJECT: Quarterly Investment Report for the Second Quarter F/Y 2012-2013. (013)
RECOMMENDATION: Accept the quarterly Investment Report for the Second Quarter F/Y 2012-2013.

Fire Department

4. SUBJECT: Formal Adoption of 2010 Ventura County Hazard Mitigation Plan (HMP) 5 Year Update. (021)
RECOMMENDATION: Approve **Resolution No. 14,301** adopting the 2010 Ventura County Hazard Mitigation Plan (HMP) 5 Year Update.
5. SUBJECT: State Homeland Security Grant. (025)
RECOMMENDATION: 1) Approve the City's receipt of \$60,000 in grant revenue from the State Homeland Security Grant (SHSG) and authorize the Interim City Manager to execute the 2011 Grant Assurances on the City's behalf; and 2) Approve a special budget appropriation in the amount of \$60,000 for Hazardous Materials Response training and equipment.

Police Department

6. SUBJECT: Gang Violence Suppression Grant Award Amendment. (029)
RECOMMENDATION: 1) Recognize \$566,640 in grant revenue from California Emergency Management Agency (CalEMA) for the Gang Violence Suppression (GVS) grant; 2) Authorize a Special Budget Appropriation in the amount of \$566,640 for personnel, equipment, training and contracted services; and 3) Authorize the City Manager or designee to appropriate additional funds if needed.
7. SUBJECT: Supplemental Law Enforcement Services Fund. (033)
RECOMMENDATION: 1) Recognize \$322,234 in grant revenue from the State Supplemental Law Enforcement Services Fund (SLESF) for Citizens Option for Public Safety (COPS) Program; and 2) Approve a special budget appropriation (SBA) in the amount of \$322,234 for the grant funds.

Recreation and Community Services Department

8. SUBJECT: Changing of Name of the Parks & Recreation Commission and Amending Bylaws. (037)

RECOMMENDATION: 1) Approve the first reading by title only and subsequent adoption of **Ordinance No. 2863** amending the Oxnard City Code concerning the power and duties and the name of the Parks and Recreation Commission; and 2) Adopt **Resolution No. 14,302** approving the Parks and Recreation Commission Bylaws as amended in Article I Organization, Article II Powers and duties, Article III Membership, Article IV Officers and Article V Meetings/Quorum.

INFORMATION/CONSENT AGENDA ACTION: Approved as recommended. (Flynn/Ramirez)
Ayes: Flynn, Ramirez, MacDonald, and Padilla.

J. **TRANSMITTAL OF INFORMATION ONLY ITEMS**

K. **INFORMATION/CONSENT PUBLIC HEARINGS**

ACTION: Mayor Flynn declared the public hearing open.

DISCUSSION: The City Clerk reported on posting, publication and no written communications were received.

Development Services Department

1. **SUBJECT:** Planning and Zoning Permit Nos. 12-500-03 (Special Use Permit) and 12-300-02 (Tentative Parcel Map), Southeast of the Intersection of West Pleasant Valley Road and Charles Street. (051)

RECOMMENDATION: 1) Adopt **Resolution No. 14,303** upholding the Planning Commission's approval of Special Use Permit No. 12-500-03 to develop four single-family residences on property zoned General Commercial Planned Development (C-2-PD), subject to the findings and conditions set forth in Resolution No. 2012-27; and 2) Adopt **Resolution No. 14,304** approving Tentative Parcel Map No. 12-300-02 to divide two parcels into four, subject to the findings and conditions set forth in Resolution No. 2012-28.

DISCUSSION: The Development Services Director reviewed the proposed development including parking, proposed density and other undeveloped properties within the neighborhood.

ACTION: Close the public hearing (MacDonald/Ramirez) unanimously. Approved as recommended. (MacDonald/Padilla) Ayes: Ramirez, MacDonald, Padilla and Flynn.

Q. **APPOINTMENT ITEMS**

1. **SUBJECT:** Oxnard Convention and Visitors Bureau (OCVB) Annual Report and Dallas Cowboys Economic Impact.

RECOMMENDATION: Receive verbal report and provide comments.

DISCUSSION: Janet Sederquist, CEO of OCVB, presented the annual OCVB report including use of internet; media/public relations formats, partnerships with businesses, trade shows, hotel occupancy, Dallas Cowboys Training Camp information and moving office to new RiverPark site.

Comments received from: Steve Nash.

The City Council provided comments regarding the activities of the OCVB and Dallas Cowboys camp.

ACTION: Received report and provided comments.

L. PUBLIC HEARINGS

ACTION: Mayor Flynn declared the public hearing open.

DISCUSSION: The City Clerk reported on posting, publication and no written communications were received.

Housing Department

1. SUBJECT: Issuance of Housing Authority Multifamily Housing Revenue Bonds for Terraza de Las Cortes Project. (097)

RECOMMENDATION: That the City Council: 1) Hold a public hearing regarding the issuance of up to \$12,000,000 of multifamily housing revenue bonds by the Housing Authority to finance the construction and development by Terraza De Las Cortes, L.P., of the Terraza De Las Cortes Project; and 2) Adopt **Resolution No. 14,305** approving the issuance of bonds by the Housing Authority for the purpose of financing the Terraza De Las Cortes Project.

DISCUSSION: The Housing Director reviewed the process for issuing bonds, proceed to move forward with this project and return to Council with relocation and replacement housing plans.

The Council discussed the current housing conditions.

ACTION: Close the public hearing (Ramirez/Padilla) unanimously. Approved as recommended. (MacDonald/Padilla) Ayes: Padilla, Flynn, Ramirez, and MacDonald.

M. REPORT OF CITY MANAGER

N. CITY COUNCIL BUSINESS/COMMITTEE REPORTS

The City Council commented on: appointment of new Fire Chief; Governor of Texas visiting Haas Automation; efforts of department staff applying for grants; change of strategic meeting date; and change of starting Council meeting times.

HOUSING AUTHORITY

At 9:27 p.m. the concurrent meeting with the Housing Authority concluded.

At 9:27 p.m. the City Council recessed while the Community Development Commission Successor Agency held a meeting and at 10:14 p.m., the City Council reconvened.

COMMUNITY DEVELOPMENT COMMISSION SUCCESSOR AGENCY

At 10:14 p.m. the concurrent meeting with the Housing Authority concluded.

O. REPORTS

Development Services Department

2. SUBJECT: Reject Award of Contract to Low Bidder, Del Norte Construction, and Approve Intent to Award Contract to Second Low Bidder, Malibu Pacific Tennis Courts, Inc. for Project Specification No. DS13-09–Victoria Avenue Transit Route Stops Project. (123)

RECOMMENDATION: 1) Determine that Del Norte Construction is not a responsible bidder and reject its bid in the amount of \$228,300 for Project Specification No. DS13-09 Victoria Avenue Transit Route Stops; and 2) Authorize the purchasing agent to process and bring to the City Council the proposed award to the second low bidder, Malibu Pacific Tennis Courts, Inc. in the amount of \$232,417 for Project Specification No. DS13-09 Victoria Avenue Transit Route Stops.

DISCUSSION: The Project Manager reviewed the bid process, scope of construction work to be completed, scheduling of work and other reasons for rejection.

Received comments from: Ralph Valenzuela; Anthony Mireles; Dan Pinedo; and Pat Brown.

At 10:15 p.m., Mayor Flynn left the meeting and Mayor Pro Tem Ramirez presided. At 10:18 p.m., Mayor Flynn returned to the meeting and presided.

The City Council discussed the bid process and dollar value of bid(s) made.

ACTION: Approved as recommended. (MacDonald/Ramirez). Ayes: Flynn, Ramirez, MacDonald, and Padilla.

Finance Department

3. SUBJECT: Comprehensive Annual Financial Report for Fiscal Year 2011-12. (209)
RECOMMENDATION: Receive and file the City of Oxnard Comprehensive Annual Financial Report (CAFR) for Fiscal Year (FY) 2011-12.
DISCUSSION: The Chief Financial Officer commented on the CAFR including revenues, expenditures financial data and placing financial information online.

The Council commented on: City reserve amount, debt policy, growth of general fund, golf course and Performing Arts Center.

ACTION: Received report and provided comments to staff.

P. PUBLIC COMMENTS ON REPORTS

R. STUDY SESSION

Public Works Department

1. SUBJECT: Utility Rates Assistance Program Options. (211)
RECOMMENDATION: Receive a report on options for a potential program to provide financial assistance on City utility bills to extremely low income senior citizens and provide direction to staff.
DISCUSSION: The Water Resources Manager commented on possible water programs the City could provide to residents and other agencies that provide assistance programs.

The City Council discussed: the need for community assistance, residents applying for current utility programs and possible funding options.

Comments received from: Steve Nash and Pat Brown.

ACTION: Received report and provided comments to staff.

S. PUBLIC COMMENTS ON STUDY SESSION

T. ADJOURNMENT

At 11:31 p.m. the City Council concurred to adjourn the meeting.

DANIEL MARTINEZ
City Clerk

TIM FLYNN
Mayor

CARMEN RAMIREZ
Mayor Pro Tem

ACTION	TYPE OF ITEM
☐ Approved Recommendation	☒ Info/Consent
☐ Ord. No(s). _____	☐ Report
☐ Res. No(s). _____	☐ Public Hearing (Info/consent)
☐ Other _____	☐ Other _____

Prepared By: Karen R. Burnham, Interim City ManagerAgenda Item No. I-2Reviewed By: City Manager [Signature] City Attorney [Signature] Finance [Signature] Other (Specify) _____**DATE:** February 25, 2013**TO:** City Council**FROM:** Karen R. Burnham, Interim City Manager
City Manager's Office**SUBJECT:** Agreements for City Council Review**RECOMMENDATION**

That City Council, pursuant to Ordinance 2835, and Resolution No. 13,932, approve and authorize the City Manager, to execute the agreements/contracts and change orders/amendments in amounts more than \$25,000 but no more than \$250,000, which are described on the attached list.

DISCUSSION

On November 16, 2010, the City Council approved changes to the City's Purchasing Procedures reducing the threshold for City agreements/contracts and change orders/amendments requiring City Council approval to \$25,000. The agreements/contract and change orders/amendments described on the attached list involve amounts above \$25,000 and up to \$250,000.

FINANCIAL IMPACT

Funding information is included on the attached list.

Attachment - #1 – List of Agreements/Contracts and/or Change Orders/Amendments

NOTE: Copies of the agreement/contracts and change orders/amendments on the list are available in the City Clerk's Office after 10:00 a.m. on Thursday prior to the Council meeting.

City Manager Contract List for 03/05/2013

Item	Type	Department/Contact	Vendor/Agreement Number	Description/Purpose	Amount
A	Original Agreement	Development Services - Traffic Eng. & Operations Cynthia Daniels	Lynn Capouya, Inc. Agreement No. 6109-13-DS	Landscape Architectural Services Rice/Highway 101 for Work Outside City Boundaries The consultant will design and provide construction support services for landscaping and irrigation for Ventura Blvd east of Santa Clara Ave., Santa Clara Avenue, and Auto Center Drive. The Rice/101 interchange project specification no. PW03-19 cannot install landscaping and irrigation as originally designed due to the above streets being outside the boundary of the City and Calleguas Municipal Water District (CMWD). The staff used a Request for Proposals (RFP) #DS 13-3 in November, 2012 to solicit proposals from qualified consultants. Four proposals were submitted by the deadline of December 17, 2012. Lynn Capouya was ranked as the best qualified for the work. Total Contract Amount: \$62,082 FundingSource: Federal Grant and Gas Tax Funds	\$62,082
		385-7871			
B	Original Agreement	Public Works Construction and Design Services - Eng. Design & Contract Admin. Lou Balderrama	Ventura County Railroad Agreement No. A-7561	Railroad Warning Device Temporary Relocation Agreement To temporarily relocate railroad warning devices to the westbound lane on Hueneme Road between Arcturus Avenue and Edison Drive. This work is necessary for the construction of the Hueneme Road Recycled Water Pipeline Project. (Ratification of Agreement signed on an emergency basis). Total Contract Amount: \$109,378 FundingSource: Grants and Water Bond Funds	\$109,378
		340-5358			
C	Task Order	Public Works Construction and Design Services - Eng. Design & Contract Admin. Lou Balderrama	Penfield & Smith Agreement No. A-7425	On-Call Engineering Services Oxnard Wastewater Treatment Plant Structural Evaluation including on site structural investigation of 28 existing structures, prepare evaluation report and conduct preliminary engineering analysis. As a result of a Request for Proposal process, the City entered into an as-needed agreement with Penfield & Smith to provide on-call services on July 26, 2011. Total Contract Amount: \$750,000 FundingSource: Wastewater Treatment Operating Funds	\$88,788
		340-5358	Task Order 23		

18

ATTACHMENT
PAGE 1 OF 2

City Manager Contract List for 03/05/2013

Item	Type	Department/Contact	Vendor/Agreement Number	Description/Purpose	Amount
D	Task Order	Public Works Lou Balderrama	Penfield & Smith Agreement No. A-7425	On-Call Engineering Services Oxnard Wastewater Treatment Plant Equipment and Process Optimization. Consultant shall review each existing treatment plant process for comparison of existing as-constructed technology in relation to new treatment technology implemented since original process construction. Consultant shall identify and evaluate alternative technologies. Consultant shall prepare plant equipment and optimization report. As a result of a Request for Proposal process, the City entered into an as-needed agreement with Penfield & Smith to provide on-call services on July 26, 2011.	\$75,214
		340-5358	Task Order 24	Total Contract Amount: \$750,000 FundingSource: Wastewater Treatment Operating Funds	

19

ATTACHMENT 1
PAGE 2 OF 2



ACTION	TYPE OF ITEM
☐ Approved Recommendation	☒ Info/Consent
☐ Ord. No(s). _____	☐ Report
☐ Res. No(s). _____	☐ Public Hearing (Info/consent)
☐ Other _____	☐ Other _____

Prepared By: Cynthia Daniels

Agenda Item No. I-3

Reviewed By: City Manager

City Attorney

Finance

Other Winegar

DATE: February 20, 2013**TO:** City Council
FROM: Cynthia Daniels, Project Manager
 Development Services Department

SUBJECT: Dedication of Ventura Boulevard East of Santa Clara Avenue and West of Nyeland Avenue for Public Right of Way

RECOMMENDATION

That City Council adopt a resolution authorizing the Mayor to execute the deed dedicating as public right of way and accepting into the City street system Ventura Boulevard east of Santa Clara Avenue and West of Nyeland Avenue.

DISCUSSION

Starting in 2002, the City acquired in fee the property for the realignment of Ventura Boulevard east of Santa Clara Avenue and north of the Ventura Freeway for the Rice Avenue/Santa Clara Avenue interchange improvements at the 101 Ventura Freeway. The City Council approved the application for an annexation of this area on February 5, 2013. Since the construction of Ventura Boulevard is finished, it is timely and appropriate to dedicate the property acquired in fee for public street and public utility purposes. The City gains several advantages in dedicating the property as a public street and accepting it into the city street system. The City would no longer pay property taxes on the public right of way (once it is annexed to the City), and the property that is not part of the roadway can be sold as surplus property. Removing the surplus property from the city's land inventory will reduce maintenance costs and future liability.

Staff will return to the City Council later with recommendations for the disposal of the surplus properties created by the dedication of Ventura Boulevard. Property taxes for the six parcels are \$4,528.13 in fiscal year 2012-13. A seventh parcel is not taxed because the Ventura County Assessor's Office recognized it is a roadway. Road maintenance will be minimal during the next three to five years because the street is new and built to the latest city standards. The dedication encompasses about 1.2 acres.

Dedication of Ventura Blvd.
March 5, 2013
Page 2

FINANCIAL IMPACT

None.

CD

Attachment #1 - Resolution Authorizing Execution of Attached Deed with Map and Legal
Description of Ventura Boulevard Dedication
#2 Certificate of Acceptance

CITY COUNCIL OF THE CITY OF OXNARD

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF OXNARD AUTHORIZING THE MAYOR TO EXECUTE THE DEED DEDICATING AS PUBLIC RIGHT OF WAY AND ACCEPTING INTO THE CITY STREET SYSTEM VENTURA BOULEVARD EAST OF SANTA CLARA AVENUE AND WEST OF NYELAND AVENUE

WHEREAS, the City of Oxnard acquired property and constructed the portion of Ventura Boulevard east of Santa Clara Avenue and west of Nyeland Avenue; and

WHEREAS, City Council Resolution No. 14,297 approved an application to the Ventura County Local Agency Formation Commission (LAFCo) for annexation of said property into the City; and

WHEREAS, it is timely and appropriate to dedicate the public right of way constructed on said property for public street and public utility purposes, and accept the public right of way into the City street system.

NOW, THEREFORE, the City Council of the City of Oxnard resolves:

1. That the public right of way identified in the Public Street Dedication Deed, attached as Exhibit A hereto and incorporated by this reference, is hereby accepted into the City street system.
2. That the Mayor is hereby authorized to execute on behalf of the City the Public Street Dedication Deed dedicating said property as public right of way.
3. That the City Clerk is hereby directed to record the Public Street Dedication Deed with the County Recorder.

PASSED AND ADOPTED THIS 5th day of March, 2013, by the following vote:

AYES:

NOES:

ABSENT:

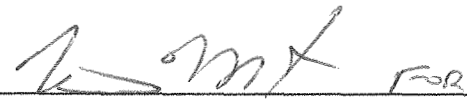
ABSTAIN:

Tim Flynn, Mayor

ATTEST:

Daniel Martinez, City Clerk

APPROVED AS TO FORM:



Alan Holmberg, City Attorney

RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:

City of Oxnard
City Clerk
305 West Third Street
Oxnard, California 93030

Request recording without fee. Record for the benefit of the
City of Oxnard Pursuant to section 6103 of the Government Code

(Space above this line for Recorder's use)

APN: 149-0-091-08, 149-0-091-28, 149-0-100-28, 149-0-100-35, 149-0-100-43, 149-0-100-51

por.

This deed is exempt from tax – Section 11922 of the California Revenue and Taxation Code

CITY OF OXNARD DOC. No. _____
PUBLIC STREET DEDICATION DEED

The City of Oxnard, GRANTOR, hereby dedicates to

The City of Oxnard, a municipal corporation (GRANTEE)

A permanent and perpetual street right of way for the purposes of constructing and maintaining a public thoroughfare and public utility appurtenances thereto, over, under, and across that real property in the County of Ventura, State of California, described and depicted on Exhibit A and Exhibit B, attached hereto.

The Grantor, its successors and assigns, agree not to erect buildings or structures upon any portion of the above-described right of way nor to utilize the land within the street right of way for any purpose detrimental to the Grantee's use of the land as a public thoroughfare.

TO HAVE AND TO HOLD said right of way unto the City of Oxnard, its successors and assigns, forever.

Dated: _____, 2013

GRANTOR:

Tim Flynn, Mayor

ATTEST:

Daniel Martinez, City Clerk

NOTARY ACKNOWLEDGEMENT REQUIRED

STATE OF CALIFORNIA)

COUNTY OF _____)

On _____ before me, _____, a
Notary Public, personally appeared _____, who proved to me
on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the
within instrument and acknowledged to me that he/she/they executed the same in his/her/their
authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or
the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the
foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____

(Seal)

EXHIBIT A

A parcel of land situated in the City of Oxnard, County of Ventura, State of California, more particularly described as follows:

EXHIBIT "A"

LEGAL DESCRIPTION

That portion of Lot 65 of the Rancho Santa Clara del Norte, in the unincorporated territory of the County of Ventura, State of California, as per map recorded in Book 3, Page 26 of Miscellaneous Records (Maps) in the office of the County Recorder of Ventura County, described as follows:

Beginning at the intersection of the centerline of Santa Clara Avenue, 60.00 feet wide, and the centerline of Old Conejo Road, 60.00 feet wide, as shown on the Record of Survey filed in Book 38, Page 64 of Records of Survey in the office of said County Recorder; thence along the centerline of said Old Conejo Road South $85^{\circ}56'02''$ East 1166.69 feet (355.609 meters); thence North $4^{\circ}03'58''$ East 5.00 feet (1.524 meters) to the intersection with a line, parallel with and 25.00 feet (7.620 meters) southerly of, measured at right angles, the northerly line of said Old Conejo Road, said point being the beginning of a curve, tangent to said parallel line and concave northeasterly, having a radius of 262.47 feet (80.000 meters), said curve hereinafter referred to as "Curve A"; thence westerly along said curve an arc distance of 412.28 feet (125.664 meters) through a central angle of $90^{\circ}00'00''$; thence tangent to said curve North $4^{\circ}03'58''$ East 109.59 feet (33.404 meters), along a line hereinafter referred to as "Line A", to the beginning of a tangent curve, concave southwesterly and having a radius of 295.27 feet (90.000 meters), said curve hereinafter referred to as "Curve B"; thence northerly along said curve an arc distance of 243.53 feet (74.229 meters) through a central angle of $47^{\circ}15'20''$; thence tangent to said curve, and along a line hereinafter referred to as "Line B", North $43^{\circ}11'23''$ West 274.49 feet (83.664 meters) to the intersection with the southeasterly line of said Santa Clara Avenue; thence along said southeasterly line North $40^{\circ}14'47''$ East 34.18 feet to the intersection with a line, parallel with and 33.96 feet (10.350 meters) northeasterly of, measured at right angles, "Line B" hereinabove described, said point being the True Point of Beginning of this description; thence along said parallel line,

- 1st: South $43^{\circ}11'23''$ East 209.41 feet; thence,
2nd: South $34^{\circ}39'32''$ East 59.26 feet; thence,
3rd: South $36^{\circ}57'30''$ East 45.11 feet to the point of tangency with a curve, concave southwesterly and having a radius of 317.42 feet (96.750 meters), said curve being concentric with and 22.15 feet (6.750 meters) northeasterly of, measured radially, "Curve B" hereinabove described; thence,

- 4th: Southeasterly along said curve an arc distance of 118.91 feet through a central angle of 21°27'52" to the intersection with the northeasterly prolongation of the northwesterly line of Parcel 1, as shown on the Parcel Map filed in Book 15, Page 96 of Parcel Maps in the office of said County Recorder; thence along said prolongation,
- 5th: South 40°14'47" West 0.48 feet to northeasterly terminus of said northwesterly line of Parcel 1; thence along the northeasterly line of said Parcel 1,
- 6th: South 49°45'13" East 0.70 feet to the intersection with the southeasterly extension of the curve hereinabove described in the fourth course of this description, having a radius of 317.42 feet (96.750 meters); thence,
- 7th: Southeasterly along said curve an arc distance of 107.51 feet through a central angle of 19°24'23" to the point of tangency with a line, parallel with and 22.15 feet (6.750 meters) easterly of, measured at right angles, "Line A" hereinabove described; thence along said parallel line,
- 8th: South 4°03'58" West 109.59 feet to the beginning of a tangent curve, concave easterly and having a radius of 240.32 feet, said curve being concentric with and 22.15 feet (6.750 meters) easterly of, measured radially, "Curve A" hereinabove described; thence,
- 9th: Southerly along said curve an arc distance of 108.04 feet through a central angle of 25°45'31" to the intersection with the easterly line of the land described in the Grant Deed recorded October 9, 2003, as Instrument No. 20031009-0387438 of Official Records of Ventura County (hereinafter referred to as the "Thomas Harvey Deed"); thence along said easterly line,
- 10th: South 4°03'58" West 2.62 feet to the most northerly corner of the land described in the Grant Deed recorded February 1, 2005, as Instrument No. 20050201-0024848 of Official Records of Ventura County, said point being the beginning of a non-tangent curve, concave northeasterly and having a radius of 241.47 feet (73.600 meters), said curve being concentric with and 21.00 feet (6.400 meters) northeasterly of, measured radially, "Curve A" hereinabove described; thence along the boundary of said Grant Deed by the following three courses:
- 11th: Southeasterly along said curve an arc distance of 73.83 feet (22.503 meters) through a central angle of 17°31'03" to the intersection with a line, radial to said curve and having a bearing of North 50°14'02" East; thence along said radial line,
- 12th: North 50°14'02" East 4.00 feet (1.219 meters) to the beginning of a non-tangent curve, concave northeasterly and having a radius of 237.47 feet (72.380 meters), said curve being concentric with and 25.00 feet (7.620 meters) northeasterly of, measured radially, "Curve A"

hereinabove described; thence continuing along the boundary of said Grant Deed, to and along the northeasterly boundary of the land described in the Grant Deed recorded January 26, 2005, as Instrument No. 20050126-0019858 of Official Records of Ventura County,

- 13th: Southeasterly along said curve an arc distance of 124.00 feet (37.796 meters) through a central angle of 29°55'07" to the intersection with the easterly line of the land described in said last mentioned Grant Deed; thence along said easterly line,
- 14th: South 4°03'58" West 9.48 feet (2.891 meters) to the intersection with northerly line of said Old Conejo Road; thence along said northerly line,
- 15th: North 85°56'02" West 75.00 feet to the southeasterly corner of the land described in the Deed recorded August 16, 1934, in Book 420, Page 143 of Official Records of Ventura County; thence along the boundary of said Deed by the following two courses:
- 16th: North 4°03'58" East 10.00 feet; thence,
- 17th: North 85°56'02" West 75.00 feet to the intersection with the easterly line of the "Thomas Harvey Deed", hereinabove described; thence,
- 18th: North 43°12'36" West 18.45 feet; thence parallel with said easterly line of the "Thomas Harvey Deed",
- 19th: North 4°03'58" East 35.95 feet to the beginning of a non-tangent curve, concave easterly and having a radius of 291.45 feet, said curve being concentric with "Curve A", hereinabove described, the northerly terminus of said curve being tangent with the westerly line of said "Thomas Harvey Deed"; thence,
- 20th: Northwesterly along said curve an arc distance of 192.75 feet through a central angle of 37°53'33" to the point of tangency with said westerly line; thence along said westerly line,
- 21st: North 4°03'58" East 62.53 feet to the northwesterly corner of said "Thomas Harvey Deed", being also the southwesterly corner of Parcel 1 of the Parcel Map hereinabove described in the fourth course of this description; thence along the boundary of said Parcel 1 by the following two courses:
- 22nd: North 1°26'58" East 102.20 feet; thence,
- 23rd: North 40°14'47" East 7.70 feet to the beginning of a non-tangent curve, concave southwesterly and having a radius of 273.13 feet, said curve being concentric with and 22.15 feet (6.750 meters) southwesterly of, measured radially, "Curve B" hereinabove described; thence,
- 24th: Northerly along said curve an arc distance of 75.78 feet through a central angle of 15°53'47" to a point along said curve which has a radial bearing of North 65°12'42" East, said point being

the beginning of a non-tangent curve, concave southwesterly and having a radius of 270.09 feet, a radial to said point bears North 61°06'30" East; thence,

- 25th: Northwesterly along said curve an arc distance of 63.15 feet through a central angle of 13°23' 46"; thence non-tangent to said curve,
- 26th: North 75°12'25" West 33.84 feet; thence,
- 27th: North 2°04'57" West 10.79 feet to the beginning of a non-tangent curve, concave southeasterly and having a radius of 45.43 feet, a radial to said point bears North 3°31'50" West; thence,
- 28th: Westerly along said curve an arc distance of 31.45 feet through a central angle of 39°39'32"; thence tangent to said curve,
- 29th: South 46°48'38" West 30.18 feet to the intersection with the southwesterly line of the land described in Parcel 4 of the Notice of Lis Pendens recorded July 21, 2004, as Instrument No. 20040721-0201590 of Official Records of Ventura County; thence along the boundary of said Parcel 4 by the following three courses:
- 30th: North 49°45'13" West 47.87 feet; thence,
- 31st: North 40°14'47" East 55.77 feet (17.000 meters); thence,
- 32nd: North 6°27'33" West 43.00 feet to the intersection with a line, parallel with and 22.15 feet (6.750 meters) southwesterly of, measured at right angles, "Line B" hereinabove described; thence along said parallel line,
- 33rd: North 43°11'23" West 39.36 feet; thence,
- 34th: North 47°00'14" West 92.53 feet; thence,
- 35th: North 78°01'16" West 31.18 feet to the intersection with the southeasterly line of said Santa Clara Avenue; thence along said southeasterly line,
- 36th: North 40°14'47" East 80.60 feet to the True Point of Beginning of this description.

Containing 54,270 square feet (1.245 acres), more or less.

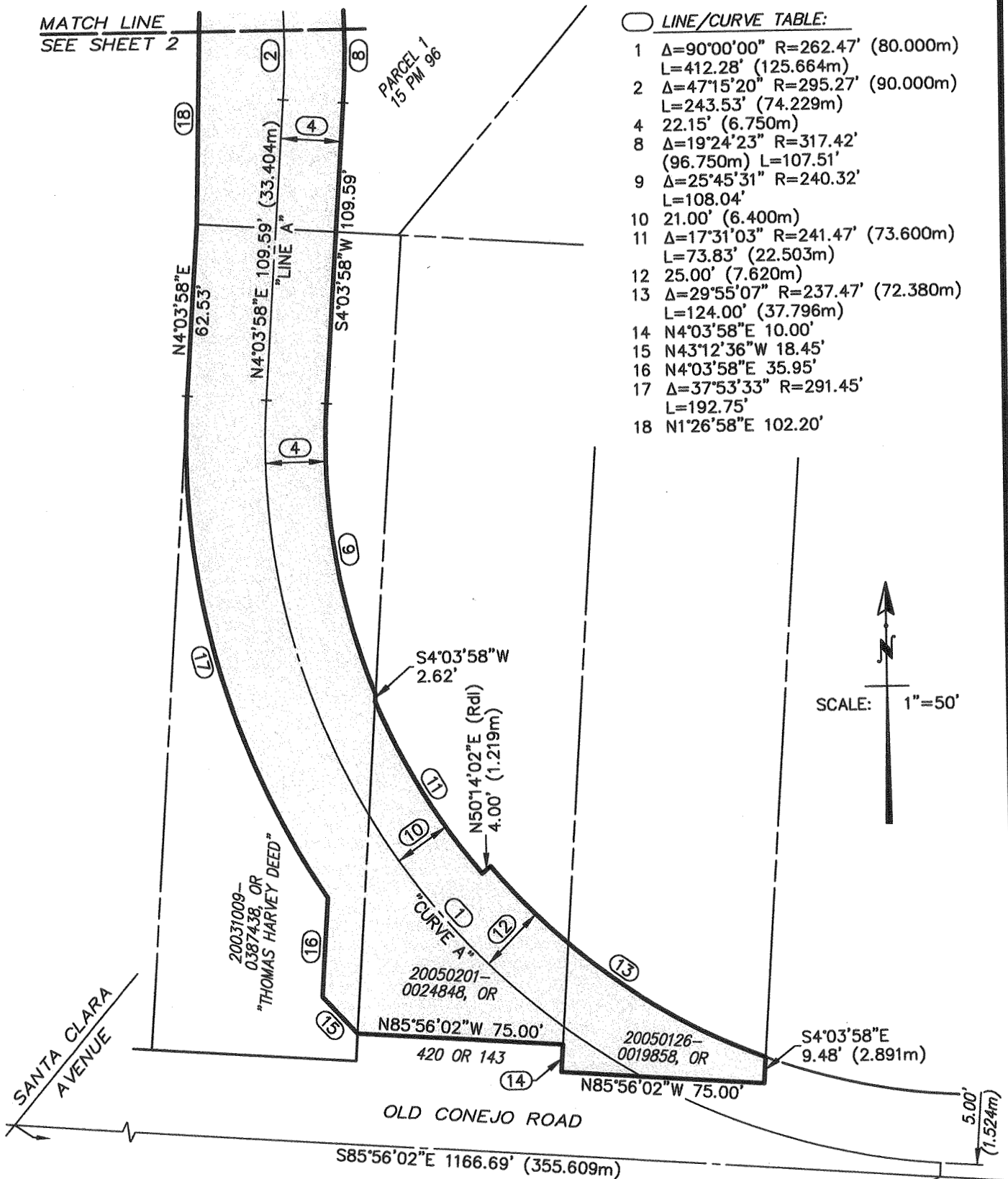

Larry J. Frager P.L.S. 7998
1/31/13
Date



MATCH LINE
SEE SHEET 2

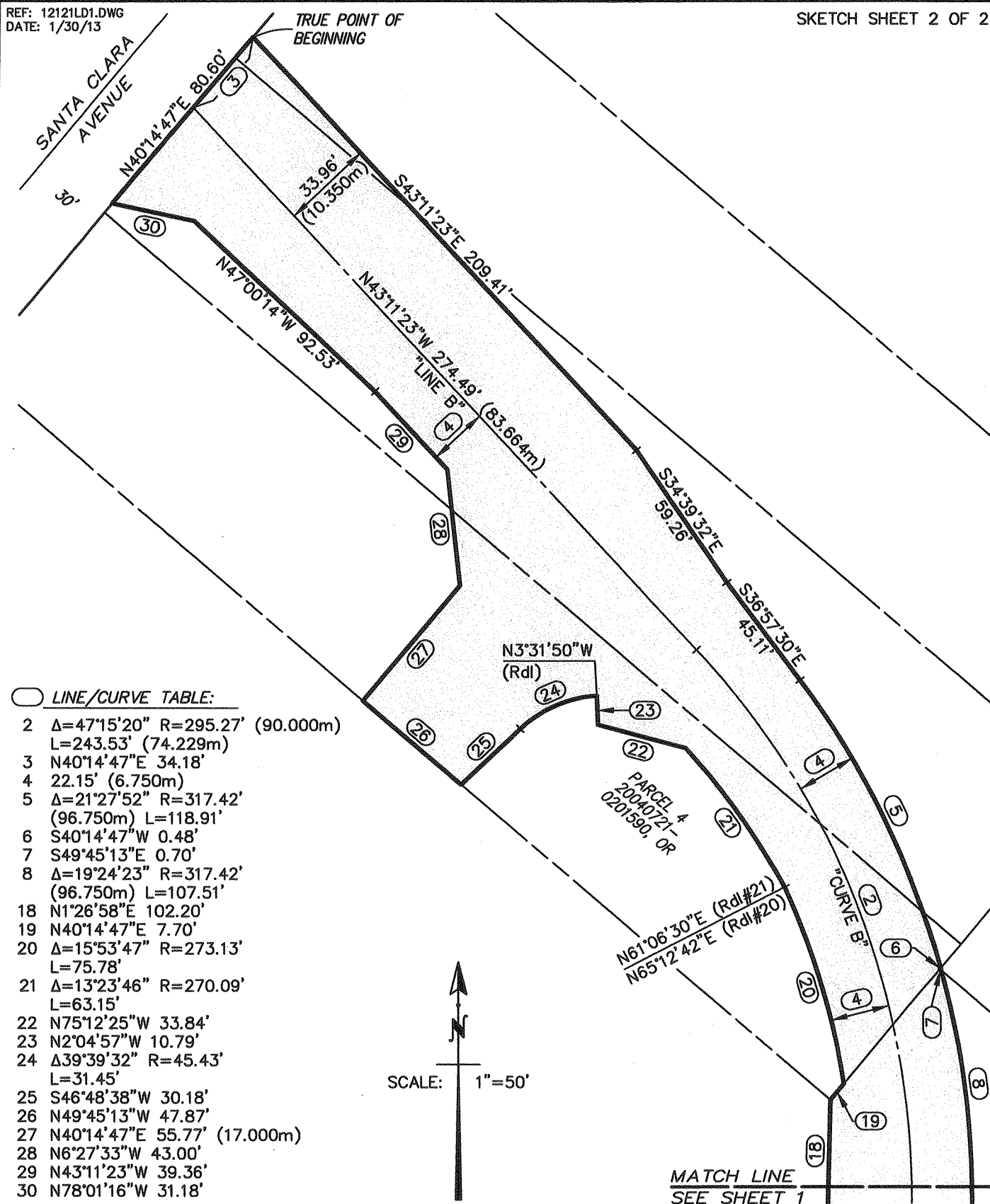
○ LINE/CURVE TABLE:

- 1 $\Delta=90^{\circ}00'00''$ R=262.47' (80.000m)
L=412.28' (125.664m)
- 2 $\Delta=47^{\circ}15'20''$ R=295.27' (90.000m)
L=243.53' (74.229m)
- 4 22.15' (6.750m)
- 8 $\Delta=19^{\circ}24'23''$ R=317.42'
(96.750m) L=107.51'
- 9 $\Delta=25^{\circ}45'31''$ R=240.32'
L=108.04'
- 10 21.00' (6.400m)
- 11 $\Delta=17^{\circ}31'03''$ R=241.47' (73.600m)
L=73.83' (22.503m)
- 12 25.00' (7.620m)
- 13 $\Delta=29^{\circ}55'07''$ R=237.47' (72.380m)
L=124.00' (37.796m)
- 14 N4°03'58"E 10.00'
- 15 N43°12'36"W 18.45'
- 16 N4°03'58"E 35.95'
- 17 $\Delta=37^{\circ}53'33''$ R=291.45'
L=192.75'
- 18 N1°26'58"E 102.20'



PREPARED BY:
BENNER AND CARPENTER, INC.
506 EAST MAIN STREET
SANTA PAULA, CA 93060
(805) 525-3396

EXHIBIT "B"
SKETCH TO ACCOMPANY
LEGAL DESCRIPTION



PREPARED BY:
BENNER AND CARPENTER, INC.
506 EAST MAIN STREET
SANTA PAULA, CA 93060
(805) 525-3396

**CERTIFICATE OF ACCEPTANCE
(CALIFORNIA GOVERNMENT CODE SECTION 27281)**

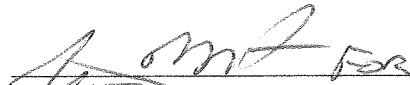
This is to certify that the interest in real property conveyed by the Deed executed _____, 2013 from City of Oxnard, a municipal corporation and governmental agency, to the City of Oxnard, a municipal corporation and governmental agency, is hereby accepted, and pursuant to City Council Resolution 1939, recorded in book 1591, Official Records of Ventura County at page 273, the City Council consents to recordation thereof by its duly authorized officer.

DATED: _____

CITY OF OXNARD

APPROVED AS TO FORM:

By: _____
TIM FLYNN, MAYOR


ALAN HOLMBERG
CITY ATTORNEY



Meeting Date: 03 /05 /13

ACTION	TYPE OF ITEM
☐ Approved Recommendation	☒ Info/Consent
☐ Ord. No(s). _____	☐ Report
☐ Res. No(s). _____	☐ Public Hearing (Info/consent)
☐ Other _____	☐ Other _____

Prepared By: Assistant Chief Scott Whitney

Agenda Item No. I-4

Reviewed By: City Manager

City Attorney

Finance

Police Chief

DATE: February 21, 2013

TO: City Council

FROM: Jeri Williams, Chief of Police
Police Department

SUBJECT: Federal Asset Forfeiture Funds

RECOMMENDATION

That City Council approve a special budget appropriation in the amount of \$225,889 for the use of Federal Asset Forfeiture funds allocated to the City of Oxnard Police Department.

DISCUSSION

The Oxnard Police Department participates with outside agencies in the investigation and prosecution of narcotics related crimes. Assets seized are proportionately shared among the agencies. These equitably shared funds must be used by law enforcement agencies for law enforcement purposes only and cannot replace or supplant existing resources. The funds have been received for over 20 years and the current year's appropriation will be used for training, equipment and repairs.

FINANCIAL IMPACT

Approval of this recommendation will have no impact on the General Fund.

Attachment #1 - Special Budget Appropriation

REQUEST FOR SPECIAL BUDGET APPROPRIATION

Department: Police
Project/Program
Manager: Jeri Williams

Date: March 5, 2013
Phone: ext. 7612

Reason for Appropriation:

Appropriation of Asset Forfeiture funds for FY 2012-13 operations.

Accounts and Descriptions

AMOUNT

Fund: **ASSET SEIZURE - VCAT FEDERAL (230)**

Expenditures/Transfers Out

SUPPORT SERVICES (2103)

230-2103-802.81-32	MINOR EQUIPMENT OFFICE	18,109
230-2103-802.81-34	MINOR EQP-SHOP/FIELD	54,748
230-2103-802.83-43	TRAINING/WORKSHOP/MTNGS	28,969
230-2103-802.86-05	CAPITAL OUTLAY / IMPRV OTHER BLDG/MAJR RPR	89,063
230-2103-802.86-06	CAPITAL OUTLAY / MACHINERY AND EQUIP NEW	35,000
Sub-total Expenditures		<u>225,889</u>

Net Change to Fund Balance **(225,889)**

Approvals

Department Director

Chief Financial Officer

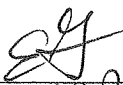
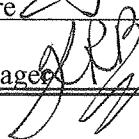
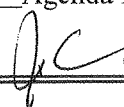
City Manager

REQUIRES CITY COUNCIL AUTHORIZATION



Meeting Date: 03 / 05 / 13

ACTION	TYPE OF ITEM
☐ Approved Recommendation	☒ Info/Consent
☐ Ord. No(s). _____	☐ Report
☐ Res. No(s). _____	☐ Public Hearing (Info/consent)
☐ Other _____	☐ Other _____

Prepared By: Efren Gorre Agenda Item No. I-5Reviewed By: City Manager City Attorney Finance 

Other (Specify) _____

DATE: February 26, 2013**TO:** City Council**FROM:** Efren Gorre, Community Services Manager
Recreation and Community Services **SUBJECT:** Grant Procurement for Employment Training**RECOMMENDATION**

That City Council adopt a resolution ratifying the City Manager's submission of an application for \$750,000 to Ventura County Workforce Investment (WIB), for a year round youth job training and employment program under the federal Workforce Investment Act (WIA).

DISCUSSION

On February 14, 2013, City staff submitted a Comprehensive Youth Services proposal to the local Workforce Investment Board, in response to a WIB Request for Proposals (RFP) making available funds for youth year-round job training in Ventura County. The City's proposal targeted the Oxnard program area with an emphasis on education and skill training tied to career pathways.

FINANCIAL IMPACT

These programs are federally-funded and when awarded increase the City's ability to serve the needs of its residents. The proposed match of the grant will be met with in-kind staff cost. Upon award, staff will return to City Council for appropriation.

EG:lal

Attachment No. 1 – Resolution Approving Application

CITY COUNCIL OF THE CITY OF OXNARD

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF OXNARD
APPROVING AN APPLICATION FOR YEAR-ROUND YOUTH JOB TRAINING
FUNDS UNDER THE FEDERAL WORKFORCE INVESTMENT ACT (WIA).

WHEREAS, the City Council of the City of Oxnard supports preparation and submittal of an application to the Workforce Investment Board of Ventura County for \$750,000 for year-round youth job training funds under the Federal Workforce Investment Act (WIA); and

NOW, THEREFORE, the City Council of the City of Oxnard resolves to approve the grant application submitted by Recreation and Community Services for year-round youth job training funds under the Federal Workforce Investment Act (WIB). The City Council further resolves that the City Manager or designee is authorized to execute grant agreements; the Finance Director or designee is authorized to submit financial reports and grant claims and approve special budget appropriations for the use of grant funds.

PASSED AND ADOPTED THIS 5th day of March, 2013, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Tim Flynn, Mayor

ATTEST:

Daniel Martinez, City Clerk

APPROVED AS TO FORM:



Alan Holmberg, City Attorney

ATTACHMENT 1
PAGE 1 OF 1



Meeting Date: 03 / 05 / 13

ACTION	TYPE OF ITEM
☐ Approved Recommendation	☒ Info/Consent
☐ Ord. No(s). _____	☐ Report
☐ Res. No(s). _____	☐ Public Hearing (Info/consent)
☐ Other _____	☒ Other Council Business

Prepared By: Alan Holmberg, City Attorney

Agenda Item No. N-1

Reviewed By: City Manager [Signature]

City Attorney [Signature]

Finance [Signature]

Other (Specify) _____

DATE: February 27, 2013

TO: City Council

FROM: Alan Holmberg, City Attorney
City Attorney's Office [Signature]

SUBJECT: Removal of Commissioner from the Senior Services Commission

RECOMMENDATION

That the City Council consider, pursuant to Oxnard City Code section 2-35, the removal of Preston Davis from the Senior Services Commission.

DISCUSSION

Oxnard City Code section 2-35 provides that, "[a] citizen advisory group member may be removed at the pleasure of the City Council." During City Council business on February 26, 2013, City Council members requested that the issue of removal of Commissioner Preston Davis from the Senior Services Commission, a citizen advisory group, be considered by the City Council. Removal may occur at the pleasure of the City Council.

FINANCIAL IMPACT

There is no financial impact to this decision.

AH

ACTION	TYPE OF ITEM
☐ Approved Recommendation	☐ Info/Consent
☐ Ord. No(s). _____	☒ Report
☐ Res. No(s). _____	☐ Public Hearing (Info/consent)
☐ Other _____	☐ Other _____

Prepared By: Michael HendersonAgenda Item No. 0-1Reviewed By: City Manager [Signature]City Attorney SMFFinance [Signature]

Other (Specify) _____

DATE: February 27, 2013**TO:** City Council**FROM:** Michael Henderson, General Services Superintendent
City Manager Department [Signature]**SUBJECT:** Approval of Agreement No. 6030-12-CM with TKC Enterprises, Inc.**RECOMMENDATION**

That City Council approve and authorize the Interim City Manager to execute an agreement with TKC Enterprises, Inc. in the amount of \$50,000 to provide consulting services for the planning, coordination, implementation, permit inspections and security services related to the NFL training camps to be held in Oxnard.

DISCUSSION:

On Tuesday, February 26, 2012, City Council directed staff to return with additional information. Staff is preparing additional material that will be made available on Monday, March 4, 2013.



Meeting Date: 03/05/2013

ACTION	TYPE OF ITEM
☐ Approved Recommendation	☐ Info/Consent
☐ Ord. No(s). _____	☒ Report
☐ Res. No(s). _____	☐ Public Hearing
☐ Other _____	☐ Other _____

Prepared By: Grant Dunne, Management Analyst III *Grant Dunne* Agenda Item No. 0-2Reviewed By: City Manager *[Signature]* City Attorney *[Signature]* Finance *[Signature]* Public Works *[Signature]***DATE:** February 21, 2013**TO:** City Council**FROM:** Rob Roshanian, Interim Public Works Director *W.R.*
Public Works Department**SUBJECT:** Release of Request for Proposal for the Management and Operation of the Del Norte Regional Recycling and Transfer Station

RECOMMENDATION

That City Council approve the release of a Request for Proposal (RFP) for the management and operation of the Del Norte Regional Recycling and Transfer Station (Del Norte Facility).

DISCUSSION

On October 23, 2012, the City Council approved the Second Amendment to the Agreement for Consulting Services with HFH for the implementation, management and facilitation of the RFP for the management and operation of the Del Norte Facility. In addition, HFH was directed to work with City staff to evaluate the feasibility of the City operating the Del Norte Facility.

On January 8, 2013, the City Council approved a six-month term extension with Republic Services of Oxnard, Inc. to operate and maintain the Del Norte Facility. This extension allows time for HFH and the City to complete the evaluation of the City's option to operate the Del Norte Facility or to proceed with the RFP process and a new operating agreement.

On February 5, 2013, the City Council received a verbal report from HFH regarding the evaluation of City operation of the Del Norte Facility and the terms and conditions of selecting a private operator through the competitive process of a RFP. The findings reported by HFH concluded; the City may have higher operational cost, lack expertise in facility operation, can shift financial and marketing risk to private companies, and found that municipal operation of similar facilities is infrequent. Based on these reasons, HFH recommended to Council to direct staff and HFH to finalize and release the RFP package for a private operator. After deliberation, Council determined to move forward with the RFP process and have staff return to Council for review and release of the final RFP package.

The goal of the RFP competitive process is to select a qualified firm through transparent and objective means with reasonable contractual terms and conditions that bring full value to the City and its rate payers. To that end, the proposal sets up guidelines for communications with staff and prohibits contact with individual Councilmembers.

Release of Request for Proposal for the Management and Operation of the Del Norte Regional Recycling and Transfer Station
February 21, 2013
Page 2 of 2

Key terms of the RFP include:

- Compensation on a per-ton basis
- City and its self-haulers receive “most favored” rates
- Contractor incentive to maximize recycling revenue; continued share to City
- Contractor incentive to attract “Other Tons” with host fees provided to the City
- Contractor incentives and performance guarantees to improve material recovery/diversion
- City sole discretion of assignment request
- Contractor to purchase existing facility rolling stock
- Contractor to maintain and replace equipment over term
- Contractor to install new processing equipment based on City review and approval

If Council approves the release of the RFP, staff anticipates issuing the RFP and receiving proposals from companies by late May, 2013. The proposals would be evaluated by an independent panel consisting of members with expertise in waste transfer operations and material recovery facilities. Staff along with HFH anticipate returning to Council in July/August, 2013 with the results of the proposal evaluation and recommending the best overall company proposal. Subsequently, staff and HFH anticipate completing contractual negotiations with the company by October, 2013 and proceeding with making a recommendation to Council for approval of the contract. A transition period of several months between the former operating company and the new operating company of the Del Norte Facility occurs before services commence by the new company.

The attached draft of the RFP and agreement are substantially in final form. Various adjustments to the RFP may be required through clarification or addenda once it is issued. The agreement may require adjustment during the evaluation process and negotiations. The final agreement will be brought back to Council for approval of the facility operator.

FINANCIAL IMPACT

Staff is recommending the release of a RFP for the management and operation of the Del Norte Facility; therefore, no financial impact is present at this time.

Attachment No. 1 RFP

Attachment No. 2 Agreement

City of Oxnard
Request for Proposals for
Operation and Maintenance of the Del Norte
Regional Recycling and Transfer Station



PROPOSALS MUST BE RECEIVED BY

RFP Issue Date: _____, 2013

FINAL DRAFT



HF&H Consultants, LLC

This page intentionally left blank

FINAL DRAFT

CITY OF OXNARD, CALIFORNIA
REQUEST FOR PROPOSALS FOR
OPERATION AND MAINTENANCE OF THE
DEL NORTE REGIONAL RECYCLING AND TRANSFER STATION

Proposal Information: The City of Oxnard, California is requesting proposals for the operation and maintenance of the City-owned Del Norte Regional Recycling and Transfer Station. All questions regarding the RFP should be directed to Peter Deibler, HF&H Consultants, LLC at the e-mail address listed below and must include "Del Norte MRF" at the beginning of the subject line to ensure proper delivery.

Peter Deibler
HF&H Consultants, LLC
201 North Civic Drive, Suite 230
Walnut Creek, CA 94596-3880
pdeibler@hfh-consultants.com

Mandatory Pre-Proposal Meeting: All parties interested in proposing must complete the registration process defined in Section 2, and attend the mandatory pre-proposal meeting at the time and date shown in Table 1 (see Section 1). The City may, but is not obligated to reject proposals received from proposers that do not attend the pre-proposal meeting.

Proposal Submittal: Proposals must meet the requirements detailed in Section 5. All proposals must be received by the time and date shown in Table 1 (see Section 1). Proposals received after this time and date will be rejected. Postmarks will not be accepted as proof of receipt. Proposers are solely responsible for ensuring delivery of proposal packages to:

Kimberly Erwin, Senior Administrative Assistant
HF&H Consultants, LLC
201 N. Civic Drive, Suite 230
Walnut Creek, CA 94596-3880
(925) 977-6960

Register to Receive Future Correspondence and Announcements: Parties registered to participate in the RFP process will receive email updates. Once the RFP has been issued, the RFP and all related documents, as well as any other correspondence, will be available on the HF&H website to parties that have received access. If you do not register as an interested party by the date shown in Table 1 (see Section 1), notice of the availability of future correspondence or announcements related to this RFP may not be transmitted to you.

This page intentionally left blank

TABLE OF CONTENTS

SECTION 1 INTRODUCTION	1
City of Oxnard	1
RFP Overview	1
Facility Overview	1
Organization of RFP	2
Schedule	2
SECTION 2 KEY PROCESS REQUIREMENTS	3
Pre-Submittal Activities	3
Communications Guidelines	5
City's Reserved Rights	5
General RFP Agreements	7
SECTION 3: BACKGROUND INFORMATION	8
The Facility	8
Operation and Maintenance Manual	8
Key Additional Data	9
SECTION 4: REQUESTED SERVICES	10
Base Services	10
Optional Services	19
Contractor Compensation	20
SECTION 5: PROPOSAL SUBMITTAL REQUIREMENTS	22
Submittal of Proposals	22
Required Proposal Organization	22
Proposal Contents	23
Scope of Services	26
Proposal Forms	26
Exceptions to RFP or Agreement	27
Signature and Authority	27
SECTION 6: PROPOSAL EVALUATION & CONTRACTOR SELECTION	29

TABLE OF FIGURES

Table 1: Preliminary Schedule	2
Table 2: Key Background Information	9
Table 3: Operator's Responsibilities – Base Services	10
Table 4: Minimum Diversion Requirements	14
Table 5: Other Proposal Submittal Information	23

ATTACHMENTS

- A. Initial Proposal Forms (pending)
- B. Cost Forms (pending)
- C. Draft Operating Agreement
- D. Secretary's Certificate (pending)
- E. Anti-Collusion Affidavit (pending)

LIST OF TABLES

Table 1 RFP Schedule

Table 2 Key Background Information

Table 3 Operator's Responsibilities – Base Services

Table 4 Diversion Requirements

Table 5 Other Proposal Submittal Information

SECTION 1 INTRODUCTION

City of Oxnard

The City of Oxnard (City), incorporated as a general law city in 1903, is located approximately sixty miles northwest of the city of Los Angeles. It is situated near the mouth of the Santa Clara River on a gently sloping alluvial fan commonly known as the Oxnard Plain. Elevations in the City range from mean sea level to about 100 feet above mean sea level. The City has a population of about 200,000 and its corporate limits cover an area of about 32 square miles.

RFP Overview

The City is requesting proposals for a Contractor to operate and maintain the Del Norte Regional Recycling and Transfer Station (Facility), including provision of materials processing and sales services. The City owns a long-haul transfer fleet and conducts transfer of materials leaving the Facility. The City desires to hire a firm who is responsive to City needs and goals, and who will provide cost effective and efficient service for both recycling and transfer services. The City supports, and desires to contribute to improving the condition of the natural environment. The City also desires to significantly reduce the amount of municipal solid waste (MSW) being disposed in landfills and to maximize the reuse and recycling of municipal solid waste.

The Facility currently serves the City of Oxnard (municipal collection vehicles and City departments), Oxnard self-haulers, the City of Port Hueneme, and permitted haulers and self-haulers from western Ventura County. The City is interested in receiving proposals that include delivery of additional materials to the Facility from "Other Users". The selected contractor shall be compensated on a per-ton basis for received tonnages. Proposers shall provide proposed per-ton rates using the proposal forms accompanying the RFP. Proposers have the option to propose delivery of material from Other Users by submitting proposed per-ton rates of compensation and City host fees.

This RFP provides an overview of the requested services; defines the information that must be submitted to be responsive to this RFP; describes the required scope of services; and describes the selection process. See the draft Agreement (Attachment C) for a full description of Contractor responsibilities. Companies submitting proposals to the City shall follow the procedures described herein and the procedures included in subsequent clarifications or addendums to this RFP, which will be issued as necessary, and as described further below.

Facility Overview

The Facility was designed to sort, process, and transfer MSW and source-separated recyclables from the cities of western Ventura County, in order to meet their current and future AB 939, AB 341 and other diversion-related requirements.

In FY 2011-12 the Facility received, processed, and transferred 275,862 tons of municipal solid waste, source-separated recyclables and yard trimmings from western Ventura County. The Facility is located at a 16.55-acre industrially-zoned parcel southwest of the intersection of Del Norte Boulevard and Sturgis

Operation and Maintenance of the Del Norte Regional Recycling and Transfer Station

Road in the City of Oxnard. The City also owns an adjoining 11.4-acre parcel, on which the City may install a CNG fueling station for City vehicles. The CNG fueling station, if installed may be available for use by the selected contractor for refueling rolling stock used in providing services under the Agreement.

Organization of RFP

This RFP is organized as follows:

Section 1 provides an introduction to the RFP.

Section 2 addresses key process requirements.

Section 3 provides background information regarding the requested services, and links to key documents.

Section 4 outlines the requested services.

Section 5 specifies required proposal content and submittal requirements.

Section 6 outlines the proposal evaluation process.

The attachments include the draft Agreement and proposal forms. Additional important background information is available for download as listed in Table 2 in Section 3.

Schedule

Table 1 provides the preliminary schedule to be adhered to by proposers during the proposal submittal and review process. Dates are subject to change at City discretion. Proposers will be notified of any changes via written addendum as provided in Section 2, and in the form of a revised Table 1.

Table 1: Preliminary Schedule

Dates will be finalized prior to RFP release.

Action	Date
RFP Issued to Proposers	, 2013
Mandatory Pre-proposal Meeting & Facility Tour	Date, time
Deadline for submitting a request to be included in the RFP process	Date
Tours of Facility and Equipment Inspection	Date
Deadline for Submittal of Written Questions from Proposers	Date
Written Responses to Proposers' Questions Issued	Date
Proposals Due	Date, time
Proposal Evaluations Begin	Date
Interviews	Date
City Council Awards Contract	Date
New Contract Begins	

SECTION 2 KEY PROCESS REQUIREMENTS

Pre-Submittal Activities

Register for Correspondence, RFP, and Announcements

Proposers must request that their contact information be placed on the list of interested parties in order to receive the RFP, future correspondence, and announcements related to this RFP. The deadline for submitting a request to be included in this RFP process is shown in Table 1 (provided that the party attended the pre-proposal meeting and registered on the website). Proposers that fail to register by the specified deadline may at City's sole discretion be excluded from this RFP process. Proposers must email requests to the following email address and include "Del Norte MRF" in the beginning of the subject line.

Peter Deibler, Senior Manager
HF&H Consultants, LLC
Email: pdeibler@hfh-consultants.com

RFP Package and Related Documents and Materials

Materials related to this RFP are available as downloads as follows:

1. The RFP package, which is available upon completing registration, can be downloaded from the HF&H website, and includes "Attachment A – Initial Proposal Forms, Attachment B – Cost Forms, Attachment C - Draft Operating Agreement, and Attachment D- Secretary's Certification, and Attachment E- Anti-Collusion Affidavit.
2. Table 5 in Section 5 lists additional materials that are necessary to complete the administrative requirements for submitting a proposal and that may be downloaded from the City's website or other specified locations. Additional materials may be added to Table 5 and posted to the website following RFP release.
3. Table 2 in Section 3 lists technical materials related to the requested scope of services that are available for download from the HF&H website, and that should be reviewed prior to submitting a proposal. Additional materials may be added to Table 2 and posted to the website following RFP release.

Following RFP release, proposers will be notified via written addenda of any changes to the above tables, or to any other aspect of the RFP package.

RFP Addenda

Submission of Written Questions

The City directs proposers to submit all questions and requests for information in writing only directly to its consultant. Proposers shall refrain from contacting City employees, except as provided below for

Operation and Maintenance of the Del Norte Regional Recycling and Transfer Station

scheduling Facility tours. All questions, requests for clarification, or requests for additional information regarding this RFP must be submitted in writing via mail, email, or facsimile to HF&H Consultants, c/o Peter Deibler. Questions submitted before the pre-proposal meeting may be addressed verbally at the pre-proposal meeting, but all verbal responses shall be non-binding. Proposers may submit additional questions on or before the date shown in Table 1. The City's consultant will respond to all written questions and requests for clarifications submitted by proposers by the date shown in Table 1. Only written responses will be binding.

Notice of Changes Regarding RFP Process or Proposal Content

Proposers will be notified via written addenda regarding any changes in any aspect of the process or in proposal content as contained in the RFP. Any changes in key dates will be provided to proposers in the form of a revised Table 1.

Receipt of Addenda and Proposer Obligations

Responses to written questions and any supplemental information or instructions will be in the form of written addenda that will be emailed to all proposers (at the respective email addresses furnished for such purposes), and posted on the consultant's website. Failure of a proposer to receive any addenda shall not relieve the proposer from any of the obligations contained in this RFP or in any addenda. All addenda shall become part of the specifications and contract documents.

Mandatory Pre-Proposal Meeting

A MANDATORY pre-proposal meeting will be held on the date and time shown in Table 1 at the Del Norte Regional Recycling and Transfer Station located at 111 South Del Norte Boulevard, Oxnard, California, and will include an informational meeting and a tour of the Facility. In the event that a proposal team contains multiple parties or subcontractors, a representative from the "prime" (the company that will sign an agreement) must be present at the pre-proposal meeting. The City is not obligated to disseminate information to parties not present at the pre-proposal meeting.

Additional Facility Tour

In addition to the Facility tour which will occur during the mandatory pre-proposal meeting, the City will provide an extended tour(s) so proposers can inspect and evaluate the Facility and equipment, including the rolling stock the selected contractor will be required to purchase. Proposers must contact the City at least one week in advance of the scheduled tour date to secure a reservation. City reserves the right to schedule multiple proposers for joint, simultaneous tours. For appointments, please contact Vickie Swainson at (805) 385-8226 or email at vickie.swainson@ci.oxnard.ca.us.

Examination of Requirements

Proposers must carefully review the RFP, the draft agreement, and all related materials. Failure or neglect to examine any form or document released by the City during the process, or any

Operation and Maintenance of the Del Norte Regional Recycling and Transfer Station

misinterpretation of the requirements shall in no way relieve proposers from any of the obligations contained in this RFP or in any addenda.

Prior to submitting a proposal, proposers must make all investigations and examinations necessary to ascertain all conditions and requirements affecting the full performance of the contract and to verify any representations made by the City upon which proposer will rely.

Disclaimer

To the best of the City's and its consultants' knowledge, all data and information provided during the RFP process is accurate. However, the City and consultant are in no way responsible for any inaccurate, inconsistent, or incomplete data or information. In submitting a proposal, proposer agrees to waive any claims against the City or its consultant for loss or damages incurred by proposer for its reliance on data and information contained in the RFP or subsequent communications.

Communications Guidelines

In order to ensure a fair and orderly process, Council has adopted the following communications guidelines to be adhered to during this RFP process.

Proposers:

- Shall, by completing the registration process, explicitly agree to fully comply with the communication guidelines;
- Shall attend the mandatory pre-proposal meeting and Facility tour;
- Shall direct all questions and communications regarding the RFP in writing to the designated RFP contact person;
- Shall not distribute door-to-door materials, and newspaper, radio, television or public space advertisements in regards to this RFP process; and
- Shall not meet individually with the Mayor or any individual Councilmember concerning the response to this RFP during the RFP process or discuss the response to this RFP with the Mayor or any Councilmember during the process.

Proposers who do not comply with the communications guidelines are subject to disqualification.

Protection of Confidential Materials

As a rule, information submitted to the City by Proposers is subject to disclosure by the City upon request from a member of the public, under the California Public Records Act, Government Code Section 6250, et seq. The City recognizes that some information which is called for in the RFP, or which may be required to be submitted in subsequent stages of the evaluation and contracting process, may be considered trade secrets or otherwise confidential by some Proposers. By submitting a proposal, proposers agree to the following with respect to information they may believe is confidential.

Operation and Maintenance of the Del Norte Regional Recycling and Transfer Station

Material which Proposers wish to be treated in confidence and withheld from public disclosure must be submitted in a separate envelope marked "CONFIDENTIAL." In addition each page of confidential materials must be clearly marked as "CONFIDENTIAL." Unless a request from a third party is received, the City will not voluntarily disclose materials so marked to persons other than the Participating Agencies' officers, attorneys, employees, and consultants involved in evaluating the proposals received.

If the City receives a request from a third party to review and/or copy material so marked, it will promptly inform the Proposer who submitted it. The Proposer must then immediately take any action the Proposer deems necessary to protect the subject materials from disclosure. The Proposer must indemnify and defend the City, its legislators, and all its officers and employees against all expenses and damages which any of them incur in connection with any activities involving protection of the materials, and must bear all costs in connection therewith.

The City may disclose information which it and its legal counsel determine is not protected from disclosure under the Public Records Act. In no event will the City be required to withhold material from disclosure beyond the time frames required by the Public Records Act in the absence of the filing of a legal action or an agreement among all affected parties.

Proposers shall have no right to recover damages or attorney's fees or costs from the City, its legislators, or any of its officers or employees for any disclosure of information Proposers deem confidential.

Material that has been marked as confidential will be returned to all unsuccessful Proposers once a contract has been signed with the selected Proposer.

City's Reserved Rights

City reserves the right to:

1. Issue addenda to the RFP;
2. Request additional information and/or clarification from the proposers;
3. Permit the timely correction of errors, and waive minor deviations;
4. Reject any or all proposals;
5. Issue subsequent RFPs based on refinements of concepts proposed in response to the RFP;
6. Withdraw or cancel, in whole or in part, this RFP;
7. Extend the time for submittal of proposals;
8. Negotiate prices and terms with one or more proposers;
9. Award or enter into a disposal agreement either in conjunction with or independently of the Agreement;
10. Select the proposer that, in the judgment of the City Council, is most likely to succeed in performing the services desired by the City, any evaluation process notwithstanding,;
11. Waive any informality or irregularity in this RFP or in responses;
12. Not make an award or enter an agreement with any proposer; and

13. Take whatever other action it deems in its interest.

City may, at its sole discretion, enter into an agreement that includes disposal services in addition to the services described herein. City may also, at its sole discretion, enter into a separate disposal agreement, independent from this RFP process.

All proposals submitted in response to this RFP become the property of City, and will become public records upon public notice of award of a final agreement.

This RFP in no way obligates the City to accept any proposal, negotiate with any proposer, award or procure a contract, or proceed with the development of any project described in response to this RFP.

General RFP Agreements

This RFP does not constitute an agreement of any kind between the City and a proposer.

All proposer responses to this RFP shall be prepared at the proposer's expense, with the express understanding that there shall be no claims whatsoever for reimbursement from the City for the cost or expense of such preparation, or for any subsequent aspect of the process.

In the event of a conflict in language between the RFP and the Agreement, the latter shall prevail.

Submission of a proposal constitutes proposer acknowledgment and acceptance of all the terms and conditions contained in this RFP, its attachments, addenda, or clarifications and the Agreement, except to the extent the proposer takes specific exceptions as discussed in Section 5.

Submittal of a proposal signifies proposer's commitment to provide the proposed services. The proposal is to be firm until [REDACTED], or a period of 270 days from the proposal due date included in Table 1, should the latter be modified. Proposals may not be altered after submittal except in response to the City's request for clarification or negotiation of a final Agreement. Acceptance of the proposal by the City obligates the proposer to enter into an Agreement with the City consistent with its proposal.

With submittal of a proposal, proposer acknowledges that the City has the right to make any inquiry it deems appropriate to substantiate or supplement information supplied by the proposer, and the proposer hereby grants the City permission to make these inquiries, and to provide any and all requested additional documentation in a timely manner.

SECTION 3: BACKGROUND INFORMATION

The Facility

The Del Norte Regional Recycling and Transfer Station was designed to sort, process, and transfer municipal solid waste and source-separated recyclables from the cities of West Ventura County. This includes helping each city meet its AB 939, AB 341 and other diversion-related requirements. The Facility also provides long-haul transfer of waste residue by truck.

The Facility is located at a 16.55-acre industrially-zoned parcel southwest of the intersection of Del Norte Boulevard and Sturgis Road in the City of Oxnard, which is currently used for City refuse vehicle parking and storage. The City also owns an adjoining 11.4-acre parcel and may install CNG fueling capabilities in the future.

In FY 2011-12 the Facility received, processed, and transferred 275,862 tons of municipal solid waste, source-separated recyclables and yard trimmings from western Ventura County. The service area includes the cities of Oxnard, Port Hueneme, San Buenaventura, Camarillo, and the County unincorporated area. Recyclables from the cities of Fillmore, Ojai, Santa Paula, and Thousand Oaks can also be processed at the Facility. As noted in Table 2, a four year history of material tonnages received, processed, and disposed is available as a download.

The Facility is comprised of approximately 150,000 square feet of building space, including administrative offices, and waste tipping and processing areas.

These consist of:

1. Administrative Offices/Visitors Area (6,131 sq. ft.);
2. Transfer/Tipping Floor Building (47,429 sq. ft.);
3. Material Recovery Facility (62,050 sq. ft.); and
4. Construction & Demolition Building (34,025 sq. ft.).

The site was designed to allow for the smooth and safe flow of traffic into and out of the Facility. Precautions were taken to separate public traffic and tipping areas from commercial truck traffic. The site is also designed to accommodate large numbers of vehicles on-site during peak hours.

Operation and Maintenance Manual

The current Facility Operations and Maintenance Manual is available as a download as listed on Table 2. Proposers shall review the manual and note substantial revisions or changes to the manual as part of their proposals. Following award of a contract, the selected proposer will work with City to finalize an updated Operations and Maintenance Manual, which will be included as an attachment to the final Agreement. Facility operation and maintenance shall be conducted in accordance with the revised

Operation and Maintenance of the Del Norte Regional Recycling and Transfer Station

manual as approved by the City. The manual may be updated by the operator from time to time subject to the approval of the City. The manual includes further details for such activities and topics as:

- Facility operating procedures
- Repair and maintenance procedures
- List of equipment
- Load check procedures
- Hazardous waste handling procedures
- Job descriptions
- Recordkeeping
- Drug and alcohol testing program

Key Additional Data

Table 2 lists a number of key documents that proposers should review prior to submitting a proposal. These materials are available as downloads from the Consultant's website.

Table 2: Key Background Information

Number	Item
1	City Operations Manual
2	Current Facility Gate Rates
3	City Equipment to be Purchased by Contractor
4	Del Norte Facility Monthly Reports 2009-2012
5	Waste Characterization data
6	Permits Necessary for Operation of Facility
7	Oxnard – Port Hueneme Agreement and Amendment
8	Oxnard-Republic Extension Agreement
9	Oxnard-Simi Valley Landfill disposal agreement
10	Oxnard-Toland Road Landfill disposal agreement
11	Republic yard trimmings processing agreement

SECTION 4: REQUESTED SERVICES

Base Services

The Base Services that must be addressed in all proposals are summarized in the table below. See the draft agreement for a full explanation of the Contractor's operational responsibilities.

Table 3: Operator's Responsibilities – Base Services

• Materials Acceptance ○ Operate scale house ○ Conduct load checking • Operations ○ Operate Transfer Station ○ Operate Materials Recovery Facility (MRF) ○ Load transfer trailers ○ Operate buy-back center ○ Operate recycle household hazardous waste drop-off site • Diversion Services ○ Guarantee diversion performance ○ Market and sell recyclable materials ○ Perform waste characterization studies • Maintenance ○ Maintain and repair the Facility ○ Maintain and repair rolling stock ○ Develop MRF safety plan ○ Upgrade MRF security system • Equipment Upgrades and Replacement ○ Upgrade and/or replace MRF processing equipment ○ Replace Facility rolling stock • Customer Relations ○ Perform billing, cash handling and customer service ○ Upgrade Education and Visitors Center media system • Data Management and Reporting ○ Provide data management and reporting activities as defined in the draft agreement

Materials Acceptance

Scale House Operation

Proposals shall provide proposer's plan and specifications to implement and operate the scale house to include, but not be limited to: weighing all materials entering and exiting the Facility; generating

Operation and Maintenance of the Del Norte Regional Recycling and Transfer Station

computerized weight-ticket/receipts for each collection vehicle entering the Facility to identify, record and collect all pertinent information to include type and weight of incoming material, collection point, hauling company, material fee charge, vehicle number, and time and date of entry to the Facility; and linking scale house weight transactions to a computerized system for City electronic "read-only" access to targeted operational data and reports. Contractor shall provide tare weights of repeat customers and code them into the scale house computer system. Contractor shall maintain State certified motor vehicle scales in accordance with applicable law. City may observe such weighing operations. The City and its representatives shall have access to the scale house at all times.

Load Checking

Proposers shall describe the elements of a load checking program to ensure the screening and removal of unpermitted materials, as necessary and sufficient to meet the requirements of the Operating Manual and the Agreement. Contractor shall be responsible for the cost of removing unpermitted materials delivered to the Facility, which were rejected following load checking. *The selected proposer's* load checking program will become part of the final Agreement. Except for materials rejected through the load checking program, Contractor shall accept all permitted materials delivered to the Facility.

Operations**Operate Transfer Station**

The Contractor shall perform work to include, but not be limited to, the furnishing of all labor, supervision, equipment, materials, supplies, and all other items necessary to perform the waste transfer services required. Proposals shall provide plan specifications to implement and perform ongoing waste transfer services to include, but not be limited to, managing turnaround times for waste collection vehicles from scalehouse to exiting the Facility, traffic flow of vehicles entering and exiting from the transfer station, use of equipment for handling waste on the transfer floor and loading waste into transfer-trailers, customer service in self-haul vehicle area and main tipping floor area for permitted waste haulers, traffic safety and personnel safety of equipment operators and, floor sorters and traffic directors.

Operate Materials Recovery Facility (MRF)

A major goal of the City is diversion of materials going to the landfill. Proposals must provide a detailed plan for diverting material by type of material, including percentage and/or tonnage of material to be diverted from the main-tipping floor and self-haul vehicle tipping floor areas, as ready for sale in the marketplace. MRF activities include removing contamination from residential yard trimmings delivered by City collection vehicles as necessary to meet required maximum contamination levels at City-contracted composting facilities, and processing and recovering recyclable materials for highest and best use.

Operation and Maintenance of the Del Norte Regional Recycling and Transfer Station

Proposals shall provide specifications to implement and perform these services to include, but not be limited to, the use and number of recyclables sorters and other personnel, use of equipment, operation and processing strategies to maximize volume capacity, and material recovery capabilities.

See "Diversion Services" below for discussion of diversion performance measures and guarantees, material sales, and waste characterization studies.

Load Transfer Trailers

Contractor shall load City-owned and operated transfer vehicles. City is responsible for paying all transfer vehicle transportation costs.

Transfer of MSW and Processing Residues for Disposal

Contractor is responsible for ensuring City meets its current tonnage disposal commitments at the Simi Valley Landfill and Toland Road Landfill. Proposal submittal is an acknowledgment that City reserves the right to direct the flow of outbound tonnage during and following expiration or early termination of its existing disposal agreements. Contractor will be required to meet contractual requirements contained in these agreements. Any penalties accruing to the City resulting from Contractor's failure to comply with disposal agreements will be deducted from Contractor's compensation.

Transfer of Yard Trimmings for Composting

Following processing, Contractor will load transfer-trailer vehicles with yard trimmings, for City transport of the material to a City-approved location(s) proposed by the successful Contractor. Republic currently contracts with Agromin Organics of Oxnard. Contractor will be required to meet contractual requirements contained in this agreement(s), including those for maximum allowable contamination of delivered material. Any direct or indirect financial penalties or costs accruing to the City or the Contractor, and resulting from Contractor's failure to comply with composting agreements including rejected loads, will be deducted from Contractor's compensation.

Operate Buy-Back Center

The Buy-Back Center is located on the west side of the building and has adjacent parking for customers that is accessible from Del Norte Boulevard. Contractor shall operate the Buy-Back Center, accepting recyclable material from the public, including, but not limited to, aluminum cans, glass bottles, plastic containers, newspaper, cardboard, magazines, tin cans, phone books and scrap metals. Operator shall weigh the materials on a platform scale and reimburse customers according to the prices posted and scheduled by the Contractor. Contractor shall inform the City of all posted rates for buyback recyclable materials. Contractor shall accept white goods, and have chlorinated fluoro-carbons removed prior to marketing for scrap. Contractor shall have a minimum of one employee present to operate the Buy-Back Center during hours open to the public (7:00 a.m. to 4:00 p.m. Monday-Saturday). Proposals shall describe plan specification for operating the Buy-Back Center to include, but not be limited to, all labor, equipment, services, supplies and materials.

Operate Recycle Household Hazardous Waste (RHHW) Center

Contractor shall operate the Recycle Household Hazardous Waste (RHHW) Center, providing residents of Oxnard and Port Hueneme 'no charge' drop-off of antifreeze, batteries, used motor oil and filters, latex paint, electronic waste, fluorescent tubes, high intensity lamps and other items as permitted. Contractor shall accept up to 500 pounds of Household Hazardous Waste daily. Contractor shall have a minimum of one employee present to operate the RHHW Center during hours open to the public.

Contractor will pay the direct costs of transportation and proper disposal for such materials. The RHHW Center has available customer parking accessible from Del Norte Boulevard. Contractor shall handle each type of waste separately, provide safe and separate containment, and manifest materials as provided in State law. Contractor will provide for recycling or reuse of such materials at permitted facilities other than landfills, through licensed contractors, in accordance with applicable law. Hours open to the public are 7:00 a.m. to 4:00 p.m. Monday through Saturday. Proposals shall describe specifications for operating the RHHW Center to include, but not be limited to, all labor, equipment, services, supplies and materials.

The City requests that proposers provide incremental compensation, if necessary, for the addition of other types or volumes of materials to the current RHHW Center. The base cost forms provide for the inclusion of this information.

Diversion Services**Guarantee of Diversion Performance**

For calendar 2011, the City was at a total diversion rate of percent as calculated using the State of California methodology. The Facility diverted percent of delivered material in calendar 2011. The fourth column of Table 4 provides the minimum required diversion level. It is the City's goal to increase the Facility's diversion rate over time, and to select a Contractor that will be proactive in anticipating and understanding regulatory changes that will drive diversion requirements, including but not limited to those that may result from the implementation of AB 341 (such as loss of diversion credit for use of yard trimmings as ADC, and/or bans on the disposal of organics material). The Contractor must be a partner in working with the City to determine how to increase diversion most cost-effectively at the margin and over the term of the Agreement.

Proposers shall propose guaranteed diversion levels for all materials received at the Facility, with actual diversion for each contract year (ending June 30th) to be measured at the end of the contract year as provided in the Agreement. Proposers shall complete the Recovered Materials Quantity Guaranty form included in Attachment A based on the example shown in Table 4.

Operation and Maintenance of the Del Norte Regional Recycling and Transfer Station

Table 4: Diversion Requirements

Material Type	Diversion Activity	Actual Facility Tonnages (Calendar 2011)	City Minimum Diversion (% by Contract Year)	Proposer's Proposed Diversion (% by Contract Year)	Actual Tonnage Diverted (Tons by Contract Year)
A. Mixed Municipal Waste Received for Transfer	Floor sorting (and additional processing as proposed and approved by City)	228,109	10%		
B. Mixed Recyclable Materials Received for Processing	Mixed recyclables processing	37,348	85%		
C. Separated Single Source Recyclable Material	Separated recyclables processing	13,325	95%		
D. Yard Trimmings	Separation and necessary preparation for transfer to processing facility	1,030	95%		
Other materials proposed as Optional Service (e.g. construction and demolition material)	(For C&D example: Floor sort and/or other processing as proposed, and approved by City)	n/a	n/a		
Total Tons		279,812			
% Diversion					

For the purposes of this RFP, tonnage categories shall be defined as:

- A. Mixed Municipal Waste Received for Transfer – Mixed municipal solid waste which will be sorted through a floor sort prior to transfer. Materials to be targeted through floor sorting, at a minimum include plant materials, concrete, asphalt, scrap metal and large quantities of recyclable materials together on the floor. [The diversion guarantee will be increased if the Contractor is to provide additional MSW processing services.]

Operation and Maintenance of the Del Norte Regional Recycling and Transfer Station

- B. Mixed Recyclable Materials Received for Processing – Recyclable materials of mixed types, segregated from refuse by the waste generator and to be sorted into individual materials types prior to baling or otherwise preparing for sale.
- C. Separated Single Source Recyclable Material – Segregated, single types of recyclable materials to be processed to remove contaminants and baled or otherwise prepared for sale.
- D. Yard Trimmings – Yard trimmings or other organic material, such as food waste, which can be composted or otherwise reused or recycled, which is received for pre-processing prior to transport to organic materials processing facility(ies) under separate contract with City. [The diversion guarantee will be increased if the Contractor is to provide food scrap processing services for non-City material. The City does not currently provide food scraps collection, and the possible addition of City-collected food scraps will constitute a change in scope.]

“Diversion” excludes residue, contamination, hazardous waste, recyclable material rejected due to quality or other issues, and any other materials that are not diverted for reuse or recycling. Proposer must suggest a method of accounting for moisture loss in diversion calculations, specifically for yard trimmings tonnage.

Contractor shall use reasonable business efforts to maximize recovery and processing of delivered permitted waste and marketing and diversion of recovered materials from landfills, in excess of these recovered materials quantity guarantee percentages. It is the City’s intent to negotiate a diversion incentive program which most likely would become effective following the end of the initial transition of services to the new operator.

Market and Sell Recyclable Materials

Contractor shall perform work to include, but not be limited to, the furnishing of all labor, supervision, equipment, services, materials, supplies, and all other items necessary to perform the buying, processing and selling of recyclable materials delivered to the Facility. Contractor will be responsible for storing, marketing, and shipping all materials recovered from MSW, mixed recyclable materials, or source-separated materials received at the Facility. The City reserves the right to terminate Contractor’s usage of any material recipient (i.e. recycler, recycling facility, material broker, or end user) purchasing or receiving any materials from the Facility in the event that the material recipient is disposing or otherwise improperly processing the materials. Contractor must ship all materials for sale within 90 days of diversion unless City provides a written exemption for that material. Source separated recyclable materials shall not be landfilled under any circumstances unless so directed by the City. Refer to the Agreement for specific details on terms for marketing of recovered material.

Perform Waste Characterization Studies

Upon City request, Operator shall perform periodic material characterization studies to assess amounts and types of specific material components of waste streams and comingled streams delivered to the Facility. Proposers shall describe:

- Quality control standards;
- Training programs for recycling sorters;

Operation and Maintenance of the Del Norte Regional Recycling and Transfer Station

- Material marketing plans, including specific personnel requirements, time dedicated to marketing efforts, knowledge of local markets, and estimated per-ton revenue received for each commodity; and,
- Methods of reporting to the City of the buying, processing and selling of recovered materials.

See the Agreement for more detailed description of waste characterization process guidelines and requirements.

Maintenance**Facility Maintenance, Repair and Replacement Requirements**

Contractor must maintain the Facility in good working order through the term of the Agreement. Required maintenance includes providing repair, maintenance and replacement of Facility infrastructure including administrative offices, education/visitors center, lobby, transfer station including tipping floor and material recovery floor, transfer-trailer tunnel, buy-back and recyclable household hazardous waste drop-off centers, material recovery facility, maintenance shop, scale house, parking area, and all landscaped grounds on Facility site. Contractor shall maintain, repair and replace all equipment associated with operation; clean and paint the Facility, parking lot and pavement sweeping and resurfacing; maintain spare parts inventory and lubricants; and provide regular periodic maintenance, repair and replacement of Facility support systems including heating, cooling, electrical and plumbing. Contractor shall maintain, repair and replace all office equipment including computers, copiers, fax machines, printers, phones and furniture. Contractor's maintenance, repair and replacement requirements include daily cleaning and maintenance of the Facility offices that are used by City staff.

Contractor shall provide daily trash pickup along Sturgis and Del Norte Boulevards pursuant to the terms and conditions of the special use permit of the Facility (SUP 1516). Contractor shall provide and maintain 24-hour security at the Facility site.

Contractor shall perform work to include, but not be limited to, the furnishing of all labor, supervision, equipment, services, materials, supplies, and all other items necessary to perform the operation and maintenance of the Facility.

Note that the Agreement provides that Contractor's performance bond shall remain in force at the end of the Agreement term until the City has verified that the Contractor has met all equipment maintenance, repair and replacement requirements.

Rolling Stock Maintenance, Repair and Replacement Requirements

Proposers should also address routine and periodic major maintenance and repairs for all rolling stock used in Facility operations that, at a minimum, meet manufacturers' requirements.

Develop MRF Safety Plan

Proposers must propose a safety plan to conduct Facility operations in a safe manner in accordance with applicable law and standard practices in the waste management/materials recovery industry. Proposer's plan shall include, but not be limited to, type of protective clothing for operators and Facility sorters, employee safety training programs and procedures including fire prevention and drills, and traffic safety of vehicles entering, maneuvering and exiting the Facility, illness and injury prevention program, lockout/tagout program, and respiratory protection program. Operator shall provide and maintain all necessary and appropriate fire control equipment, including an alarmed sprinkler system, visual alarms, fire hoses and extinguishers. Proposers must describe the elements of an emergency response plan to be utilized in the event of an emergency, such as a spill, injury, earthquake, or issue with unknown hazardous waste.

Upgrade MRF Security System

Proposers must propose a plan to improve the security system at the Facility. Currently, Facility personnel stationed in the scale house monitor all incoming traffic. The site is secured by a combination of 12 foot solid concrete walls, 8 foot high chain link fence, and gates at all entry and exit points, and is occupied by both City and contractor staff. Proposers should include a plan to maintain, repair, replace or upgrade the current video/camera surveillance system, to secure the areas of the building used by City staff, upgrade the radiation detection system, install backup generators for weigh scales, upgrade the motorized gate entrance, as well as generally increase ease of use to City and contractor staff. Security guards patrol the Facility during non-operating hours. Proposers may provide for the use of security guard patrols at the Facility during operating hours and non-operating hours.

Equipment Upgrades and Replacement**Update and/or Replace MRF Equipment**

Contractor shall be responsible for the upgrade of equipment to improve the capacities and efficiencies of material recovery through the term of the operating agreement. Contractor shall introduce technologies and equipment that capture newly marketable recyclable material and that reduces or extracts residuals from the recovered material. Contractor shall, over the term of the Agreement inform the City of technologies suitable for the Facility to increase sorting and processing capabilities of recyclable materials. Contractor shall provide, when feasible, demonstrations of technologies by arranging field trips to other facilities utilizing innovative equipment. Any resulting City-approved changes in operations shall be considered a City-directed change in scope per Article 2 of the Agreement.

Proposals shall describe plan specifications for introducing and modifying existing services to include, but not be limited to, all labor, equipment, services, supplies, and materials, with a proposed schedule for doing so. Should proposer identify any additional services that it would like to propose for immediate implementation, however, it may do so.

Operation and Maintenance of the Del Norte Regional Recycling and Transfer Station

Replace Rolling Stock

Proposers must address anticipated needs for replacement of rolling stock used within for Facility operations. Without prior City approval, rolling stock may not be more than ten (10) years of age prior to replacement.

Customer Relations**Billing, Cash Handling and Customer Service**

Contractor will invoice all commercial hauling customers with established accounts and collect cash from self-haulers and all other customers without established accounts. City shall approve and adjust maximum rates charged to customers in accordance with Article 13 of the Agreement. Contractor shall provide customers with an itemized invoice detailing charges for all services, including tipping fee, service date, services rendered, material type, tonnage, and any charges for late payments. Contractor shall, on a daily basis, transfer all funds collected in the form of cash, check or credit card payments to City via electronic direct transfer into a designated bank account. Contractor shall be responsible for management and safekeeping of cash and checks prior to deposit and transfer to City.

Contractor shall have customer service representatives available by telephone and in the office during all Facility operating hours. A responsible and qualified bilingual (English and Spanish speaking) representative of Contractor shall be available at such times. All complaints shall be directed to operator. Operator shall maintain daily logs of complaints that shall be retained for a minimum of twenty-four (24) months and shall be available to City upon request.

Proposals shall describe plan specifications for performing billing, cash handling and customer service to include, but not be limited to, all labor, equipment, services, supplies, and materials in conformance with the Agreement.

Provide Media Upgrade for Education-Visitors Center

Contractor shall upgrade the audio/visual equipment at the Facility's Education and Visitor's Center. Upgrading media equipment will enhance the Facility tour experience and provide modern presentation options for key meetings. Proposers shall propose a plan to upgrade such media equipment to include, but not be limited to, full maintenance and replacement responsibilities for the Facility camera system including a feature allowing a tour leader inside the Education-Visitor's Center to go "live" on the flat panel screen anywhere in the Facility for audience education purposes. Operator shall pay for all audio/video equipment, tables, chairs, banners, brochures and other related items to upgrade and promote the Facility's Education and Visitors Center.

Data Management and Reporting

Contractor shall meet the data management and reporting requirements of the Agreement. Proposers should describe their experience in providing data management and reporting, and how they will meet the specific requirements of the Agreement.

Optional Services

The City encourages submittal of proposals for Optional Services beyond the Base Services. The City will develop contract provisions to address any selected optional services in the final Agreement. Examples of Optional Services are summarized below:

Delivery of Additional MSW or Recyclable Materials

Proposers may identify other types or sources of MSW or recyclable materials. Additional material types might include construction and demolition debris in the proposer's ownership or by third-party agreement that it will commit for delivery to the Facility. If proposer proposes to deliver material from additional customers to the Facility, proposer shall indicate the number of annual tons, type of material, length of term, proposed gate rate per-ton, and proposed host fee to be remitted to the City. Proposers shall provide material characterization, material volume, and source point of generation.

Processing of Municipal Solid Waste (MSW)

There is the potential to substantially increase the Facility's diversion rate by processing municipal solid waste (MSW). The City is interested in collaborating with the Contractor to determine the most cost-effective means for processing MSW, which, for instance, could include additional targeted collection routing to maximize the wet or dry fraction of material collected from commercial generators. Proposers should address any suggested changes in collection, and how they propose to process MSW including proposed equipment specifications and placement, anticipated recovery rates by broad material type, and capital and operating costs.

Processing of Construction and Demolition (C&D) Material

There is the potential to substantially increase the Facility's diversion rate by processing construction and demolition (C&D) materials. The City is interested in receiving proposals that address the addition of a C&D processing line. Proposals should describe proposed equipment specifications and placement, anticipated recovery rates by broad material type, and capital and operating costs.

Optional New/Evolving Technologies and Methods

The City encourages proposers to submit proposals for use of innovative technologies or methods. Examples of such technologies or methods include, but are not limited to:

Acceptance of Food Scraps

Proposers may propose to provide delivery to the Facility of food scraps from parties other than the City, and/or may propose pricing for acceptance of City collected food scraps should the city add such a collection program in the future. Acceptance of food scraps may, at proposer discretion, include providing services pre-processing of the material to enhance composting or other final processing, and to remove recoverable materials as feasible. Proposers offering this service should also identify a facility(ies) that is willing and able to accept the material for final processing.

Conversion Technology

Proposers may propose conversion technology as a longer-term alternative to disposing material at a landfill. Conversion technology may be proposed as an integral part of "front-end" processing, or for processing of MRF residue. Proposers may identify the types of conversion technologies most suitable for Oxnard in relation to its waste volume and composition. Proposers offering use of conversion technology should address, at a minimum, technical feasibility including successful use of the technology to process material of a comparable amount per day and composition, and economic benefits and risks in sufficient detail to allow the City to determine whether to consider the suggested approach(es).

Alternative Fuel Vehicles

Currently, wheel loaders (front-end articulating loader) and mini-wheel loaders (skid steer loaders) use diesel fuel that is pumped from an above-ground tank at the Facility. The tractor-trailers receive diesel fuel from MacValley Oil located next to the Facility. Proposers may propose retrofitting rolling stock for the use of alternative fuel sources, as well as aiding the City in constructing a fueling station that may be utilized by the City and its solid waste collection fleet. Proposers shall describe and discuss the relative merits of the proposed type of alternative fuel, the cost of retrofitting rolling stock, and any positive and/or negative impacts associated with operations and maintenance.

Alternative Disposal Options

Proposers may offer to provide disposal at other locations and/ or under other contractual terms. Such proposals must identify the proposed disposal site, the term of the offer (if different than the term of the Agreement), the "all-in" per-ton rate (including specification of the gate fee and all government fees), proposed method of rate adjustment, other relevant contractual terms, and any other information the City might reasonably be anticipated to need to evaluate the offer.

Other Proposal Enhancements

Proposers may offer additional enhancements that exceed the requirements of this RFP.

Contractor Compensation

Contractor compensation is specified in detail in the draft Agreement, and will be limited to the following:

Operation and Maintenance of the Del Norte Regional Recycling and Transfer Station

1. Final approved per-ton gate rates for each ton of applicable material that is delivered and accepted for transfer and/or processing from each type of approved Facility user adjusted as provided in the draft Agreement, and less any monies due to City as provided in the draft Agreement.
2. Contractor shall retain fifty percent (50%) of recovered material sales revenue above the guaranteed minimum payment to the City provided in the Agreement.

SECTION 5: PROPOSAL SUBMITTAL REQUIREMENTS

Submittal of Proposals

Proposals must be received on the date and by the time shown in Table 1, and at the address shown below.

Submittal must include a sealed envelope containing one (1) executed original and two (2) signed copies of the technical proposal, eight (8) CD's or other electronic media storage devices containing the technical proposal, and a separate sealed envelope containing a CD or other electronic media storage device containing the Initial Proposal Forms (Proposal Attachment A). All hardcopies must be printed double-sided on paper with a minimum post-consumer recycled content of 50 percent. The full submittal envelope must be sealed and addressed to:

Kimberly Erwin
Senior Administrative Assistant
HF&H Consultants, LLC
201 N. Civic Drive, Suite 230
Walnut Creek, CA 94596-3880
(925) 977-6960

Proposals must be marked "**RFP – Operation and Maintenance of the Del Norte Regional Recycling and Transfer Station – Proposal**". The envelope must show proposer's name and address.

Proposals will not be opened publicly. Any proposal received after the established closing date and time will not be accepted and will be returned unopened. Proposal information may be made available pursuant to the California Public Records Act.

Proposals may be withdrawn upon written request received within two (2) days prior to the established closing date and time. The proposer's authorized agent must sign such request.

Required Proposal Organization

Proposals must be submitted in the following format:

1. Cover Letter - briefly summarizing proposer's team, qualifications and key proposal features.
2. Section 1 Qualifications - addressing proposer qualifications requirements discussed below, and including references for at least three (3) previous clients for whom proposer has provided similar services in the last five (5) years.
3. Section 2 Base Proposal - addressing the submittal requirements for Facility operation discussed below.
4. Section 3 Optional Proposal - addressing any optional services.
5. Proposal Attachment A - Completed Initial Proposal Forms (RFP Attachment A).

Operation and Maintenance of the Del Norte Regional Recycling and Transfer Station

6. Proposal Attachment B - Draft Agreement (RFP Attachment C).
7. In addition, any material that will add to the persuasiveness of your proposal may be included. Such materials should directly address the stated requirements, and be succinct and to the point.

Note: Do not include completed Cost Forms (RFP Attachment B) with your proposal. Completed cost forms will be requested from short listed proposers, as described in Section 6.

See the following section "Proposal Contents" for the specific format and content.

Proposals must be signed and dated in ink by the individual(s) that will sign an agreement, if offered to do so by the City. Include the name and position held within proposer's organization.

Certain documentation is to be prepared for direct inclusion as Exhibits to the Agreement. References are made below to the specific Proposal Forms and Exhibits. Proposers must submit the following:

- Secretary's certificate (RFP Proposal Form D),
- An affidavit of non collusion (RFP Proposal Form E),
- The additional forms shown in Table 5, as available from the identified websites.

Table 5: Other Proposal Submittal Information

Form #	Item	Location
1	Business Tax Certificate and Rate Schedule	City's website at [redacted]
2	Zone Clearing Application	City's website at [redacted]
3	Iran certification	Federal website at [redacted]
4	Insurance Requirements for Consultants and Instructions for Submitting Insurance Certificates and Endorsement Forms	City's website at [redacted]
	Certificate of Insurance	
5	Living Wage Policy	City's website at [redacted]
	Exhibit A to the Living Wage Policy	

Proposal Contents

Section 1 Qualifications

Minimum Requirements

To qualify for further consideration, the following minimum technical experience and financial qualifications must be met. Proposals from companies that do not meet all of the minimum requirements will be returned to the submitter(s) and will not be evaluated further.

Technical Experience

Proposers must have been in existence for no fewer than three (3) years and possess no fewer than two (2) years of actual operating experience in materials recovery, recycling, and marketing. Proposers may not be in default on any contract obligations during this period. In the case of joint venture or partnership proposals, the primary proposing company must meet the experience requirement and no members can be in default.

Financial Qualifications and Bond Requirements

Submit audited financial statements for the most-recently completed fiscal year for the legal entity(ies) that would execute the Agreement. Any proposer that does not have audited statements should contact the City's consultant to discuss compliance with this requirement. All such statements are to be prepared in accordance with *Generally Accepted Accounting Principles applied on a consistent basis* and shall be audited in accordance with *Generally Accepted Auditing Standards* by an accountant certified in the State of California and shall include a statement by the chief financial officer (CFO) of the entity(ies) that *there has been no material adverse change in such condition or operations as reflected in the submitted balance sheet and income statements since the date on which they were prepared.*

Proposers must comply with the bonding requirements of the RFP as follows:

- Furnish, as proposal security, a proposal bond issued by a licensed surety, in the amount of \$100,000.
- Provide proof of ability to obtain a fidelity bond consistent with the requirements of Section 15.6 of the Agreement issued by a surety company admitted in California.
- Provide proof of ability to obtain the insurance coverage *specified in the Agreement, and in the form required by the City as referenced in Table 5.*

Corporate Qualifications

Proposers must provide as evidence of prior experience in the form of references for at least three (3) *current or previous clients for whom proposer has provided similar services in the last five (5) years and who can:*

- Verify that the proposer has successfully operated projects involving the acceptance, and handling of MSW for transfer
- Verify that the proposer has material recovery and materials marketing experience.

Project Team Experience

Proposers must provide as evidence of project team experience:

Operation and Maintenance of the Del Norte Regional Recycling and Transfer Station

- An organization chart for operating Del Norte, detailing the responsibilities of key team members and personnel;
- A list of all principals and owners of the project team, their subcontractors, and all the parties' relationship to the project, including a complete resume of the facility manager and other key members of the operation management team; and
- A list of other projects involving material recovery, MSW processing, and transfer station operations with which the project team has had experience, indicating facility capacity, technology, operating methods, ownership, agreements, contracts or other documents describing the relationship(s), capital and operating costs information for each listed project, and the degree of involvement of the key project participants.

History of Litigation, Fines, Penalties, Settlements or Damages

Describe past and pending civil, legal, regulatory, and criminal actions (including arrests, indictments, litigation, grand jury investigations, etc.) now pending or that have occurred in the past five years against the identified key personnel, proposing entity, its parent company, and all subsidiaries owned by proposing entity.

A statement disclosing any and all fines, penalties (including liquidated damages or administrative fees), settlements, or damages of any kind paid by proposer, its parent company and subsidiaries, to public agencies in the past five years. For each payment, list the amount the company has paid, name(s) of jurisdictions to which damages were paid, and the event(s) which triggered the damages. Identify what personnel and/or policy changes the company made in response to such incidents (e.g., terminated or reassigned employees involved, new process protocols, etc.).

With regard to the above items, proposers who operate in multiple counties or states with independent management structures need only report such actions relative to the operations managed by the management team proposed to be responsible for this contract. Similarly, proposers who operate landfill facilities need not disclose information about those facilities, as they are beyond the scope of the services requested here.

Note: The occurrence of past or pending civil, legal, regulatory, or criminal actions does not automatically disqualify a company from participating in this process. However, failure to report such actions, whether discovered before or after the City executes the Agreement, shall be considered a material omission and may form the basis for disqualifying a proposer or terminating the Agreement.

History of Worker Treatment

A statement listing any events involving poor treatment of workers to which the proposer has been a party in the last ten years resulting in filing by agencies against the proposer for any action to impose civil or criminal penalties.

Assignment History

Proposers must provide a description of any instances in which proposer (or any company on the proposing team) has requested assignment of a facility operating agreement including:

- A description of the facility;
- Date of assignment request;
- Assignee, if the request was granted; and
- Fees or other considerations associated with the assignment, whether it was granted or not.

Section 2 Base Services

Describe how you will provide each of the Base Services listed in Table 3 of Section 4, using the format provided in Table 3, and addressing at a minimum the Base Services as described in Section 4. Include all information, succinctly, that you believe the evaluation panel will need to accurately evaluate how you propose to provide the Base Services, including but not limited to technical description, labor requirements, and financing needs (see below). Please use a consistent format in the presentation of each Base Service.

Describe the general plan for financing all capital requirements in a "Sources and Uses of Funds" format, which describes the sources of required capital (e.g., banks, leasing companies, cash reserves, etc.) and uses (e.g., property, trucks, equipment, containers, reserves, etc.). Attach supporting documents (e.g., letters from banks or leasing companies) that demonstrate your ability to implement the financing plan. The City may request additional related information prior to, or following short listing of proposers.

Section 3 Optional Services

Describe how you will provide any Optional Services you propose to provide. For optional services described in Section 4, address at a minimum the issues specified for each. Include all information, succinctly, that you believe the evaluation panel will need to accurately evaluate each proposed Optional Service, including but not limited to technical description, labor requirements, and financing needs (see below). Please use a consistent format in the presentation of each Optional Service. Provide a financing plan meeting the requirements of that described above for Base Services.

Attachment A Initial Proposal Forms

Proposer shall complete and submit an electronic set of each of the proposal forms included in RFP Attachment A. The proposal forms must be completed to provide a sufficient level of detail to allow adequate evaluation on a technical, environmental, and financial basis by the selection team.

The proposal forms are also provided on the City's Consultant's website with all other RFP materials. The proposal forms include:

1. Staffing Plan
2. Equipment Plan

3. Material Handling Estimates
4. Equipment Listing and Purchase Price Offer
5. Diversion Guarantee

The enclosed Initial Proposal Forms are for Base Services only. If proposer chooses to propose any Optional Services, it shall provide cost information in a manner consistent with the Proposer Forms for the Base Services. If proposing optional services, Proposers should copy the electronic version of the forms, save them as a new file labeled "Optional Services", and adapt them as necessary to fully describe the proposed Optional Service(s).

Note: Do not include completed Cost Forms (RFP Attachment B) with your proposal for either Base Services or Optional Services. Completed cost forms will be requested from short listed proposers, as described in Section 6.

Attachment B Agreement

The draft Agreement is included as RFP Attachment C. Proposers should carefully review the Agreement before preparing its proposal. Proposals must include either: 1) a statement that Proposer has examined, and is prepared to enter into an agreement in substantially the same form as that in RFP Attachment C, or 2) a "redline/strikeout" version of the draft Agreement taking exception to specific provisions as follows. Proposers taking exceptions to the terms and conditions of the RFP, and/or the draft Agreement must use only the redline/strikeout and comment functions in Microsoft Word, as needed. Proposers should not use alternative software. For each exception noted, proposers must provide suggested alternative language for the City's consideration. The City reserves the right to determine if the exceptions are reasonable. The evaluation process may take into account an excessive number of substantive exceptions taken by any proposer. Proposers shall be deemed to have accepted and agreed to any provisions of the RFP and/or proposed terms and conditions of the Agreement which have not been expressly identified as exceptions in the proposal.

Signature and Authority

Proposals must be signed by an officer of the corporation, principal, partner, or other duly authorized person or persons with the authority to make the commitments required by this RFP. The signatures are to be provided as indicated on the proposal forms.

If a proposal is submitted by a partnership, the name and address of the partnership and a list of all partners must be included. If made by a corporation, the proposal must indicate the name, the state in which the corporation is incorporated, and the address and federal tax identification number of the corporation. If the proposal is made by a corporation, a certified copy of the appropriate section of the bylaws, or a resolution of the board of directors of the corporation, shall be furnished showing the authority of the officer who has signed the proposal and proposal forms to execute contracts on behalf of the corporation. If the proposal is made by a joint venture, a copy of the joint venture agreement, and the name, address, and organizational status of each of the joint ventures must be provided. Where a joint venture is composed of one or more partnerships, corporations, or other entities, the information

Operation and Maintenance of the Del Norte Regional Recycling and Transfer Station

specified in this paragraph must be provided for each entity. Each proposal form submitted by a joint venture must be signed by at least one authorized officer from each party in the joint venture agreement. In proposals containing proprietary information, proprietary paragraphs and/or other data must be clearly marked.

SECTION 6: PROPOSAL EVALUATION & CONTRACTOR SELECTION

The City will establish a Selection Panel (Panel) to review and evaluate submitted proposals, following elimination of any proposals that do not meet minimum requirements.

The Panel will conduct a technical evaluation based on factors such as firm experience and past record, recommendations, thoroughness and clarity of operations and maintenance plans, history in meeting diversion targets, reasonableness of any proposed exceptions to the agreement, proposed gate rates, and proposed Optional Services.

Based on the full review of the technical proposals, the Panel will develop a shortlist of proposals that will receive additional consideration. At this point, shortlisted proposers will be asked to submit completed Cost Forms in a form substantially similar to those contained in RFP Attachment B.

The Panel will then complete the evaluation, considering both technical and cost proposals. The Panel's goal will be to recommend award of the best proposal at the best price.

Proposers may at any point in the process be asked to:

1. Clarify information through written communications and interviews,
2. Participate in an interview(s) and/or site visit,
3. Submit a proposal to address a "best and final" request, and/or

If a proposer receives an award as a result of a proposal submission, failure to have made adequate investigations and examinations will in no way relieve proposer from the obligation to comply in every detail with all provisions and requirements of the documents, nor will a plea of ignorance of such conditions and requirements be accepted as a basis for any claim whatsoever by the proposer for additional compensation.

FINAL DRAFT

AGREEMENT

BETWEEN

CITY OF OXNARD

AND



FOR

OPERATION AND MAINTENANCE OF THE

DEL NORTE REGIONAL RECYCLING AND TRANSFER STATION

* * *

AGREEMENT
 BETWEEN
 CITY OF OXNARD
 AND
DEL NORTE REGIONAL RECYCLING AND TRANSFER STATION
 FOR
 OPERATION AND MAINTENANCE OF THE
 DEL NORTE REGIONAL RECYCLING AND TRANSFER STATION

TABLE OF CONTENTS

	<u>Page</u>
RECITALS	1
ARTICLE 1 DEFINITIONS	3
ARTICLE 2 GRANT AND ACCEPTANCE OF AGREEMENT	16
2.1 Grant and Acceptance of Terms and Conditions of Agreement	16
2.2 Effective Date and Commencement Date	16
2.3 Reserved	17
2.4 Term of Agreement	17
2.5 Option to Extend Term	17
2.6 Survival of Certain Provisions	17
2.7 Representations and Warranties of Contractor	17
2.8 Conditions to Effectiveness of Agreement	19
2.9 Delegation of Authority	20
2.10 City's Right to Direct Changes	20
2.11 Services and Performance Review	21
2.12 Voluntary Use of Designated Disposal Site(s)	22
ARTICLE 3 FEES AND PAYMENTS DUE TO CITY	22
3.1 General	22
3.2 One-Time, Lump-Sum Fees	23
3.3 AB 939 Fee	23
3.4 Operator Payment	23
3.5 Host Fees	23
3.6 Recovered Material Revenue Sharing	23
3.7 Reserved	24
3.8 Late Fees	24
ARTICLE 4 GENERAL FACILITY OPERATIONS	24
4.1 General	24
4.2 Operations and Maintenance Manual	25
4.3 Receiving and Operating Hours	25
4.4 Weighing	26
4.5 Facility Users and Contractor's Facility Throughput Guarantee	27
4.6 Inspections/Load Check Program	29
4.7 Right to Enter and Inspect Facility	29
4.8 Security	30

4.9	Diversion Guarantee	30
4.10	Facility Ownership and Contractor Operating Responsibilities	31
4.11	Safety	31
4.12	Nuisances	32
4.13	Determination and Management of Facility Users	33
4.14	Utility Costs	33
4.15	Contractor Management	33
4.16	City Use of Facility Space	33
4.17	Customer and Visitor Education	34
4.18	Waste Generation/Characterization Studies	35
4.19	Equipment	36
4.20	CNG Fueling Station	38
4.21	Other Facility Enhancements and Services	39
4.22	Implementation Plan	39
ARTICLE 5 TRANSFER STATION		39
5.1	General	39
5.2	Transfer Station Receiving Hours	39
5.3	Acceptance of Permitted Material	39
5.4	Facility User Comments	41
5.5	Vehicle Turnaround Guaranty	41
5.6	Transfer of Permitted Material and Residue	42
ARTICLE 6 MRF OPERATIONS		42
6.1	Recovery and Processing of Recovered Materials	42
6.2	Processing and Marketing of Recovered Materials	42
6.3	Rejection of Recovered Material by Purchaser	42
6.4	Disposal of Recyclable and Organic Materials Prohibited	43
ARTICLE 7 BUYBACK/DROP-OFF CENTER		43
7.1	Hours of Operation	43
7.2	Buyback Material	44
ARTICLE 8 RECYCLABLE HOUSEHOLD HAZARDOUS WASTE AND E-SCRAP COLLECTION AREA		44
8.1	Hours of Operation	44
8.2	Recyclable Household Hazardous Waste and E-Scrap Collection Area	44
8.3	Recyclable Household Hazardous Waste and E-Scrap Gate Rates	45
ARTICLE 9 MARKETING		45
9.1	Marketing Obligations	45
9.2	No Warranties	46
9.3	Liens	46
ARTICLE 10 DISPOSAL AND OFF-SITE PROCESSING		47
10.1	Disposal of Mixed Municipal Waste and Residue	47
10.2	Off-Site Processing of Organic Materials	48
ARTICLE 11 PERSONNEL		49
11.1	Personnel Requirements	49
11.2	Subcontractors	50
11.3	Fees and Gratuities	50

11.4	Non-Discrimination	50
ARTICLE 12 BILLING AND CUSTOMER SERVICE		50
12.1	Customer Billing	50
12.2	Customer Service and Contractor Availability	51
ARTICLE 13 CONTRACTOR COMPENSATION AND GATE RATES.....		52
13.1	General.....	52
13.2	Gate Rates for Contract Year One	52
13.3	Annual Gate Rate Adjustment Method and Schedule of Adjustments.....	52
13.4	Extraordinary Adjustments	53
13.5	City is Most Favored Customer	57
13.6	City Payment to Contractor	58
ARTICLE 14 RECORDS, REPORTS AND INFORMATION REQUIREMENTS		59
14.1	General.....	59
14.2	Record Keeping Requirements	60
14.3	Reporting Requirements	63
14.4	Audits.....	65
14.5	Reporting Adverse Information	66
14.6	Failure to Report	66
ARTICLE 15 INDEMNIFICATION, INSURANCE AND FIDELITY BOND		66
15.1	Indemnification.....	66
15.2	Hazardous Substances Indemnification	67
15.3	Defense of Patent Infringement Suits	68
15.4	Consequential Fines	69
15.5	Insurance.....	69
15.6	Contractor's Fidelity Bond	75
ARTICLE 16 DEFAULT, REMEDIES AND LIQUIDATED DAMAGES		76
16.1	Events of Default	76
16.2	Criminal Activity of Contractor.....	77
16.3	Right to Terminate Upon Default and Right to Specific Performance.....	78
16.4	Waiver	79
16.5	Suspension, Termination of a Portion of Contractor's Obligations	79
16.6	Contractor's Payment of Damages	79
16.7	City Right to Perform	80
16.8	Liquidated Damages	81
16.9	Excuse from Performance	83
16.10	Dispute Resolution, Non-Binding Arbitration	83
16.11	Assurance of Performance	84
16.12	Other Remedies.....	84
ARTICLE 17 OTHER AGREEMENTS OF THE PARTIES		85
17.1	Relationship of Parties	85
17.2	Compliance with Law	85
17.3	Governing Law.....	85
17.4	Jurisdiction.....	85
17.5	Assignment.....	85
17.6	Binding on Assigns	87
17.7	Cooperation in Unforeseen Circumstances.....	87

17.8	Cooperation Upon Termination or Expiration of Agreement	87
17.9	Parties in Interest	89
17.10	Waiver	89
17.11	Contractor's Investigation	89
17.12	Notice	89
17.13	Contractor's Representative	90
17.13	Compliance with Municipal Code	90
17.14	Exercise of Options	90
17.15	Guarantee of Contractor's Performance	90
17.16	Professionalism	90
17.17	Cooperation and Disputes	90
17.18	Payment of Taxes	91
17.19	Amendments	91
ARTICLE 18 MISCELLANEOUS PROVISIONS		91
18.1	Entire Agreement	91
18.2	Section Headings	91
18.3	References to Laws and Other Agreements	91
18.4	Interpretation	91
18.5	Agreement	91
18.6	Severability	92
18.7	Exhibits	92
18.8	Attorneys' Fees	92

EXHIBITS List of exhibits subject to revision for final agreement

1. Proposed Costs and Gate Rates for Contract Year One
2. Gate Rate Adjustment Methodology and Example Calculation
3. Diversion Guarantee
4. Facility Operations and Maintenance Manual
5. Financial Guarantee Agreement
6. Contractor's Fidelity Bond
7. Approved Subcontractor List
8. City and Contractor Maintenance Obligations
9. Contractor Audit Scope and Procedures
10. Notary Certification
11. Secretary's Certification
12. Facility Inspection Report
13. Equipment Purchased from City by Contractor
14. Living Wage Policy
15. New Recovery and Processing System Design and Installation Plan
16. Sample Monthly Report
17. Example Insurance Certificates
18. Liquidated Damages
19. Implementation Plan
20. Designated Facilities
21. Existing Permits

AGREEMENT

This Agreement for the operation and maintenance of the Del Norte Regional Recycling and Transfer Station (hereinafter the "Agreement") is entered into this ____ day of _____, 2013, by and between the City of Oxnard ("City") and _____ ("Contractor"), for the transfer of mixed municipal waste, recovery, processing and marketing of recyclables, maintenance of the Del Norte Regional Recycling and Transfer Station at 111 South Del Norte Boulevard, Oxnard, California (hereinafter "Facility"), and other services related to the operation of the facility.

RECITALS

WHEREAS, the State of California has found and declared that the amount of Mixed Municipal Waste generated in California, coupled with diminishing landfill space and potential adverse environmental impacts from landfilling, have created an urgent need for State and local agencies to enact and implement an aggressive new integrated waste management program; and

WHEREAS, through enactment of the California Integrated Waste Management Act of 1989 ("AB 939") the State has directed the responsible state agency, and all local agencies, to promote recycling and to maximize the use of feasible source reduction, recycling and composting options in order to reduce the amount of Mixed Municipal Waste that must be disposed of by land disposal; and

WHEREAS, the City is now required by Applicable Law to divert at least fifty percent (50%) of the City's waste, and can reasonably anticipate that additional diversion requirements will become law during the Term; and

WHEREAS, the City owns the Del Norte Regional Recycling and Transfer Station whose purpose is to provide for cost effective and long-term recycling and long-haul transfer and disposal of mixed municipal waste; and

WHEREAS, the City sought proposals from qualified firms to operate and maintain the Facility, including its transfer station and materials recovery operations for recovery and processing recyclables, the buyback/drop-off center, the recyclable household hazardous waste and electronic scrap area, the education center and wood/yard trimmings separation sorting operations, and to market the resulting recovered recyclable materials; and

WHEREAS, the City evaluated all proposals and determined that Contractor has proposed to operate and manage the Facility in a manner and on terms which are in the best interest of the City and its residents, taking into account the qualifications and experience of Contractor, the level of recycling to which the Contractor is committed, and the cost of providing such services; and

WHEREAS, the City wishes to engage Contractor to operate and maintain the Facility; to recover and process materials and market recovered materials; and, to transport mixed municipal waste and residue to a City-approved disposal site(s), all in accordance with the terms and conditions of this Agreement; and

36 WHEREAS, the City intends that this Agreement will contribute to providing the most effective and
37 efficient, municipal waste management services to its citizens.

38 NOW, THEREFORE, in consideration of the mutual promises, covenants, guaranties and conditions
39 contained in this Agreement and for other good and valuable consideration, the City and Contractor
40 agree as follows:

41 ARTICLE 1 42 DEFINITIONS

43 The terms used in this Agreement shall have the meaning set forth in this Section, and as defined
44 elsewhere in this Agreement. In the event a term is not defined in this Agreement, then it shall have
45 the meaning set forth in the Oxnard Municipal Code or in Division 30, Part 1, Chapter 2 of the California
46 Public Resources Code (with precedence given to definitions in the Oxnard City Code over conflicting
47 definitions contained in the Public Resources Code). Words beginning with lower case letters are being
48 used with their common ordinary meanings, not as defined terms.

49 1.1 AB 341

50 "AB 341" means the California Jobs and Recycling Act of 2011 (Chapter 476, Statutes of 2011 [Chesbro,
51 AB 341]), also commonly referred to as "AB 341", as amended, supplemented, superseded, and
52 replaced from time to time.

53 1.2 AB 939

54 "AB 939" means the California Integrated Waste Management Act of 1989 (Division 30 of the California
55 Public Resources Code), also commonly referred to as "AB 939," as amended, supplemented,
56 superseded, and replaced from time to time

57 1.3 Agreement

58 "Agreement" means this Agreement, including all exhibits and attachments which are incorporated
59 herein by reference, as this Agreement may be amended and supplemented.

60 1.4 Applicable Law

61 "Applicable Law" means all law, statutes, rules, regulations, guidelines, Permits, actions,
62 determinations, orders, or requirements of the United States, State of California, County of Ventura,
63 City, regional or local government authorities, agencies, boards, commissions, courts or other bodies
64 having applicable jurisdiction, that from time to time apply to or govern the Facility or the performance
65 of the Parties' respective obligations hereunder.

66 **1.5 Billings**

67 "Billings" means statements of charges for services rendered by Contractor to Facility Users for
68 acceptance at the Facility of Permitted Materials.

69 **1.6 Change in Law**

70 "Change in Law" means the occurrence of any event or change in Applicable Law as follows:

71 (1) the adoption, promulgation, modification, or change in judicial or administrative interpretation
72 occurring after the date hereof which adoption, promulgation, codification, or change in judicial
73 or administrative interpretation relates to any Applicable Law, other than laws with respect to
74 taxes based on or measured by net income, or any unincorporated business, payroll, taxes
75 levied by any tax board or employment taxes; or

76 (2) any order or judgment of any federal, state or local court, administrative agency or
77 governmental body issued after the date hereof if:

78 (i) such order or judgment is not also the result of the willful misconduct or negligent
79 action or inaction of the Party relying thereon or of any third party for whom the Party
80 relying thereon is directly responsible; and

81 (ii) the Party relying thereon, unless excused in writing from so doing by the other Party,
82 shall make or have made, or shall cause or have caused to be made, Reasonable
83 Business Efforts in good faith to contest such order or judgment (it being understood
84 that the contesting in good faith of such an order or judgment shall not constitute or be
85 construed as a willful misconduct or negligent action of such Party); or

86 (3) the imposition by a governmental authority or agency of any new or different material
87 conditions in connection with the issuance, renewal, or modification of any Permit after the
88 date hereof; or

89 (4) the failure of a governmental authority or agency to issue or renew, or delay in the issuance or
90 renewal of, or the suspension, interruption or termination of, any Permit after the date hereof,
91 provided such failure to issue or the suspension or termination of any Permit is not the result of
92 the willful misconduct or negligent action or inaction of the Party relying thereon or any third
93 party for whom the Party relying thereon is directly responsible; or,

94 (5) a Change in Law promulgated by the City shall be a Change in Law excusing the performance of
95 its obligations hereunder unless such City Change in Law was required in response to a Change
96 in Law promulgated by another governmental body.

97 **1.7 City**

98 "City" means the City of Oxnard, a municipal corporation, and all the territory lying within the municipal
99 boundaries of the City as presently existing or as such boundaries may be modified during the Term of
100 this Agreement.

101 **1.8 City Hauler**

102 "City Hauler" means the City, using collection vehicles it owns and operates, or hauling company
103 franchised by the City, which or whom the City may add or thereafter delete by Notice to the
104 Contractor, that collects Mixed Municipal Waste, Recyclable Materials, and Organic Materials from
105 within the City, including from residents, businesses, and City departments, and City departments
106 delivering material directly to Facility.

107 **1.9 City Self Haulers**

108 "City Self Haulers" means Self-Haulers that reside in the City as evidenced by proof of residency in the
109 form of a driver's license or utility bill showing an address for the City of Oxnard.

110 **1.10 Commencement Date**

111 "Commencement Date" means the date specified in Section 2.2 when Contractor begins operations and
112 maintenance of the Facility as required by this Agreement.

113 **1.11 Commingled Recyclable Material**

114 "Commingled Recyclable Material" means Recyclable Materials that have been separated from Mixed
115 Municipal Waste, but are not separated by individual Recyclable Material type; may include plastics,
116 paper, cans and other Recyclable Materials mixed together; and contain at least eighty-five percent
117 (85%) Recyclable Materials.

118 **1.12 Construction and Demolition Debris**

119 "Construction and Demolition Debris" means used or discarded construction materials removed from a
120 premise during the construction or renovation of a structure resulting from construction, remodeling,
121 repair, or demolitions operations on any pavement, house, commercial building, or other structure
122 including, but not limited to, concrete, brick, wood, dirt, rock, cardboard, packaging materials, etc.

123 **1.13 Contract Year**

124 "Contract Year" means each year commencing July 1 and ending June 30, with the exception that
125 Contract Year One shall commence _____, 2014 and end June 30, 2015.

126 **1.14 Contractor**

127 "Contractor" means _____, a _____ organized and operating under the laws of the State of
128 _____ and its officers, directors, employees, agents, companies and subcontractors.

129 **1.15 CPI-U**
130 "CPI-U" means the Consumer Price Index, All Urban Consumers, All Items, Not Seasonally Adjusted, Los
131 Angeles-Riverside-Orange County, California compiled and published by the U.S. Department of Labor,
132 Bureau of Labor Statistics, Series Identification No. CUURA421SA0, or such index as may in the future
133 replace it.

134 **1.16 Customer**
135 "Customer" means any Facility User using the services of the Facility as provided by Contractor.

136 **1.17 Delivered**
137 "Delivered" means Permitted Material delivered to the Facility which Contractor may not reject under
138 the terms of this Agreement unless such material includes Unpermitted Waste.

139 **1.18 Designated Disposal Site(s)**
140 "Designated Disposal Site(s)" means the Disposal Site(s) discussed in Section 10.1 and specified in
141 Exhibit 20, which were approved by the City for Contractor's disposal of Mixed Municipal Waste and
142 Residue from the Facility.

143 **1.19 Designated Processing Site(s)**
144 "Designated Processing Site(s)" means the off-site Processing Site(s) discussed in Section 10.2 and
145 specified in Exhibit 20, which were approved by the City for Contractor's Processing of Recovered
146 Materials from the Facility.

147 **1.20 Disposal**
148 "Disposal" means the final disposition of Mixed Municipal Waste and Residue from the Facility by the
149 Contractor at a Designated Disposal Site approved by the City. Disposal does not include the use of
150 Organic Materials as alternative landfill cover so long as the City and State regulations consider
151 alternative landfill cover use of Organic Materials as Diversion under the AB 939.

152 **1.21 Disposal Site**
153 "Disposal Site(s)" means a facility for ultimate Disposal of Mixed Municipal Waste and Residue.

154 **1.22 Divert**
155 "Divert" means to prevent Recyclable Materials from Disposal at Disposal Sites through source
156 reduction, reuse, recycling, composting, conversion and/or transformation, as provided in Section
157 41780-41786 of the AB 939, as such Act may be hereafter amended or superseded. Diversion is a broad
158 concept that is to be inclusive of new technology and material handling and Processing changes that

159 may occur over the Term, including, but not limited to, implementation of innovative techniques or
160 technology, transformation or conversion, that may reduce Disposal, decrease costs and/or are for
161 other reasons deemed desirable by the City.

162 1.23 Effective Date

163 "Effective Date" means the date on which the Oxnard City Council approves the Agreement and the
164 date on which Contractor may begin to take actions and incur costs in preparation for its operation and
165 maintenance of the Facility and its improvement of the Recovery and Processing equipment in
166 accordance with this Agreement.

167 1.24 E-Scrap

168 "E-Scrap" means discarded electronic equipment including, but not limited to, televisions, computer
169 monitors, central processing units (CPUs), laptop computers, computer peripherals (including external
170 hard drives, keyboards, scanners, and mice), printers, copiers, facsimile machines, radios, stereos,
171 stereo speakers, VCRs, DVDs, camcorders, microwaves, telephones, cellular telephones, and other
172 electronic devices. Some E-Scrap or components thereof may be Hazardous Waste, Unpermitted
173 Waste, or include Hazardous Substances and thus require special handling, Processing, or Disposal.

174 1.25 Facility

175 "Facility" means the Del Norte Regional Recycling and Transfer Station at 111 South Del Norte
176 Boulevard, Oxnard, California, which is owned by the City of Oxnard, California.

177 1.26 Facility Operations

178 "Facility Operations" means all Contractor's obligations under this Agreement.

179 1.27 Facility Receiving Hours

180 "Facility Receiving Hours" means the hours when Contractor shall accept Permitted Material Delivered
181 by Customers.

182 1.28 Facility Users

183 "Facility Users" means the persons that Deliver Permitted Materials to the Facility.

184 1.29 Financial Guarantee Agreement

185 "Financial Guarantee Agreement" is the Agreement attached as Exhibit 5 executed by a party other
186 than the Contractor guaranteeing the timely and full performance of Contractor's obligations.

187 **1.30 Food Scraps**

188 "Food Scraps" means those discarded materials that will decompose and/or putrefy including (i) all
189 kitchen and table food waste, (ii) animal or vegetable waste that is generated during or results from the
190 storage, preparation, cooking, or handling of food stuffs, (iii) discarded paper that is contaminated with
191 Food Scraps; (iv) fruit waste, grain waste, dairy waste, meat and fish waste; and, (v) non-Recyclable
192 paper or contaminated paper. Food Scraps are a subset of Organic Materials.

193 **1.31 Gate Rates**

194 "Gate Rate(s)" means the per-item or per-ton fees or charges for acceptance of Permitted Materials at
195 the Facility under this Agreement, which are provided in Exhibit 1 and adjusted in accordance with
196 Article 13, that Contractor charges each Customer delivering Permitted Materials under this Agreement.

197 **1.32 Gross Rate Revenues**

198 "Gross Rate Revenue" means the actual monies remitted to Contractor by Facility Customers, which
199 shall be determined in accordance with Generally Accepted Accounting Principles.

200 **1.33 Guarantor**

201 "Guarantor" means _____.

202 **1.34 Hazardous Waste**

203 "Hazardous Waste" is any waste which is defined or regulated as a hazardous waste, toxic waste,
204 hazardous chemical substance or mixture, or asbestos under Applicable Law, including:

- 205 (1) "Hazardous Waste" pursuant to Section 40141 of the California Public Resources Code; all
206 substances defined as acutely hazardous waste, extremely hazardous waste or hazardous waste
207 by Sections 25110.02, 25115, and 25117 of the California Health and Safety Code (the California
208 Hazardous Waste Control Act), and future amendments to or recodification of such statutes or
209 regulations promulgated thereunder;
- 210 (2) "Hazardous Substances" as defined under Chapter 6.8 of the California Health and Safety Code,
211 Division 20, Sections 25316 and 25317;
- 212 (3) Materials regulated under the Toxic Substance Control Act, 15 U.S.C. Section 2601 et seq., as
213 amended, and related federal, State of California, and local laws and regulations, including the
214 California Toxic Substances Account Act, California Health and Safety Code Section 25300 et
215 seq.;
- 216 (4) Materials regulated under the Comprehensive Environmental Response, Compensation and
217 Liability Act, 42 U.S.C. 9601, et seq., as amended, and regulations promulgated thereunder;

218 (5) Materials regulated under The Resource Conservation and Recovery Act and the regulations
219 contained in 40 CFR Parts 260-281; and,

220 (6) Materials regulated under any future additional or substitute federal, State or local laws and
221 regulations pertaining to the identification, transportation, treatment, storage or disposal of
222 toxic substances or hazardous waste.

223 If two or more governmental agencies having concurrent or overlapping jurisdiction over hazardous
224 waste adopt conflicting definitions of "hazardous waste", for purposes of collection, transportation,
225 processing and/or disposal, the broader, more restrictive definition shall be employed for purposes of
226 this Agreement.

227 **1.35 Household Hazardous Waste**

228 Household Hazardous Waste are those wastes resulting from products used by the general public for
229 household purposes which, because of their quantity, concentration, or physical, or chemical
230 characteristics, may pose a substantial known or potential hazard to human health or the environment
231 when improperly treated, disposed, or otherwise managed.

232 **1.36 Market or Marketing**

233 "Market" (or "Marketing" or other variations thereof) means providing for the sale or placement of
234 Recovered Materials for the purpose of beneficial use.

235 **1.37 Material Recovery Facility or MRF**

236 "Material Recovery Facility" or "MRF" refers to the area of the Facility where Recovery and Processing
237 activities and Processing equipment are used to Recover and Process Commingled Recyclable Materials,
238 Source Separated Recyclable Materials, and other Permitted Materials to segregate and consolidate
239 Recovered Materials.

240 **1.38 Mixed Municipal Waste**

241 "Mixed Municipal Waste" is a type of Permitted Material comprised of residential, commercial and
242 industrial Mixed Municipal Waste, garbage and/or rubbish, other than Source Separated Recyclable
243 Materials, Commingled Recyclable Materials, Source Separated Organic Materials, Recyclable HHW, E-
244 scrap, and Construction and Demolition Debris.

245 **1.39 Notice**

246 "Notice" (or "Notify" or other variation thereof) means notice given in accordance with Section 17.12.

247 **1.40 Organic Materials**

248 "Organic Materials" means those Discarded Materials that will decompose and/or putrefy and that the
249 City's Municipal Code permits, directs, and/or requires generators to separate from Solid Waste and
250 Recyclable Materials for collection in specially designated containers for Organic Materials collection.
251 Organic Materials include Yard Trimmings and Food Scraps such as, but not limited to, green trimmings,
252 grass, weeds, leaves, prunings, branches, dead plants, brush, tree trimmings, dead trees, small wood
253 pieces, other types of organic yard waste, vegetable waste, fruit waste, grain waste, dairy waste, meat
254 waste, fish waste, paper contaminated with Food Scraps, polylactide (PLA) products, pieces of
255 unpainted and untreated wood, and pieces of unpainted and untreated wallboard. No Discarded
256 Material shall be considered to be Organic materials, however, unless such material is separated from
257 Mixed Municipal Waste and Recyclable Material.

258 **1.41 Other Users**

259 "Other Users" includes Self-Haulers other than City Self Haulers, and licensed commercial hauling
260 companies Delivering Permitted Material to the Facility. "Other Users" excludes City Hauler, City Self
261 Haulers, and Port Hueneme Hauler.

262 **1.42 Party(ies)**

263 "Party(ies)" refers to the City and the Contractor, individually and together.

264 **1.43 Performance Guaranties**

265 "Performance Guaranties" means the following guaranties made by the Contractor hereunder:

- 266 • Section 4.5 Facility Throughput Guarantee,
- 267 • Section 4.9 Diversion Guarantee,
- 268 • Section 5.5 Vehicle Turnaround Guarantee, and
- 269 • Section 6.3 Recovered Materials Quality Guarantee.

270 **1.44 Permit(s)**

271 "Permit(s)" means all federal, State, City, other local and any other governmental unit permits, orders,
272 licenses, approvals, authorizations, consents and entitlements of whatever kind and however described
273 which are required under Applicable Law to be obtained or maintained by any person with respect to
274 the Facility or the performance of any obligation under this Agreement, as renewed or amended from
275 time to time.

276 **1.45 Permitted Material**

277 "Permitted Material" means material that the Facility may receive under its Permits and Applicable Law,
278 including:

- 279 • Mixed Municipal Waste,
- 280 • Source Separated Recyclable Materials,
- 281 • Commingled Recyclable Material,
- 282 • Source Separated Yard Trimmings,
- 283 • Organic Materials,
- 284 • Recyclable Household Hazardous Waste,
- 285 • E-Scrap, and,
- 286 • Construction and Demolition Debris.

287 The Parties shall promptly conform this definition of "Permitted Material" to reflect any changes in
288 Permits and Permit requirements.

289 **1.46 Person**

290 "Person" includes any individual, firm, association, organization, partnership, corporation, trust, joint
291 venture, the United States, the State, a county, a municipality or special purpose district or any other
292 entity whatsoever.

293 **1.47 Port Hueneme**

294 "Port Hueneme" means Port Hueneme, a municipal corporation, validly existing as a general law city
295 under the Constitution and laws of California and all the territory lying within the municipal boundaries
296 of Port Hueneme as presently existing or as such boundaries may be modified during the Term of this
297 Agreement.

298 **1.48 Port Hueneme Hauler**

299 "Port Hueneme Hauler" means Port Hueneme, using collection vehicles it owns and operates, or a
300 hauling company franchised by Port Hueneme, which or whom Port Hueneme may add or thereafter
301 delete by Notice to the Contractor, that collects Mixed Municipal Waste and Recyclable Materials from
302 residents and businesses in Port Hueneme.

303 **1.49 Process/Processing**

304 "Process," or "Processing" or any other variation thereof, means baling, crushing, shredding, chipping,
305 grinding, extracting, hand picking and any other method of processing Recovered Materials by
306 Contractor after Recovery and before Marketing thereof.

307 **1.50 Reasonable Business Efforts**

308 "Reasonable Business Efforts" means those efforts a reasonably prudent business Person would expend
309 under the same or similar circumstances in the exercise of such Person's business judgment, intending
310 in good faith to take steps calculated to satisfy the obligation which such Person has undertaken to
311 satisfy; provided that such Person and/or any enterprise by which such Person is employed would not
312 incur a financial loss (other than time expended or otherwise compensated for such efforts herein) by
313 reason of having expended or expending such efforts.

314 **1.51 Recovered Materials**

315 "Recovered Materials" means Recyclable Materials and Organic Materials Recovered from Permitted
316 Materials.

317 **1.52 Recovery**

318 "Recovery," or "Recover" or "Recovered" or other variations thereof, means the picking, pulling,
319 sorting, separating, classifying and recovery of Recyclable Materials from Permitted Material, whether
320 by manual or mechanical means, by the Contractor at the Facility, after Delivery and before Marketing
321 thereof.

322 **1.53 Recyclable Household Hazardous Waste**

323 "Recyclable Household Hazardous Waste" means automobile batteries, motor oils, anti-freeze, oil filters
324 and water-based paint resulting from products used by the general public for household purposes.

325 **1.54 Recyclable Materials**

326 "Recyclable Materials" means materials having value which are of a size commonly Recovered in
327 comparable materials recovery facilities in California and which have a potential for reuse or
328 reprocessing.

329 **1.55 Residue**

330 "Residue" (or "Residual" or other variations thereof) means remaining Permitted Material requiring
331 disposal following Recovery and Processing thereof, if any, that require Disposal. Residue does not
332 include Recovered Materials.

333 **1.56 Self-Haulers**

334 "Self-Haulers" means Persons Delivering Permitted Material on their own behalf, and not as a licensed,
335 commercial hauling enterprise collecting Permitted Material for third parties or on behalf of a
336 municipality.

337 **1.57 Source Separated Recyclable Materials**

338 "Source Separated Recyclable Materials" are Recyclable Materials that are separated by individual
339 material type from other Permitted Materials prior to collection and Delivered to the Facility separately
340 for the purpose of Diversion.

341 **1.58 Source Separated Yard Trimmings**

342 "Source Separated Yard Trimmings" are Yard Trimmings segregated from other Mixed Municipal Waste
343 prior to collection.

344 **1.59 State**

345 "State" means the State of California.

346 **1.60 Term**

347 "Term" of this Agreement has the meaning set forth in Section 2.4 including an extension thereof
348 granted in accordance with Section 2.5.

349 **1.61 Ton or Tonnage**

350 "Ton" or "Tonnage" means a short ton of 2,000 pounds.

351 **1.62 Uncontrollable Circumstance(s)**

352 "Uncontrollable Circumstance(s)" means any act, event or condition, whether affecting the Facility or
353 either Party beyond the reasonable control of such Party and not the result of willful or negligent action
354 or inaction of such Party (other than the contesting in good faith or the failure in good faith to contest
355 such action or inaction), which materially and adversely affects the ability of either Party to perform any
356 obligation hereunder, including:

357 (1) An act of nature, landslide, lightning, earthquake, fire, flood, (other than reasonably anticipated
358 weather conditions for the geographic area of the Facility), explosion, sabotage, acts of a public
359 enemy, war, blockade or insurrection, riot or civil disturbance;

360 (2) The failure of any appropriate federal, State, City, or local public agency or private utility having
361 operational jurisdiction in the area in which the Facility is located, to provide and maintain

362 utilities, services, water, sewer or power transmission lines to the Facility which are required for
363 Facility Operation;

364 (3) A Change in Law other than Changes in Law excluded in items (ii) and (vi) below;

365 (4) The failure of any subcontractor or supplier to furnish labor, services, materials or equipment
366 on the dates agreed to if such failure is caused by an Uncontrollable Circumstance and the
367 affected Party is not reasonably able to obtain substitute labor, services, materials or
368 equipment on the agreed upon dates;

369 (5) The presence of Hazardous Waste beneath or migrating to the Facility from sources other than
370 the Contractor;

371 (6) Governmental pre-emption of materials or services in connection with a public emergency or
372 condemnation or other taking by eminent domain of any portion of the Facility. In the event of
373 any condemnation, neither Party waives its rights to assert claims in such condemnation
374 proceedings; and,

375 (7) Failure of the current operator (as defined below) to relinquish possession of the Facility to
376 Contractor in a condition that is reasonably required for Contractor to perform its obligations
377 under this Agreement, subject, however, to Contractor's obligations under this Agreement with
378 respect to (a) the purchase of equipment and rolling stock necessary for the operation of the
379 Facility, and (c) Contractor's obligations to make repairs and/or replacements to the Facility.
380 For the purpose of this subsection, "current operator" means the company that has an
381 agreement with the City to operate the Facility through January 30, 2013, including any
382 extensions thereof.

383 but excluding, without limitation:

384 (i) Either Party's own breach of its obligations hereunder;

385 (ii) Adverse changes in the financial condition of either Party or any Change in Law with respect to
386 any taxes based on or measured by net income, or any unincorporated business, payroll, or
387 employment taxes;

388 (iii) The consequences of errors in Facility Operation on the part of the Contractor, its employees,
389 agents, subcontractor or affiliates, including failure to comply with the Operations and
390 Maintenance manual and Contractor's failure to adequately update the manual;

391 (iv) Labor unrest including, but not limited to, strikes, work stoppages or slowdowns, sick-outs,
392 picketing, or other labor disputes or disturbances conducted by Contractor's employees or
393 directed at Contractor or by any Person performing services related to Facility Operation;

394 (v) The failure of the Contractor to secure patents, licenses, trademarks, and the like necessary for
395 Facility Operation; and,

396 (vi) As to the Contractor, the failure of any Facility technology to perform in accordance with
397 Performance Guaranties, unless caused by Uncontrollable Circumstances.

398 **L63 Unpermitted Waste**

399 "Unpermitted Waste" means wastes that the Facility may not receive under its Permits, including:

- 400 (1) Agricultural wastes comprised of animal manures;
- 401 (2) Asbestos, including friable materials that can be crumbled with pressure and are therefore likely
402 to emit fibers, being a naturally occurring family of carcinogenic fibrous mineral substances,
403 which may be a Hazardous Waste if it contains more than one percent asbestos;
- 404 (3) Ash residue from the incineration of Mixed Municipal Wastes, including infectious waste
405 described in item (8) below, wood waste, sludge, and agricultural wastes described in item (1)
406 above;
- 407 (4) Auto shredder "fluff" consisting of upholstery, paint, plastics, and other non-metallic substances
408 which remains after the shredding of automobiles;
- 409 (5) Large dead animals;
- 410 (6) Hazardous Wastes, explosives, ordnance, highly flammable substances and noxious materials;
- 411 (7) Industrial solid or semi-solid wastes resulting from industrial processes and manufacturing
412 operations, including cement kiln dust, ore process residues and grit or screenings removed
413 from waste water treatment facility;
- 414 (8) Infectious wastes which have disease transmission potential and are classified as Hazardous
415 Wastes by the State Department of Health Services, including pathological and surgical wastes,
416 medical clinic wastes, wastes from biological laboratories, syringes, needles, blades, tubings,
417 bottles, drugs, patient care items such as linen or personal or food service items from
418 contaminated areas, chemicals, personal hygiene wastes, and carcasses used for medical
419 purposes or with known infectious diseases;
- 420 (9) Liquid wastes which are not spadeable, usually containing less than fifty (50%) percent solids,
421 including cannery and food processing wastes, landfill leachate and gas condensate, boiler
422 blowdown water, grease trap pumpings, oil and geothermal field wastes, septic tank pumpings,
423 rendering plant byproducts, sewage sludge, and those liquid wastes which may be Hazardous
424 Wastes;
- 425 (10) Radioactive wastes as defined in Section 114710 of the California Health and Safety Code and
426 any waste that contains a radioactive material, the storage or disposal of which is subject to any
427 other State or federal regulation;
- 428 (11) Sewage sludge comprised of human (not industrial) residue, excluding grit or screenings,
429 removed from a waste water treatment facility or septic tank, whether in a dry or semidry
430 form;
- 431 (12) Special wastes designated from time to time by the California Integrated Waste Management
432 Board, including contaminated soil;

433 (13) Bulky items that cannot fit within standard roll-off containers or Mixed Municipal Waste
434 collection vehicles unless otherwise approved by Contractor.

435 Parties shall promptly conform this definition of "Unpermitted Waste" to the extent necessary to
436 comply with Applicable Law, should a Change in Law or in Permits and Permit requirements necessitate.

437 1.64 Visitor Education Center

438 "Visitor Education Center" is a designated area at the Facility where visitors can convene to learn about
439 and view Facility Operations.

440 1.65 Yard Trimmings

441 "Yard Trimmings" means those discarded materials that will decompose and/or putrefy, including, but
442 not limited to, green trimmings, grass, weeds, leaves, prunings, branches, dead plants, brush, tree
443 trimmings, dead trees, small pieces of unpainted and untreated wood, and other types of organic
444 waste. Yard Trimmings are a subset of Organic Materials.

445 ARTICLE 2 446 GRANT AND ACCEPTANCE OF 447 AGREEMENT

448 2.1 Grant and Acceptance of Terms and Conditions of Agreement

449 Subject to the terms and conditions of this Agreement and applicable Federal and State laws, City
450 hereby grants to Contractor and Contractor hereby accepts from the City, for the Term hereof, the right
451 and privilege to operate and maintain the Facility.

452 2.2 Effective Date and Commencement Date

453 The "Effective Date" of this Agreement shall be the date on which the latter of the Parties signs the
454 Agreement provided that City Council has taken action approving this Agreement and no restraining
455 order of any kind has been issued.

456 The Commencement Date of this Agreement shall be _____, 2014 and shall be the date Contractor
457 commences to operate and maintain the Facility and fulfill all other obligations described by this
458 Agreement.

459 During the time between the Effective Date and Commencement Date, Contractor shall perform any
460 and all activities necessary to prepare itself to start operations and maintenance of the Facility on the
461 Commencement Date and to improve Recovery and Processing equipment in accordance with the plans
462 described by this Agreement.

463 **2.3 Reserved**

464 **2.4 Term of Agreement**

465 The term of this Agreement (the "Term") shall commence on _____, 2014, and expire on June
466 30, 2024 subject to extension as provided herein. Notwithstanding the foregoing, the unexcused failure
467 or refusal of Contractor to perform any material term, covenant, obligation or condition contained in
468 this Agreement shall give rise to the right, in favor of the City, for earlier termination of this Agreement
469 for cause in accordance with the procedures elsewhere contained herein.

470 **2.5 Option to Extend Term**

471 The City shall have the sole option to extend the Term of this Agreement beyond the initial Agreement
472 Term for up to ten (10) years in two five- (5-) year increments for a maximum Term of twenty (20) years
473 including the initial Term and any extensions thereof. The City may, upon three hundred sixty five day
474 (365-day) advance Notice to the Contractor prior to the expiration of the Term of this Agreement or any
475 extension thereof, exercise its extension rights.

476 If the City chooses to exercise its rights to extend the Term, the City will meet and confer with
477 Contractor to discuss facility improvements, recovery and processing equipment, and rolling stock
478 needs and related costs, if any, and how depreciation and interest expenses related to such expenses
479 shall be treated during the extension period. City reserves the right to negotiate modifications to the
480 Agreement as a condition to the extension of the Term, subject to approval by both Parties. In the
481 event the Parties have not agreed to proposed revisions to this Agreement no later than one hundred
482 eighty (180) days prior to the end of the Term or then current extension, then the City does not have to
483 extend the Agreement and, at the City's option, the Agreement shall terminate at the end of the Term
484 or then current extension.

485 The City has no obligation to renegotiate, renew, or otherwise extend the rights granted to Contractor
486 beyond the initial ten-year (10-year) Term of the Agreement.

487 **2.6 Survival of Certain Provisions**

488 All representations and warranties of the Parties herein, and all indemnifications provided for herein,
489 and any other rights and obligations of the Parties expressly stated to survive the expiration or early
490 termination of this Agreement, shall survive such expiration or early termination, including payment of
491 any amounts due and owing by either Party to the other Party at the time of expiration or early
492 termination.

493 **2.7 Representations and Warranties of Contractor**

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

- 497 a) Contractor Status. Contractor represents and warrants that it is a _____ duly
498 organized, validly existing and in good standing under Applicable Laws. It is qualified to transact
499 business in the State of California and has the power to own its properties and to carry on its
500 business as now owned and operated and as required by this Agreement.
- 501 b) Authority and Authorization. Contractor represents and warrants that it has the authority to
502 enter into and perform its obligations under this Agreement. The Board of Directors or partners
503 of Contractor (or the shareholders, if necessary) have taken all actions required by law, its
504 articles of incorporation, its bylaws or otherwise to authorize the execution of this Agreement.
505 The Persons signing this Agreement on behalf of Contractor have authority to do so and the
506 Corporate Secretary's Certification in Exhibit 11 confirms this. Contractor shall authorize one
507 employee for the Contractor as a single point of contact for issues arising under this Agreement,
508 and Contractor acknowledges and agrees that City may expect and assume that this employee's
509 actions are taken on behalf of and with the full approval of the Contractor.
- 510 c) Statements and Information in Proposal. Contractor's Proposal, which was submitted by the
511 Contractor on _____ in response to the City of Oxnard's Request for Proposals for
512 Operation and Maintenance of the Del Norte Regional Recycling and Transfer Station issued on
513 _____, and subsequent clarifications on which the City has relied upon in entering
514 into this Agreement, and representations as set forth in this Agreement, are correct and
515 complete in all material respects at the time originally submitted to the City or executed by
516 Contractor, as the case may be.
- 517 d) No Conflicts. Neither the execution or delivery by the Contractor of this Agreement, the
518 performance by the Contractor of its obligations required by this Agreement, nor the fulfillment
519 by the Contractor of the terms and conditions hereof: (1) conflicts with, violates or results in a
520 breach of any Applicable Law; (2) conflicts with, violates or results in a breach of any term or
521 condition of any judgment, order or decree of any court, administrative agency or other
522 governmental authority, or any agreement or instrument to which the Contractor is a party or
523 by which the Contractor or any of its properties or assets are bound, or constitutes a default
524 thereunder; or (3) will result in the creation or imposition of any lien, charge or encumbrance of
525 any nature whatsoever upon any of the properties or assets of the Contractor.
- 526 e) No Approvals Required for Equipment. The Contractor and its affiliates shall hold or possess a
527 right to use all patents, rights to patents, trademarks, copyrights, and licenses, as the case may
528 be ("Proprietary Property") of any equipment or software not owned by the City necessary for
529 the performance by the Contractor of its obligations under this Agreement and the transactions
530 contemplated by this Agreement, and shall ensure that the City shall own, hold or possess a
531 right to use such Proprietary Property for all equipment, Facility furnishings and fixtures owned
532 by the City. As of the date hereof, the Contractor represents that it does not know of any
533 material conflict with the rights of others regarding Proprietary Property.
- 534 f) No Litigation. There is no action, suit or other proceeding as of the date of this Agreement, at
535 law or in equity, or to the best of Contractor's knowledge, any investigation, before or by any
536 court or governmental authority, pending or threatened against Contractor or _____
537 [Guarantor] which is likely to result in an unfavorable decision, ruling or finding which would
538 materially and adversely affect the validity or enforceability of this Agreement or any such
539 agreement or instrument entered into by Contractor or _____ [Guarantor] in connection with

the transactions contemplated hereby, or which could materially and adversely affect the ability of Contractor to perform its obligations hereunder or which would have a material adverse effect on the financial condition of Contractor or _____ [Guarantor].

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

h) Status of Guarantor. Contractor is wholly owned by _____ [Guarantor] (if applicable), which is duly organized and validly existing as a _____ under the laws of the State of _____.

i) No Material Changes. Since the date of Contractor's Proposal, there shall not have occurred any material change, financial or otherwise, that would adversely affect the ability of Contractor to perform its obligations under this Agreement.

j) No Approvals. No approval, authorization, license, Permit, order or consent of, or declaration, registration or filing with any governmental or administrative authority, commission, board, agency or instrumentality is required for the valid execution and delivery of this Agreement by Contractor, except such as have been duly obtained. Except for the permits listed on Exhibit 21 (the "Existing Permits") which will need to be transferred to Contractor prior to the Commencement Date, Contractor has all licenses, Permits, City business license, qualifications and approvals of whatsoever nature which are legally required for Contractor to provide services hereunder and meet Contractor's obligations hereunder, and Contractor further warrants that it shall, at its sole cost and expense, keep in effect or obtain at all times during the Term all licenses, Permits, and approvals which are legally required for Contractor to provide such services and meet Contractor's obligations.

2.8 Conditions to Effectiveness of Agreement

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

a) Furnishing of Insurance and Bond. Contractor shall have furnished evidence of the insurance and bond required by Sections 15.5 and 15.6, and shall comply with all ongoing requirements relating thereto.

b) Fees Due to City. Contractor shall have demonstrated to the satisfaction of the City its ability to pay the Signing/Administrative Fee and Equipment Purchase Fee to the City, as provided in Section 3.2.

c) Proprietary Products. The City or Contractor shall have received the right to use proprietary technology, processes and equipment, if any, necessary for the operation and maintenance of the Facility in accordance with the provisions hereof for the Term.

d) Financial Guarantee Agreement. Contractor shall have caused the Financial Guarantee Agreement attached hereto as Exhibit 5 to be executed.

e) Secretary's Certification. Exhibit 11 of this Agreement shall have been signed by the secretary of the Contractor and identifies the name of the Contractor's representative that is authorized to execute this Agreement.

f) Independent Certified Public Accountant Representation. Contractor shall provide City with a letter from an independent, certified public accountant that the Contractor has the financial ability to perform in accordance with this Agreement.

g) Inspection of Facility. The Contractor performed a physical inspection of the Facility (the "Inspection"). The results of the Inspection are contained in the report attached hereto as Exhibit 12 (the "Inspection Report"), which the City reviewed and approved.

2.9 Delegation of Authority

The administration of this Agreement by the City shall be under the supervision and direction of the City Manager's office and the actions specified in this Agreement, unless otherwise stated, shall be taken by the City Manager, or his or her designee.

2.10 City's Right to Direct Changes

2.10.1 General

The City may request Contractor to make changes in Facility Operations, including, but not limited to the following: use different designated facilities (e.g., change in Designated Disposal Site or Designated Processing Site), perform additional services (including implementation of new Diversion programs, implementation of conversion technologies, etc.) or modify the manner in which it performs existing services (e.g., increased Diversion Guarantee, etc.). If the City and Contractor cannot agree upon the performance and compensation for the additional services, the City reserves the right to award a contract for such additional services to a third party.

2.10.2 Procedure for Making Changes in Scope

Contractor shall present, within thirty (30) calendar days of the City's written request, a written proposal to implement the requested change in service. Contractor shall not be compensated for the proposal preparation costs or costs incurred during the negotiation of its proposal for the change in scope of such services. At a minimum, the proposal shall contain a complete description of the following:

- Methodology to be employed
- Equipment to be utilized
- Labor requirements (number of employees by classification).

- 611 • Type(s) of material to be Recovered and Processed
- 612 • Provisions for program publicity/education/marketing
- 613 • Implementation timeline
- 614 • Compensation
- 615 • Three-year projection of the financial results of the program's operations in an
- 616 operating statement format including documentation of the key assumptions
- 617 underlying the projections and the support for those assumptions.

618 The City shall review the Contractor's proposal for the change in scope of services. The City
619 may negotiate with the Contractor to amend the Agreement to reflect the change in scope or
620 the City may choose not to negotiate with the Contractor.

621 If the City chooses to negotiate with the Contractor and the Contractor and City cannot agree
622 on terms and conditions of such services within one hundred twenty (120) calendar days from
623 the date when City first requests a proposal from Contractor to perform such services,
624 Contractor acknowledges and agrees that the City Council may authorize other Persons besides
625 Contractor to provide additional services not otherwise contemplated by this Agreement.

626 **2.10.3 Implementation of New Services**

627 The Contractor's implementation of the new services, modification to existing service, or
628 change in the Designated Disposal Site shall occur in a timely, smooth, and seamless manner
629 such that Facility Users do not experience disruption in Facility Operations. Contractor shall be
630 responsible for managing the implementation of new or modified Facility Operations or change
631 in the Designated Disposal Site and other related services and shall do so in accordance with an
632 implementation plan that has been approved by the City.

633 **2.11 Services and Performance Review**

634 Each year during the Term of this Agreement, City may conduct a performance review. The purpose of
635 the Services and Performance Review is to provide for a discussion and review of opportunities to
636 achieve an ever-improving Recycling system; and, to ensure services are being provided by Contractor
637 with adequate quality, effectiveness, economy, and in full compliance with the terms of this Agreement.
638 Topics for discussion and review at the Services and Performance Review may include, but are not
639 limited to:

- 640 a) Services provided,
- 641 b) Feasibility of providing new services,
- 642 c) Application of new technologies,
- 643 d) Customer complaints,

- 644 e) Amendments to this Agreement,
645 f) Developments in the law and regulatory constraints, and
646 g) Contractor's compliance with terms and conditions of the Agreement.

647 City and Contractor may each select additional topics for discussion at any Services and Performance
648 Review.

649 Thirty (30) days after the end of each year of service, Contractor shall submit a report to City which may
650 contain additional information it wishes to have considered.

651 As a result of its findings following any Services and Performance Review, City may request Contractor
652 to provide expanded or new services within a reasonable time and City may direct or take corrective
653 actions for any performance inadequacies. Should City require expanded or new services as a remedy
654 for Contractor's failure to perform its obligations hereunder, no additional compensation shall be due
655 for such services. Otherwise, any new or expanded services required of Contractor shall be subject to
656 the provisions of Section 2.10.

357 2.12 Voluntary Use of Designated Disposal Site(s)

358 The Contractor, without constraint and as a free-market business decision in accepting this Agreement,
359 agrees to use the Designated Disposal Site(s), specified in Exhibit 20, selected by the City for the
360 purposes of disposing of Mixed Municipal Waste and Residue from the Facility Operation in the
361 amounts required by the existing agreement(s) between the City and the operator(s) of the Designated
362 Disposal Site(s), or an alternative Disposal Facility proposed by the Contractor subject to City approval.
363 Such decision by Contractor in no way constitutes a restraint of trade notwithstanding any Change in
364 Law regarding flow control limitations or any definition thereof. If Contractor's Disposal needs exceed
365 the obligation to Deliver Solid Waste to the Designated Disposal Site(s) or the availability of capacity at
366 the Designated Disposal Site(s), Contractor shall use another Disposal Site, selected by Contractor and
367 approved by the City.

68 ARTICLE 3 69 FEES AND PAYMENTS DUE TO CITY

70 3.1 General

71 In addition to any other consideration set forth herein, as part of its consideration for entering into this
72 Agreement, and for the right and privilege to provide Permitted Materials handling services and Facility
73 Operations as specified herein, Contractor shall provide the City fees and payments described in this
74 Article. The fees and payments described in this Article 3, which are due to City by Contractor, were not
75 imposed on the Contractor, but were freely negotiated terms voluntarily entered into by the Parties.

676 **3.2 One-Time, Lump-Sum Fees**

677 **3.2.1 Signing/Administrative Fee**

678 Contractor shall pay to City a Signing/Administrative Fee in a one-time lump sum payment of
679 _____thousand dollars (\$____,000) within seven (7) days of the Effective Date
680 of this Agreement to reimburse the City for costs it incurred in connection with entering this
681 Agreement.

682 **3.2.2 Rolling Stock Purchase Payment**

683 Contractor shall pay to City _____thousand dollars (\$____,000) on the
684 Commencement Date of this Agreement to reimburse the City for acquisition of the rolling
685 stock listed in Exhibit 13.

686 **3.3 AB 939 Fee**

687 Annually, on the first day of the Contract Year, Contractor shall pay the City an AB 939 Fee equal to the
688 prior Contract Year's AB 939 Fee adjusted by one hundred (100%) of the annual percentage change in
689 the CPI-U, as a pass-through expense and as determined in accordance with Exhibit 2. The AB 939 fee is
690 initially set at \$0.00. The City reserves the sole right to change the AB 939 Fee, and should it exercise
691 that right, Contractor shall pay it as above.

692 **3.4 Reserved**

693 **3.5 Host Fees**

694 Throughout the Term of this Agreement, Contractor shall pay to City a host fee for each Ton of material
695 received at the Facility from non-City customers to address increased wear and tear on the Facility and
696 City streets and additional Facility management and oversight.

697 The host fee shall be a per-Ton payment paid by Contractor for each Ton of Permitted Material
698 accepted at the Facility from non-City customers. For Contract Year One, the host fee shall be
699 _____dollars (\$____) per Ton and shall be due on a monthly basis fifteen (15) days after the close
700 of the month. Annually thereafter, the host fee shall be equal to the prior Contract Year's host fee
701 adjusted by one hundred percent (100%) of the annual percentage change in the CPI-U as determined in
702 accordance with Exhibit 2.

703 The host fee payment shall be accompanied by a detailed listing of the Tons received on a daily basis
704 and shall list the type and Tonnage of Permitted Material accepted separately for materials Delivered.

705 **3.6 Recovered Material Revenue Sharing**

706 Contractor shall pay City fifty percent (50%) of all gross revenues earned from the sale of all Recovered
707 Materials including Recovered Materials from materials Delivered by all Facility Users to the Facility
708 (including Recovered Materials from the drop-off/buy-back center) and shall guarantee that the City's

709 annual revenue share payment shall be equal to or greater than six hundred thousand dollars
710 (\$600,000), adjusted annually by one hundred (100%) of the annual percentage change in the CPI-U as
711 determined in accordance with Exhibit 2.

712 Payment shall be fifteen (15) days after the end of each month. Contractor shall report Tonnage and
713 pricing by type of material in accordance with Article 14.

714 **3.7 Reserved**

715 **3.8 Late Fees**

716 Unless late payment policies have been otherwise addressed, if the fees are not paid by their due date,
717 Contractor shall pay in addition to the amount owed to City a late payment penalty in an amount equal
718 to two percent (2%) of the amount owing for that quarter. Contractor shall pay an additional two
719 percent (2%) owing on any unpaid balance for each following thirty (30) calendar day period the fee
720 remains unpaid. Late payment penalty amounts shall not be reimbursed to Contractor. The late
721 payment penalty amounts are not intended as interest on debt, but rather are intended as a
722 predetermined penalty for failure to meet an obligation under this Agreement. City may withhold late
723 fees from Gate Rates due to Contractor.

724 **ARTICLE 4**
725 **GENERAL FACILITY OPERATIONS**

726 **4.1 General**

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

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

738 Contractor will fulfill all requirements relating to Facility Operation in accordance with accepted practice
739 for comparable facilities, sound management and operations practice, the Operations and Maintenance
740 Manual, Permits, Applicable Law, the provisions hereof, and covenants, conditions and restrictions
741 pertaining to the Facility. The Contractor shall not use or permit the use of the Facility for any purpose
742 other than those contemplated by this Agreement, including waste management activities unrelated to
743 Contractor's obligations to the City and Customers under this Agreement. Contractor shall not accept,

744 transfer, Recover or Process any materials other than Permitted Material and Recovered Materials
745 approved by the City.

746 4.2 Operations and Maintenance Manual

747 Contractor has established an Operations and Maintenance Manual to guide Contractor in the
748 operation and maintenance of the Facility. This manual is included in the Agreement as Exhibit 4.
749 Contractor shall adhere to operations and maintenance plans in the manual, as it is now written and as
750 it may be amended over the Term of this Agreement. Contractor shall at all times maintain, including
751 performing such preventative maintenance as is necessary to ensure at the end of the Term that all
752 Facility equipment is operating at least as effectively as on the Commencement Date or on a later date
753 of installment.

754 On or before January 1 of each year, Contractor shall review the Operations and Maintenance Manual,
755 prepare a revised manual reflecting any changes in Facility Operation procedures during the previous
756 year. Contractor shall provide the City an electronic copy of the manual with changes highlighted. If
757 Contractor fails to update the Operations and Maintenance Manual by _____, 2014, the City may
758 assess liquidated damages specified in Section 16.8 and Exhibit 18.

759 The City has the right, but not the obligation, to review and comment on the changes presented in the
760 Operations and Maintenance Manual. Notwithstanding any such annual review and comment by the
761 City, the operation and maintenance of the Facility shall remain the responsibility of Contractor.
762 Neither the annual review nor comment upon, nor the failure of the City to comment upon, the
763 Operations and Maintenance Manual shall: (1) relieve Contractor of any of its obligations and
764 responsibilities hereunder or impose any liability upon the City, nor (2) be deemed to be a
765 representation by the City that Contractor's Facility Operation in accordance with the Operations and
766 Maintenance Manuals signifies that the Contractor has complied with all its obligations with respect to
767 Facility Operations or with Applicable Law.

768 4.3 Receiving and Operating Hours

769 Contractor shall operate and maintain the Facility at times in accordance with Permits, except for
770 January 1, Thanksgiving Day, and December 25. Contractor shall receive Permitted Materials from
771 Customers as follows: (i) Transfer Station receiving hours shall be 5:30 a.m. to 5:00 p.m. Monday
772 through Saturday, and (ii) the buy-back/drop off center and Household Hazardous Waste and E-Scrap
773 area receiving hours shall be 7:00 a.m. to 4:00 p.m. Monday through Saturday. With approval of the
774 City, Contractor may extend operating hours either on a temporary or permanent basis. Contractor may
775 apply a surcharge for extended hours requested by the City.

776 If Contractor cannot accept Permitted Material or operate the Facility for any reason, it shall give the
777 City immediate telephonic notice followed by written Notice, including the nature and expected
778 duration of the shutdown and its impact on Contractor's ability to fulfill its obligations under this
779 Agreement, provided such Notice shall not relieve the Contractor of its obligations under this
780 Agreement, including payment of any damages.

4.4 Weighing

4.4.1 Installation, Operation and Maintenance.

The Contractor shall maintain State certified motor vehicle scales in accordance with Applicable Law and operate the scales in a manner that allows for City or City Hauler vehicles with tare weights to bypass the weighing operation when exiting the Facility after unloading Permitted Materials. All scales shall be linked to the Contractor's centralized computer recording and Billing system for all incoming and outgoing materials. Contractor will follow procedures and collect, at a minimum, the information described in Section 14.3.2 regarding scale house procedures and waste receipts.

Contractor's licensed weigh master shall weigh at the scale house all materials entering and exiting the Facility, in compliance with Applicable Law to determine Diversion. The City and its representatives shall have access to the scale house during operating hours and may observe weighing operations.

Contractor shall provide back-up generator(s) capable of supplying power to the scales in the event of a power outage.

City reserves the right, per Section 2.10 of this Agreement, to assume any or all responsibilities associated with weighing, installation, operation and maintenance of the scales and scale house at any time during the Term, including any extensions thereof.

4.4.2 Vehicle Tare Weights

Contractor shall within ten (10) days of the Commencement Date weigh City or City Haulers delivery vehicles to determine unloaded weight ("tare") weight of each vehicle. Contractor shall record tare weight, contractor name, and vehicle identification number for each such vehicle and within ten (10) Working Days of weighing Contractor shall provide the appropriate City and the City Hauler with a report listing vehicle tare weight information. When additional or replacement vehicles are placed into service by City or City Hauler, the Contractor shall promptly weigh such additional and replacement vehicles and provide the tare weight(s) to City and City Hauler. Contractor shall have the right to request re-taring of vehicles as reasonably required to ensure accuracy but not more than two (2) times per year.

4.4.3 Substitute Scales

To the extent practicable, if any scale is inoperable, being tested or otherwise unavailable, vehicles shall be weighed on the remaining operating scales. To the extent that all the scales are inoperable, being tested, or otherwise unavailable, the Contractor shall substitute portable scales until the permanent scales are replaced or repaired. Contractor shall arrange for any inoperable scale to be repaired as soon as possible, and in any event, within seventy-two (72) hours (excluding Holidays) of the failure of the permanent scale. Contractor shall arrange to immediately obtain a temporary substitute scale(s) should the repair of the permanent scale require more than seventy-two (72) hours.

818 **4.4.4 Estimates**

819 Pending substitution of portable scales, the Contractor shall estimate the quantity of Permitted
820 Material being Delivered to the Facility and Mixed Municipal Waste and Residue being
821 transported from the Facility, on the basis of delivery truck and transfer trailer volumes, tare
822 weight, landfill and/or processing and composting facility weight records, and data obtained
823 through historical information. These estimates shall take the place of actual weighing and shall
824 be the basis for records while scales are inoperable.

825 **4.4.5 Scale Testing**

826 The Contractor shall arrange for the County of Ventura's Weights and Measures Program to test
827 and calibrate all scales in accordance with Applicable Law, but at least three times annually
828 (every six (6) months and once on a randomly selected day). Prior to any test, Contractor shall
829 provide at least five (5) days' Notice thereof to the City, unless such test is conducted by the
830 State or other regulatory entity without advance notice to Contractor. Contractor shall provide
831 the City with copies of test results. Contractor may use a third party for scale testing, with prior
832 written City approval.

833 If the testing schedule is performed in accordance with this subsection and the test results
834 indicate scale inaccuracies, no adjustment of Gate Rates calculated, charged and paid, as the
835 case may be, shall be made retroactively. However, if the scale testing schedule described in
836 this subsection is not maintained and scale test results indicate that the scale or scales did not
837 comply with Applicable Law, then all weight measurements recorded and Gate Rates calculated,
838 charged and paid, as the case may be, from the date of such test, shall be adjusted by
839 Contractor and corrected consistent with the results of such test. The Contractor shall further
840 test and calibrate any or all scales upon written request therefore by the City, within three (3)
841 days of such request.

842 Commercial collection vehicles and transfer trucks shall be assigned a number for weighing
843 purposes. Tare weights shall be checked at least annually or promptly upon City request.

344 **4.5 Facility Users & Contractor's Facility Throughput Guarantee**

345 **4.5.1 City Commitment to Deliver Permitted Materials**

346 City agrees to arrange for City Hauler to Deliver to the Facility the Mixed Municipal Waste and
347 Commingled Recyclable Materials it collects from residents and businesses in the City with the
348 exception of Permitted Materials which the City Hauler collects and directly hauls from
349 Customers' Premises to a Disposal Site or Processing site using City Hauler owned and operated
350 vehicles. At the time of the Effective Date of the Agreement, the City Hauler will direct haul the
351 following:

- 352 a) Mixed Municipal Waste it collects from New-Indy Oxnard LLC (formerly International
353 Paper Company) and hauls in large-capacity vehicles (capable of carrying fifteen (15) or
354 more Tons per load) to a Disposal Site;

- 855 b) Sludge, grit, and screenings it collects from the City's wastewater treatment plant and
856 hauls directly to a Disposal Site; and,
- 857 c) Construction and demolition debris it collects from Customers and hauls directly to a
858 Processing site.

859 Yard Trimmings collected by City Hauler may be Delivered to Facility for pre-processing and
860 transport to a Designated Processing Site. Yard Trimmings collected by City Hauler are not
861 subject to City commitment of Delivery, and City reserves right to haul those materials directly
862 to a Processing site upon thirty (30) days written notice.

863 **4.5.2 Port Hueneme Delivery of Permitted Materials**

864 The City has an agreement with Port Hueneme, in which the City agrees to accept up to twenty-
865 four thousand (24,000) Tons of Permitted Materials annually (July 1 through June 30) from the
866 Port Hueneme Hauler. As of the Effective Date, Port Hueneme owns and operates collection
867 vehicles that collect Mixed Municipal Waste and Commingled Recyclable Materials from the
868 residents and businesses of Port Hueneme and delivers such materials to the Facility. The
869 conditions of the agreement between the City and Port Hueneme obligate Port Hueneme to
870 deliver Mixed Municipal Waste and Recyclables collected in Port Hueneme owned and operated
871 collection vehicles unless the City or Port Hueneme cancels the automatic extension provision
872 of its agreement. As part of Contractor's obligations herein, Contractor shall fulfill City's
873 obligations under the Agreement between the City and Port Hueneme with regard to
874 acceptance, transfer, Recovery, Processing, and Disposal of Permitted Materials.

375 **4.5.3 Other Users Delivery of Permitted Materials**

376 The City does not have any control over the Other Users with regard to the volume, Tonnage,
377 and/or number of vehicles that will Deliver Permitted Materials to the Facility. Contractor and
378 City shall have the right to enter into agreements with Other Users for acceptance of Permitted
379 Materials at the Facility to the extent Facility throughput capacity is available, in the following
380 order of priority: (1) City Hauler, (2) City Self-Haulers, (3) Port Hueneme, (4) Other Users. Prior
381 to the effectiveness of an agreement with Other User(s), Contractor shall request written
382 approval from the City. City or Contractor may enter into agreements with Other Users subject
383 to the terms specified below:

- 384 a) Duration of Agreement. The duration of any agreement between Contractor and Other
385 User shall not extend beyond the Term of this Agreement.
- 386 b) Facility Throughput Commitment. Contractor may not commit to accepting Permitted
387 Materials Delivered by the Other Users if such commitment impairs or is likely to impair
388 the Contractor's ability to meet its Facility Throughput Guarantee for City and Port
389 Hueneme Permitted Materials pursuant to Section 4.5.4. If Contractor is unable to meet
390 its Facility Throughput Guarantee in accordance with Section 4.5.4 for two (2) or more
391 days in a month, the Contractor's agreement with the Other User(s) shall be terminated
392 or the Contractor's Facility throughput commitment to the Other User(s) shall be
393 reduced.

- 894 c) Gate Rates. Contractor may charge Other Users Gate Rates for Permitted Materials
895 provided that Contractor treats the City Hauler and City Self Haulers as Most Favored
896 Customers in accordance with Section 13.5 and provided that Gate Rates for City Self
897 Haulers do not exceed the maximum Gate Rates established in accordance with Article
898 13.
- 899 d) City Fees. Contractor shall pay applicable City fees on all Tonnage received from Other
900 Users in accordance with Article 3.
- 901 e) City Right to Review. Upon City request, Contractor shall provide copies of its
902 agreements with Other Users and City shall have the right to verify through an audit
903 that Contractor has complied with the Most Favored Customer provision of Section
904 13.5; has charged Self-Haulers Delivering Permitted Materials generated in the City no
905 more than maximum Gate Rates established in accordance with Article 13; and has paid
906 all City fees due to City in accordance with Article 3. In conducting such an audit, City
907 may request and Contractor shall provide such data as City determines is reasonably
908 necessary to evaluate compliance.

909 **4.5.4 Contractor's Facility Throughput Guarantee**

910 Contractor's "Facility Throughput Guarantee" shall be Contractor's guarantee to accept for
911 transfer, Recovery, and Processing(as applicable): (i) all Mixed Municipal Waste, Commingled
912 Recyclable Materials, and Source Separated Recyclable Materials Delivered by the City Hauler,
913 (ii) all Permitted Materials Delivered by City Self-Haulers including materials Delivered to the
914 transfer station, buy-back/drop-off center, and the Recyclable Household Hazardous Waste and
915 E-Scrap collection area, and (iii) all Permitted Materials as required by the City's agreement with
916 Port Hueneme. Contractor's Facility Throughput Guarantee shall include the Processing of all
917 Commingled Recyclable Materials and Source Separated Recyclable Materials.

918 If Contractor does not fulfill the Facility Throughput Guarantee as evidenced by its refusal to
919 receive acceptable Permitted Materials, City may assess liquidated damages for each Ton of
920 Permitted Material that Contractor was not able to accept on a particular day in accordance
921 with Section 16.8.

922 Contractor's Facility Throughput Guarantee extends to all Facility Users except Other Users.

923 **4.6 Inspections/Load Check Program**

924 Contractor shall inspect loads for Unpermitted Waste in accordance with Sections 5.3 and 6.3. Section
925 6.3 includes additional inspection procedures required to be completed by Contractor.

926 Contractor shall upgrade the current system that monitors all Permitted Materials for the presence of
927 radioactive material, ensuring capability to accurately read the specific type of material. Contractor shall
928 continue to upgrade the system as necessary to ensure that it is at all times meeting industry standards
929 for detecting and identifying radioactive materials. Upon identification of such material, Contractor
930 shall prohibit the Delivery of such material.

931 **4.7 Right to Enter and Inspect Facility**

932 City shall have the right, but not the obligation, to observe and inspect Facility Operations including, but
933 not limited to scale house, grounds, offices, maintenance shop, tipping floor, Recovery and Processing
934 areas, materials storage areas, buy-back center, and Recyclable Household Hazardous Waste and E-
935 Scrap collection area. In connection therewith, City and its representatives authorized by the City
936 Manager, or his or her designee, shall have the right to enter the Facility at any time and speak to any of
937 Contractor's employees. Such representatives shall have access to the Facility at all times, provided
938 that they shall comply with the Contractor's reasonable safety and security rules and shall not interfere
939 with the work of the Contractor or its subcontractors. Upon City request, Contractor shall make
940 specified personnel available to accompany City employees on inspections. Contractor shall ensure that
941 its employees cooperate with the City and respond to the City's inquiries. Upon City request,
942 Contractor shall make operational and business records available to the City during Facility receiving
943 hours (specified in Section 4.3) and shall provide City copies of records at City's request.

944 **4.8 Security**

945 During the Term of this Agreement, the Contractor shall maintain security at the Facility using methods
946 and procedures that are consistent with Applicable Law; Facility permits, licenses, and approvals;
947 industry standards; and conditions of this Agreement. A comprehensive security plan for the security
948 system is included in the Operations and Maintenance Manual (Exhibit 4). Examples of security
949 measures to be performed by Contractor are listed below, however, this list is not intended to be
950 comprehensive:

- 951 a) Contractor will implement a sign-in procedure for all visitors.
- 952 b) Contractor will provide professional security guard patrols at the Facility staffed twenty-four
953 (24) hours per day, seven days per week.
- 954 c) Contractor shall install a completely new security system meeting the minimum industry
955 standards. Such improvements shall be completed within the first three (3) months of the
956 Commencement Date. If Contractor fails to complete all of the improvements to the
957 security system within the time frame specified here, City may assess liquidated damages
958 specified in Section 16.8 and Exhibit 18.
- 959 d) Upon request, the City shall have twenty-four (24) hour per day access to the security
960 video/camera surveillance system including the rolling 10-days of video.

361 **4.9 Diversion Guarantee**

362 **4.9.1 Description of Guarantee**

363 Contractor "Diversion Guarantee" shall be Contractor's guarantee to conduct Facility
364 Operations including its Recovery and Processing activities in such a manner that Contractor
365 Diverts Recovered Materials in amounts to achieve the Diversion Rates by material type
366 described in Exhibit 3. The Diversion Rates shall be calculated on a monthly basis and shall
367 equal the total Tonnage of Recovered Materials divided by the total Tonnage of Permitted
368 Materials accepted at the Facility as described in Exhibit 3.

4.9.2 Measurement of Contractor's Compliance

The Parties agree to measure Contractor's compliance with the Diversion Guarantee based on the overall performance of the Facility. Contractor's compliance shall be calculated on a monthly basis using a rolling average for a twelve- (12-) month period.

If the actual Diversion Rate is less than the Diversion Guarantee, the City may assess liquidated damages in accordance with Section 16.8 provided that the City shall not have the right to assess liquidated damages for Contractor's failure to meet the Diversion Guarantee in the first six months following the Commencement Date.

4.10 Facility Ownership and Contractor Operating Responsibilities

City owns the Facility including all structures, equipment, and other features with the exception of (i) the Recovery and Processing equipment and rolling stock, listed in Exhibit 13, which the Contractor purchased on the Commencement Date; (ii) new Recovery and Processing equipment in accordance with Section 4.19.3; and (iii) any additional equipment and/or rolling stock acquired by Contractor to meet its obligations under this Agreement. Contractor shall maintain the aesthetic appearance of the Facility in a clean and neat manner.

Contractor shall pay City an annual operator payment pursuant to Section 3.4 for its right to use the Facility.

Contractor shall maintain the Facility in good working order and repair, including landscape, building and equipment maintenance and repair, cleaning and painting the Facility, street sweeping, and generally performing periodic maintenance in accordance with the Operations and Maintenance Manual. Contractor shall schedule repair and maintenance activities at times other than the Facility Receiving Hours specified above in such a manner that Contractor can fulfill its Performance Guaranties and in no event shall repair and maintenance excuse Contractor Defaults described in Section 16.1. Examples of required repairs include, but are not limited to, those listed in Exhibit .

Any repairs, replacements, and purchases by Contractor must be performed in accordance with Applicable Law including Applicable Laws relating to public bidding and payment of prevailing wages.

4.11 Safety

4.11.1 General

Contractor acknowledges that safety and fire prevention is of critical importance to the City, and shall conduct Facility Operations in a safe manner, in accordance with Applicable Law and standard practices in the waste management/materials recovery industry.

4.11.2 Employee Health and Safety Plan Handbook

Contractor shall meet all federal and state requirements regarding employee health and safety.

004 **4.11.3 Fire Control/Handling Plan**

005 At a minimum, Contractor shall meet all federal, state, and City permitting requirements
006 regarding fire prevention and general fire procedures and drills.

007 **4.11.4 General Emergency Conditions and Response Plan**

008 Contractor shall prepare an emergency response plan to be followed in the event of an
009 emergency, such as a spill, injury, earthquake, or issues with known or unknown types of
010 Unpermitted Waste. The plan shall meet all federal, State and City requirements and be made
011 available for review by such agencies upon request.

012 At the request of the City, Contractor shall provide emergency services to the extent it is
013 capable of providing such services in the event of major accidents, disruptions, or natural
014 calamities. Contractor shall provide emergency services in accordance with this Section 4.11.4
015 within twenty-four (24) hours of notification by the City or as soon thereafter as is reasonably
016 practical in light of the circumstances. Emergency services that exceed the Contractor's
017 obligations under this Agreement shall be compensated through Extraordinary Review in
018 accordance with Section 13.4.

019 **4.12 Nuisances**

020 **4.12.1 Litter and Vectors**

021 Contractor shall maintain the Facility in a neat and orderly condition, unfavorable to rodents,
022 insects, and birds, including cleanup of litter and debris on site and along roads near the Facility,
023 at a minimum, daily, or as frequently as necessary to comply with this Section. Contractor shall
024 provide a program for daily litter removal and street sweeping, which shall conform to the
025 requirements of Special Use Permit No. 1516, for the Facility that specifies litter pick-up and
026 street sweeping along Sturgis Road between Rice Avenue and Del Norte Boulevard, East Fifth
027 Street between Rice Avenue and Del Norte Boulevard, and Del Norte Boulevard between East
028 Fifth Street and U.S. Highway 101. If Contractor fails to meet the litter pick-up and street
029 sweeping requirements of this Section or of the Special Use Permit, City may assess liquidated
030 damages in accordance with Section 16.8.

031 Contractor will develop and implement a rodent and insect management program, including
032 contracting with a professional pest control vendor to inspect the Facility on a periodic basis. In
033 the event of apparent vector activity, Contractor shall implement vector control measures
034 sufficient to remedy the vector nuisance.

035 **4.12.2 Odor**

036 Contractor shall diligently manage operations to minimize odors in conformance with applicable
037 laws. In the event of odor complaint(s), Contractor shall meet with the City, within twenty-four
038 (24) hours of City request, to discuss the nature of complaint(s) and Contractor's plans for
039 responding to the complaint(s) and minimizing future odor concerns. At the City's request,

Contractor shall prepare a plan for managing odors for review and approval by the City and shall implement the odor management plan upon City's approval.

4.12.3 Noise

Contractor shall meet all federal, state and county regulations regarding noise, including the California Occupational Safety and Health Act.

4.12.4 Dust

Contractor shall diligently suppress dust as required by Applicable Law to protect the health and safety of Facility Users and Contractor's employees.

4.13 Determination and Management of Facility Users

Contractor shall require Facility Users to identify themselves by means mutually acceptable to the Parties. Contractor shall have sole responsibility for determining if any Person attempting a Delivery to the Facility is a Facility User.

4.14 Utility Costs

Contractor shall be responsible for all Facility-related utility costs including, but not limited to costs and fees for water, wastewater, sewerage, natural gas, electricity, internet, cable television, and Disposal of Solid Waste generated by Facility Operations. The City's or other party's occupancy of office space does not alter Contractor's utility payment responsibility.

4.15 Contractor Management

Contractor will provide City Notice at least thirty (30) days after a change in management personnel responsible for ensuring complete and timely performance of Agreement services (such as a change in the Facility manager, operations/safety manager, or Contractor's regional manager). The Notice shall identify the name of the new manager, effective date of the assignment, telephone and e-mail contact information for such person, title, description of responsibilities, and the individual's professional qualifications.

Contractor shall provide City with a twenty-four (24) hour emergency number to the Contractor's manager of this Agreement and such number shall connect the City to the Person, not to a voicemail system.

4.16 City Use of Facility Space

4.16.1 Office Space

The City's Environmental Resources Division and/or City employees from other City departments shall occupy the office space on the first floor of the Facility, which is

approximately 4,725 square feet. Contractor shall be responsible for maintenance and repair of the office area occupied by the City, and the office areas occupied on the 2nd floor by the Contractor as well as HVAC and other equipment serving both office areas. In the event of a critical repair requirement, including but not limited to inadequate heating and cooling, Contractor shall promptly correct the deficiency. If such repairs are not completed within seventy-two (72) hours Contractor shall be assessed liquidated damages as provided in Section 16.8. In addition Contractor will be responsible for the cost of providing temporary office space for City employees including all moving and setup in the temporary space and cost of moving back to the Facility upon completion of repairs. Every five (5) years during the Term, the Contractor shall paint the walls and provide new flooring for the office space occupied by the City subject to City's approval of the paint and flooring.

Contractor shall be responsible for daily cleaning of the office space occupied by the City.

4.16.2 Facilities for City Drivers

Contractor shall provide adequate restroom and locker facilities for City vehicle operators. Contractor shall be responsible for cleaning, maintaining, and repairing such facilities.

4.16.3 Other

- i)  dedicated parking spaces for City employees,
- ii) Parking for approximately 50 City collection vehicles
- iii) The feasibility of modifying the office area to provide separate access to City office space, with the goal of providing security at the entrances and exits connecting floors.

4.17 Customer and Visitor Education

4.17.1 Visitor Education Center

Contractor shall provide and operate a Visitor Education Center. Within three (3) months of the Commencement Date, Contractor shall upgrade the equipment in the Visitor Education Center to include, at a minimum: laptop computer, and an audio or visual system which would enable persons within the Education-Visitor's Center to view or communicate with persons in other areas of the facility for educational purposes acceptable to the City. Such equipment is to be replaced every five (5) years with "current" technology for that time. The City shall have access to the Visitor Education Center at all times for use by the City.

4.17.2 Facility Tours

Upon request of the City or any Facility User and reasonable notice (three business days, if possible), Contractor shall deliver visitor presentations on source reduction, recycling and Mixed Municipal Waste management and provide tours of the Facility. Upon request of the City

no less than one day in advance, Contractor shall permit the City to conduct presentations and tours of the Facility.

4.17.3 Public Education Efforts and Materials

Contractor acknowledges and agrees that education and public awareness are critical, key and essential elements of any efforts to achieve the requirements of AB 341 and AB 939. Accordingly, Contractor agrees to take direction from City to explore opportunities to expand public and Customer knowledge concerning needs and methods to reduce, reuse and Recycle Mixed Municipal Waste and to cooperate fully with City in this regard.

Contractor shall notify through its Customer Billing and through contact with Customers at the Facility, of Facility Gate Rates, methods of limiting contamination in loads, and other Facility procedures. City may instruct Contractor to place notices in all mailings and to pass out notices to Customers at the scale house, drop-off center and/or Visitor Education Center. All public education materials shall be printed in English and Spanish.

City may provide Contractor with notices to reproduce and include in any Billing, at no additional cost, one 8.5" x 11" sheet. City may request Contractor to perform mailing services and if so able, provide not less than thirty (30) days Notice to Contractor prior to the mailing date of any proposed mailing to permit Contractor to make appropriate arrangements for inclusion of City's materials in its Billings. City will provide Contractor the mailers at least fifteen (15) days prior to the mailing date.

In order to promote public education, in addition to any other materials it develops, Contractor shall create public education materials and programs at its expense, which will be provided to visitors to the Facility's Visitor Education Center. All of these materials and programs shall be produced and/or available in English and Spanish languages, including pictures wherever applicable. All brochures, mailings, and other educational materials are to be approved by City in advance of distribution.

Contractor shall provide, at a minimum, one public education employee and shall work with the City to develop a public education plan. The public education plan shall be completed and submitted to City for approval within ninety (90) days of the execution of this Agreement.

4.18 Waste Generation/Characterization Studies

4.18.1 Initial Study

Prior to the Commencement Date, City shall cause the completion of a waste characterization study at Contractor's expense. Specifications for such study are detailed in Exhibit ____.

4.18.2 Annual Studies

Contractor acknowledges that City must perform generation and characterization studies of Permitted Materials periodically to comply with the requirements of AB 341 and AB 939. Contractor agrees to participate and cooperate with City and its agents and to accomplish

studies and data collection and prepare reports, as needed and directed by City, to determine weights and volumes of Permitted Materials Collected and characterize Permitted Materials generated, disposed, transformed, Diverted or otherwise handled/processed, by Customer and waste stream type. City has the right to request that Contractor will, at its sole expense, conduct characterization studies once per year for five (5) consecutive days and shall perform characterization study of Permitted Materials and target loads selected by the City by sorting and weighing of agreed-upon material categories. Contractor shall provide City with results of waste volumes, weights, and characterization studies within fourteen (14) days of completing such study. If City requests additional characterization studies in a particular year or for the annual characterization study to be performed for more than five (5) consecutive days, the City shall pay for costs incurred by Contractor in excess of its regular operating costs. If Contractor chooses to perform additional characterization studies, Contractor shall pay for costs incurred by Contractor in excess of its regular operating costs

4.18.3 Methodology

The City and Contractor shall agree on the method of the waste characterization studies and the information to be reported by Contractor at the conclusion of the studies.

4.19 Equipment

4.19.1 General

Contractor shall provide all equipment (including Recovery and Processing equipment and Facility rolling stock), sufficient in number and capacity to perform safely and efficiently the work required by this Agreement. All equipment shall comply with all Applicable Laws.

Contractor shall maintain the Recovery and Processing equipment and Facility rolling stock in good working order and repair. Contractor shall maintain a spare parts inventory and perform periodic maintenance in accordance with the Operations and Maintenance Manual. Contractor shall schedule repair and maintenance activities at times other than the Facility Receiving Hours specified above in such a manner that Contractor can fulfill its Performance Guaranties and in no event shall repair and maintenance excuse Contractor Defaults described in Section 16.1. Examples of required repairs include, but are not limited to, those listed in Exhibit **1**. Any repairs, replacements, and purchases by Contractor must be performed in accordance with Applicable Law including Applicable Laws for public bidding and prevailing wage of Labor Code Section 1771.

4.19.2 Equipment Down-Time Contingency Plan

In anticipation of planned equipment down-time and emergency operation during equipment failure and/or power outages, Contractor shall maintain back-up equipment on-site in order to assure on-going operations, together with a standby generator to power the operation of all scales.

176 **4.19.2 Rolling Stock Purchase from City by Contractor**

177 As of the Commencement Date, Contractor shall own the rolling stock listed in Exhibit 13
178 subject to Contractor's payment for such equipment pursuant to Section 3.2.

179 **4.19.3 New and Upgraded Recovery and Processing Equipment**

180 Based on its Proposal, and as approved by the City, Contractor shall modify existing Recovery
181 and Processing equipment and/or install new Recovery and Processing equipment to improve
182 the Recyclable Materials Recovery and Processing system capabilities, efficiencies, and
183 Recovery potential. Contractor shall be responsible for the design, permitting, procurement,
184 construction (if any), equipment installation, and performance testing of the Recovery and
185 Processing equipment in accordance with Exhibit 15 subject to the City's review and approval of
186 the final Recovery and Processing system design and equipment specifications and selected
187 equipment supplier. Contractor is solely responsible for the adequacy, safety, and suitability of
188 the Recovery and Processing system and its ability to meet the Contractor's obligations under
189 this Agreement. Contractor's Recovery and Processing equipment improvements shall be
190 performed in accordance with Applicable Law and Contractor shall use Standard Industry
191 Practices. All equipment furnished by Contractor shall be new and unused as of its installation
192 date, and suitable in design and construction for arduous, heavy-duty service in a MRF
193 operation.

194 The City-approved plan for the new Recovery and Processing system, which is provided in
195 Exhibit 15, identifies major milestone events throughout the process which are planned to
196 result in the new system being fully operational by _____, 2014. If Contractor fails to meet
197 the completion date of one or more of the major milestone events, City may assess liquidated
198 damages in accordance with Section 16.8.

199 Any new equipment shall be used at the Facility for a minimum of ten (10) years commencing
200 on the Commencement Date of this Agreement; and, shall be fully depreciated over a ten-year
201 (10-year) period.

202 **4.19.4 Facility Rolling Stock**

203 Contractor shall be solely responsible for acquiring, operating, and maintaining all rolling stock
204 in sufficient number and type to meet the needs of the Facility Operations. Rolling stock shall
205 include, but not be limited to, loaders, forklifts, sweeper, and roll-off trucks.

206 Any other vehicles that travel off the Facility property shall be kept clean, shall be thoroughly
207 washed on the exterior at least once every week or more often as needed for appearance and
208 shall be thoroughly cleaned with pressurized hot water at least once every six months. They
209 shall be repainted and/or refurbished so that they present a reasonably acceptable appearance
210 to the City. The Contractor's name and truck identification number shall be clearly marked on
211 all vehicles that travel off the Facility property.

212 As needed, Contractor may park, fuel, maintain and repair vehicles in the parking area on site;
213 provided Contractor shall ensure that such vehicles do not interfere with or pose any hazard to
214 Facility Users' vehicles delivering Permitted Material to the Facility.

Contractor shall collect and Dispose of all debris generated for repair, maintenance, and washing vehicles. Contractor shall use its own catch basin to safely and responsibly dispose of all liquid waste from vehicle washing.

4.19.5 Change in Equipment Needs

The Contractor recognizes that volume (Tonnage) of Permitted Materials to be accepted, Recovered, Processed, and transferred may increase or decrease over time and that the number and type of equipment (including materials handling equipment, Recovery and Processing equipment, and rolling stock) may be increased or decreased if and when it does. Contractor will make adjustments to its equipment inventory as needed including acquiring and operating additional rolling stock and/or other equipment as needed to meet performance standards required by this Agreement, and there shall be no adjustment in the Contractor's compensation provided in Article 13 as a result of changes in the equipment needs related to the increases or decreases in the volume of Permitted Materials to be handled.

4.19.6 Equipment Lease Approval

If Contractor wishes to lease (rather than purchase) the equipment (including rolling stock and/or other vehicles) which it is to furnish, it shall request City's permission to do so and provide to City, for its approval, complete and accurate copies of all equipment leases which it proposes to enter into. The leases must provide that the lessor will, if requested, consent to their assignment to City without charge upon the expiration or earlier termination of this Agreement and must provide adequate mechanisms for the City to acquire title to equipment if desired.

4.19.7 City Right to Purchase at End of Term or Early Termination

The City shall have the right, but not the duty, to purchase any or all equipment owned by Contractor (including rolling stock and/or other vehicles) at the expiration or earlier termination of this Agreement, at its net book value as shown on Contractor's financial statements, which shall be no greater than the purchase price less accumulated depreciation claimed by Contractor on its federal income tax returns. Contractor shall, within three (3) months of Effective Date, deliver to the City properly signed UCC-1 Financing Statements and all other documents necessary or appropriate for the City to secure its purchase options and shall record, or allow the City to record, such Statements and other documentation. As new or replacement equipment is purchased, similar documentation covering it shall be provided by Contractor.

Upon the City's exercise of its option to purchase, Contractor will sign and deliver bills of sale or other documents reasonably requested by City to evidence the transfer of title to all equipment purchased.

4.20 CNG Fueling Station

{If proposed, and accepted by City}

4.21 Other Facility Enhancements and Services

{City and Contractor will discuss other elements of Contractor's proposal and amend the Agreement to include such elements as necessary.}

4.22 Implementation Plan

The Implementation Plan, which describes the key steps Contractor shall perform between the Effective Date and Commencement Date to prepare to provide services described in this Agreement is included as Exhibit 19. If Contractor fails to achieve one or more key milestone events in accordance with the proposed completion dates, the City may assess liquidated damages specified in Section 16.8 and/or may consider such failure an event of default for the purposes of Section 16.1.

ARTICLE 5 TRANSFER STATION

5.1 General

Contractor shall operate the transfer station in a safe and efficient manner. Contractor's services shall include, but not be limited to, accepting Permitted Materials; screening and removing Unpermitted Waste; ensuring efficient turnaround time for vehicles delivering materials; managing traffic flow of vehicles entering and exiting the transfer station; managing Customer unloading operations; providing and operating equipment required for handling Permitted Materials on the transfer station floor and for loading Mixed Municipal Waste and Residue into transfer trailers; providing customer service support to Customers in the Self-Haul unloading area and in the main tipping floor area; and ensuring traffic safety and personnel safety of equipment operators, floor sorters, traffic directors, and Customers. In addition, Contractor shall use Reasonable Business Efforts to Recover Recyclable Materials, and Yard Trimmings through floor sorting efforts and through selection of targeted loads of Permitted Materials for Recovery and Processing in the MRF.

5.2 Transfer Station Receiving Hours

Contractor shall accept Permitted Material Delivered by Customers from 5:30 a.m. to 5:00 p.m. Monday through Saturday, or such other times as the Parties may mutually agree, except January 1, Thanksgiving Day and December 25 ("Holidays").

5.3 Acceptance of Permitted Material

5.3.1 Acceptance

Contractor shall accept at the Transfer Station, Permitted Material Delivered by Facility Users during Facility Receiving Hours, subject to rejection rights in Section 5.3.2. However, nothing in this Agreement shall be construed to mean that the City guarantees to Deliver or cause to be Delivered any amount of Permitted Material. The Contractor's obligations under this

Agreement, including operating the Facility and meeting Diversion Guarantees, shall not be dependent upon characterization of Permitted Material.

Contractor shall not discriminate in the use of the Facility on account of race, color, national origin, ancestry, religion, sex, marital status or disability.

At Contractor's expense, those items which have chlorinated flouro-carbons ("CFCs") left intact shall be set aside, and Contractor shall then be responsible for having CFCs removed from used appliances if the appliances are being marketed for their scrap value. All handling shall be done in accordance with Permits and Applicable Law.

5.3.2 Rejection

Notwithstanding the foregoing subsection 5.3.1, the Contractor shall not knowingly accept Unpermitted Waste at the Facility. Contractor shall reject any Unpermitted Waste discovered in vehicles or during tipping thereof and require that all Persons remove such Unpermitted Waste from their vehicle and from the Facility. If the Contractor reasonably determines that it is impracticable to remove such items, then the Contractor may deem the entire load to comprise Unpermitted Waste and shall have the right to refuse to accept the entire load.

Contractor may deny service for the following reasons:

- (i) Delivery by Persons which are not Facility Users;
- (ii) Delivery at times other than Facility Receiving Hours and/or Buyback/Drop-off Center and Household Hazardous Waste and E-Scrap receiving hours, as the case may be, or at any other mutually agreed upon times;
- (iii) Delivery in excess of an amount equal to the permitted daily Tonnage for the Facility;
- (iv) Facility is partially or completely closed due to Uncontrollable Circumstances;
- (v) The suspicion of unpermitted materials;
- (vi) In the reasonable judgment of the Contractor, providing service to such Facility User would result in a risk of loss or liability to the Contractor;
- (vii) Such Facility User fails to comply with Applicable Law or the rules and regulations imposed by the Contractor; or
- (viii) Such Facility User has previously Delivered, or attempted to Deliver, Unpermitted Waste to the Facility.

The Contractor shall notify the City if Contractor refuses to provide service to a Facility User within twenty-four (24) hours of the incident and shall specify the reason(s) for such refusal. If the Contractor wrongfully rejects Permitted Material Delivered in accordance with Section 5.3.1 above, it shall pay damages in accordance with Section 16.8.

5.3.4 Inadvertently Accepted Unpermitted Waste

If the Contractor inadvertently receives delivery of any Unpermitted Waste (including Hazardous Waste other than Recyclable Household Hazardous Waste and E-Scrap), it shall classify, treat and/or transport or arrange for the transportation of such Unpermitted Waste from the Facility to a recycling, Processing, or Disposal Site as appropriate in accordance with Applicable Law, as necessary. Neither the Contractor nor the City shall tolerate or knowingly permit the Delivery of Unpermitted Waste to the Facility or the storage of Unpermitted Waste at the Facility, other than Recyclable Household Hazardous Waste and E-Scrap.

The Contractor shall pay all costs and expenses incurred in the handling, transportation and Disposal incurred by third parties of such Unpermitted Waste. The Contractor shall use its best efforts to identify any Person responsible for Delivery to or abandonment at the Facility of any Unpermitted Waste and shall use its Reasonable Business Efforts to require such Person to bear all costs and liabilities associated with the handling of its Unpermitted Waste.

The City and the Contractor shall take all reasonable steps necessary to seek enforcement of Applicable Law regarding such Delivery.

5.4 Facility User Comments

Contractor shall keep a record of comments made and concerns raised by facility customers and use Reasonable Business Efforts to address such comments and concerns. These records shall be retained and made available to City as all records are in accordance with Article 14 and for performance review.

5.5 Vehicle Turnaround Guaranty

Contractor shall manage the scale house and vehicle receiving process to ensure that vehicles Delivering Permitted Material do not queue on the street.

Contractor guaranties (the "Vehicle Turnaround Guarantee") that each Facility Users' collection vehicle Delivering Permitted Material is able to unload (1) within fifteen (15) minutes of departing the entry scale house, averaged over a thirty (30) day period and (2) in no event greater than thirty (30) minutes, absent vehicle breakdown or driver negligence, except that such vehicles delivering two categories of materials (e.g., paper and commingled Recyclable containers) in bifurcated truck compartments shall be able to unload both bins within thirty (30) minutes thereof. Upon City request, Contractor shall provide the City reports or access to electronic scale house system records that provide the City information to determine vehicle turnaround times based on documented entry time at the entry scale house and documented facility exit time. The City may also use GPS (global positioning system) records for collection vehicles to calculate turnaround time or conduct on-site surveys of performance to verify compliance with the Vehicle Turnaround Guaranty. The City may also review video from Facility security cameras to monitor vehicle turnaround time and verify compliance with the Vehicle Turnaround Guaranty.

If Contractor fails to meet the Vehicle Turnaround Guarantee, the City may assess liquidated damages in accordance with Section 16.8.

5.6 Transfer of Permitted Material and Residue

Contractor shall transfer into City transfer trucks (i) Mixed Municipal Waste from the tipping floor of the Transfer Station (which is not Recovered through floor sorting operations or moved to the MRF for Recovery and Processing); (ii) Residue from the MRF; and (iii) Yard Trimmings. Contractor's loading operation shall involve the use of truck scales to accurately measure the weight of the City transfer vehicle to confirm its compliance with Applicable Law.

ARTICLE 6 MRF OPERATIONS

6.1 Recovery and Processing of Recovered Materials

Contractor shall accept Delivery of Recyclable Materials from Customers during the Facility Receiving Hours. Contractor guaranties to annually accept and Process Source Separated Recyclables Materials (if needed to remove contamination) and Commingled Recyclable Materials in amounts necessary to meet the Facility Throughput Guarantee specified in Section 4.5. Contractor's Recovery and Processing operations shall result in Recovery of Recyclable Materials to achieve or exceed the Diversion Guarantee specified in Section 4.9.

6.2 Processing and Marketing of Recovered Materials

Contractor will Recover, at a minimum, Recyclable Materials in accordance with standard recycling industry practices, including sorting and segregation of paper and metal by type and segregation of glass, plastics, and other commonly Recovered Materials. Contractor shall also recover ferrous and non-ferrous scrap metal, rigid plastics, LDPE film plastic, plastic toys, and mattresses to the extent Contractor can market the Recovered Materials.

Contractor shall Process all Recovered Materials for Marketing pursuant to Article 9. The City will not reimburse Contractor for any related marketing or other costs.

6.3 Rejection of Recovered Material by Purchaser

Rejection of any shipment of Recovered Material, or of Source Separated Yard Trimmings, by purchasers and consequent Disposal thereof shall constitute a breach of the Recovered Materials Quality Guarantee. The weight of rejected material shall not be included as Recovered Material in calculations of the Diversion Guarantee, and Contractor shall be liable for, and pay for, (1) excess transfer, hauling and Disposal costs, (2) fees charged by rejecting party, and (3) Consequential Fines, as applicable. Contractor shall also pay the City its share of lost Recovered Material revenues as if the Recovered Materials had not been Disposed.

6.4 Disposal of Recyclable and Organic Materials Prohibited

Recyclable Materials, Organic Materials, and Recovered Materials may not be Disposed of in lieu of recycling or composting of such material, without the express written approval of the City. If for reasons beyond its reasonable control, Contractor (or its off-site Processing Subcontractor(s)) believes that it cannot Divert the Recyclable Materials, Organic Materials and Recovered Materials from Disposal, then it shall prepare a written request for approval to Dispose of such material. Such request shall

- Contain the basis for Contractor's belief (including, but not limited to, supporting documentation),
- Describe the Contractor's efforts to arrange for the Diversion from Disposal of such material,
- The period required for such Disposal,
- The value of the Recyclable Materials, Organic Materials, and Recovered Materials, and,
- Any additional information supporting the Contractor's request.

In addition, the request shall describe the Contractor's proposed interim plans for implementation while the City is evaluating its request. If the City objects to the interim plans, the City shall provide Notice to the Contractor and request an alternative arrangement. The City Manager shall consider the Contractor's request and inform Contractor in writing of its decision within thirty (30) calendar days. If the City Manager approves such request, the City shall be reimbursed for its share of the value of lost sales of Recyclable Materials. Depending on the nature of the Contractor's request, the City may extend the thirty (30) calendar-day period, at its own discretion, to provide more time for evaluation of the request and negotiation of an acceptable arrangement with the Contractor.

In the event the accumulation of such non-Diverted Recyclable, Organic Material, or other Recovered Materials is causing, or is likely to cause, a nuisance or health hazard, in the sole discretion of the City Manager he or she may authorize, in writing, the Disposal of such material on an interim basis pending final approval (or disapproval) of such Disposal by City Council.

ARTICLE 7 BUYBACK/DROP-OFF CENTER

7.1 Hours of Operation

Contractor shall accept Source Separated Recyclable Materials Delivered by Self-Haulers at the Buyback/Drop-off Center from 7:00 a.m. to 4:00 p.m. Monday through Saturday, except on January 1, Thanksgiving Day, and December 25.

1416 **7.2 Buyback Material**

1417 **7.2.1 Acceptance by the Contractor**

1418 The Contractor shall accept, Recover, Process, and market all Buyback Materials from the City,
1419 City Hauler, Port Hueneme Hauler, Other Users, and from all City residents and businesses. The
1420 Contractor shall accept, Recover, Process and market all Buyback Materials from Customers,
1421 other than City, City Hauler, Port Hueneme Hauler, and from all City residents and businesses,
1422 at the Facility to the extent that the Facility has the excess capacity to accept such materials.

1423 **7.2.2 Materials Accepted**

1424 Contractor will accept Recyclable Materials Delivered to the Buyback/Drop-off Center and
1425 Recover, Process and Market such materials. At a minimum, Contractor shall accept containers
1426 with a California Redemption Value (CRV). The City may request the Contractor to add or
1427 subtract materials from the list of accepted Recyclable Materials.

1428 **7.2.3 Buyback Material Pricing**

1429 Contractor shall operate the Buyback Center as a certified Buyback Center in accordance with
1430 the State's Department of Resources, Recycling, and Recovery (CalRecycle) requirements and
1431 shall pay for California Redemption Value (CRV) items using a weight-based returns system
1432 consistent with CalRecycle's program. Contractor shall establish and post prices at the
1433 Buyback/Drop-off Center to be paid for Recyclable Materials, and shall pay such prices to
1434 Customers upon Delivery thereof. Upon request, Contractor shall fax to City the Contractor's
1435 daily list of market prices for Recyclable Materials.

1436 **ARTICLE 8**
1437 **RECYCLABLE HOUSEHOLD**
1438 **HAZARDOUS WASTE AND**
1439 **E-SCRAP COLLECTION AREA**

1440 **8.1 Hours of Operation**

1441 Contractor shall accept Recyclable Household Hazardous Waste and E-Scrap Delivered by Self-Haulers at
1442 the Recyclable Household Hazardous Waste and E-Scrap area from 7:00 a.m. to 4:00 p.m. Monday
1443 through Saturday, except on January 1, Thanksgiving, and December 25).

1444 **8.2 Recyclable Household Hazardous Waste & E-Scrap Collection**

1445 Contractor will accept Recyclable Household Hazardous Waste and E-Scrap in amounts up to and
1446 including five hundred (500) pounds per customer, daily, delivered to the Recyclable Household
1447 Hazardous Waste and E-Scrap collection area, which shall be adjacent to the Buyback/Drop-off Center,

by Self-Haulers and Recover, Process and Market such Recyclable Household Hazardous Waste and Recover, Process, Market, or Dispose of E-Scrap.

Contractor will provide for recycling or reuse of such materials at permitted facilities other than landfills through licensed contractors in accordance with Applicable Law and will not Dispose of such materials without consultation with the City. Contractor will pay the actual third party costs of transportation, Recovery, Processing, and Disposal for such materials.

8.3 Recyclable Household Hazardous Waste & E-Scrap Rates

Contractor shall determine Gate Rates for Facility Users that Deliver materials to the Recyclable Household Hazardous Waste and E-Scrap drop-off area with the exception that Contractor shall not charge residents of the City and Port Hueneme for Delivery of Recyclable Household Hazardous Waste Materials and E-Scrap, unless directed otherwise by City. Contractor shall verify proof of residency, which shall be in the form of a driver's license or utility bill showing an address for the City of Oxnard and the City of Port Hueneme.

ARTICLE 9 MARKETING

9.1 Marketing Obligations

Contractor shall Market Recovered Materials and use Reasonable Business Efforts to operate the Facility for Recovery and Processing of additional materials as new recycling markets, processes and technologies develop. Contractor's obligations shall include, but not be limited to:

- (a) Storage: storing all Recovered Materials on-site or indoors at an off-site location to protect against theft, deterioration, contamination or other loss or damage.
- (b) Insurance: insuring all Recovered Materials on-site, at an off-site storage location, and during shipment prior to transfer of title to purchasers thereof, against fire, theft and other casualty losses in accordance with Section 15.5.
- (c) Packaging and Transportation: properly Processing, consolidating, and/or packaging Recovered Materials in accordance with standard practice in the recycling industry, and arranging for transportation and delivery to purchasers unless the terms of sale require the purchaser to arrange for transportation and delivery,
- (d) Sales: arranging for the sale of Recovered Materials at competitive market prices, foreign or domestic.
 - i. General. Contractor shall exert Reasonable Business Efforts to sell Recovered Materials in accordance with this Agreement and to maximize purchase prices and assure stable markets.

- 481 ii. Certificate of End Use. To the extent practicable, Contractor shall obtain a certification
482 of end use from the purchaser of Recovered Materials establishing that the Recovered
483 Materials have been, in fact, recycled, re-used or otherwise Diverted from Disposal.
- 484 iii. Contractor shall comply with Section 40201 of the California Integrated Waste
485 Management Act in regards to Recovered Materials from Source Separated Yard
486 Trimblings.
- 487 iv. Sale or Placement. The City has a strong interest in the Contractor selling or otherwise
488 providing Recovered Materials to local purchasers, including Persons located in the
489 Ventura County Recycling Market Development Zone. In the event Contractor believes
490 that such sale or placement yields less revenue than a sale that Contractor would have
491 arranged, it may submit evidence of such price differential to the City, including bids
492 made for the same materials with the same specifications during the past four weeks or
493 quotations from Institute for Scrap Recycling Industries, Inc. (ISRI), Scrap Specifications
494 Circular (for such year), Guidelines for Ferrous Scrap, Nonferrous Scrap, Paper Stock,
495 and Plastic Scrap and Anchor Glass Container, Technical Series Standards #700 010 01
496 for Purchased Unprocessed Cullet, or in the event such publications are no longer
497 published.
- 498 (e) Weighing: delivering Recovered Materials to the scale house for weighing during Facility
499 Receiving Hours prior to shipment and by the Contractor at other times, in accordance with the
500 Operations and Maintenance Manual.
- 501 (f) Maintaining Records: maintaining complete, accurate and detailed records in accordance with
502 Article 14.

503 9.2 No Warranties

504 Contractor shall not make any warranties or representations regarding Recovered Materials unless
505 specifically authorized by the City Manager or its designee. If directed to do so by City Manager or its
506 designee, Contractor shall include in all sales contracts a disclaimer of warranties, including warranties
507 of merchantability and fitness. The Contractor shall indemnify the City for damages in connection with
508 marketing in accordance with Section 15.1.

509 9.3 Liens

510 Contractor shall keep Recovered Materials free from liens and other creditors' claims until sold.

**ARTICLE 10
DISPOSAL AND OFF-SITE
PROCESSING**

10.1 Disposal of Mixed Municipal Waste and Residue

Contractor shall transport to and Dispose of all Mixed Municipal Waste received at the Facility, which is not Recovered and Processed, and Residue from the Facility at the Designated Disposal Site(s) pursuant to 10.1.1. All costs associated with Disposing Mixed Municipal Waste and Residue shall be paid by Contractor at the Disposal fees negotiated between the City and the Designated Disposal Site(s)' operator(s). If Contractor delivers materials to a facility other than the Designated Disposal Site(s), the City may assess liquidated damages specified in Section 16.8.

10.1.1 Designated Disposal Site(s)

Unless and until City otherwise approves, the Designated Disposal Sites shall be the site(s) specified in Exhibit 20. City reserves the right to change the Designated Disposal Site(s) at any time during the Term of the Agreement and such change shall be treated a City-directed change pursuant to Section 2.10. Contractor shall be required to meet all Tonnage requirements per negotiated agreements.

In addition, Contractor may indicate its desire to use additional lawful sites for Disposal by Notice to the City for reasons including, but not limited to, reducing the tipping fees due and/or shortening the transportation distance. The City shall have the right, in its sole discretion, to approve the use of additional Disposal Sites, and upon the City's approval thereof, such approved Disposal Sites shall be considered a Designated Disposal Site; provided, however, that if Contractor requests City's approval to use an additional Disposal Site as a result of a permanent unavailability of a Designated Disposal Site, then the City's approval shall be exercised in good faith and not unreasonably withheld.

10.1.2 Alternative Disposal Site(s)

If the Contractor expects, during the Term of this Agreement, to be prevented from delivering Mixed Municipal Waste and/or Residue to the Designated Disposal Site(s), it shall notify the City immediately. Contractor shall then identify alternative Disposal Sites and evaluate each. Such evaluation shall include the Disposal fee, transportation cost, permit status, any known permit enforcement proceedings and any other criteria used by the Contractor in recommending alternative Disposal Sites. Contractor shall then present its recommendation and evaluation of alternatives described above to City. City shall either approve the Contractor's recommended Disposal Site or identify an alternative Disposal Site.

544 **10.2 Off-Site Processing of Organic Materials**

545 **10.2.1 Processing Site(s)**

546 Contractor shall be responsible for securing and paying for Processing services for all Yard
547 Trimmings received at the Facility over the Term of the Agreement and transferred to an off-
548 site Processing site for Composting or Processing. Contractor shall negotiate and pay a per-Ton
549 Processing fee with the Processing site operator(s). Contractor shall request approval from the
550 City for use of the Processing site(s) and City's approval shall not be unreasonably withheld. As
551 of the Effective Date of the Agreement, the Processing sites listed in Exhibit 20 are approved by
552 the City. If Contractor delivers materials to a facility other than the City-approved Processing
553 Sites, the City may assess liquidated damages specified in Section 16.8.

554 **10.2.2 Change in Processing Site(s)**

555 **A. Emergency or Sudden Closure.** If Contractor is unable to use the approved Processing
556 site(s) due to an emergency or sudden unforeseen closure of the Processing site(s),
557 Contractor may use an alternative Processing site provided that the Contractor provides
558 verbal and written Notice to the City and receives written approval from the City at
559 least twenty-four (24) hours prior to the use of an alternative Processing site. The
560 Contractor's Notice shall include a description of the reasons the approved Processing
561 Site is not feasible and the period of time Contractor proposes to use the alternative
562 Processing site. Contractor shall not be compensated for any increased Transportation
563 and Processing costs and shall guarantee the then-current Gate Rates unless its inability
564 to use the Processing site(s) occurs due to one or more Uncontrollable Circumstances
565 defined in Section 13.4. In such case, Contractor may request a special review of Gate
566 Rates pursuant to Section 13.4.

567 **B. Contractor-Initiated.** Contractor may change its selection of the City-approved
568 Processing site(s) following City's written approval, but Contractor will bear any
569 increased transportation and Processing costs associated with a Contractor-initiated
570 change in the Processing site(s). In such case, Contractor shall guarantee the same
571 Processing Cost Component in the then-current Gate Rates. If Contractor elects to use
572 a Processing site(s) that is different than the Processing site(s) approved by the City, it
573 shall request written approval from the City sixty (60) days prior to use of the site and
574 obtain the City's written approval no later than ten (10) calendar days prior to use of
575 the site.

576 **10.2.3 Transportation**

577 Contractor is responsible for transporting Yard Trimmings to City-approved Processing sites.

ARTICLE 11
PERSONNEL

11.1 Personnel Requirements

A. Qualified Staff. The Contractor shall engage and train qualified and competent sorters, drivers, mechanical, supervisory, clerical, maintenance, operations, management, and other personnel in numbers necessary and sufficient for Facility Operation and to provide the services required by this Agreement in a satisfactory, safe, economical, and efficient manner. Contractor shall ensure that all employees present a neat appearance and conduct themselves in a courteous manner.

B. Identifying Unpermitted Waste. Contractor shall establish and vigorously enforce an educational program that will train Contractor's employees in the identification of Unpermitted Waste. Contractor's employees shall not knowingly accept Unpermitted Waste or loads containing Unpermitted Waste, other than as approved in accordance with Article 8. All employees working in the Recyclable Household Hazardous Waste and E-Scrap collection and drop-off area or handling such materials shall have all appropriate and current federal, State, and local training and certifications.

C. Customer Courtesy. Contractor shall train its employees in Customer courtesy and shall prohibit the use of loud or profane language. If any employee is found to be discourteous or not to be performing services in the manner required by this Agreement, Contractor shall take all necessary corrective measures including, but not limited to, transfer, discipline, or termination.

D. Living Wage Policy

i. Contractor shall compensate any employee of Contractor who provides services under this Agreement in accordance with the Living Wage Policy, incorporated herein as Exhibit 14.

ii. Contractor agrees to post, at a location readily accessible to those employees providing services to the City, a copy of the Living Wage Policy adopted by City Council on July 9, 2002 and effective October 1, 2002.

iii. If Contractor fails to comply with the Living Wage Policy in any manner, Contractor shall pay to City a fine of \$500 and shall pay to any employee providing services under this Agreement a penalty of three times the amount or value of the compensation owed to such employee under the Living Wage Policy. Contractor shall pay such fine and penalty within fifteen (15) days after the City Manager or designee provides Notice to Contractor of the amount owed.

iv. If Contractor fails to correct for and comply with iii above, the City Manager may terminate this Agreement on Notice to Contractor, effective immediately.

514 **11.2 Subcontractors**

515 Contractor shall not engage any subcontractors to perform any of the services required of it by Articles
516 4 through 12 of this Agreement without the prior written consent of City. Contractor shall notify City no
517 later than ninety (90) days prior to the date on which it proposes to use a subcontractor. City may
518 approve or deny any such request at its sole discretion.

519 As of the Effective Date of the Agreement, the City approved the subcontractors listed in Exhibit 7.
520 Upon City approval of other subcontractors during the Term of the Agreement, Contractor shall amend
521 such list to reflect substitutions or additions, with City approval.

522 In an emergency, upon immediate telephonic or other oral notice to the City followed promptly by
523 written Notice, the Contractor may engage additional or substitute subcontractors for up to seven (7)
524 consecutive days, provided, at the expiration of such seven (7) days, engagement of such additional or
525 substitute subcontractors may be continued only if the City consents thereto.

526 All subcontractors shall be licensed as required under Applicable Law to perform their subcontracted
527 work and shall obtain and maintain a City business tax certificate. The Contractor shall remain liable for
528 the full and complete performance of its obligations hereunder including its Subcontractors' compliance
529 with conditions such as, but not limited to: the City's living wage policy pursuant to Section 11.1; record
530 keeping and reporting requirements defined in Article 14; indemnification and insurance requirements
531 in accordance with Section 15.5, and responsibly to hold a valid City business tax certificate.

532 **11.3 Fees and Gratuities**

533 Contractor shall not, nor shall it permit any agent, employee, or subcontractors employed by it to
534 request, solicit, demand, or accept, either directly or indirectly, any compensation or gratuity for
535 services required under this Agreement, other than as specifically provided for under this Agreement.

536 **11.4 Non-Discrimination**

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

540 **ARTICLE 12**
541 **BILLING AND CUSTOMER SERVICE**

542 **12.1 Customer Billing**

543 Contractor is responsible for Billing Gate Rates to all Customers. Fees paid to City or other
544 governmental entities shall not be itemized on the bills. Contractor shall be responsible for collection of
545 payments due from Customers including any bad debt. Contractor shall deposit all amounts due to the
546 City via electronic funds transfer, with a frequency, to an account, and in a format to be specified by the
547 City. City reserves right to reasonably require a modified form of payment.

1648 **12.2 Customer Service and Contractor Availability**

1649 **12.2.1 General**

1650 Contractor shall provide customer service during regular service hours by telephone and in the
1651 office, including a responsible and qualified bilingual (English and Spanish speaking)
1652 representative, available by telephone and in the office from 8:30 a.m. to 5:30 p.m. Monday
1653 through Saturday. Contractor shall have a message machine or an answering service available
1654 outside of its regular telephone service hours. Calls received outside of regular telephone
1655 service hours shall be responded to on the next business day.

1656 **12.2.2 Complaint Documentation**

1657 All complaints shall be directed to Contractor. Daily logs of complaints shall be retained for a
1658 minimum of twenty-four (24) months. On a monthly basis, Contractor shall submit copies of
1659 the daily complaint log in accordance with Section 14.3.2.

1660 Contractor shall log all complaints received by telephone and said log shall include the date and
1661 time the complaint was received as well as the name, address, and telephone number of the
1662 caller, a description of the complaint, the name of the employee recording the complaint, and
1663 the action taken by Contractor to respond to and remedy the complaint.

1664 All written Customer complaints and inquiries shall be date-stamped when received and shall be
1665 initially responded to within one (1) business day of receipt. Contractor shall log the actions
1666 taken by Contractor to respond to and remedy the complaint.

1667 All Customer service records and logs kept by Contractor shall be available to City upon request.
1668 City shall, at any time during regular Office Hours, have access to Contractor's Customer service
1669 department for purposes that may include monitoring the quality of Customer service or
1670 researching Customer complaints.

1671 **12.2.3 Resolution of Customer Complaints**

1672 If Contractor is unable to resolve a complaint with a Customer, the City may, at its sole
1673 discretion, review the matter and suggest a resolution.

1674 Intervention by the City is not a condition precedent to any rights or remedies third parties
1675 might otherwise have in any dispute with Contractor. Nothing in this Section is intended to
1676 affect the remedies of third parties against the Contractor.

1677 **ARTICLE 13**
1678 **CONTRACTOR COMPENSATION AND**
1679 **GATE RATES**

680 **13.1 General**

681 Contractor shall perform all of its obligations, responsibilities, and duties under this Agreement in
682 consideration of the right to charge and collect Gate Rates from Permitted Users as determined in
683 accordance with this Agreement. Contractor's Compensation provided for in this Article 13 shall be the
684 full, entire, and complete compensation due to Contractor pursuant to this Agreement.

685 The Gate Rates that the Contractor shall charge City Hauler, Port Hueneme Hauler, and the maximum
686 Gate Rate that Contractor may charge City Self-Haulers shall be determined in accordance with the
687 procedures described in this Article. A different Gate Rate is established for each material type.
688 Contractor shall have the right to determine Gate Rates it charges Other Users provided that such Gate
689 Rates are not more favorable than the Gate Rates for materials generated in the City in accordance with
690 Section 13.5. City is in no way responsible for payment of Gate Rates from Other Users.

591 If Contractor's actual costs are more than the Gross Rate Revenue, Contractor shall not be
592 compensated for the difference in actual costs and actual revenues from Gate Rates. If Contractor's
593 actual costs are less than the actual revenues Contractor receives from Gate Rates, Contractor shall
594 retain the difference between its actual costs and actual Gate Rate revenues. Other than the
595 Contractor's Recovered Materials Revenue share, if any, permitted per Section 3.6, this is the only
596 compensation due Contractor under this Agreement.

597 **13.2 Gate Rates for Contract Year One**

598 Initial Gate Rates for City Hauler, Port Hueneme Hauler, and City Self-Haulers for Contract Year One
599 from [REDACTED], 2014 through June 30, 2015, shall not exceed the Gate Rates set forth in Exhibit 1.

'00 **13.3 Annual Gate Rate Adjustment Method and Schedule of**
'01 **Adjustments**

'02 Beginning with Contract Year Two (July 1, 2015 through June 30, 2016) and for all subsequent Contract
'03 Years, annual adjustment to the Gate Rates shall be based on the method of adjustment described in
'04 Exhibit 2 that adjusts rates to reflect the Change in the Consumer Price Index (CPI). Contractor shall
'05 submit its calculation for the Gate Rate adjustment by the preceding September 1.

'06 Gate Rate adjustments shall be performed in accordance with procedures set forth in Exhibit 2 and shall
'07 be approved by the City Manager, based upon Contractor's performance and having met all Agreement
'08 requirements. As provided in Exhibit 2, CPI adjustments shall be capped at 5% per year.

1709 **13.4 Extraordinary Adjustments**

1710 City or Contractor may request an extraordinary adjustment as part of the annual Gate Rate adjustment
1711 in accordance with this Section 13.4.

1712 **13.4.1 Eligible Items**

1713 The City and Contractor are entitled to seek a special review of Gate Rates for City Haulers, Port
1714 Hueneme Haulers, and City Self-Haulers, should one or more of the following events occur and
1715 should such occurrence(s) have a material effect totaling one percent (1%) or more annually of
1716 the Gross Rate Revenues for the most-recently completed Contract Year. If one or more of the
1717 following events occur and should such occurrence(s) have a material effect less than one
1718 percent (1%) annually of the Gross Rate Revenues for the most-recently completed Contract
1719 Year, such cost impact shall be considered at the time of the annual Gate Rate adjustment.

1720 a) City-Directed Change in Service. Significant changes in the cost to provide services
1721 required in this Agreement as a result of an agreed-upon, City-directed change in scope,
1722 as provided for under Section 2.10.

1723 b) Emergency Service. Provision of emergency services pursuant to Section 4.11.4.

1724 c) Uncontrollable Circumstance. An Uncontrollable Circumstance provided that such
1725 Uncontrollable Circumstance results in a significant increase or decrease in Contractor's
1726 direct costs.

1727 d) Change in Law. Change in Law including, but not limited to, Changes in Law that result
1728 in regulatory, governmental, or other surcharge fees after the Effective Date that: (1)
1729 were not reasonably known to the Contractor before the Effective Date; and, (2) the
1730 Contractor substantiates.

1731 e) Disposal Cost Adjustment. If the City contracts directly with the Designated Disposal
1732 Site operator(s), the following condition will be an eligible item: per-Ton Disposal cost
1733 increases at the Designated Disposal Site(s) above those reflected in the Disposal cost
1734 determined during the annual Gate Rate adjustment process performed in accordance
1735 with Section 13.3.

1736 f) Processing Cost Adjustment. If the City contracts directly with the Designated
1737 Processing Site operator(s), the following condition will be an eligible item: per-Ton
1738 Processing cost increases at the Designated Processing Site(s) above those reflected in
1739 the Processing cost determined during the annual Gate Rate adjustment process
1740 performed in accordance with Section 13.3.

1741 **13.4.2 Ineligible Items**

1742 A special review of Gate Rates may not be initiated for the following items and Contractor shall
1743 not be compensated for such items over the Term of the Agreement.

- a) Increased Operation Costs. Increases in the cost of Facility Operations in excess of the increases provided through the annual adjustment mechanism described in Exhibit 2 unless cost increases are related to eligible items listed in Section 13.4.1 above.
- b) Increased Transportation and Processing Costs. Increases in the cost of Yard Trimmings Transportation or Processing that may be impacted by change in Processing site, unless such change is initiated by or at the direction of the City or due to an Uncontrollable Circumstance.
- c) Decreased Recyclables Revenue. Decreases in Revenues from the sale of Recovered Materials except as provided in Exhibit 2.
- d) Change in Tonnage Levels. Increase or decrease in the Tonnage of Permitted Materials and/or the number of Facility Users; however, the Contractor shall be entitled to bill all Customers Gate Rates for delivery of Permitted Materials and retain all Gross Rate Revenues (net fees due to City) collected from its Customers for services provided under this Agreement.
- e) Change in Material Composition. Change in the composition of Permitted Materials.
- f) Contractor Error. Equipment failure or failure to accept Permitted Materials due to Contractor error(s) in planning, failure to maintain proper permits; regulatory actions against Contractor that prohibit or curtail Facility Operations; underestimation of Facility Operating costs; other operating problems; and/or problems related to internal company operations of the Contractor, its subcontractors, its vendors, or its agents.
- g) Disposal Cost Adjustment. If Contractor contracts directly with the Designated Disposal Site operator(s), the following condition will be an ineligible item: per-Ton Disposal cost increases at the Designated Disposal Site(s) above those reflected in the Disposal cost determined during the annual Gate Rate adjustment process performed in accordance with Section 13.3.
- h) Processing Cost Adjustment. If Contractor contracts directly with the Designated Processing Site operator(s), the following condition will be an ineligible item: per-Ton Processing cost increases at the Designated Processing Site(s) above those reflected in the Processing cost determined during the annual Gate Rate adjustment process performed in accordance with Section 13.3.

13.4.3 Review of Costs

If the Contractor or the City requests a special review of Gate Rates, the City, or its agent, shall have the right to review any or all financial and operating records of Contractor and Related-Party Entities if Related-Party Entities are involved in Facility Operations.

13.4.4 Submittal of Request

A request for an Extraordinary Review shall be conducted as provided in this Section. Contractor is obligated to meet requirements of this Section whether process is City-initiated or Contractor-initiated.

- a) The Party initiating an Extraordinary Review shall Notice the other Party, citing the applicable provisions of this Article and providing a complete written summary of the reason for the Extraordinary Review, and its impact on Contractor's obligations and Gate Rates.
- b) If a Notice of Extraordinary Review is issued by the City, within thirty (30) calendar days of receiving the City's Notice, the Contractor shall prepare and submit a proposal in accordance with the proposal format specified in Section 13.4.4(d).
- c) If a Notice of Extraordinary Review is issued to City by the Contractor, the Contractor's Notice shall include a proposal in accordance with the proposal format specified in Section 13.4.4(d).
- d) Proposal Format. For any proposal submitted under this Section, Contractor shall:
 - (1) Describe the circumstance warranting an Extraordinary Review.
 - (2) Describe the impact of the circumstance under Extraordinary Review on Contractor's compensation or Contractor's obligations.
 - (3) Submit work plan for implementing a change in Contractor's obligations identifying physical changes to the Facility, changes in operating methods and labor needs, and implementation schedule.
 - (4) Identify the capital and/or operating cost of modifying the Contractor's obligations to support any requested change in Contractor compensation. The Contractor shall include detailed documentation supporting its cost proposal, including cost substantiation. Contractor covenants that it will not propose a cost in excess of the fair market price for such change in Contractor's obligations, whether it implements such changes itself or through a subcontractor.
 - (5) Propose a change in compensation, as necessary, as a change in the Gate Rate. Increased costs (or decreased costs) of Contractor in meetings its obligations related to any adjustment in Gate Rates caused by one or more of the eligible items in Section 13.4.1 shall be apportioned to the City using a ratio equal to the Tonnage Delivered by the City in the Contract Year preceding the occurrence of the eligible item(s) divided by the total Tonnage Delivered to the Facility by all Facility Users for such Contract Year.
 - (6) For the purposes of analyzing cost impacts of changes in scope, the Contractor's profit shall be calculated using an operating ratio of 0.90 of actual reasonable and necessary costs net of Disposal expenses and City fees specified in Article 3.

(7) Provide draft language changes to the provisions of this Agreement, as Contractor deems appropriate and necessary to affect any change in Contractor's compensation or its obligations.

e) Such proposal shall be deemed the Contractor's offer with regard to changes in Contractor's compensation, Contractor's obligations, and/or change in scope pertaining to the circumstances under review, as appropriate, in accordance with the terms of such proposal, and shall be binding for one hundred and eighty (180) calendar days unless the request for Extraordinary Review is withdrawn subject to subsection 13.4.4.f.

f) The Party that initiated the Extraordinary Review may withdraw its Notice and its request for Extraordinary Review at any time.

13.4.5 City Review

The initiator of the Extraordinary Request shall bear the burden of justifying by substantial evidence its entitlement to any adjustment in Gate Rates under this Section 13.4. City shall review the proposal provided by Contractor as well as any other information it deems necessary to determine, what, if any adjustment is justified.

The City may use the assistance of an independent third party to review the proposal. The City shall be responsible for the cost of the third party if the Extraordinary Review was initiated by the City, otherwise, the Contractor shall be responsible for all reasonable costs. The cost of such review shall be estimated in advance of the work, and provided to the Contractor for comment and agreement to pay. Contractor refusal to pay its share of the reasonable cost of review of a Contractor-initiated proposal shall be grounds for City rejection of such proposal.

The City may request from the Contractor operating and business records reasonably required to verify the reasonableness and accuracy of the impacts associated with an Extraordinary Review. Contractor shall fully cooperate with the City's request and provide City and its agent(s) copies of or access to Contractor's records.

If the City determines that the Contractor has not met its burden, Contractor may request a meeting with City staff and the City Manager at which time Contractor may produce additional evidence in support of its request for a special Gate Rate adjustment. Upon such request, City shall promptly arrange said meeting.

Based on evidence the Contractor submits and the City's review of the evidence and any other information it deems necessary, the City may grant some or all of the requested increase and approve adjusted Gate Rates or City may deny all of the requested Gate Rate increase.

Any dispute regarding compliance with this Section or the validity of the grounds for Extraordinary Review or the amount of any change in Gate Rates will be resolved through dispute resolution procedures set forth in Section 17.17.

13.4.6 Grant of Request

If approved by the City Council, City will issue a Notice to Contractor approving the Extraordinary Review and documenting any change to Gate Rates or Contractor's obligations. The changes shall be documented in the form of an amendment to this Agreement, which shall be approved by City Council.

13.5 City is Most Favored Customer

13.5.1 Most Favored Customer Conditions

Contractor represents and warrants that the City is a most favored customer and, unless otherwise approved by the City, Contractor shall comply with the following conditions regarding Gate Rates for Mixed Municipal Waste or Yard Trimmings. Contractor shall not charge the Port Hueneme Hauler or any Other User Gate Rates less than the City Hauler and City Self-Hauler Gate Rates for substantially similar services relating to Mixed Municipal Waste, or Yard Trimmings acceptance, Recovery, Processing, transfer, and Disposal regardless of the duration of contract and material quantities associated with the Port Hueneme Hauler or the Other Users.

Contractor acknowledges and agrees that this most favored customer representation and warranty is material.

13.5.2 Verification of Compliance

Contractor shall by January 31 of each year after the Commencement Date provide the City written verification and documentation (to the satisfaction of the City) that (i) the then-current Gate Rates for City Hauler and City Self-Haulers for Mixed Municipal Waste, and Yard Trimmings is equal to or lower than the comparative gate rates that the Contractor is then providing to the Port Hueneme Hauler and Other Users, and (ii) the then-current Gate Rates for City Hauler and City Self-Haulers for Commingled Recyclable Materials and Source Separated Recyclable Materials is equal to or higher than (assuming a net revenue is paid to the City for acceptance of materials) the comparative gate rates that the Contractor is then providing to the Port Hueneme Hauler and Other Users using the Facility. If one or more of the then-current Gate Rates for City Hauler or City Self-Haulers is not equal to or lower than (or equal to or higher than in the case of Recyclable Materials) the comparative gate rates for the Port Hueneme Hauler or Other Users, the Gate Rates for City Hauler and City Self-Haulers shall be adjusted accordingly to match the comparable Gate Rate as provided in Section 13.5.3.

If City fees or other fees included in Gate Rates for the City Hauler and City Self-Hauler are different than fees in the Gate Rates for the Port Hueneme Hauler or Other Users, the verification of Contractor's compliance with this most favored customer warranty shall be determined by comparing Gate Rates adjusted to deduct City fees or other fees.

13.5.3 Adjustment for Comparability

If at any time during the Term, the then-current Gate Fees for the City Hauler or City Self-Haulers are adjusted to match a lower per-Ton comparative rate(s) for Mixed Municipal Waste,

or Yard Trimmings or to match a higher per-Ton comparative rate for Recyclable Materials for Delivery of Permitted Materials, the City and Contractor shall agree on how such adjustment shall be made to the various components of the Gate Rates. The Regulatory Fee Component defined in Exhibit 1 shall only be adjusted to reflect actual changes in federal, State, and local government fees and Change in Law as provided in Exhibit 2.

If an adjustment to the Gate Rates is made to reflect comparative gate rates on a date other than January 1 of the regularly scheduled annual adjustment, the adjustment to the Gate Rates in the following annual adjustment period shall reflect the change in CPI that occurred between the date the Gate Rate(s) were adjusted to reflect the comparative gate rate and the date of the following annual adjustment.

13.6 City Payment to Contractor

13.6.1 Monthly Invoice by Contractor

Beginning with services performed by Contractor during the month of _____, 2014, Contractor shall produce a preliminary monthly invoice. City shall pay Contractor for services performed in accordance with this Agreement at the Gate Rates set forth in Exhibit 1, Initial Gate Rates, and as such Gate Rates may be adjusted pursuant to this Agreement. Such invoice shall be delivered to the City by mail and e-mail no later than the tenth (10th) day of the month following the month such services were rendered.

13.6.2 Payments to Contractor

City shall make monthly payments to Contractor within thirty (30) calendar days of the City's receipt of Contractor's invoice, with the exception of amounts, if any, disputed by City. City shall not make any payments to any Contractor's subcontractors.

13.6.3 Wire Transfers

Unless requested otherwise by Contractor, City will make monthly invoice payments and/or additional payments electronically through the City's e-payables system to Contractor's bank account or accounts as designated by Contractor. If a paper check is requested, a five hundred dollar (\$500) fee will be assessed and deducted from the amount due to Contractor and a seven hundred and fifty dollar (\$750) fee will be assessed and deducted from the amount due to Contractor if a wire transfer is required.

13.6.4 Withholding of Payment

In addition to express provisions contained elsewhere in this Agreement, City may withhold from any payment otherwise due to Contractor such amount as is reasonably determined by City as necessary to protect City's interest, or, if City elects, may withhold or retain all or a portion of any monthly payment or refund payment for reasons, such as, but not limited to: events of default specified in Section 16.1; criminal activity of Contractor as defined in Section 16.2, and the following conditions:

- a.) Unsatisfactory progress of the work caused by a condition within Contractor's control;
- b.) Defective work not corrected;
- c.) Failure to carry out instructions or directive of the City;
- d.) Execution of work inconsistent with this Agreement;
- e.) Claims filed by or against Contractor or reasonable evidence indicating probable filing of claims;
- f.) Failure of Contractor to make payments to any subcontractor for material or labor;
- g.) Unsafe working conditions allowed to persist by Contractor;
- h.) Use of any subcontractors without City's prior written approval.
- i.) Dispute between the Parties regarding material accuracy of a monthly invoice.

City shall provide Notice to Contractor of the reason(s) for withholding of payments

13.6.5 Payment of Withheld Amounts.

Upon Contractor's remedy of the above-listed grounds for withholding payment and demonstration of the remedy to the reasonable satisfaction of the City, City shall pay all withheld amounts within fifteen (15) calendar days. City shall not be liable for interest on any delayed or late payment.

ARTICLE 14 RECORDS, REPORTS AND INFORMATION REQUIREMENTS

14.1 General

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

956 **14.2 Record Keeping Requirements**

957 **14.2.1 General**

958 During the Term of the Agreement, Contractor shall keep daily accurate and complete records
959 of Facility Operations, as needed to complete reports and audits as required in Sections 14.3
960 and 14.4; and keep records in sufficient detail to allow the Contractor to calculate, and City to
961 corroborate, the Gate Rates, any damages and other amounts hereunder and to determine
962 compliance with the provisions hereof. Records shall be kept in electronic, magnetic or other
963 media approved by the City and compatible with the City's system. Records shall be maintained
964 in forms and by methods that facilitate flexible use of data contained in them to structure
965 reports, as needed. Adequate record security shall be maintained to preserve records from
966 events that can be reasonably anticipated such as a fire, theft and earthquake. Electronically
967 maintained data/records shall be protected and backed up off site.

968 All computations, records, files, plans, correspondence, reports, drawings, designs, data and
969 photographs prepared by or possessed by Contractor relating to Facility Operations shall be the
970 property of the City and upon City request, City shall be entitled to immediate possession
971 thereof, provided Contractor may retain copies of such records and other materials. Contractor
972 shall furnish such records and other materials to the City no later than ten (10) days after
973 request.

974 Contractor agrees that the records of any and all companies conducting operations addressed in
975 the Agreement shall be provided or made available to City and its official representatives during
976 normal business hours or within twenty-four (24) hours Notice. City may review or utilize any
977 of the records described in this Section for any purpose whatsoever.

978 **UPON TERMINATION OF THIS AGREEMENT, CONTRACTOR SHALL DELIVER ALL SUCH RECORDS**
979 **AND OTHER MATERIALS TO THE CITY, WITHIN TWENTY (20) DAYS OF TERMINATION, WHICH**
980 **OBLIGATION SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT**

981 **14.2.2 Weight Records**

982 Contractor shall maintain at least the following records:

983 **A. Delivery of Permitted Material weighed at Scale house:** the weight of Permitted
984 Material in the aggregate and by category (Mixed Municipal Waste, Source Separated
985 Recyclable Materials, Commingled Recyclable Material, and Source Separated Yard
986 Trimmings, to the extent Delivered in segregated loads) Delivered by each Facility User
987 daily to the Facility and weighed at the scale house.

988 **B. Delivery of Permitted Material, Recyclable Household Hazardous Waste, and E-Scrap**
989 **not weighed at the Scale house:** the volume, category and estimated weight of:

990 1) Permitted Material (including Source Separated Recyclable Materials) Delivered
991 daily to the Buyback/Drop-off Center,

- 1992 2) Recyclable Household Hazardous Waste and E-Scrap Delivered daily to the
1993 Recyclable Household Hazardous Waste and E-Scrap Area, and
- 1994 3) Mixed Municipal Waste Delivered daily by Self-Haulers to the Transfer Station in
1995 Self-Haulers' vehicles which are not weighed at the scale house (including license
1996 plate and reported jurisdictional origin, Tonnage as estimated, and date and time of
1997 Delivery).
- 1998 C. **Delivery of Source Separated Recyclable Materials:** the weight of Source Separated
1999 Recyclable Materials purchased at the Buyback/Drop-off Center.
- 2000 D. **Transport of Recovered Materials; Transfer of Residue and Permitted Material:** the
2001 weight of Recovered Materials (including specifically the weight of all Recovered
2002 Materials Recovered and Processed, sold or otherwise Diverted from Disposal, and/or
2003 otherwise Disposed); Residue; transferred Permitted Material; and any other materials
2004 leaving the Facility.
- 2005 E. **Third Party Invoices and Receipts:** copies of the invoices or other receipts issued by
2006 third parties (e.g. brokers, purchasers or other takers of Recovered Materials)
2007 evidencing weight of Recovered Materials shipped from the Facility.
- 2008 F. **Vehicle Weights:** gross and tare weight of each municipal and commercial vehicle
2009 (including vehicle ID number and date and time of Delivery).

010 **14.2.3 Cash/Billing Records**

011 Contractor shall maintain all invoices and receipts for all payments and other records generated
012 by the Contractor related to customer Billing and payments including, but not limited to the
013 following:

- 014 A. any Gate Rate paid to Contractor in cash for Delivery of Permitted Material by Self-
015 Haulers;
- 016 B. cash register receipts for Contractor's purchase of Source Separated Recyclable
017 Materials at the Buyback/Drop-off Center;
- 018 C. any other cash receipts; credit card payment transaction records; and,
- 019 D. all invoices issued to Permitted Users with accounts and payments remitted.

020 **14.2.4 Operations Records**

021 In addition to records supporting operational and maintenance reports, Contractor shall
022 maintain at least the following:

- 023 A. video recordings of Facility Operations (including views of weighing and each tipping
024 operation, with date and times);

- 025 B. traffic counts, and upon City request, the arrival and departure time of each vehicle, the
026 amount of time vehicles were queued, amount of time for vehicles to cross scales at the
027 scale house and unload materials on tipping floor and exit the Facility;
- 028 C. equipment maintenance logs in accordance with Operations and Maintenance Manual;
- 029 D. downtime, including repair and maintenance; and,
- 030 E. routine, periodic and preventive Facility maintenance, including detailed logs for each
031 piece of Equipment.

032 **14.2.5 Marketing Records**

033 In addition to records supporting marketing and Diversion reporting and amounts owed to the
034 City, Contractor shall maintain at least the following records:

- 035 A. names, addresses, phone numbers of brokers and purchasers, including contacts;
- 036 B. date and terms of sale including type, grade, specification, and quantity of Recovered
037 Materials sold sales prices;
- 038 C. unit and total sales prices for each sales transaction and total revenue from Recovered
039 Materials;
- 040 D. contracts or other documents evidencing transfer of title;
- 041 E. Residue rates for secondary processing activities; and,
- 042 F. any certifications of end use of Recovered Materials.

043 **14.2.6 Financial Records**

044 Contractor shall maintain financial records relating to Facility Operations pursuant to this
045 Agreement separate and segregated from such records relating to its other operations. In
046 addition to records supporting audited and unaudited financial statements, Contractor shall
047 maintain at least the following records:

- 048 • Audited financial statements for the Guarantor as a whole if a guarantee was provided;
049 and,
- 050 • Complete descriptions of related party transactions (corporate and/or regional
051 management fees, inter-company profits from transfer, Recovery, Processing or
052 Disposal operations).

1053 **14.3 Reporting Requirements**

1054 **14.3.1 Report Formats, Submittal Schedule**

1055 Contractor may propose report formats that are responsive to the objectives and audiences for
1056 each report. The format of each report shall be approved by City. Contractor shall submit all
1057 reports in an electronic format approved by City, compatible with City's software/computers.

058 Monthly reports shall be submitted within thirty (30) calendar days after the end of the report
059 month except documentation supporting monthly Gate Fees due by City and payments by the
060 Contractor shall be submitted with the monthly invoices and payments. Annual reports shall be
061 submitted within sixty (60) calendar days after the end of the Contract Year, unless audited, in
062 which case the audit reports shall be submitted by July 1. Failure to update and submit all
063 required reports on time, may result in assessment of liquidated damages as specified in
064 Section 16.8. City may request additional information and report clarifications, which
065 Contractor will provide within thirty (30) days.

066 All reports shall be submitted to:

067 City Environmental Resources Manager
068 City of Oxnard
069 111 South Del Norte Boulevard
070 Oxnard, CA 93030

071 **14.3.2 Monthly Reports**

072 At a minimum, the monthly report shall include the following information:

073 A. **Facility Tonnage:** daily and summarized monthly weight records with respect to the
074 Facility, by incoming waste stream type (Mixed Municipal Waste, Source Separated
075 Recyclables, Commingled Recyclables, Yard Trimmings) and specifying the actual
076 amount of Residue.

077 B. **Facility Users' Tonnage:** summary of daily and monthly weight records with respect to
078 each Facility User (including the Self-Haulers) by jurisdiction (including the City) and
079 including the average estimated percentage of Residue present in their respective loads
080 of Source Separated Recyclable Materials and Commingled Recyclable Material.

081 C. **Recyclable Household Hazardous Waste and E-Scrap Tonnage:** summary of daily and
082 monthly weight records with respect to the types of materials Delivered to the
083 Recyclable Household Hazardous Waste and E-Scrap collection area listed separately by
084 type of Facility User and jurisdiction of origin.

085 D. **Recovery Information and Performance Guaranties.**

086 1. Tonnage of Commingled Recyclable Material, Source Separated Yard Trimmings,
087 and Source Separated Recyclable Materials was Recovered from floor sorting and
088 Processed at the MRF;

- 089 2. Tonnage of any Mixed Municipal Waste, wood and Yard Trimmings, and Source
090 Separated Yard Trimmings which was floor sorted in the Transfer Station;
- 091 3. Calculation of Performance Guarantees on monthly and Contract Year-to-date
092 basis. If any Performance Guarantee is not met on a pro-rated, monthly basis,
093 Contractor shall include a discussion of reasons why such Guarantee was not met,
094 its proposed corrective action to meet such Guarantee in the succeeding month,
095 and projections for annual compliance thereof.
- 096 4. Projections of Recovery and Processing during the months remaining in the then
097 current Contract Year.
- 098 5. Results of waste characterization studies, including studies on Buyback Materials.
- 099 6. Materials sales statement showing type of material Diverted, specifications for each
100 material, prices, quantity sold (in tons), and types of buyers.
- 101 E. **Disposal:** daily and monthly summary of Tons transferred to the Designated Disposal
102 Site(s) listed separately by Disposal site.
- 103 F. **Off-Site Processing:** daily and monthly summary of Tons including Yard Trimmings
104 transferred to off-site Processing facilities.
- 105 G. **Marketing and Diversion:** Based on Delivery records, Contractor will use Reasonable
106 Business Efforts to allocate specific Diversion percentages to the individual jurisdictions
107 from which Facility Users Deliver Permitted Materials. City acknowledges that licensed
108 commercial hauling companies Delivering materials to the Facility may collect waste
109 from multiple jurisdictions, and will cooperate with Contractor to develop a method or
110 procedure for tracking and/or apportioning such waste by jurisdiction of origin.
- 111 H. **Safety Report:** monthly report of any accidents with respect to Facility Users' vehicles
112 on site and any accidents to Persons, including Contractor's employees, on site.
- 113 I. **Contaminated Load Rejections:** monthly report on loads rejected as contaminated or
114 discovered contaminated after acceptance.
- 115 J. **Facility Maintenance and Improvements:** monthly report of Facility maintenance
116 activities and improvements.
- 117 K. **County Inspection Reports.** Copy of the monthly inspection report prepared by the
118 County for the Facility. If the County identified violations, concerns, or issues,
119 Contractor shall provide a correction action plan.
- 120 L. **Complaint Log.** Copy of daily logs of complaints required to be maintained by Section
121 12.2.2.

22 14.3.3 Annual Reports

23 Contractor will submit to City an annual report including:

- 124 A. Annual financial statements and footnotes prepared in accordance with Generally
125 Accepted Accounting Principles (GAAP) specific to the operations of the facility
- 126 B. Yearly totals of data required in Sections 14.3.2(A) through (F) and (I).
- 127 C. General information about the Contractor, including a list of officers and members of its
128 board of directors.
- 129 City may reasonably request other information or reports.

130 **14.3.4 Access to Electronic Records**

131 Contractor shall provide City with real-time, read-only electronic access to Facility and reporting
132 information. City and Contractor shall determine within sixty (60) days of the Effective Date the
133 specific Facility and reporting information to be made available in this format. City access to
134 Facility and reporting information in no way limits Contractor's sole responsibility for the
135 accuracy of Facility and reporting information.

136 **14.4 Audits**

137 **14.4.1 Contractor's Annual Audit and Costs**

138 Contractor shall have an annual audit conducted by an independent certified public accountant
139 of financial statements and operations at Contractor's expense. Financial statements shall be
140 audited, in accordance with Generally Accepted Auditing Standards (GAAS) by a certified public
141 accountant (CPA) licensed (in good standing) to practice public accounting in the State of
142 California as determined by the State of California Department of Consumer Affairs Board of
143 Accountancy. City must approve selection of accountant.

144 On an annual basis, Contractor shall cause a qualified firm with relevant industry experience to
145 conduct an inventory of Recovered Materials and audit of all weight records during each
146 Contract Year and provide the City with a copy of such inventory and audit, on or before July 1
147 of each year. City may observe such inventory and auditing procedures and confer with such
148 accountant.

149 City reserves the right to define the scope of audit. See Exhibit 9 for an example of basic audit
150 scope and procedures. Contractor shall provide City with a copy of the audit on or before July 1
151 of each year. City may observe such inventory and auditing procedures and confer with
152 accountant.

153 **14.4.2 City Audit**

154 The City may fund and conduct a full audit of the Facility at the City's expense and of
155 Contractor's Facility Operations under this Agreement. Contractor will cooperate with City's
156 auditor as instructed by City.

14.4.3 Payments and Refunds

If an audit determines that Contractor has been overpaid by the City, Contractor shall refund the amount of the overpayment. If an audit determines that Contractor has been underpaid by the City, City shall pay the amount of the underpayment. Payments shall be due as follows:

- a) \$100,000 or less shall be due thirty (30) calendar days from the date of the audit,
- b) More than \$100,000 shall be due ninety (90) calendar days from the date of the audit.

14.5 Reporting Adverse Information

Contractor shall provide City two copies (one to the City Manager or its designee, one to the City Attorney) of all reports, pleadings, applications, notifications, Notices of Violation, communications or other material relating in any way to Contractor's performance of services pursuant to this Agreement, submitted by Contractor to, or received by Contractor from, the United States or California Environmental Protection Agency, the California Department of Resources Recycling and Recovery (CalRecycle), the Securities and Exchange Commission or any other federal, state or local agency, including any federal or state court. Copies shall be submitted to City within fifteen (15) calendar days of receipt by Contractor, or sooner if reasonably apparent that to do so is materially relevant, and any responses by Contractor shall be submitted to City simultaneously with Contractor's filing or submission of such matters with said agencies. Contractor's routine correspondence to said agencies need not be routinely submitted to City, but shall be made available to City promptly upon City's written request.

14.6 Failure to Report

The refusal or failure of Contractor to file any required reports, or to provide required information to City, or the inclusion of any materially false or misleading statement or representation by Contractor in such report shall be deemed a condition of default of the Agreement as described in Section 16.1 and shall subject Contractor to all remedies which are available to the City under Agreement or otherwise.

ARTICLE 15 INDEMNIFICATION, INSURANCE AND FIDELITY BOND

15.1 Indemnification

Contractor hereby agrees and shall indemnify, hold harmless and defend City, its elected and appointed boards, commissions, officers, employees, consultants and agents (collectively, "Indemnitees") from and against any and all loss, liability, penalty, forfeiture, claim, demand, action, proceeding or suit in law or equity of any and every kind and description (including, but not limited to, injury to and death of any Person and damage to property, or for contribution or indemnity claimed by third parties) (the "Claims") arising or resulting from and in any way connected with (1) the negligence or willful misconduct of Contractor, its officers, employees, agents, contractors and/or subcontractors in performing services under this Agreement; (2) the failure of Contractor, its officers, employees, agents,

192 contractors and/or subcontractors to comply in all respects with the provisions of this Agreement,
193 Applicable Laws (including, without limitation, the Environmental Laws), ordinances and regulations,
194 and/or applicable permits and licenses; (3) the acts of Contractor, its officers, employees, agents,
195 contractors and/or subcontractors performing services under this Agreement for which strict liability is
196 imposed by law (including, without limitation, the Environmental Laws); (4) any condition of the Facility
197 or transfer trucks relating to hazardous or toxic substances or Unpermitted Waste; (5) any allegation of
198 infringement, violation or conversion of any patent, licenses, proprietary right, trade secret or other
199 similar interest, in connection with Facility Operations, and the Facility, including Facility technology,
200 processes, machinery or equipment; or (6) any claims made by, or payments made to, purchasers or
201 users of Recovered Materials for alleged breaches of warranties of fitness in connection with the
202 beneficiation of contaminated Recovered Materials, except on the part of the City and its officers and
203 employees. Contractor's obligation to indemnify applies unless it is adjudicated that any of the Claims
204 covered by this Section are the result of the sole active negligence or sole willful misconduct of the
205 Indemnitees.

206 The duty to defend is a separate and distinct obligation from Contractor's duty to indemnify.
207 Contractor shall be obligated to defend, in all legal, equitable, administrative, or special proceedings,
208 with counsel approved by the Indemnitees immediately upon tender to Contractor of the Claim in any
209 form or at any stage of an action or proceeding, whether or not the Claim is established. An allegation
210 or determination of sole active negligence or sole willful misconduct by the Indemnitees shall not
211 relieve Contractor from its separate and distinct obligation to defend the Indemnitees. The obligation
212 to defend extends through final judgment, including exhaustion of any appeals. The defense obligation
213 includes the obligation to provide independent defense counsel if Contractor asserts that the Claim is
214 caused in whole or in part by the sole active negligence or sole willful misconduct of the Indemnitees. If
215 it is finally adjudicated that the Claim is caused by the sole active negligence or sole willful misconduct
216 of the Indemnitees, Contractor may submit a claim to City for reimbursement of reasonable attorneys'
217 fees and defense costs.

218 The review, acceptance or approval of Contractor's work or work product by the Indemnitees shall not
219 affect, relieve or reduce Contractor's indemnification or defense obligations. The provisions of this
220 Section shall not be restricted by and do not affect the provisions of this Agreement relating to
221 insurance.

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

225 {If City approves Contractor proposal to provide disposal services, this indemnification section will be
226 revised to include CERCLA indemnification related to landfill disposal.}

227 15.2 Hazardous Substances Indemnification

228 A. Without regard to any insurance coverage or requirements, and without limiting the above
229 general indemnification obligation in any way, Contractor specifically agrees to and shall, to the
230 maximum extent permitted by law, defend (with counsel acceptable to City), reimburse,
231 indemnify, and hold Indemnitees harmless from and against any and all claims, actions,
232 liabilities, damages, demands, judgments, losses, costs, liens, expenses, suits, actions, attorneys'

fees, consultant fees, penalties and any and all other losses, damages, fees and expenses of whatever kind or nature ("Claims") (including but not limited to response costs, investigative costs, assessment costs, monitoring costs, treatment costs, cleanup costs, removal costs, remediation costs, and similar costs, damages and expenses) that arise out of or are alleged to arise out of or in any way relate to any action, inaction or omission of Contractor that:

1. results in any demand, claim, notice, order, or lawsuit, asserting that any Indemnitee is liable, responsible or in any way obligated to investigate, assess, monitor, study, test, treat, remove, remediate, or otherwise cleanup, any Hazardous Contaminant (as defined below in this Section 15.2); or

2. relates to material collected, transported, recycled, processed, treated or disposed of by Contractor.

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

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

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

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

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

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

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

E. THE PROVISIONS OF THIS SECTION 15.2 SHALL NOT TERMINATE OR EXPIRE, SHALL BE GIVEN THE BROADEST POSSIBLE INTERPRETATION AND SHALL SURVIVE THE EXPIRATION OR EARLIER TERMINATION OF THIS AGREEMENT.

15.3 Defense of Patent Infringement Suits

Upon request by the City, the Contractor shall defend any lawsuit or proceeding that is brought against the City, City's affiliated employees, Council members, officers, officials, agents, assigns and volunteers, insofar as such lawsuit or proceeding is based upon an allegation of infringement, violation or

conversion of any patent, licenses, proprietary right, trade secret or other similar interest, in connection with Facility Operations and any technology, processes, machinery or equipment supplied by the Contractor, except in cases of sole negligence on the part of the City and its officers and employees. The Contractor shall pay all liabilities, damages, claims, demands, judgments, losses, costs and expenses awarded in any such lawsuit or proceeding it defends, in accordance with subsection a. If as a result of any such lawsuit or proceeding it defends, the Facility, or any portion thereof, is held to constitute an infringement or use by the City is enjoined, then the Contractor shall, at its option, either (1) acquire the right of continued use under the infringed patent, license, proprietary right, trade secret or other similar interest on behalf of the City or (2) to the satisfaction of the City, modify or replace the infringing equipment with equipment that is equivalent in quality, performance, useful life and technical characteristics, which meets performance requirements.

THE PROVISIONS OF THIS SECTION 15.3 SHALL NOT TERMINATE OR EXPIRE, SHALL BE GIVEN THE BROADEST POSSIBLE INTERPRETATION AND SHALL SURVIVE THE EXPIRATION OR EARLIER TERMINATION OF THIS AGREEMENT.

15.4 Consequential Fines

Any consequential fines and penalties assessed on the City, including any related to AB 939, resulting from Contractor's failure to meet the Diversion Guarantee and not from the failure of any City programs to meet contemplated Diversion levels, shall be paid by the Contractor.

If Contractor does not pay any such damages to City by the first day of each month, the City may (i) withhold such amounts from monthly Gate Rate payments, or (ii) declare a Contractor Default in accordance with Section 16.1.

15.5 Insurance

15.5.1 Required Forms of Insurance

Contractor shall secure and maintain the following insurance throughout the Term of the Agreement. Example insurance certificates are provided in Exhibit 17.

A. **General Liability Insurance.** Contractor shall provide general liability insurance 1973 Comprehensive General Liability (Occurrence Form), or 1986 or 1988 commercial General Liability (Occurrence Form), including the following extensions:

1. premises and operations
2. products and completed operations
3. advertising and personal injury, including copyrights infringement
4. unlicensed mobile equipment
5. explosion, collapse and underground hazard coverage

- 302 6. blanket contractual
- 303 7. broad form property damage
- 304 8. contingent coverage for any subcontractors
- 305 9. care, custody and control coverage for City-owned equipment
- 306 10. premises medical coverage
- 307 11. cross suits.

308 Minimum limits of liability for 1973 Comprehensive General Liability (Occurrence Form)
309 shall be \$1,000,000 each occurrence or in the aggregate, as applicable, for Combined
310 Single Limit-Bodily Injury and Property Damage Liability and \$1,000,000 aggregate for
311 Products/Completed Operations and Property Damage at the Facility; and for 1986 or
312 1988 Commercial General Liability (Occurrence Form) shall be:

313	Per occurrence limit:	\$ 2,000,000
314	Products/Completed Operations aggregate:	\$ 2,000,000
315	Policy aggregate:	\$ 2,000,000
316	Personal and Advertising Injury limit:	\$ 1,000,000
317	Fire damage limit:	\$ 1,000,000
318	Medical Payments:	\$ 10,000

319 Deductibles shall be no greater than \$10,000 per loss, which deductibles shall be the
320 responsibility of Contractor.

321 **B. Comprehensive Automobile Liability Insurance.** Contractor shall maintain
322 Comprehensive Automobile Liability Insurance coverage for:

- 323 1. all vehicles and equipment requiring licenses under Applicable Law, owned by the
324 City or Contractor, and their drivers employed by the Contractor
- 325 2. all vehicles hired by City or Contractor, and their drivers employed by the
326 Contractor
- 327 3. Uninsured/Underinsured Motorists liability coverage
- 328 4. cross suits
- 329 5. transportation by insured vehicle of "pollutants" or "wastes" and clean-up costs
330 relating to spills thereof

331 Deductibles shall be no greater than \$10,000 per loss, which deductibles shall be the
332 responsibility of Contractor.

2333 C. **Workers' Compensation Insurance.** Contractor shall maintain Workers' Compensation
2334 Insurance Part 1, in accordance with Applicable Law. Such policy shall include a waiver
2335 of rights of subrogation against the City and the Facility.

2336 D. **Employers' Liability Insurance.** Contractor shall maintain Employers' Liability Insurance
2337 in the following amounts:

2338 1. bodily injury by accident \$1,000,000 each accident

2339 2. bodily injury by disease \$1,000,000 policy limit,

2340 \$1,000,000 each employee

2341 Such policy shall include a waiver of rights of subrogation against the City and the Facility.

2342 E. **Crime Insurance, Including Employee Dishonesty/Fidelity Bond.** Contractor shall
2343 maintain Crime Insurance, including Employee Dishonesty/Fidelity Bond including losses
2344 of "money, securities and property other than money and securities", including Gate
2345 Rates, Recovered Materials, and Recovered Materials revenues lost as a result of
2346 burglary, theft, forgery, alteration, disappearance and destruction occurring on or off-
2347 site. Deductibles shall be no greater than \$1,000 per loss (\$2,500 maximum), which
2348 deductibles shall be the responsibility of Contractor. This requirement can be satisfied
2349 by the Fidelity Bond required by Section 15.6.

2350 F. **Umbrella Liability and/or Excess Liability policies.** Contractor shall maintain Umbrella
2351 Liability and/or Excess Liability policies with endorsements providing "drop down"
2352 coverage solely for Contractor's performance of its obligations required by this
2353 Agreement hereunder effective when primary limits of General Liability, Automobile
2354 and Employers' Liability policies described in items I, II and IV above are exhausted,
2355 with minimum limits of liability (Occurrence Form) of \$10,000,000 each occurrence or
2356 in the aggregate, as applicable, for Combined Single Limit-Bodily Injury and Property
2357 Damage Liability and \$10,000,000 aggregate for Products/Completed Operations and
2358 Property Damage at the Facility. Non-concurrent exclusions shall not be permitted.
2359 Deductibles shall be no greater than \$10,000 per loss, which deductibles shall be the
2360 responsibility of Contractor.

2361 G. **Property Insurance.** Contractor shall maintain property insurance, naming City and
2362 Facility as owners, insured and loss payees as their interests may appear, covering "All
2363 Risks" of loss or damage to physical property, including the periods of earthquake and
2364 flood, including extensions for:

2365 1. Business Interruption

2366 2. Expediting Expense

2367 3. Boiler and Machinery (Systems Performance and Efficacy)

2368 4. Contractors' and Inland Marine Equipment

5. On-Site or Off-Site Materials in storage or in the open

6. Materials in Transit

7. Valuable Papers

8. Electronic Data Processing Equipment

9. Media and Hardware

10. Increased Cost of Construction

11. Ordinance or Law

Minimum limits of liability shall be in an amount acceptable to the City, but in no event less than replacement cost of the project and written on a replacement cost basis, which amount may be adjusted on the Acceptance Date and as of the first day of each Contract Year thereafter to equal the value of the Facility and income it generates to City. Such policy shall contain a valid agreed amount endorsement waiving any co-insurance penalty. Deductibles shall be no greater than \$10,000 per loss, which deductibles shall be the responsibility of Contractor.

H. Environmental Impairment and Pollution Liability. Contractor shall maintain Environmental Impairment and Pollution Liability coverage for any environmental liability attributable to Contractor's actions, including clean-up and/or transportation of pollutants, hazardous materials or Unpermitted Waste off-site. Minimum limits of liability shall be \$10,000,000 per occurrence and in the aggregate. The amount of the deductibles shall be determined when the policy is obtained.

15.5.2 Additional Insurance Requirements

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

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

1. General Liability and Automobile Liability Coverages

a) City, its elective and appointive boards, commissions, officials, employees, agents and volunteers are to be named as additional insureds as respects: liability arising out of activities performed by or on behalf of Contractor; products and completed operations of Contractor; Premises owned, leased or used by Contractor; or vehicles owned, leased, hired or borrowed by

Contractor. The coverage shall contain no special limitations on the scope of protection afforded to City, its elective and appointive boards, commissions, officials, employees, agents or volunteers.

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

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

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

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

3. All Coverages - Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after sixty (60) days' prior Notice by certified mail, return receipt requested, has been given to City.

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

D. **Verification of Coverage.** Contractor shall furnish City's Chief Financial Officer, at the address provided below or another address as City may provide, with certificates of insurance and with original endorsements affecting coverage required by this clause. The certificates and endorsements for each insurance policy are to be signed by a Person authorized by that insurer to bind coverage on its behalf. The certificates and endorsements are to be on forms provided by or acceptable to City and are to be received and approved by City before work commences. City reserves the right to require complete, certified copies of all required insurance policies, at any time.

City of Oxnard
Risk Manager
Contract No. _____
300 West Third Street, Suite 302
Oxnard, CA 93030

Upon request of the City's Chief Financial Officer, the Contractor shall cause its subcontractors to provide proper evidence of insurance coverage required hereunder, satisfactory to the City's Chief Financial Officer. Contractor shall institute a comprehensive accounting system to assure the City it is monitoring all insurance requirements hereunder, including those of its subcontractors.

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

F. Required Endorsements

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

"Sixty (60) days prior written notice by certified mail, return receipt requested, shall be given to City in the event of cancellation, reduction in coverage, or non-renewal of this policy. Such notice shall be sent to:

Risk Manager
City of Oxnard
300 West Third Street
Oxnard, CA 93030

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

- a) "Sixty (60) days prior written notice shall be given to City in the event of cancellation, reduction in coverage, or non-renewal of this policy. Such notice shall be sent to:

Risk Manager
City of Oxnard
300 West Third Street
Oxnard, CA 93030

- b) "City, its officers, elective and appointive boards, commissions, employees, and agents are additional insureds on this policy."

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

- d) "Inclusion of City as an insured shall not affect City's rights as respects any claim, demand, suit or judgment brought or recovered against Contractor. This

policy shall protect Contractor and City in the same manner as though a separate policy had been issued to each, but this shall not operate to increase Contractor's liability as set forth in the policy beyond the amount shown or to which Contractor would have been liable if only one party had been named as an insured."

G. Delivery of Proof of Coverage. Simultaneously with the execution of this Agreement, Contractor shall furnish City certificates of each policy of insurance required hereunder, in form and substance satisfactory to City. Such certificates shall show the type and amount of coverage, effective dates and dates of expiration of policies and shall have all required endorsements. If City requests, copies of each policy, together with all endorsements, shall also be promptly delivered to City.

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

H. Other Insurance Requirements

1. In the event any services are delegated to another company or subcontractor, Contractor shall require such Contractor or subcontractor to provide statutory workers' compensation insurance and employer's liability insurance for all of the Contractor or subcontractor's employees engaged in the work in accordance with this Section. The liability insurance required by this section shall cover the Contractor and all subcontractors or the Contractor or subcontractor must furnish evidence of insurance provided by it meeting all of the requirements of this section.
2. Contractor shall comply with all requirements of the insurers issuing policies. The carrying of insurance shall not relieve Contractor from any obligation under this Agreement. If any claim exceeding the amount of any deductibles or self-insured reserves is made by any third Person against Contractor or any Contractor or subcontractor on account of any occurrence related to this Agreement, Contractor shall promptly report the facts in writing to the insurance carrier and to City.

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

15.6 Contractor's Fidelity Bond

Contractor shall secure, and throughout the Term, plus an additional twelve (12) months maintain, in full force and effect a fidelity bond in an amount of one million dollars (\$1,000,000) for Contract Years One and Two and annually thereafter in the amount equal to twenty percent (20%) of the gross receipts from Gate Rates Contractor collected from all Facility Users and from revenues from the sale of Recovered Materials for the most-recently completed Contract Year. Such fidelity bond shall be in substantially the form of commercial blanket bond form attached as Exhibit 6. Contractor shall procure such bond from underwriters approved by the City's Chief Financial Officer, licensed in California, with a size category VII or larger and rated not less than "A" VII" by A.M. Best Company, Inc. The fidelity bond

521 shall remain in effect for twelve (12) months following the Contractor's final day of Operation, or until
522 the City has fully reviewed the condition of the Facility and determined that the Contractor has met all
523 obligations related to maintaining, repairing and replacing equipment, whichever comes first.

524 **ARTICLE 16**
525 **DEFAULT, REMEDIES AND**
526 **LIQUIDATED DAMAGES**

527 **16.1 Events of Default**

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

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

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

534 C. Failure to Maintain Coverage. If Contractor fails to provide or maintain in full force and effect
535 insurance, bonds, workers' compensation, liability, or indemnification coverage as required by
536 this Agreement.

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

542 E. Failure to Meet Facility Throughput Guarantee. Contractor fails to accept and transfer some or
543 all of the Permitted Materials covered by the Facility Throughput Guarantee described in
544 Section 4.5.4 for more than four (4) consecutive days, even if due to labor unrest including
545 strike, work stoppage or slowdown, sick-out, picketing, or other concerted job action.

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

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

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

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

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

562 K. Failure to Meet Diversion Guarantee. Contractor fails to meet the Diversion Guarantee
563 measured as of the last day of a Contract Year.

564 L. Failure to Provide Assurance of Performance. If Contractor fails to provide reasonable
565 assurances of performance as required under Section 16.11.

566 M. Failure to Pay Compensatory Damages. Contractor fails to pay City compensatory damages
567 suffered by the City within thirty (30) days following the end of such Contract Year or with
568 respect to compensatory damages paid monthly in accordance with Section 16.1(M), within
569 thirty (30) days following the end of each such month.

570 N. Failure to Maintain or Secure Permits/Approvals. Contractor fails to acquire and maintain all
571 permits/licenses required for Facility Operation or to acquire and maintain those needed for
572 Facility improvements and operational changes.

573 O. Assignment. Contractor Assigns any portion of the Agreement without approval of City.

574 P. Any other failure to perform an obligation or to satisfy a condition imposed by any provision of
575 this Agreement.

576 Contractor shall have forty-eight (48) hours from the time it is given notification by City to cure any
577 default arising under subsections E, F, G, H, J, K, L, M, and O provided, however, that City shall not be
578 obligated to provide Contractor with a Notice and cure opportunity if Contractor has committed the
579 same or similar breach within a twenty-four (24) month period. It is expressly understood that
580 Contractor is not entitled to receive Notice of default, or to cure such default, with respect to those
581 matters listed in subsections A, B, C, D, I, and N above.

582 **16.2 Criminal Activity of Contractor**

583 Should the Contractor or any of its officers or directors have a criminal conviction of, have made an
584 admission of guilt for, or pled nolo contendere to any offense directly or indirectly related to this
585 Agreement or any other Agreement held with the City, from a court of competent jurisdiction with
586 respect to:

587 1) fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a
588 public or private agreement;

- 589 2) bribery or attempting to bribe a public officer or employee of a local, State, or federal agency in
590 that officer's or director's or Contractor's employee's official capacity;
- 591 3) embezzlement, racketeering, false claims, false statements, forgery, falsification or destruction
592 of records, obstruction of justice, receiving stolen property, or theft; or
- 593 4) conviction for any other crime indicating a lack of business integrity or business honesty that
594 seriously and directly affects the present responsibility of the Contractor or its officers or
595 directors,
- 596 then City has the option to each or all of the remedy options below:
- 597 a) to have each employee, officer, or director of Contractor responsible for such proscribed
598 conduct promptly terminated and/or replaced; and/or,
- 599 b) to unilaterally terminate this Agreement; and/or,
- 500 c) to impose such other sanctions, which may include financial sanctions, temporary suspensions
501 or any other condition City deems appropriate.

502 **16.3 Right to Terminate Upon Default and Right to Specific**
503 **Performance**

504 If Contractor commits a material breach, including specifically any of the matters listed in Section 16.1
505 (and, if permitted to cure, does not cure it within the forty-eight (48) hours), City shall be entitled to
506 unilaterally terminate this Agreement or impose other such sanctions (which may include financial
507 sanctions, temporary suspensions or any other conditions it deems appropriate short of termination) as
508 it shall deem proper. Should City decide to terminate this Agreement upon a default by Contractor, City
509 shall have the right to do so upon giving ten (10) days Notice to Contractor, unless there is a more
510 imminent danger to public health, welfare or safety, and shall not be required to take any further action
511 (such as holding any hearing, bringing any suit or taking any other action.).

512 City's rights to terminate this Agreement are not exclusive, and City's termination of this Agreement
513 shall not constitute an election of remedies. Instead, such remedies shall be in addition to any and all
514 other legal and equitable rights and remedies which City may have.

515 By virtue of the nature of this Agreement, the urgency of timely continuous and high- quality service,
516 the time required to effect alternative service, and the rights granted by City to Contractor, the remedy
517 of damages for a breach hereof by Contractor is inadequate and City shall be entitled to seek injunctive
518 relief and/or specific performance of any breach of this Agreement. Contractor acknowledges that
519 City's remedy of damages for a breach hereof by Contractor may be inadequate for reasons including:

- 520 • the urgency of timely, continuous and high-quality waste management and Recycling service
521 hereunder, including Recovery, Processing and/or transfer for Disposal of putrescible wastes
522 which constitute a threat to public health;
- 523 • the long time and significant investment of money and personnel (both City staff and private
524 consultants, including engineers, financial advisors, procurement counsel, bond counsel and

investment bankers) required to request and evaluate proposals for alternative service comparable to the service provided hereunder for the price provided hereunder, and to negotiate new agreements therefore;

- the City's reliance on Contractor's technical waste management and Recycling expertise;

- the City's reliance on Contractor's established relationships with Recovered Materials brokers and purchasers; and

- City's obligation to repay municipal obligations, regardless whether it secures Contractor's performance hereunder,

Consequently, City shall be entitled to all available equitable remedies, including injunctive relief.

16.4 Waiver

City's waiver of any breach or default shall not be deemed to be a waiver of any other breach or default, including ones with respect to the same obligations hereunder. The subsequent acceptance by City of any damages or other money paid by Contractor shall not be deemed to be a waiver by City of any pre-existing or concurrent breach or default.

16.5 Suspension, Termination of a Portion of Contractors Obligations

In the event the City suspends all or a portion of this Agreement or terminates a portion of Contractor's obligations required by this Agreement, Contractor shall continue to fully perform its obligations under the remaining portions hereof which are not suspended or terminated. For example, if City suspends Contractor's obligations with respect to Recovery and Processing of Source Separated Recyclable Materials upon the occurrence of one or more events listed in Section 16.1 and/or Section 16.2, Contractor would be obligated to fully perform its other obligations hereunder, including Facility Operation of the transfer station and other material Recovery and Processing activities. Compensation for the suspended services would also be suspended.

16.6 Contractor's Payment of Damages

Contractor shall pay City any damages accrued and payable during the then-current Contract Year or portion thereof which would have otherwise become payable.

CONTRACTOR'S LIABILITY FOR SUCH PAYMENTS SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT.

654 **16.7 City Right to Perform**

655 **16.7.1 General**

656 If City suspends or terminates this Agreement or any portion of Contractor's obligations under
657 this Agreement due to a Contractor default, then City shall have the right, but not the
658 obligation, to perform, or cause to be performed, such services itself with its own or other
659 personnel, utilizing all of City's property and equipment, as well as any other equipment owned
660 or obtained by Contractor that is used to provide such service. If City's performance costs,
661 including procurement of labor, equipment and materials and all other expenses necessary to
662 perform such obligations exceed the amounts which would have been payable to Contractor
663 hereunder had Contractor fully performed, then Contractor shall pay the amount of such excess
664 to the City.

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

669 Contractor further agrees that in such event:

- 570 A. It will take direction from City to effect the transfer of possession of all or any portion of
571 equipment and property to City for City's use, or for use by any Person or entity
572 designated by the City.
- 573 B. It will, if City so requests, keep in good repair and condition all of such equipment and
574 property, provide all motor vehicles and other equipment with fuel, oil, electricity, and
575 other service, and provide such other service as may be necessary to maintain said
576 property in operational condition.
- 577 C. City may immediately engage all or any personnel necessary or useful to provide
578 services, including, if City so desires, employees previously or then employed by
579 Contractor. Contractor further agrees, if City so requests, to furnish City the services of
580 any or all management or office personnel employed by Contractor whose services are
581 necessary or useful for provision of the services described under this Agreement.

582 **16.7.2 Billing and Compensation to City During City's Possession**

583 During such time that City is providing services as described in 16.7.1 above, Contractor shall, if
584 possible, and as directed by City, continue to operate the scale house, collect payment from
585 Self-Haulers, and Bill all Facility Users. If Contractor is no longer operating the scale house,
586 Contractor will assist the scale house operator to perform Billing services. Contractor further
587 agrees that, in such event, it shall reimburse City for any and all costs and expenses incurred by
588 City in taking over operations beyond Gate Rates withheld from the Contractor due to non-
589 performance of services under the Agreement. Such reimbursement shall be made from time
590 to time after submission by City to Contractor of each statement listing such costs and
591 expenses, but in no event later than five (5) working days from and after each such submission.

16.7.3 City's Right to Direct Contractor's Resumption of Service

It is further mutually agreed that City may at any time at its discretion provide control of the Facility to Contractor and thereupon demand that Contractor resume the services as provided in this Agreement, whereupon Contractor shall be bound to resume the same.

16.7.4 City's Possession Not A Taking

It is expressly agreed between the Parties that City's exercise of its rights under this Article (1) does not constitute a taking of private property for which compensation must be paid, (2) shall not create any liability on the part of City to Contractor, and (3) does not exempt Contractor from any of the indemnity and insurance provisions of this Agreement, which are meant to extend to circumstances arising under this Section provided that Contractor is not required to indemnify City against claims and damages arising from the sole negligence of City, its elective and appointive boards, commissions, officers, employees and agents in the Facility Operation during the time City has taken possession of the Facility.

16.7.5 Duration of City's Possession

City's right pursuant to this Article to retain temporary possession of any of Contractor's equipment that might be in use at the Facility, and to render services provided for under this Agreement, shall terminate when (i) Contractor demonstrates to City's satisfaction that it is ready, willing, and able to resume providing such services, (ii) City no longer reasonably requests such equipment, or (iii) one hundred and eighty (180) days from the date City retained temporary possession of the Facility, whichever occurs first. In any case, City has no obligation to maintain possession of Contractor's equipment and/or continue its use for any period of time and may at any time, in its sole discretion, relinquish possession to Contractor.

16.8 Liquidated Damages

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

B. Service Performance Standards; Liquidated Damages for Failure to Meet Standards. The Parties further acknowledge that consistent, reliable Facility Operations is of utmost importance to City and that City has considered and relied on Contractor's representations as to its quality of service commitment in entering this Agreement with it. The Parties further recognize that some quantified standards of performance are necessary and appropriate to ensure consistent and reliable service and performance. The Parties further recognize that if Contractor fails to achieve the performance standards, or fails to submit required documents in a timely manner, City, its residents and businesses, and Facility Users may suffer damages and that it is and will be impractical and extremely difficult to ascertain and determine the exact amount of damages which such parties will suffer. Therefore, without prejudice to City's right to treat such breaches as an event of default under this Article 16, the Parties agree that the liquidated damage amounts set forth in Exhibit 18 represent a reasonable estimate of the amount of such damages for such specific breaches, considering all of the circumstances existing on the date of this Agreement, including the relationship of the sums to the range of harm to City and others that reasonably could be anticipated and the anticipation that proof of actual damages would be costly or impractical. In placing their initials at the places provided, each Party specifically confirms the accuracy of the statements made above and the fact that each Party has had ample opportunity to consult with legal counsel and obtain an explanation of the liquidated damage provisions at the time that the Agreement was made.

Contractor

City

Initial Here_____

Initial Here_____

Contractor agrees to pay (as liquidated damages and not as a penalty) the amounts set forth in Exhibit 18.

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

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 incident(s)/non-performance. Contractor may review (and make copies at its own expense) all information in the possession of City relating to incident(s)/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 incident(s)/non-performance. City will provide Contractor with a written explanation of its determination on each incident(s)/non-performance prior to authorizing the assessment of liquidated damages. The decision of City shall be final.

C. Amount. 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.

D. Timing of Payment. City may either withhold the liquidated damage amount from compensation to be paid to Contractor, or City may request Contractor to 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 and there is insufficient Contractor Compensation to cover these damages due Contractor within the ten (10) day period or other period as parties may agree to,

City may proceed against the fidelity bond required by the Agreement or find Contractor in default and terminate this Agreement, or both.

16.9 Excuse from Performance

The Parties shall be excused from performing their respective obligations hereunder in the event they are prevented from so performing by reason of floods, earthquakes, other natural disasters, war, civil insurrection, riots, acts of any government (including judicial action), and other similar catastrophic events which are beyond the control of and not the fault of the Party claiming excuse from performance hereunder. Labor unrest, including, but not limited to, strike, work stoppage or slowdown, sick-out, picketing, or other concerted job action conducted by Contractor's employees or directed at Contractor is not an excuse from performance and Contractor shall be obligated to continue to provide service notwithstanding the occurrence of any or all of such events.

The Party claiming excuse from performance shall, within two (2) days after such party has Notice of such cause, give the other party Notice of the facts constituting such cause and asserting its claim to excuse under this Section.

The interruption or discontinuance of Contractor's services caused by one (1) or more of the events excused shall not constitute a default by Contractor under this Agreement. Notwithstanding the foregoing, however, if Contractor is excused from performing its obligations hereunder for any of the causes listed in this Section for a period of seven (7) days or more, City shall nevertheless have the right, in its sole discretion, to terminate this Agreement by giving ten (10) days' Notice, in which case the provisions relative to City's operating of Facility, using all equipment, and engaging Contractor's personnel in this Article 16 will apply.

16.10 Dispute Resolution, Non-Binding Arbitration

The Parties may, if both choose to do so, use non-binding arbitration as a dispute resolution procedure. In such event, the Parties will follow the following non-binding arbitration proceedings using an independent arbitrator. Parties may mutually agree to mediation in an attempt to resolve conflicts prior to entering arbitration.

16.10.1 Selection

If either Party wishes to select an arbitrator, each Party shall prepare a separate list of five independent arbitrators having experience in the operation of transfer stations, material recovery facilities and Yard Trimmings processing facilities, in numerical order with the first preference at the top, and exchange and compare lists. The independent arbitrator ranking highest on the two lists by having the lowest total rank order position on the two lists shall be the Independent Arbitrator. In case of a tie in scores, the Independent Arbitrator having the smallest difference between the rankings of the two Parties shall be selected; other ties shall be determined by a coin toss. If no independent arbitrator appears on both lists, this procedure shall be repeated. If selection is not completed after the exchange of three lists or sixty (60) days, whichever comes first, then each Party shall select one independent arbitrator having experience described above and the two arbitrators so selected shall together select an Independent Arbitrator.

16.10.2 Costs

Parties shall pay the costs of the Independent Arbitrator in accordance with the provisions hereof, provided that if no provision is specifically made, the Parties shall share the costs of the Independent Arbitrator equally for the first three dispute resolutions brought in any twelve (12) month period commencing on January 1, and thereafter shall be borne by the loser, as determined by the Independent Arbitrator.

16.10.3 Notices

Following the Parties mutual good faith efforts to resolve disputes for a period of no less than thirty (30) days, the Parties shall each give the Independent Arbitrator Notice detailing the dispute together with a written statement of each Party's position thereon. Parties shall simultaneously exchange copies thereof. Upon mutual written consent of the Parties, the determination of the Independent Arbitrator shall be binding.

Both Parties shall, in good faith and in writing, promptly provide the Independent Arbitrator with any and all information and documentation the Independent Arbitrator requires or requests in order to make its determination. Each Party shall simultaneously provide the other Party with copies thereof. Neither Party shall communicate orally with the Independent Arbitrator unless the other Party is privy thereto. Neither Party shall communicate in writing with the Independent Arbitrator unless it simultaneously sends copies of such communication to the other Party, in the same manner that it sends such communication to the Independent Arbitrator.

16.10.4 Determination

The Independent Arbitrator shall make its determination based on the submissions of the Parties, the provisions hereof, and other factual determinations it may make regarding the matter in dispute. If the Parties have not previously agreed that the determination of the Independent Arbitrator is binding, either Party may promptly request alternative dispute resolution in accordance with Section 16.12 below.

16.11 Assurance of Performance

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

16.12 Other Remedies

If after following the foregoing procedures, the Parties have not resolved their dispute or if due to the nature of the claimed default or exigencies of the situation, following such procedures would place the Parties or the public at risk, the Parties shall be entitled to pursue any legally available remedies.

347 **ARTICLE 17**
348 **OTHER AGREEMENTS OF THE**
349 **PARTIES**

350 **17.1 Relationship of Parties**

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

361 **17.2 Compliance with Law**

362 In providing the services required under this Agreement, Contractor shall at all times, at its sole cost,
363 comply with all Applicable Laws now in force and as they may be enacted, issued, or amended
364 including, but not limited to, the payment of prevailing wage, if applicable.

365 **17.3 Governing Law**

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

368 **17.4 Jurisdiction**

369 Except for those matters where Federal Courts have exclusive jurisdiction, any lawsuits between the
370 Parties arising out of this Agreement shall be brought and concluded in the courts of the State of
371 California, which shall have exclusive jurisdiction over such lawsuits. The Parties agree that venue is
372 made in and will be performed in courts sitting in Ventura County, California or, in case of federal
373 jurisdiction, Federal District Court, Central Division. Parties further agree that the site of any other
374 hearing or action, whether arbitration or non-judicial, of whatever nature of kind regarding this
375 Agreement, shall be conducted in Ventura County, California.

376 **17.5 Assignment**

377 Contractor shall not assign its rights, nor delegate, subcontract or otherwise transfer its obligations
378 under this Agreement (collectively referred to as an "assignment") to any other Person without the
379 prior written consent of the City Council. Any such assignment made without the consent of the City
380 Council shall be void and the attempted assignment shall constitute a material breach of this
381 Agreement.

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

396 Contractor acknowledges that this Agreement involves rendering a vital service to City's residents and
397 businesses, and that City has selected Contractor to perform the services specified herein based on (1)
398 Contractor's experience, skill and reputation for conducting services required under this Agreement in a
399 safe, effective and responsible fashion, at all times in keeping with applicable Environmental Laws,
300 regulations and best solid waste and Recycling management practices, and (2) Contractor's financial
301 resources to maintain the required equipment and to support its indemnity obligations to City under
302 this Agreement. City has relied on each of these factors, among others, in choosing Contractor to
303 perform the services to be rendered by Contractor under this Agreement.

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

310 a) Contractor shall undertake to pay City its reasonable expenses for attorney's fees and
311 investigation costs necessary to investigate the suitability of any proposed assignee, and to
312 review and finalize any documentation required as a condition for approving any such
313 assignment. An advance payment of one hundred thousand dollars (\$100,000) towards
314 expenses shall be paid to City prior to City consideration of any assignment request and
315 Contractor shall be responsible to pay all costs incurred by City in considering a request for
316 assignment, including those in excess of the aforesaid deposit amount, regardless of whether
317 City consents to the assignment.

318 b) Contractor shall pay the City a transfer "assignment right" fee equal to the total of Gate Fees
319 received from the City during the prior twelve (12) month period.

320 c) Contractor shall furnish City with audited financial statements of the proposed assignee's
321 operations for the immediately preceding three (3) operating years.

322 d) Contractor shall furnish City with proof; satisfactory to the City: (i) that the proposed assignee
323 has at least five (5) years of transfer station and MRF operating and management experience on

a scale equal to or exceeding the scale of operations conducted by Contractor under this Agreement; (ii) that in the last five (5) years, the proposed assignee has not suffered any significant citations or other censure from any federal, state or local agency having jurisdiction over its solid waste and Recycling management operations due to any significant failure to comply with state, federal or local Applicable Laws and that the assignee has provided City with a complete list of any such citations and censures; (iii) that the proposed assignee has at all times conducted its operations in an environmentally safe and conscientious fashion; (iv) that the proposed assignee conducts its solid waste and Recycling management practices in accordance with sound solid waste and Recycling management practices in full compliance with all federal, state and local laws regulating the handling of solid waste and Recycling including Hazardous Substances, and; (v) proposed assignee(s) financial resources are sufficient to ensure ability to meet all Contractor obligations under this Agreement.

e) Contractor shall furnish the City with any other information required by City to ensure the proposed assignee can fulfill the terms of this Agreement in a timely, safe and effective manner. Under no circumstances shall City be obliged to consider any proposed assignment by City if Contractor is in default at any time during the period of consideration. Should City consent to any assignment request, such assignment shall not take effect until all conditions relating to City's approval have been met.

17.6 Binding on Assigns

The provisions of this Agreement shall inure to the benefit to and be binding on the permitted assigns (if any) of the Parties.

17.7 Cooperation in Unforeseen Circumstances

The Parties recognize and agree that unforeseen developments and circumstances may occur during the Term that materially modify or otherwise affect the obligations of the City or the Contractor. The City and the Contractor further agree that in such event each will cooperate in a professional manner and negotiate with the other in good faith to address and resolve such unforeseen developments.

17.8 Cooperation Upon Termination or Expiration of Agreement

Prior to, and at, the end of the Term or in the event this Agreement is terminated for cause prior to the end of the Term, Contractor shall cooperate fully with City and any subsequent Facility operator that City designates to assure a smooth transition of Facility Operations and management. Contractor's cooperation shall include, but not be limited to, providing the following:

- (a) Promptly turn over all keys and security codes for access to property and operation of Facility.
- (b) Leave Facility intact and in maintained and operable condition, removing no Facility property.
- (c) Vacate the Facility, removing all Contractor property not used in the Facility Operation and delivering possession of Facility, equipment, rolling stock, and transfer vehicles acquired by City pursuant to Section 4.19.7, as directed by City.

- 960 (d) Transfer to the City or at the City's request to the new operator, the rights to use any and all
961 patents, licenses, trade secrets, or other intellectual property necessary for Facility Operation.
- 962 (e) Transfer to the City or at the City's request to the new operator, any and all maintenance and
963 supply contracts and Recovered Materials sales contracts which are specific to the Facility.
- 964 (f) Deliver possession of any proprietary components needed for Facility Operation to the City or
965 at the City's request to the new operator.
- 966 (g) Provide thirty (30) days of training of such personnel designated by the City as may reasonably
967 be necessary to enable the City or new operator to continue with Facility Operation.
- 968 (h) Provide the City or at the City's request to the new operator, non-technical and technical
969 design, construction and Facility Operation information, whether or not proprietary, including
970 the Operations and Maintenance Manual, technical specifications, and as-built plans of the
971 Processing system and assign or provide any other license or consent which is necessary for the
972 Facility Operation.
- 973 (i) Provide the City or at the City's request to the new operator Customer Billing information.
- 974 (j) Transfer to City or at the City's request the new operator up-to-date maintenance records.
- 975 (k) Provide the City or at the City's request to the new operator other operating records needed to
976 provide all services covered by this Agreement.
- 977 (l) Pay City any compensatory damages or liquidated damages, in accordance with Sections 16.8,
978 accrued and payable during the then current calendar year or portion thereof which would have
979 otherwise become payable. Contractor's liability for such payments shall survive the
980 termination of this Agreement.
- 981 (m) Pay all taxes due to appropriate parties including, but not limited to, State, county, and local
982 agencies.
- 983 (n) Transfer by Contractor to the City of all work in process.
- 984 (o) Delivery of functional equipment, machinery, and rolling stock to the City or new operator if the
985 City exercises its right to acquire such equipment in accordance with Section 4.19.7;
- 986 (p) Delivery of clean and functional Facility.
- 987 (q) Payment of any amounts due and owing by either Party to the other Party.
- 988 City and Contractor agree that this Agreement is an operating agreement and does not create a
989 possessory interest in Contractor subject to taxation. If, however, it is asserted that this Agreement
990 does create a taxable property interest, Contractor will be solely responsible for contesting any
991 proceeding in which such an assertion is made and solely responsible for payment of any taxes or
992 payments assessed as a result of any determination made in any such proceeding.

193 The failure to cooperate with City following expiration of the Term or early termination shall be
194 conclusively presumed to be grounds for specific performance of this covenant and/or other equitable
195 relief necessary to enforce this covenant.

196 17.9 Parties in Interest

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

199 17.10 Waiver

200 The waiver by either Party of any breach or violation of any provisions of this Agreement shall not be
201 deemed to be a waiver of any breach or violation of any other provision nor of any subsequent breach
202 of violation of the same or any other provision. The subsequent acceptance by either Party of any
203 moneys which become due hereunder shall not be deemed to be a waiver of any pre-existing or
204 concurrent breach or violation by the other Party of any provision of this Agreement.

205 17.11 Contractor's Investigation

206 Contractor has made an independent investigation (satisfactory to Contractor) of the conditions and
207 circumstances surrounding the Agreement and the work to be performed by it.

208 17.12 Notice

209 All notices, demands, requests, proposals, approvals, consents and other communications which this
210 Agreement requires, authorizes or contemplates shall be in writing and shall either be personally
211 delivered to a representative of the Parties at the address below or be deposited in the United States
212 mail, first class postage prepaid, addressed as follows:

213 If to City:

214 City Manager and City Attorney
215 City of Oxnard
216 300 West Third Street
217 Oxnard, CA 93030

218 If to Contractor:

219 _____
220 _____
221 _____

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

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

026 **17.13 Contractor's Representative**

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

032 **17.13 Compliance with Municipal Code**

033 Contractor shall comply with those provisions of the municipal code of City which are applicable, and
034 with any and all amendments to such applicable provisions during the term of this Agreement.

035 **17.14 Exercise of Options**

036 Except as otherwise provided, City's exercise of any approval, disapproval, option, discretion, election
037 or choice hereunder shall be in City's independent, sole, exclusive and absolute control and judgment,
038 unless this Agreement specifically provides that such exercise must be reasonable.

039 **17.15 Guarantee of Contractor's Performance**

040 Pursuant to a guaranty in substantially the form attached as Exhibit 5, _____ {Insert
041 name of Contractor's Guarantor}, a _____ which owns all of the issued and outstanding
042 common stock of Contractor, has agreed to guarantee Contractor's performance of this Agreement.
043 The Guaranty is being provided concurrently with Contractor's execution of this Agreement.

044 **17.16 Professionalism**

045 Contractor, its employees, subcontractors, or other agents shall act in a professional and courteous
046 manner at all times when on the property of the Disposal Facility and Processing Sites and shall follow
047 all operating procedures established by the Disposal Facility and Processing Site operator including
048 those related to health and safety, traffic, gate house, Mixed Municipal Waste unloading, and load
049 checking operations.

050 **17.17 Cooperation and Disputes**

051 Contractor shall fully comply with its obligations and cooperate to its fullest extent with the operator of
052 a Disposal Facility and Processing Site. In the event of disputes between Contractor and said operator,
053 Contractor shall continue performance of Contractor's obligations under this Agreement and shall
054 attempt to continue to resolve such dispute in a cooperative manner, including but not limited to
055 negotiating with the operator in good faith.

156 **17.18 Payment of Taxes**

157 Contractor shall pay, when and as due, any and all Federal, State, and local fees, assessments, or taxes
158 incurred as a result of Contractor's compensation hereunder, including estimated taxes.

159 **17.19 Amendments**

160 The Parties may change, modify, supplement, or amend this Agreement only upon mutual written
161 agreement duly authorized and executed by both Parties.

162 **ARTICLE 18**
163 **MISCELLANEOUS PROVISIONS**

164 **18.1 Entire Agreement**

165 This Agreement contains the entire integrated agreement and understanding concerning the subject
166 matter herein and supersedes and replaces any prior negotiations, promises, proposals, and
167 agreements between the Parties, whether written or oral. The Parties acknowledges this document has
168 been executed with the consent and upon the advice of counsel. Each of the Parties acknowledges that
169 no Party or agent or attorney of any other party has made any promise, representation, or warranty,
170 express or implied, not contained in this Agreement, to induce the other Party to execute this
171 instrument.

172 **18.2 Section Headings**

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

176 **18.3 References to Laws and Other Agreements**

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

179 **18.4 Interpretation**

180 This Agreement, including the Exhibits attached hereto, shall be interpreted and construed reasonably
181 and neither for nor against either Party, regardless of the degree to which either Party participated in its
182 drafting.

183 **18.5 Agreement**

184 This Agreement may not be modified or amended in any respect except by a writing signed by the
185 Parties.

086 **18.6 Severability**

087 If any non-material provision of this Agreement is for any reason deemed to be invalid and
088 unenforceable, the invalidity or unenforceability of such provision shall not affect any of the remaining
089 provisions of this Agreement which shall be enforced as if such invalid or unenforceable provision had
090 not been contained herein.

091 **18.7 Exhibits**

092 Each of the Exhibits identified as Exhibit "1" through "21" is attached hereto and incorporated herein
093 and made a part hereof by this reference.

094 **18.8 Attorneys' Fees**

095 If either Party to this Agreement is required to initiate or defend or made a party to any action or
096 proceeding in any way connected with this Agreement, the prevailing Party in such action or
097 proceeding, in addition to any other relief which may be granted, whether legal or equitable, shall be
098 entitled to recover its reasonable attorney's fees and costs. Attorneys' fees shall include attorney's fees
099 on any appeal, and in addition a Party entitled to attorney's fees shall be entitled to all other reasonable
100 costs for investigating such action, taking depositions and discovery and all other necessary costs the
101 court allows which are incurred in such litigation. All such fees shall be deemed to have accrued on
102 commencement of such action and shall be enforceable whether or not such action is prosecuted to
103 judgment.

104

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

107 CITY OF OXNARD

108 ("City")

109
110 DATED: _____
111 CITY OF OXNARD

112
113 By: _____
114 Tim Flynn, Mayor

115
116
117
118 ATTEST:

119
120
121 By: _____
122 Daniel Martinez, City Clerk

123
124 APPROVED AS TO FORM:
125
126
127 By: _____
128 Alan Holmberg, City Attorney

129
130 APPROVED AS TO INSURANCE:
131
132
133 By: _____
134 James Cameron, Risk Manager

135
136 APPROVED AS TO CONTENT:
137
138 By: _____
139 Karen R. Burnham, Interim City Manager

140
141
142 By: _____
143 Rob Roshanian, Interim Public Works Director

DATED: _____
CONTRACTOR

By: _____
NAME

TITLE

NAME OF CONTRACTOR

ADDRESS

TELEPHONE



ACTION	TYPE OF ITEM
☐ Approved Recommendation	☐ Info/Consent
☐ Ord. No(s). _____	☐ Report
☐ Res. No(s). _____	☐ Public Hearing (Info/consent)
☐ Other _____	☒ Other Study Session

Prepared By: James Cameron

Agenda Item No. R-1

Reviewed By: City Manager

City Attorney

Finance

Other (Specify)

DATE: February 20, 2013**TO:** City Council**FROM:** James Cameron
Chief Financial Officer**SUBJECT:** Budget Study Session – Salary and Benefits Discussion**RECOMMENDATION**

That City Council receive information regarding salaries and benefits and provide guidance to staff for the Fiscal Years 2013-14 2014-15 Two-year Budget and future study sessions.

DISCUSSION

The major component in the cost of providing most services to the community is personnel. Over all, personnel costs are about 75% of the General Fund budget and 43% of the total budget. The current year salary budget for all funds is \$85.7 million with \$52.4 million in the General Fund. Benefits, including pension and medical total \$27.4 million for all funds and \$14 million in the General Fund. In addition, other personnel related costs such as overtime, workers' compensation and temporary employees total \$37.6 million, with \$13.9 million in the General fund.

Salaries and benefits are in large part determined through collective bargaining with the various union groups. In addition, State and Federal rules and regulations impact the process for setting these amounts. For example, The Public Employees' Pension Reform Act (California) and the Federal Affordable Care Act have future impacts and are important topics for discussion.

The State Controller provides noteworthy benchmarks for Cities on his web site. The average wage for City of Oxnard employees is \$52,486 compared to the average for all cities of \$61,059. In addition the ratio of residents to employee is 117:1 for Oxnard compared to an average of 104:1 for all cities. This implies that City residents get more service from each employee at a lower cost than the average city in California.

Based on interest expressed by several Council Members and the significance of personnel costs in the annual budget, the discussion of compensation is being brought to Council at this time in order to address any interest on the part of Council to pursue new strategies related to this issue.

FINANCIAL IMPACT

Because this item is for discussion purposes only, there is no financial impact.