

FIRST AMENDMENT TO
EXTENDED AND SECOND RESTATED AGREEMENT BETWEEN
CITY OF SUNNYVALE
AND
BAY COUNTIES WASTE SERVICES, INC.
FOR SOLID WASTE COLLECTION AND RECYCLING

This First Amendment (the "First Amendment") is dated as of September 30, 2010, and is an amendment to that certain Extended and Second Restated Agreement Between City of Sunnyvale and Bay Counties Waste Services, Inc. For Solid Waste Collection And Recycling, dated January 11, 2005 (the "Agreement").

The City of Sunnyvale and Bay Counties Waste Services, Inc. agree that the Agreement shall be amended as follows:

1. Section 3.03 of the Agreement is deleted and replaced by the following:

"3.03 Term of Franchise

The term of the franchise granted under this Agreement, as distinct from the Term of this Agreement, is 30 years, commencing at 12:01 a.m. on July 1, 1991 and expiring at midnight June 30, 2021.

If this Agreement is terminated earlier than its expiration, the Franchise will also terminate concurrently therewith."

2. Section 4.02 of the Agreement is deleted and replaced by the following:

"4.02 Term

The Term of this Agreement begins on December 1, 1990 and ends at midnight June 30, 2021."

3. Section D of Exhibit 8.03D is deleted and replaced by the following:

"D. Termination of Certain Incentive Payments. Contractor received Incentive Payments under the Incentive Program during the July 1, 1996-June 30, 1997 year that are payable with respect to cost savings programs implemented in prior years that resulted in savings in (i) Residential refuse collection labor (the "Residential Refuse Collection Incentive Payment") and (ii) workers' compensation insurance (the "Workers' Compensation Incentive Payment"). Notwithstanding any other provision of

this Exhibit 8.03D, but without prejudice to Contractor's right to receive other Incentive Payments (to the extent applicable under this Exhibit 8.03.D) beyond June 30, 2004, the Residential Collection Incentive Payment and the Workers' Compensation Incentive Payment terminated on June 30, 2004.

Contractor received Incentive Payments under the Incentive Program during the July 1, 2009-June 30, 2010 year that are payable with respect to an automation and route restructuring cost savings program implemented in a prior year that resulted and will in the future result in savings in Residential refuse collection costs (the "Residential Route Reduction Incentive Payment"). The Contractor Payment for the July 1, 2010-June 30, 2011 year anticipates a \$126,559.24 ~~130,882.24~~ Residential Route Reduction Incentive Payment to Contractor. Notwithstanding any other provision of this Exhibit 8.03D, but without prejudice to Contractor's right to receive other Incentive Payments (to the extent applicable under this Exhibit 8.03.D) beyond June 30, 2010, the Residential Route Reduction Incentive Payment will be limited to a maximum of \$32,706 per year, effective July 1, 2010 and will terminate no later than June 30, 2021.

4. During the July 1, 2009-June 30, 2010 year, Contractor operated ten "commercial" front-loader garbage collection routes per weekday (Department 10). Contractor's equipment replacement schedule anticipates replacement of two of these front-loader garbage trucks during the July 1, 2010-June 30, 2011 year at a projected purchase price of \$402,196 per truck. Contractor agrees to purchase no more than one of these trucks and to reduce the number of Department 10 commercial front-loader garbage routes to no more than nine per weekday, effective September 1, 2010.

5. During the July 1, 2009-June 30, 2010 year, Contractor operated nine residential garbage collection routes per weekday (Department 30). Contractor's equipment replacement schedule anticipates replacement of nine of these residential garbage trucks during the July 1, 2011-June 30, 2012 year at a projected purchase price of \$378,816 per truck. Contractor agrees to reduce the number of Department 30 residential garbage routes to no more than eight per weekday, effective on the first day of the first calendar month, or the fifteenth (15th) day, whichever is sooner, after the Amendment to this Agreement inserting this provision is approved by City's City Council and signed by City, and to purchase no more than eight residential garbage collection trucks in the July 1, 2011-June 30, 2012 year."

6. Section 11.03 of the Agreement is deleted and replaced by the following:

"11.03 Possession/Purchase of Property Upon Termination

A. In Event of Default. If City terminates this Agreement in accordance with Section 11.02, City may take possession of any and all of Contractor's Service Assets and use those Service Assets to collect and transport any Solid Waste generated within City. City may retain the possession of those Service Assets until other suitable arrangements can be made for the provision of Solid Waste collection services, including the grant of a franchise to another solid waste hauling company.

B. Upon Expiration of this Agreement. At midnight on June 30, 2021 (the "Expiration Date"), Contractor shall transfer to City title, ownership or other rights to use and possession (such as leasehold interests in the case of leased Service Assets) and possession of all, but not part, of the Service Assets (excluding land, buildings and fixtures), without encumbrance or lien other than those in existence as of the date Contractor executed the Agreement and liens for property taxes not yet due and payable. Waste Generators' possession of Containers will be deemed possession by City for this purpose. CITY'S PURCHASE OBLIGATION WILL SURVIVE THE EXPIRATION OF THIS AGREEMENT.

1. Service Assets To Be Purchased

Service Assets subject to the City's obligation to purchase are those listed by department below and refer to those assets shown in the Equipment Depreciation Schedules that are part of the approved Contractor Payment Request for Fiscal Year 2009/10 and future modifications to those schedules approved by City.

- Department 10 (Commercial FEL) - All items
- Department 20 (Commercial Roll-Offs) - All items
- Department 30 (Residential Collection) - All items
- Department 40 (Commercial/Industrial Recycling) - All items
- Department 50 (Yard Waste Recycling) - All items
- Department 70 (Multi-Family/Residential Recycling) - All items
- Department 80 (Vehicle Maintenance) - No items
- Department 90 (Container Maintenance) - Container and lift trucks only

- Department 00 (Administration) - Pickup trucks and phone system only
2. Adjustments to asset purchase schedules

Contractor and City shall work cooperatively to adjust asset purchases between the date of this First Amendment and the Expiration Date in order to minimize the purchase price of the Service Assets required to be purchased by the City on the Expiration Date; provided, however, that Contractor shall be compensated by means of increased Contractor's Payments for the increased cost, if any, of maintaining Service Assets that are not replaced on schedule and continue to be used after their scheduled replacement dates. Any assets scheduled to be replaced within 2 years of the Expiration Date shall not be replaced without the prior written approval of City.

3. Contractor Obligation To Maintain Assets

Contractor agrees to maintain, use and repair all Service Assets that are subject to the City's obligation to purchase in accordance with the manufacturers' specifications. Contractor agrees to provide City with maintenance records for such Service Assets to be purchased prior to City purchase. City shall have the option, at City expense, to perform an inspection of such Service Assets prior to purchase. Service assets that have not been maintained in accordance with the manufacturers' specifications or that are non-functioning shall not be subject to City's purchase obligation.

Simultaneously upon City's purchase of the Service Assets subject to City's obligation to purchase, City shall pay Contractor an amount equal to the aggregate depreciated value of such Service Assets (as used for determining the Contractor Payment amount subject to City approval per the Agreement) at Agreement expiration. Any of such Service Assets the purchase price for which has been fully paid to Contractor through Contractor's Payments shall be transferred at no cost to City.

C. Records and Service Asset Documentation. Upon City direction, Contractor will furnish City with immediate access to Waste Generator subscription (including service and complaint information), routing, and all of its business records related to its billing of accounts for services that are not billed by City under Section 6.01A. Contractor will comply with its obligations with respect to Service Asset Documentation as defined in and in accordance with Section 10.01B.

D. Undepreciated Assets. Except as set forth in part B of this Paragraph 11.03, Contractor has no right to

recover amounts equal to any undepreciated asset value remaining upon expiration or earlier termination of this Agreement from City or Waste Generators."

7. Exhibit 8.03A Section [C2]a. Escalation of Fuel is amended by replacing the incorrect reference to "05-73-02-01 Producer Price Index #2 Diesel Fuel," with the correct reference "05-73-03 Producer Price Index #2 Diesel Fuel."

8. Section 1.03N2 of Exhibit 5.02 is deleted and replaced by the following:

"Disabled and Elderly Rear Yard Service; Push Out Service.

Contractor may enter onto private property to provide rear yard services to the disabled or elderly in accordance with Section 1.04B and push out service to Waste Generators who subscribe to push out service in accordance with Section 1.030."

9. Section 1.06A1 of Exhibit 5.02 is deleted and replaced by the following:

"1.06. Commercial/Industrial Collection - Can Service, Bin Service and Drop Boxes/Compactors

A. Service Provided.

1. Frequency and Commencement.

Contractor will collect all Solid Waste at Commercial/Industrial premises at least once each week, Monday through Saturday, commencing on the next regularly scheduled collection day following that Commercial/Industrial Waste Generator's request for service. Contractor will provide push out service described in Section 1.030 of this Exhibit at request of Commercial/Industrial Generators at rates established by City.

Contractor will provide special collection services as requested by the Commercial/Industrial Waste Generator at rates established by City."

10. Section 8.03A2 of the Agreement is amended by changing contract year references as follows:

- Reference(s) to (PAC06) are changed to (PAC14)
- Reference(s) to (P6) are changed to (P14)
- Reference(s) to (PL6) are changed to (PL14)
- Reference(s) to (PV6) are changed to (PV14)

Reference(s) to (PO6) are changed to (PO14)
Reference(s) to (NID6) are changed to (NID14)

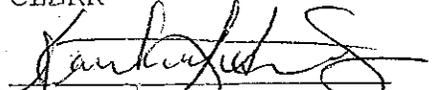
11. Except as amended by this First Amendment, the Agreement shall remain in full force and effect in accordance with its terms.

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

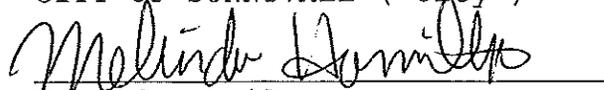
ATTEST:

CITY CLERK

By:


Kathleen Franco-Simmons
City Clerk

CITY OF SUNNYVALE ("City")

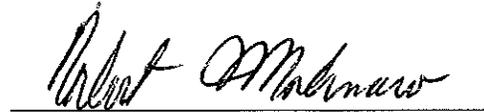

Melinda Hamilton
Mayor

APPROVED AS TO FORM:


David Kahn
City Attorney

BAY COUNTIES WASTE SERVICES,
INC. ("Contractor")

By:


Robert Molinaro
President

ATTEST name and signature:


Jerry Nabhan
Corporate Secretary

EXTENDED AND RESTATED AGREEMENT BETWEEN
CITY OF SUNNYVALE
AND
BAY COUNTIES WASTE SERVICES, INC.

FOR SOLID WASTE COLLECTION AND RECYCLING

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(h)

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EXHIBIT 9.03 FAITHFUL PERFORMANCE BOND

EXHIBIT 10.01 LEASE AGREEMENT PROVIDING FOR CONTRACTOR'S LEASE TO CITY OF VEHICLES FOR COLLECTION AND DISPOSAL SERVICES

EXHIBIT 10.02 1992 AGREEMENT AMONG COMERICA BANK, CONTRACTOR AND CITY REGARDING ASSIGNMENT OF LEASE PROCEEDS, ETC.

1993 City Council Acknowledgement of 1992 Agreement

1993 First Amendment to 1992 Agreement

1997 First Amendment of 1992 Agreement

EXHIBIT 11.08 FUNDING AGREEMENTS



**EXTENDED AND SECOND RESTATED AGREEMENT BETWEEN
CITY OF SUNNYVALE
AND
BAY COUNTIES WASTE SERVICES, INC.
FOR SOLID WASTE COLLECTION AND RECYCLING**

THIS AGREEMENT was made and entered into as of the first day of December, 1997, and is extended, amended and restated as of the 11 day of January, 2005 by and between City of Sunnyvale, a municipal corporation of the State of California (hereinafter "City") and Bay Counties Waste Services, Inc., a California corporation, D.B.A. Specialty Solid Waste and Recycling (hereinafter "Contractor"). The extension, amendment and restatement of this Agreement does not constitute a re-dating of the entire Agreement, and unless provisions in this Agreement are specifically qualified by reference to the date of amendment and restatement of this Agreement, their date refers to the date of original execution of this Agreement.

RECITALS

This Agreement is entered into with reference to the following facts and circumstances that are found and declared by City:

A. City and Contractor are parties to this Agreement for the Collection of Solid Waste between City and Specialty Garbage and Refuse Service, Inc. dated July 24, 1990 (the "Franchise Agreement"),

- (1) as assigned to Contractor and amended by a Consent and First Amendment dated as of December 17, 1992,
- (2) as further amended by a Second Amendment dated as of January 11, 1994, a Third Amendment dated as of November 9, 1994, a Fourth Amendment dated as of December 19, 1995, a Fifth Amendment dated as of April 23, 1996, and a Sixth Amendment dated as of June 19, 1996, and
- (3) as restated by a Restated Agreement dated as of December 1, 1997.

B. This Extended and Second Restated Agreement restates in its entirety all prior versions of the Franchise Agreement effective as of the date hereof, unless otherwise provided in this Second and Second Restated Agreement

C. The provision of adequate and reliable solid waste collection and disposal is essential to the health, safety and well-being of residents of City.

D. The State of California has found and declared that the rapidly increasing volume of solid waste resulting from population growth, industrial expansion and other factors requires an organized and comprehensive approach to solid waste management.

E. As an essential part of the State of California's comprehensive program for solid waste management, the State has declared that it is in the public interest for local governmental agencies to make adequate provision for solid waste handling, including the promotion of recycling and reuse of materials which would otherwise be disposed of in landfills.

F. The City Council concurs in the aforementioned findings and declarations of the State of California, which it finds to be applicable to the conditions prevailing within the City.

G. The State of California has recognized in Public Resources Code Section 40059 that City may determine all aspects of solid waste handling which are of local concern, including frequency of collection, methods of collection and transportation, level of services, charges and fees, and has declared that City may determine whether any such services are to be provided by means of exclusive or non-exclusive franchises, contracts, licenses, permits or other means, and that City may grant to others authorization to provide solid waste handling services under such terms and conditions as City may prescribe.

H. The City Charter, Article XVI, authorizes the City Council to grant by ordinance a franchise for furnishing City and its inhabitants garbage, waste and refuse removal up to a term of 30 years, Section 8.16.070 of the Sunnyvale Municipal Code requires the City Council to provide for the collection of garbage, waste and refuse within the City by the issuance of one or more franchises or licenses to disposal service operators upon terms and conditions to be established in the applicable franchise or license.

I. The City desires that a thorough, competent and qualified solid waste handling company provide the highest

quality of solid waste collection for the City residents and businesses. To that end, City solicited proposals from solid waste handling companies to provide solid waste collection services of the type described in this Agreement pursuant to a franchise which is exclusive to the extent provided in this Agreement.

J. The City Council has determined that an exclusive franchise for the collection of solid waste, the scope of which is described in this Agreement, is an appropriate means of providing for the efficient and orderly collection of solid waste. The City Council has evaluated all proposals submitted and has determined that Contractor has proposed to provide such services in a manner and on the terms which are in the best interest of City and its residents, taking into account the qualifications and experience of Contractor in the collection of solid waste and the cost of providing such services.

K. On November 11, 2003, the City Council approved as follows:

(1) **Depreciation of Trucks and Equipment:** Approve in concept extending depreciation for Contractor trucks and equipment to 10 years from 7 and 5 years, respectively (as provided in Section III(4)b of Exhibit [8.03A2A]); and

(2) **Extend Term of Refuse Collection Contract to 27 Years:**
Direct the City Manager to negotiate and return to Council a contract amendment with Bay Counties Waste Services that;

Accepts Contractor's proposal to extend the term of this Agreement to 27 years (as provided in Section 4.02) and lengthen the depreciation of trucks and equipment to 10 years (as provided in Section C4b of Exhibit 8.03A), with City to realize 50% of the resulting savings (as evidenced by payment from Contractor to City simultaneously with the execution of this Extended and Second Restated Agreement of \$907,389, which represents sharing 50% of the cost savings that Contractor realized by extending the depreciation of its service assets between July 1, 2002 and June 30, 2004 in conjunction with the extension of this Franchise Agreement);

Requires Contractor to submit its operations to a detailed performance review (by a consultant to be selected by City) of Contractor's operations to identify opportunities for route reductions and other efficiency

improvements (which was conducted by Brown, Vence & Associates);

Requires Contractor to pay 50% of the cost of the performance review (as evidenced by payment from Contractor to City of \$34,912.53) and to make changes to its operations that are identified by the review and approved by City (such as with respect to sale or lease of assets as provided in Section C4c of Exhibit 8.03A, reconciliation of actual / projected capitalized maintenance costs in Section C2d of Exhibit 8.03A);

Incorporates City-desired changes to the contract in the following areas:

- (1) **SERVICE STANDARDS** (such as care of private and City property in Section 5.11, minimization and cleanup of spills in Section 5.12, graffiti cleanup in Section 5.15C, employee training in Section 5.16F, compliance with City billing protocol in Section 6.01A, buy-recycled procurement in Section 6.03, public/customer service and accessibility in Section 6.05, complaint response time in Section 6.05, with respect to CNG vehicles and fueling in Section 11.08),
- (2) **ASSIGNMENT** (as provided in Section 12.05), and
- (3) **REMEDIES** (such as liquidated damages in Section 6.07 for failure to meet service standards, compensatory damages for lost franchise fees upon breach in Section 7.01E, agreed upon letter of credit assurances in Section 9.03, and implementation of City's right to perform services in Section 10.01.

L. At the City Council meeting November 11, 2003, Contractor presented the following slide:

- "Staff Concern: BCWS can be sold and the contract assumed by new owners at any time.
- Response: The City currently has the ability within the existing franchise agreement to approve or disapprove an assignment of the contract. Our two principal owners have operated in other South Bay locations for extensive periods of time under a long-term commitment philosophy. This is no different for the City of Sunnyvale. The Company, if given the opportunity, will be there for the long haul."

A representative of Contractor closed his remarks to City Council, as follows: "Would another [waste company] put their company up for sale after they got the contract? Some might . . ."

. South City Scavengers has been around since 1914. I'm third generation, and my kids are fourth generation. . . . We're here for the long run."

M. Nothing in this Agreement is intended to constitute a waiver or modification of the rights or obligations of either party as they may exist under the Franchise Agreement as previously amended, restated and consolidated.

NOW, THEREFORE, in consideration of the extension of the franchise and the mutual covenants and agreements contained in this Agreement, the parties agree as follows:

ARTICLE 1 DEFINITIONS

For purposes of this Agreement, unless a different meaning is clearly required, the following terms have the following meanings:

"Affiliate" has the meaning provided in Section 8.07H. For the purposes of Section 7.01 of The Consent and First Amendment to Agreement between the City of Sunnyvale and Specialty Garbage and Refuse Service, Inc. for the Collection of Solid Waste dated as of the 17th day of December 1992 by and among the City, Specialty Garbage and Refuse Service, Inc., "affiliated companies" means "Affiliates".

"Agreement" or **"Extended and Restated Agreement"** means this contract, including all exhibits and attachments, and any amendments thereof or supplements thereto.

"City" means **City** of Sunnyvale, a municipal corporation, and all of the territory lying within the municipal boundaries of **City** as presently existing or as such boundaries may be modified during the Term. For purposes of the areas to be served by Contractor under this Agreement, "City" also includes unincorporated areas completely surrounded by the City of Sunnyvale, all of which are now provided solid waste collection services by Contractor under this Agreement.

"Collection" means (1) collection of solid waste and its transportation to the Disposal Site; and (2) collection and disposition (other than by disposal) of Recyclable Materials, as the context requires.

"Commercial/Industrial" means not Residential.

"**Commercial/Industrial Premises**" means Premises that are not Residential Premises or Multi-Unit Residential Premises, including all retail, commercial, industrial, government and schools.

"**Containers**" or "containers" mean receptacles for use by Waste Generators to set out Solid Waste for Collection, including Toters, cans, carts, bins, debris boxes, oil boxes and compactors, as further described in Section 5.15.

"**Contractor**" means Bay Counties Waste Services, Inc.

"**Contractor's Payment**" means Contractor's compensation determined in accordance with Section 8.03.

"**Construction Debris**" means used or discarded construction materials removed from premises during the construction or renovation of a structure.

"**Delivery**" of solid waste by a Waste Generator is deemed to occur when solid waste is deposited in a receptacle or at a location that is designated for collection pursuant to **City's** Municipal Code, or is otherwise discarded.

"**Demolition Debris**" means used construction materials removed from premises during the razing or renovation of a structure.

"**Disposal Site(s)**" means the solid waste handling facility or facilities designated by **City** for the ultimate disposal (by Contractor) of solid waste collected by Contractor, which may include the Sunnyvale Sanitary Landfill and the Transfer Station.

"**Environmental Laws**" means all federal and state statutes, county and city ordinances concerning public health, safety and the environment including:

- the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. .9601 et seq.;
- the Resource Conservation and Recovery Act, 42 U.S.C. .6901 et seq.;
- the Federal Clean Water Act, 33 U.S.C. .1251 et seq.;
- the Toxic Substances Control Act, 15 U.S.C. .2601 et seq.;
- the Emergency Planning and Community Right to Know Act, 42 U.S.C. .1101 et seq.;
- the Occupational Safety and Health Act, 29 U.S.C. .651 et seq.;

- the California Hazardous Waste Control Act, California Health and Safety Code .25100 et seq.;
- the California Toxic Substances Account Act, California Health and Safety Code .25300 et seq.;
- the Porter-Cologne Water Quality Control Act, Cal. Water Code .13000 et seq.; and
- the Safe Drinking Water and Toxic Enforcement Act, Cal. Health & Safety Code .25249.5 et seq..

"Event of Default" has the meaning provided in Section 11.01.

"Fiscal Year" or "fiscal year" means July 1 through June 30.

"Garbage" means putrescible animal, fish, food, fowl, fruit or vegetable matter, or any thereof, resulting from the preparation, storage, handling or consumption of such substances.

"Hazardous Waste" means all substances defined as hazardous waste, acutely hazardous waste, or extremely hazardous waste by the State of California in Health and Safety Code Sections 25110.02, 25115, and 25117, or identified and listed as hazardous waste by the U.S. Environmental Protection Agency, pursuant to the Federal Resource Conservation and Recovery Act (42 U.S.C. Section 6901 et seq.).

"Household Hazardous Waste" means hazardous waste generated at Residential Premises within the City and delivered by the Owner or occupant of such premises to a drop-off site provided or made available by **City**.

"Medical Waste" means biomedical waste generated at hospitals, public or private medical clinics, dental offices, research laboratories, pharmaceutical industries, blood banks, mortuaries, veterinary facilities and other similar establishments that are identified by the State of California in Health and Safety Code Section 25117.5.

"Multi-Unit Residential Premises" means all Residential Premises, including apartments and condominiums, which contain four or more Residential units. Mobile home parks are not Multi-Unit Residential Premises.

"Owner" when used in reference to Waste Generators, means the person holding the legal title to the real property

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constituting the Premises to which solid waste collection service is to be provided under this Agreement.

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

"prompt" or **"promptly"** and variations thereof mean as soon as possible, but not more than 2 days.

"Premises" means any land or building in the City where solid waste is generated or accumulated.

"Public Information Materials" means all materials that Contractor is required to prepare and distribute to Waste Generators under this Agreement, including:

Section 6.05.E, paragraphs 2 and 3;
Exhibit 5.02, Section 1.02;
Exhibit 5.02, Section 1.04D1;
Exhibit 5.02, Section 1.04F, final 2 sentences;
Exhibit 5.02, Section 1.04I2 and 4b.
Exhibit 5.02, Section 1.04J7, semi-annual Yardwaste reminder;
Exhibit 5.02, Section 1.05H; and
Exhibit 5.02, Section 1.06E, "publicize" only, as required in first sentence.

"rear yard" means a location behind or beside a premise, including side yard.

"Reasonable Business Efforts" means those efforts a prudent business person would expend under the same or similar circumstances in the exercise of the person's business judgment, intending in good faith to take steps calculated to satisfy the obligation that the person has undertaken to satisfy, considering that costs undertaken to satisfy that obligation are allowable costs under Article 8.

"Recycling" means the process of collecting, sorting, cleansing, treating and reconstituting materials which would otherwise become solid waste and returning them to the economic mainstream in the form of raw materials for new, reused or reconstituted products. The collection, transportation or disposal of solid waste not intended for, or capable of, reuse is not Recycling. Recycling does not include use of solid waste

for conversion to energy or use of solid waste as alternative daily cover at landfill.

"Recyclable Materials" means domestic, commercial or industrial by-products of some potential economic value, set aside, handled, packaged or offered for collection in a manner different from garbage or rubbish, specifically including:

- glass,
- paper,
- plastic,
- metal,
- Yardwaste,
- materials listed in Section 5.07, and
- as the context demands, materials included in recycling programs from time to time upon agreement of City and Contractor, such as Residential Recyclables Materials listed in Section 1.04I of Exhibit 5.02, Multi-Unit Residential Premises Recyclable Materials listed in Section 1.05C of Exhibit 5.02, Commercial/Industrial Recyclable Materials prescribed by City in accordance with Section 1.06E of Exhibit 5.02 and Institutional Recyclable Materials listed in Section 1.07B3c of Exhibit 5.02.

"Recyclable Materials" may be mixed together and not subject to Source Separation.

"Residential" or **"Residential Premises"** means single family, duplex, triplex and mobile home park residences, and freestanding or ground level town homes subscribing to cart or can service.

"Refuse" means Garbage and Rubbish.

"Rubbish" means all waste wood, wood products, printed materials, paper, pasteboard, rags, straw, used and discarded clothing, packaging materials, ashes, floor sweepings, glass, and other waste materials not included in the definition of Garbage or Hazardous Waste.

"Service Assets" are all of Contractor's land, fixtures, buildings, equipment, vehicles and Containers in use or storage, and other property used or useful in the collection and transportation of Solid Waste, whether

- (1) owned outright or pursuant to installment sale agreement or
- (2) leased, including right to use, possession and occupancy,

as the case may be.

"Solid Waste" or "solid waste" means all putrescible and non-putrescible solid or semi-solid waste accumulated or delivered for collection and disposal or recycling within the City, including:

- Garbage,
 - Rubbish,
 - Construction Debris,
 - Yardwaste, and
 - Recyclable Materials,
- but excluding Hazardous Waste, Household Hazardous Waste, Medical Waste, sewage, or abandoned automobiles.

"Source Separation", "source separated" or other form thereof means the segregation into separate containers by the Waste Generator prior to delivery of individual components of Solid Waste, such as glass bottles, metal cans, newspapers, plastic containers, etc., for the sole purpose of Recycling.

"Sunnyvale Sanitary Landfill" means the closed Class III landfill owned by City, located at the intersection of Caribbean Drive and Borregas Avenue in the City.

"Term" means the term of this Agreement provided in Section 4.02.

"Toters" is a trade name for a specific brand of portable wheeled solid waste collection carts. As used in this Agreement, the term **"toters"** means the carts made by Toters' manufacturer or any substantially similar type of wheeled plastic cart.

"Transfer Station" means the Sunnyvale Materials Recovery and Transfer Station, located at 301 Carl Road, Sunnyvale, California, or other facility designated by City.

"Vehicle Lease" means the lease agreement made and entered into as of the December 16, 1997, between the City and Contractor, appended to this Agreement as Attachment 10.01.

"Waste Generator" means the owner or occupant of premises, including businesses, which initially produce Solid Waste.

"Working Days" are the days Contractor must keep its office open in accordance with Section 6.05B.

"Working Hours" are the hours of collection described in Section 5.10.

"Yardwaste" means tree trimmings, grass cuttings, dead plants, leaves, branches and trees (not more than 6 inches in diameter) and similar materials generated at Premises.

"Year" or "year" means the 12-month period beginning on a July 1 and ending the following June 30.

"Year Twelve" means the year beginning July 1, 2002 and ending June 30, 2003.

"Year Thirteen" means the year beginning July 1, 2003 and ending June 30, 2004.

"Year Fourteen" means the year beginning July 1, 2004 and ending June 30, 2005.

ARTICLE 2 REPRESENTATIONS AND WARRANTIES OF CONTRACTOR

2.01 Corporate Status

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

2.02 Corporate Authorization

Contractor has the authority to enter into and perform its obligations under this Agreement. The Board of Directors of Contractor (or the shareholders if necessary) has taken all actions required by law, its articles of incorporation, its bylaws or otherwise to authorize the execution of this Agreement. The persons signing this Agreement on behalf of Contractor have authority to do so.

ARTICLE 3

GRANT AND ACCEPTANCE OF FRANCHISE

3.01 Grant of Franchise

City hereby extends its previous grant to Contractor of the exclusive franchise, right and privilege to engage in the business of collecting and transporting Solid Waste generated within the City and to use City streets for such purposes for the Term and within the scope set forth in this Agreement.

3.02 Scope of Franchise; Exclusions

The franchise granted to Contractor is exclusive except as to the following categories of Solid Waste listed in subsections a. through k. in this Section. The granting of this franchise does not preclude the categories of Solid Waste listed in subsections a. through k. from being delivered to and collected and transported by others, provided that nothing in this Agreement is intended to or may be construed to excuse any person from obtaining any authorization from City that is otherwise required by law:

a. Recyclable Materials;

b. Yardwaste removed from a Premises by a gardening, landscaping, or tree trimming contractor as an incidental part of a total service offered by that contractor rather than as a hauling service and tree trimmings, clippings, and all similar materials generated at parks, golf courses and other City maintained premises, which are collected and transported by City to the Disposal Site; and Yardwaste that is composted at the Premises;

c. *Construction Debris* or *Demolition Debris* removed from a Premise by a licensed construction contractor or demolition contractor as an incidental part of a total service offered by that contractor rather than as a hauling service;

d. Non-putrescible Solid Waste (including Rubbish) source-separated by the Waste Generator for collection and transportation by a Junk Dealer, but not as a hauling service, where a "Junk Dealer" is a person who lawfully, and in accordance with all City ordinances, collects (without charge to the Waste Generator) or purchases used articles for purposes of restoration and/or resale, including junk dealers, antique dealers, used building supply dealers and automobile salvagers,

but *not* including a person who collects or accepts solid waste for recycling after source separation;

e. Animal waste and remains from slaughterhouses or butcher shops for use as tallow;

f. Hazardous Waste, including Household Hazardous Waste;

g. non-hazardous waste that may pose special disposal problems because of its potential to contaminate the environment and that may be disposed of only in Class II disposal sites (or Class III disposal sites pursuant to a variance issued by the California Department of Health Services), consisting of those substances classified as "**designated waste**" by the State of California in 23 California Code of Regulations Section 2522.

h. Solid Waste which is generated at any Residential Premises and which is transported personally by the owner or occupant of such Premises to a licensed public solid waste disposal facility in a manner consistent with the City Municipal Code and other applicable laws;

i. solid waste generated by bulk food processors, including canneries and frozen food processors;

j. Medical Waste;

k. By-products of sewage treatment, including sludge, grit and screenings.

Contractor acknowledges and agrees that City may permit other persons besides Contractor to collect any or all of the types of solid waste listed above, including Recyclable Materials, without seeking or obtaining approval of Contractor under this Agreement.

To the extent that this franchise, right and privilege is exclusive, it will remain so only so long as Contractor is ready, willing and able to collect, transport and dispose of all solid waste which it is required to collect by this Agreement, in accordance with the provisions of this Agreement.

3.03 Term of Franchise

The term of the franchise granted under this Agreement, as distinct from the Term of this Agreement, is 27 years, commencing at 12:01 a.m. on July 1, 1991 and expiring at midnight June 30, 2018.

If this Agreement is terminated earlier than its expiration, the Franchise will also terminate concurrently therewith.

3.04 Acceptance of Franchise

Contractor hereby accepts the franchise on the terms and conditions set forth in this Agreement.

ARTICLE 4 TERM OF AGREEMENT

4.01 Effective Date

The effective date of this Agreement is December 1, 1990.

4.02 Term

The Term of this Agreement begins on December 1, 1990 and ends at midnight June 30, 2018.

ARTICLE 5 WASTE COLLECTION SERVICES

5.01 General

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

Contractor will accomplish the work to be done by Contractor pursuant to this Agreement in a thorough and workmanlike manner so that the residents and businesses within the City are provided reliable, courteous and high-quality solid

waste collection at all times. The enumeration of, and specification of requirements for, particular aspects of service quality does not relieve Contractor of the duty of accomplishing all other aspects in the manner provided in this Section, whether such other aspects are enumerated elsewhere in this Agreement or not.

5.02 Work Specifications

Contractor will perform all work in accordance with Exhibit 5.02.

5.03 Contingency Plan

Contractor has submitted to City a written contingency plan demonstrating Contractor's arrangements to provide vehicles and personnel and to maintain uninterrupted service during mechanical breakdowns, strikes, work stoppages and other concerted job actions, and other similar events, attached as Exhibit 5.03.

5.04 Residential and Multi-Family Refuse Collection

A. Regular Collection. Contractor will collect all Refuse generated at Residential Premises and Multi-Unit Residential Premises within the City and delivered for collection. Contractor will collect Refuse from such Premises at the frequencies and in the manner described in Sections 1.04 (Single-Unit dwellings) and 1.05 (Multi-Unit Residential Premises) of Exhibit 5.02.

B. Special Collections (Spring and Fall). Contractor will collect all Refuse generated at Residential Premises and delivered for collection at the curbside by Residential Waste Generators during 2 special collection events to be held at intervals directed by City. Special collection events will be of sufficient duration that each Residential Premises described above will be served at least 8 times per year. Contractor will conduct special collections in accordance with additional requirements, and subject to the limitations, set forth in Section 1.04D of Exhibit 5.02.

5.05 Commercial/Industrial Collection

Contractor will collect all Refuse generated at Commercial/Industrial Premises within the City and delivered for collection. Contractor will collect Refuse from those Premises at the frequencies and in the manner described in Section 1.06 (Commercial/Industrial Collections-Bin Service and Drop Boxes) of Exhibit 5.02.

5.06 City Facilities Collection; Additional Services

Contractor will collect all Refuse generated at Premises owned and/or operated by City, at no charge to City other than as part of Contractor's Payment. Contractor will make those collections Monday through Saturday, and in cases of emergency, if requested by City, on Sunday. The facilities to be provided service initially, together with the type and frequency of service, are listed on Attachment 1.07 to Exhibit 5.02, which Attachment may be modified or expanded by City.

Contractor will provide additional solid waste collection and consulting services entailing:

collection of Refuse from all City-owned sidewalk and bus stop litter containers;

collection of refuse, beverage containers and other Recyclable Materials from special events;

collection of Recyclable Materials from facilities owned and operated by City, other governmental agencies and community service organizations identified in Attachment 1.07 to Exhibit 5.02.

collection of Refuse from litter containers in City parks, if requested by City;

Review of plans for new development with regard to Solid Waste service issues;

all in accordance with the standards and requirements set out in Section 1.07 (City Facilities) of Exhibit 5.02.

5.07 Recycling Programs

A. Residential "Curbside" / Rear Yard Recycling.

Contractor will collect Residential Recyclable Materials listed in Section 1.04I of Exhibit 5.02 generated at Residential Premises and a limited number of Multi-Unit Residential Premises participating in curbside recycling, source separated and delivered for collection in authorized containers (to be provided by Contractor or, with respect to additional containers, by Waste Generators) at the curbside as of the date of this Extended and Second Restated Agreement, at the frequencies and in the manner described in Section 1.04I of Exhibit 5.02. Contractor will also collect those Residential Recyclable Materials generated at Residential Premises, source separated and delivered for collection at rear yard locations by occupants who are eligible for rear yard collection of Refuse as elderly or handicapped under Section 1.04B of Exhibit 5.02, at the frequencies and in the manner described in Section 1.04I of Exhibit 5.02.

Contractor will transport and deliver all Recyclable Materials collected to the Transfer Station or other recycling facility designated by City for subsequent processing and marketing by City. Contractor will not charge City for delivery of the collected Recyclable Materials, nor will Contractor receive any portion of the proceeds received by City from sale of the collected Recyclable Materials.

Contractor will take all steps necessary to ensure that the Residential Recycling Program achieves at least the same level of participation as that achieved by City in 1990: Contractor must collect at least 4,306 tons of Recyclable Materials each year and achieve an average level of household participation in each collection of at least 22.4 percent, provided that City does not award a contract or franchise for a competing Residential recycling program to be operated by a third party.

B. Commercial/Industrial Recycling. Contractor will collect corrugated cardboard and any other Commercial/Industrial Recyclable Materials directed by City from Commercial/Industrial Premises without charge to the Waste Generator in accordance with additional standards and requirements set forth in Section 1.06E of Exhibit 5.02.

Contractor will arrange for the sale or other disposition of collected corrugated cardboard, but not its disposal in a sanitary landfill, and for the revenues from such sales to be

paid directly to City by the purchaser. Contractor will deliver Recyclable Materials collected pursuant to this section to the Transfer Station or other recycling facility designated by City.

C. Multi-Unit Recycling Contractor will separately collect Multi-Unit Residential Recyclable Materials listed in Section 1.05C of Exhibit 5.02 from all Multi-Unit Residential Premises in the City, and deliver them, in accordance with Section 1.05C of Exhibit 5.02.

5.08 Yardwaste Program

Contractor will separately collect Yardwaste from all Residential Premises (other than mobile home parks) in the City and, if directed by City, from mobile home parks.

Contractor will deliver Yardwaste separately collected to the Transfer Station or other facility designated by City for processing.

5.09 Other Solid Waste Collection Services: On-Call, Drop-Box etc.

Contractor will provide other solid waste collection services as requested by Waste Generators in the City on an on-call basis, including drop box service, special pick-ups of bulky waste, etc., whether billed by City or Contractor.

5.10 Hours of Collection

Contractor will collect Solid Waste, including Recyclable Materials, only during hours authorized by City. Contractor may not collect Solid Waste earlier than 7:00 a.m. or later than 8:00 p.m., except as authorized in writing by the Director of Public Works.

If City amends its Municipal Code to further limit hours of operation, then the more restrictive requirement (i.e., the later start time and the earlier time after which operations will cease) controls.

5.11 Collection Standards.

A. Care of Private and City Property. Contractor will use due care when handling all solid waste containers. Contractor will ensure that Containers are not thrown from trucks, roughly handled, damaged or broken.

Contractor will return Containers to the collection point upright, with lids closed and properly secured. Contractor will ensure that after providing collection service its employees close and secure all gates, doors, enclosures, container lids and (if required by Waste Generator) locks that they opened unless otherwise directed by the Waste Generator in that Waste Generator's City-approved and duly executed subscription order. Contractor will avoid crossing landscaped areas and climbing or jumping over hedges and fences.

Contractor will ensure that Contractor's employees operate Contractor's vehicles in a manner that prevents tire skidding damage to the finished pavement surfaces of City streets during routine stopping and starting to collect Solid Waste. Contractor will use cameras and other methods to detect tire skidding and will take disciplinary action against employees responsible for skid marks on private pavement or City streets.

Contractor will use Reasonable Business Efforts to prevent oil or fluids from leaking from vehicles onto pavement or streets.

City will refer complaints about damage to private property to Contractor. Contractor will repair all damage to private and public property caused by its employees.

Contractor will retrieve carts moved by others that have been reported to Contractor by the customer or City on or before the end of the next day on which Contractor must provide service in accordance with Section 5.04.

B. Noise. Contractor will conduct all refuse collection operations as quietly as possible and conform to any federal, State of California, County of Santa Clara and City noise level regulations, including the requirement that the noise level during the stationary compaction process not exceed 75 decibels at a distance of 25 feet from the collection vehicle. City may conduct random checks of noise emission levels to ensure compliance with this standard.

5.12 Litter Abatement

A. Minimization of Spills. Contractor will use Reasonable Business Efforts to prevent solid waste from being spilled or scattered during the collection or transportation process or fluids to leak from vehicles. If any solid waste is spilled or fluid is leaked, Contractor will, as soon as possible, but in all events within 2 Working Hours of customer's complaint thereof or City's direction, clean up all spilled and leaked materials. Contractor will ensure that each collection vehicle carries a broom and shovel and absorbent material at all times for this purpose and train its employees in their use.

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

B. Clean Up. Contractor will clean up litter in the immediate vicinity of any solid waste storage area (including the areas where collection bins and debris boxes are delivered for collection) whether or not Contractor has caused the litter as soon as possible, but in all events within 2 Working Hours of customer's complaint thereof or City direction. Contractor will discuss instances of repeated spillage not caused by it directly with the Waste Generator responsible and will report such instances to City in its monthly report filed in accordance with Section 6.03. City will attempt to rectify such situations with the Waste Generator if Contractor has already attempted to do so without success.

C. Clean Up of Illegal Dumping. Contractor will respond to all calls from City regarding spilled or illegally dumped solid waste, including bulky materials, during Working Hours and, in emergencies, at night and on weekends. Contractor will collect and deliver such solid waste to the Disposal Site, provided it does not exceed in volume the amount which can be collected by a two-person crew in a large pick up truck or collection vehicle.

D. Covering Loads. Contractor will place tarps on all open debris boxes during transport to the Disposal Site. Contractor will pay fees charged Contractor by the operator of the Disposal Site for improperly covered loads or purchase of a tarp, and those fees are not allowable costs under Section 8.03.

5.13 Transportation and Disposal of Refuse

Contractor will transport and deliver all Refuse collected under Sections 5.04, 5.05, 5.06 and 5.09 to the Disposal Site. Contractor will transport and deliver all Recyclable Materials collected under Section 5.07 and Yardwaste collected under Section 5.08, to the Transfer Station or other facilities respectively provided in those Sections.

City will pay all transfer and disposal fees and charges imposed by the operator of the Disposal Site, Transfer Station or other facilities on all types of Solid Waste collected by Contractor under this Agreement. Contractor will maintain accurate records of the quantities of Solid Waste (and separately itemized Recyclable Materials and Yardwaste) delivered to the Disposal Site, and Transfer Station or other facilities and will cooperate with City in any audits or investigations of those deliveries.

Contractor will cooperate with the operator of the Disposal Site, Transfer Station or other facilities with regard to operations thereat, including complying with directions from the operator to unload collection vehicles in designated areas, accommodating maintenance operations and construction of new facilities, cooperating with its Hazardous Waste Exclusion Program (HWEP), and so forth. Cooperation with the HWEP may entail inspection of up to one truckload per day, randomly selected. Costs incurred due to inspection of more than one truck per day will be allowable costs under Section 8.03, and will be included in Contractor's Payment provided for in Article 8.

In order to mitigate traffic circulation impacts and localized air quality impacts, Contractor will stagger the entry of collection vehicles into the City each day over time or over a number of different intersections. In order to reduce impacts on intersections near the Disposal Site, Contractor will disperse collection vehicle traffic to and from the Disposal Site among Mathilda Avenue, Fair Oaks Avenue and Lawrence Expressway between 6:45 - 8:15 a.m. and 3:30 - 6:15 p.m.

5.14 Vehicles

A. General. Contractor will provide a fleet of collection vehicles sufficient in number and capacity to efficiently perform the work required by this Agreement in

strict accordance with its terms. Contractor will have available during Working Hours on Working Days at least 1 back up vehicle for each type of collection vehicle used (including side loaders, front end loaders and roll off) to respond to complaints and emergencies. Contractor will notify City of all Contractor's proposed acquisitions of new vehicles and acquire those vehicles only following City approval.

B. Specifications. Contractor will register all vehicles used by Contractor in providing Solid Waste collection services with the California Department of Motor Vehicles. Contractor will ensure that collection vehicles have water-tight bodies designed to prevent leakage, spillage or overflow. Contractor will ensure that collection vehicles comply with U.S. Environmental Protection Agency noise emission regulations, currently codified at 40 CFR Part 205, other applicable noise control regulations, and will incorporate noise control features throughout the entire vehicle. Contractor will paint all vehicles uniformly in a color approved by City. Contractor will submit the specifications for all vehicles to City for approval prior to their use.

C. Vehicle Identification. Contractor will prominently display Contractor's name, local telephone number, and a unique vehicle identification number designated by Contractor for each vehicle on all vehicles, in letters and numbers no less than 3 inches high, on front, back and sides of each vehicle. Contractor will not place City's logo on its vehicles. Upon request by the operator of the Transfer Station, Contractor will cooperate with the operator in weighing the vehicles and displaying additional vehicle identification numbers assigned by the Transfer Station operator.

D. Cleaning and Maintenance

1. General. Contractor will maintain all of its properties, facilities, and equipment used in providing service under this Agreement in a safe, neat, clean and operable condition at all times.

2. Cleaning. Contractor will thoroughly wash vehicles used in the collection of Solid Waste at least once every working day and thoroughly steam clean them at least once every week. City may inspect vehicles at any time to determine compliance with sanitation requirements. Contractor will make vehicles available to the Santa Clara County Health Department for inspection, at any frequency it requests.

3. Painting. Contractor will repaint all vehicles used in collection of Solid Waste at least once every year, unless (1) City determines that repainting specific vehicles at that frequency is not necessary because the vehicles' appearance is satisfactory, in which event Contractor will repaint them the following year or at such time as City determines that repainting is necessary to ensure that the vehicles give the appearance of having been repainted within 12 months, or (2) City determines that repainting specific vehicles at a shorter frequency is necessary to ensure that such vehicles give the appearance of having been repainted within 12 months, in which event, Contractor will repaint them within 30 days' notice from City directing repainting.

4. Maintenance. Contractor will inspect each vehicle daily to insure that all equipment is operating properly. Contractor will take vehicles that are not operating properly out of service until they are repaired and do operate properly, and perform all scheduled maintenance functions in accordance with the manufacturer's specifications and schedule. Contractor will keep accurate records with respect to each vehicle of all vehicle maintenance, recorded according to date and mileage and will make such records available to City upon request.

5. Repairs. Contractor will repair, or arrange for the repair of, all of its vehicles and equipment for which repairs are needed because of accident, breakdown or any other cause so as to maintain all equipment in a safe and operable condition. If an item of repair is covered by a warranty, Contractor will obtain warranty performance. Contractor will maintain accurate records of repair, which must include the date/mileage, nature of repair and the signature of a maintenance supervisor that the repair has been properly performed.

6. Inventory. Contractor will furnish sufficient equipment to provide all service required under this Agreement, including backup collection vehicles. Contractor will furnish City a written inventory of all vehicles, including collection vehicles, used in providing service, and shall update the inventory annually. In the inventory Contractor will list all vehicles by manufacturer, ID number, date of acquisition, type, capacity and decibel rating.

7. Storage. Contractor will arrange to store all vehicles and other equipment in safe and secure location(s).

E. Operation. Contractor will operate vehicles in compliance with the California Vehicle Code and all applicable safety and local ordinances. Contractor will not load vehicles in excess of the manufacturer's recommendations or limitations imposed by state or local weight restrictions on vehicles.

5.15 Refuse Containers

A. General. Contractor will furnish, without cost to the Waste Generator, all containers for storage of Refuse and Recyclable Materials by Residential, Multi-Unit Residential, Commercial/Industrial, and all other Premises, except to the following:

- Multi-Unit Residential Premises where customers furnish their own containers,
- Commercial/Industrial customers who provide their own cans or compactors, and
- Residential customers who elect baseline service described in Section 1.01B of Exhibit 5.02 or who prefer to continue to use 32 gallon cans following the date of this Extended and Second Restated Agreement.

An inventory of Contractor's containers as well as other equipment used by Contractor in providing services as of the date of this Agreement is attached as Exhibit 5.15A. Contractor will provide **Residential Premises** with Containers for Refuse, Recyclable Materials, used oil and oil filters, and Yardwaste in accordance with Sections 1.01, 1.04I and 1.04J4, respectively, of Exhibit 5.02. Contractor will provide **Multi-Unit Residential Premises** with Containers for Refuse, Multi-Unit Residential Recyclables and used motor oil and oil filters in accordance with Sections 1.05B 1.05C3a and b, respectively, of Exhibit 5.02. Contractor will provide **Commercial/Industrial Premises** with Containers for Refuse and Recyclable Materials in accordance with Sections 1.06B and 1.06E, respectively, of Exhibit 5.02.

Contractor will notify City of all Contractor's proposed acquisitions of new Containers and will acquire those Containers only following City approval, which will be deemed given in conjunction with City's approval of Contractor's payment request documenting the proposed acquisition.

B. Specifications. Containers provided by Contractor for storage of solid waste must be metal or plastic, with plastic lids. They must be designed and constructed to be water tight and prevent the leakage of liquids. All containers with a capacity of one cubic yard or more must meet applicable federal regulations on refuse bin safety. All containers must be painted Contractor's standard color for that container type and must prominently display the name and telephone number of Contractor. Contractor will obtain permission from City for changes to the standard color and for the color of any new container type.

C. Cleaning, Painting, Maintenance. Contractor will steam clean and repaint all Contractor-owned metal Containers at least once a year, unless (1) City determines that repainting specific Containers at that frequency is not necessary because the containers' appearance is satisfactory, in which event Contractor will repaint them the following year or at such time as City determines that repainting is necessary to ensure that the containers give the appearance of having been repainted within 12 months, or (2) City determines that repainting specific containers at a shorter frequency is necessary to ensure that such containers give the appearance of having been repainted within 12 months, in which event, Contractor will repaint them within 30 days' notice from City directing repainting. Contractor will maintain all containers in a functional condition and so as to present an attractive appearance and will refurbish them as directed by City.

Within 3 days (weekends excepted) of Contractor's observation or of City direction, Contractor will remove graffiti from its Containers, unless that graffiti contains obscene words or pictures, in which event Contractor will remove it within 48 hours (weekends excepted). At City's request, Contractor will give City a list of dates Containers were cleaned, painted or otherwise repaired. If requested by City, Contractor will provide City written notice of graffiti, including a description thereof within 2 days after Contractor discovers it.

D. Repair and Replacement. Contractor will repair or replace all Containers damaged by collection operations. If so many Containers are so severely damaged due to a common design or manufacturing defect that the frequency and type of the defect makes prompt repair or replacement not feasible using Reasonable Business Efforts, Contractor will diligently pursue with the manufacturer a remedy to the defect and will propose to City, for City's review, comment and approval, a plan that states how and when repair or replacement will occur.

5.16 Personnel

A. General. Contractor will furnish such qualified drivers, mechanical, supervisory, clerical and other personnel as may be necessary to provide the services required by this Agreement in a safe and efficient manner.

B. Driver Qualifications. Contractor will ensure that all drivers are trained and qualified in the operation of solid waste collection vehicles and have in effect a valid license, of the appropriate class, issued by the California Department of Motor Vehicles.

C. Uniforms. Contractor will require its drivers, and all other employees who come into contact with the public to wear clean, standardized uniforms bearing Contractor's name and an identification badge or other means of identifying the employee, all as approved by City.

D. Safety Training. Contractor will provide suitable operational and safety training for all of its employees who utilize or operate vehicles or equipment for collection of Solid Waste or who are otherwise directly involved in collection. Contractor will train its employees involved in Solid Waste collection to identify, and not to collect, Hazardous Waste or Medical Waste.

E. No Gratuities. Contractor will not permit its employees to demand, solicit or accept, directly or indirectly, any additional compensation or gratuity from members of the public for the collection of Solid Waste under this Agreement.

F. Employee Conduct and Courtesy; Training. Contractor will use its best efforts to assure that all employees present a neat appearance and conduct themselves in a courteous manner. Contractor will regularly train its employees in customer courtesy, including interaction with the public, prohibit the use of loud or profane language, and instruct collection crews to perform the work as quietly as possible. If any employee is found not to be courteous or not to be performing services in the manner required by this Agreement, Contractor will take all necessary corrective measures, including transfer, discipline or termination. If City has notified Contractor of a complaint related to discourteous

behavior, upon request of City, Contractor will reassign the employee to duties not entailing contact with the public while Contractor is pursuing its investigation or disciplinary process.

Contractor will additionally make review of this Agreement part of a courtesy training program that it conducts with customer service representatives and supervisory staff in sufficient detail and frequency to ensure that they are familiar with Contractor's customer service obligations under this Agreement. Contractor will submit its courtesy training program to City within 60 days of City's initial request and thereafter promptly upon City request for review and comment and will use its best efforts to incorporate any City comments.

Contractor will train its employees in collection routing. Contractor will establish a standard route stop sequence for each residential route that conforms with Contractor's routing guidelines established in accordance with Section 1.03H of Exhibit 5.02 and require all drivers (including relief drivers) to follow that sequence. Contractor will document its training and report thereon to City monthly in its reports prepared and delivered to City in accordance with Section 6.03.

G. Provision of Field Supervision. Contractor will designate at least 1 qualified employee as supervisor of field operations. The field supervisor will devote at least 50% of his or her time in the field checking on collection operations, including responding to complaints.

H. Roster of Employees. On January 1 and on July 1 of each year of the Term, Contractor will furnish to City a complete roster of all employees providing service under this Agreement. The roster must contain the name, unique employee identification number, job classification, wage rate, and such other information as City may require.

5.17 Vehicle Selection

After consultation with and receipt of approval of City, Contractor may select the type of vehicles to be used, or change the type of vehicles previously selected, for collection of Solid Waste and Recyclable Materials for the remainder of the Term. When making recommendations, Contractor will seriously consider the advice of City and will propose vehicles that will help to promote efficiency, maintain a high level of service,

reduce costs consistent with the level of service to be provided, and that will be reasonable and necessary in light of the scope of service.

ARTICLE 6 OTHER COLLECTION RELATED SERVICES, STANDARDS AND AGREEMENTS

6.01 Billing

A. By City. City will prepare, mail and collect bills for solid waste collection services provided by Contractor as a part of the municipal utility billing system. City will retain all sums it collects, and Contractor has no claim to them.

Contractor will timely comply with City's billing protocol and report to City Revenue Department both regular and special Waste Generator billable services at the scheduled time, by the means and media and in the manner prescribed in Section 1.03J of Exhibit 5.02 including additional containers that Contractor collects but that are not recorded as part of that Waste Generator's regularly scheduled service accounts.

B. By Contractor. Contractor will prepare, mail and collect bills for all specialized, on-call collection services provided by it which are not programmed into City's municipal utility billing system, in accordance with Sections 1.03J4 of Exhibit 5.02.

Contractor will either prepare and issue formal billings for those services or issue written receipts for services paid for in cash.

If City has established by ordinance or resolution rates for the types of service provided, Contractor will bill and collect at those rates.

6.02 Reports by Contractor of Billings

Contractor will submit to City 3 copies of a written report, in a form acceptable to and approved by City, listing by date and amount all bills and cash receipts issued under Section 6.01B. Contractor will submit the report covering the immediately preceding month on or before the 5th day of each month or within 3 Working Days of City request.

City will receive full credit, against Contractor's Payment due under Article 8 for all services performed and billed by Contractor under authority of the Franchise and this Agreement. The credit is based on invoices billed and the credit risk is for account of Contractor, which is solely responsible for taking necessary steps to collect its bills. City has no liability or responsibility for Waste Generators' nonpayment of Contractor's bills. Contractor may require prepayment or a payment deposit from customers that Contractor bills.

6.03 Records and Reports: Waste Collection Operations

Each Working Day Contractor will compile and allow City access to records of its solid waste collection operations covering those aspects of its operations and in such detail as City may prescribe, including:

- (1) quantities of solid waste collected in the aggregate, and during annual cleanups
- (2) composition of solid waste collected
- (3) number of participants in the various recycling programs
- (4) number and type of accounts served by each route, including number of locations and containers collected at City and other public facilities
- (5) labor allocation information (e.g., amount of time spent on route and off-route by employee)
- (6) production data (e.g., tons of solid waste collected per route or per worker-hour)
- (7) customer complaints and similar information that City may demand in order to evaluate the effectiveness and efficiency of the customer service system and the solid waste collection and disposal program.
- (8) number of containers located in the Company's yard and changes in the inventory.
- (9) route maps, and updated maps following any significant changes.

(10) property and personal injury damage claims and their dispositions.

(11) any changes in permit and regulatory status at any Company facility.

(12) number of collection vehicles using CNG, diesel or gasoline fuel, together with volume of CNG usage (in therms) for Company operations and public sales.

(13) operating and maintenance costs of all rolling stock (except boom, maintenance, container and pick up trucks), bins, toters and containers for each year of their respective scheduled depreciation.

Contractor will submit a report containing the information required by City in electronic or other format specified by City at the following times:

- (1) with respect to preceding items #1, 2, and 6, monthly by the 10th day following Contractor's receipt of data from the Transfer Station,
- (2) with respect to preceding items #3-5 and 8-12, monthly by the 10th day of the following month, and
- (3) with respect to preceding items #7, monthly by the 5th day of the following month.

Contractor will prepare such other expanded or detailed reports, including reports of complaints under Section 1.03.11 of Exhibit 5.02, utilizing the information it is required to compile under this Section, which City may require.

Contractor will purchase and use paper having a minimum of 30% post-consumer fiber for reports and all other written communications. Contractor will use its Reasonable Business Efforts to purchase and use supplies having recycled content in connection with meeting its obligations under this Agreement. Contractor will further comply with City's environmental procurement policy as it may exist from time to time. For the convenience of the parties, a copy of that policy in effect as of the date of Extended and Second Restated Agreement, is attached as Exhibit 6.03. Contractor will quarterly report to City on the type and amount of paper and supplies having recycled content it has purchased during that preceding quarter.

6.04 Inspection by City

City may, but is not obligated to, observe and inspect all of Contractor's operations involved in providing services under this Agreement. In connection therewith, City may enter any of Contractor's facilities, speak to any of Contractor's employees and receive a response to any inquiries directed to such employees, and review and make copies of (at City's expense) all of Contractor's operational and business records related to this Agreement. If City so requests, Contractor will make specified personnel available to accompany City employees on inspections.

6.05 Public/Customer Service and Accessibility

Contractor acknowledges that Waste Generators' contact with Contractor's employees by telephone is critical in establishing and maintaining good customer service, relations and satisfaction.

A. Office. Contractor will establish and maintain a business office for purposes of carrying out its obligations under this Agreement.

B. Office Hours. Contractor will keep its office open to the public from 8 a.m. to 5 p.m. Monday through Friday, 9:00 a.m. to noon on Saturdays. Contractor may close its office on Sundays and those holidays listed on Exhibit 5.02, Section 1.02.

C. Availability of Representatives. Contractor will make its representative available during office hours described in subsection B to communicate with the public and City in person and by telephone.

D. Telephone. Contractor will install and maintain a telephone system in operation at its office during office hours described in subsection B sufficient in the sole discretion of City to handle the volume of calls typically experienced on the busiest days. Contractor will keep a record of the number of calls that hang up and the time that calls are placed on hold. At any time, City may randomly check and audit lengths of hold time and hang ups. Contractor will cooperate with City's checks and audits. Contractor will install additional telephone lines, hire additional operators and make other customer service improvements as soon as possible following direction of City.

Contractor will also maintain an emergency telephone number for use during other than normal business hours. Contractor will have a representative, or an answering service to contact the representative, available at the emergency telephone number during hours when the office is closed.

Regardless of the location of Contractor's offices, Contractor will arrange for both the regular and emergency telephone numbers to be listed in all telephone directories generally distributed in the City and on all Contractor's bills and invoices.

Regardless of where Contractor's office is located, Contractor will arrange for telephone calls to it originating within the City to be billed as "local" or "toll free" calls (such as an 800 number) by all telephone companies so there is no charge to the calling party.

Contractor will establish a direct tie line between City and its office to allow City to transfer service calls received by it directly to Contractor.

Contractor will use Reasonable Business Efforts to answer all incoming calls in person, within 3 rings. Contractor will not install or use automatic answering telephone trees. Preceding and following holidays on which service is not provided that occur on a Waste Generator's regularly scheduled collection day, Contractor will provide sufficient staffing to timely handle Waste Generator's questions about holiday rescheduling.

If Contractor personnel put any Waste Generator on hold, Contractor will give that Waste Generator immediate notice of the anticipated amount of time the Waste Generator will remain on hold prior to speaking to live Contractor personnel and instruct Waste Generator to hang up and call 911 in event of an emergency. Contractor will give Waste Generators the option of leaving a message instead of waiting on hold. Contractor will not place Waste Generators on hold more than 3 minutes and use Reasonable Business Efforts to have live Contractor personnel address Waste Generators' questions within 1 minute. While Waste Generators are placed on hold, Contractor will broadcast educational announcements approved by City with respect to solid waste services and management, including recycling services and other waste diversion opportunities and programs in the City.

Contractor will respond to all Waste Generators' calls received

during office hours described in subsection B prior to closing Contractor's office that day.

E. Maps, Schedules, Consumer Information.

Contractor will furnish City with written maps and schedules of all collection and disposal routes in accordance with Section 1.03H of Exhibit 5.02 and will update those maps and schedules no less than once every 3 months or whenever a significant change occurs. If no change to routes has occurred and the maps and schedules do not need to be updated, Contractor will so advise City at 3-month intervals. Contractor will make maps and schedules available for inspection by the public at its business office.

In addition, Contractor will prepare information cards containing information about the amounts of solid waste that will be collected, times for special collection events, curbside recycling and household hazardous waste drop off programs, collection schedules, rates and complaint procedures. Contractor will revise and distribute information cards if there is any material change in the information and, in any event, at least once each year of the Term, prior to January 1. Contractor will also mail information cards to City residents upon City request and to the Sunnyvale Chamber of Commerce in quantities required by the Chamber.

Contractor will submit drafts of the information cards to City for approval prior to distribution and will incorporate City's comments in the final version that Contractor distributes to the public.

F. E-mail Access. Contractor will maintain an E-mail address for correspondence with Waste Generators and provide City with the E-mail address that City may post on Waste Generators' bills.

Contractor will submit service-related information on its web site as of the date of execution by Contractor of this Extended and Second Restated Agreement, and thereafter any new or amended service-related information to City for review and approval prior to posting that material on Contractor's web site.

G. Response Policy. Contractor will submit a written policy for City approval describing Contractor's time to respond to Customer correspondence by telephone, email fax, mail or other means.

6.06 Service Complaints

Contractor is responsible for the prompt and courteous attention to, and prompt and reasonable resolution of, all Waste Generator complaints relating to service and billing for those services billed by Contractor. Contractor will record in a separate log all complaints, noting the name, address and telephone number of complaining caller; date and time that the complaint was received; identification of employee receiving complaint; description of complaint and characterization of complaint type (such as missed pickup, spilled trash, noise, etc.); and description of response; and description and date of resolution, all in accordance with Section 1.03E of Exhibit 5.02. Contractor will make available this complaint log for inspection by City during Working Hours. In addition, Contractor will compile a summary statistical table and / or graph of the complaint log and submit the table and / or graph to City each month. Contractor will retain logs for the time required in Section 1.03E of Exhibit 5.02.

Contractor will respond to all complaints from Waste Generators within 8 Working Hours following Waste Generator's giving Contractor notice of the complaint. For example, if Contractor receives complaint of a missed collection at 4:30 p.m., it will respond to the complaint by 12:30 p.m. the next day. Timely response does not excuse Contractor's breach of obligation to provide timely service (such as a missed collection) in the first instance. Despite timely response, City may assess liquidated damages related to Contractor's breach of obligation (such as missed collections).

6.07 Service Standards: Liquidated Damages for Failure to Meet Standards

The parties acknowledge that consistent, reliable solid waste collection service is of utmost importance to City and that City has considered and relied on Contractor's representations as to its quality of service commitment in awarding the franchise to Contractor. The parties further recognize that quantified standards of performance are necessary and appropriate to ensure consistent and reliable service. The parties further recognize that if Contractor fails to achieve the performance standards, or fails to submit required documents in a timely manner, City and its residents will suffer damages and that it is and will be impracticable and extremely difficult

to ascertain and determine the exact amount of damages that City will suffer. Therefore, without prejudice to City's right to treat non-performance as an event of default under Section 11.01, the parties agree that the following liquidated damage amounts represent a reasonable estimate of the amount of such damages considering all of the circumstances existing on the date of this Agreement, including the relationship of the sums to the range of harm to City that reasonably could be anticipated and the anticipation that proof of actual damages would be costly or inconvenient. 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 had ample opportunity to consult with legal counsel and obtain an explanation of this liquidated damage provision at the time that this Extended and Second Restated Agreement was made.

Contractor

City

Initial Here

M

Initial Here

D.C.

Contractor will pay (as liquidated damages and not as a penalty) the amount set forth below. City may deduct these amounts from Contractor's Payment:

Collection Reliability

- 1 For each failure over 5 annually to timely \$300 **deliver the following containers:**

carts for Refuse, containers for Residential Recyclable Materials, plastic jugs for oil and containers for used oil filters, and carts for Yardwaste to a **Residential** Waste Generator account in accordance with Sections 1.01A, 1.04I3a and d and 1.04J4 of Exhibit 5.02;

bins for Refuse, carts for Multi-Unit Recyclable Materials or plastic jugs or containers for recycling used oil and oil filters to a **Multi-Unit Dwellings** customer, in accordance with Section 1.05B, 1.05C3a and 1.05C3b, respectively, of Exhibit 5.02;

bins or roll-offs for Refuse and bins or

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other containers for Commercial/Industrial Recyclable Materials to a **Commercial/Industrial** customer in accordance with Section 1.06B and 1.06E2 of Exhibit 5.02;

- 2 For each failure over 5 annually to timely \$300 **commence service** for collection of:

Refuse, Residential Recyclable Materials and Yardwaste to a new **Residential** Waste Generator account in accordance with Sections 1.04A, B, I and J1 of Exhibit 5.02;

Refuse, and Multi-Unit Recyclable Materials to a new customer at a new **Multi-Unit Residential Premise** in accordance with Sections 1.05A and C1 of Exhibit 5.02;

Refuse or Commercial/Industrial Recyclable Materials to a new **Commercial/Industrial** Waste Generator in accordance with Sections 1.06A1 or E1 of Exhibit 5.02:

- 3 For each failure over 3 annually to **collect** \$300

Refuse, Recyclable Materials, Yardwaste, used oil filters or used oil which has been properly delivered for collection, from an established customer account **on the Scheduled Collection Day** in accordance with the following sections in Exhibit 5.02 -

1.04 (including 1.04A Regular; 1.04B Disabled and Elderly and 1.04C (bulky) & 1.04D (spring and fall) Special; 1.04I Residential "Curbside" Recycling; and 1.04J Yardwaste Recycling),

1.05 (including 1.05A Multi-Unit Refuse and 1.05C Multi-Unit Recycling),

1.06 (including 1.06A Commercial/Industrial Refuse and 1.06E Commercial/Industrial Recycling), and

1.07 (City Facilities)

(together, "**Scheduled Collection Days**"):

4 For each failure to **collect** solid waste that \$300
has been properly delivered for collection,
from the same customer **on 2 consecutive**
Scheduled Collection Days defined in the
preceding liquidated damage item (3):

5 For each failure over 5 annually to **leave a** \$300
tag for a customer when containers or
materials are not serviced because they have
not been properly delivered for collection in
accordance with Section 1.03F of Exhibit
5.02:

6 For each failure to leave the **required number** \$300
of replacement jugs or containers when oil or
oil filters are collected for recycling in
accordance with Sections 1.04I4d or 1.05C3b
of Exhibit 5.02:

Collection Quality

7 For each occurrence over 5 annually of tire \$500
skidding damage warranting repair to pavement
of City streets in contravention of Section
5.11A:

For each occurrence over 5 annually of leaks
in contravention of Section 5.11A:

8 For each occurrence over 15 of two or more \$300
failures in accordance with Section 5.11A
with respect to **Multi-Unit Residential**
Premises or Commercial/Industrial services
for an individual Waste Generator:

to return emptied Containers to their
collection point after servicing,

place Containers upright with lids closed and
properly secured,

close and secure any gates, doors,
enclosures, container lids or (if required by
customer) locks opened in the course of
providing service;

if required, to secure locks after service;

For example if Contractor fails 15 times to
close any Waste Generators' refuse bins, then
if Contractor fails to close any of those
Waste Generator's bin a second time,

Contractor would be assessed \$300 in liquidated damages:

- 9 For each occurrence over 15 annually of \$300 failures in accordance with Section 5.11A with respect to **Residential services:**
to return emptied Containers to their collection point after servicing,
place Containers upright with lids closed and properly secured,
close and secure any gates, doors, enclosures, container lids or (if required by customer) locks opened in the course of providing service and;
retrieve carts moved by others that have been reported to Contractor by a Waste Generator or City.
For example if Contractor fails 15 times to close any Residential Waste Generators' refuse cart, then if Contractor fails to close any Residential Waste Generator's cart a 16th time, Contractor would be assessed \$300 in liquidated damages.:
- 10 For each occurrence of excessive **noise** in \$1,000 accordance with Section 5.11B:
- 11 For each occurrence of **discourteous behavior** \$1,000 in contravention of Section 5.16F:
- 12 For each failure over 10 annually to timely \$300 **clean up solid waste spilled** from solid waste containers (cans, carts, bins, debris boxes or compactors) in accordance with Section 5.12A:
- 13 For each occurrence over 5 annually of \$500 collecting solid waste **outside authorized hours** in accordance with Section 5.10:

14 For each occurrence of wrongfully driving 2 \$300
or more times onto customer property to
service containers instead of providing push-
out service in accordance with account
subscription in accordance with Section
1.04B2 of Exhibit 5.02:

15 After January 1, 2006, for each failure over \$150
25 annually to **clean, paint or label any
Container** in accordance with Section 5.15C or
repair or replace them in accordance with
Section 5.15D:

Customer Responsiveness

16 For each failure to timely **respond to a** \$100
customer complaint in accordance with Section
6.06:

17 For each failure to **report customer** \$500
complaints to City as required by Section
6.06:

Timeliness of Submissions to City

18 For each failure to timely **submit the report** \$500
on the monthly audit of billings required by for each
Section 6.15: day the
report is
late

19 For each failure to timely **submit the annual** \$500
application for adjustment of compensation for each
required by Section 8.03: day the
applica-
tion is
late

20 For each failure over 10 annually to timely \$300 for
comply with City's **billing protocol** in each
accordance with Sections 6.01A and B, and failure
6.02:

Neither the imposition nor the payment of liquidated damages limits City's right to treat Contractor's failure to meet the performance standards as an Event of Default under Section 11.01.

City may determine the occurrence of events giving rise to liquidated damages through the observation of its own employees or investigation of customer complaints.

Prior to assessing liquidated damages, City will give Contractor notice of its intention to do so accompanied by a list of each incident giving the date and a brief description. Contractor may review (and make copies at its own expense) all information in the possession of City relating to incidents on the list. Contractor may, within 10 days after receiving the notice and list request a meeting with City held by the Director of Public Works. Contractor may present evidence in writing and through testimony of its employees and others relevant to the incidents on the list. The Director of Public Works will provide Contractor with a written explanation of his or her determination on each incident prior to authorizing City's Finance Department to deduct liquidated damages from payments subsequently due to Contractor.

The parties recognize that Owners of Premises may allege that damage to their pavement is attributable to passing of collection vehicles over pavement in the ordinary course of performing services under this Agreement. City acknowledges that such allegations have in the past frequently proved inaccurate upon investigation, in that the pavement was found to have been built to inadequate thickness, did not meet current building code requirements, or had simply exhausted its useful life. City does not intend to assess liquidated damages for instances of "damage" to private property of the type described in this paragraph.

The parties also recognize that the 64 and 96-gallon carts that Contractor provides to Residential Premises are designed to be mobile and easily moved. From time to time they may be moved by children from their proper locations. City does not intend to assess liquidated damages for instances in which carts are properly placed by Contractor's employees but subsequently moved by others. Upon receiving notice of this occurring from the owner or occupant of Premises or from City, and/or upon its drivers' noticing this having occurred, Contractor will promptly retrieve the carts and redistribute them back to the proper locations in front of the Premises to which they are assigned.

6.08 City's Right to Direct Termination of Service to Premises

City may direct Contractor to suspend or terminate solid waste collection services from any Premises if the Owner or occupant thereof (or other party responsible for payment of City's utility bills) is delinquent in payment of such bills. City indemnifies and holds Contractor harmless from any liability or costs associated with Contractor's suspending or terminating pursuant to directions of City under this Section.

Contractor will promptly implement City directions to suspend or terminate service.

6.09 City's Right To Change Scope of Work; Pilot Programs

Without amending this Agreement, City may direct Contractor to cease performing one or more of the types of solid waste collection service described in Article 5, may direct Contractor to modify the scope of one or more of those services, or may direct Contractor to perform additional solid waste collection service, including pilot programs and innovative services that may entail new collection methods, different types of services and/or new requirements for Waste Generators. Contractor will promptly and cooperatively comply with City's directions.

If those changes cause an increase or decrease in the cost of performing the services, an equitable adjustment in Contractor's Payment will be made in accordance with Section 8.06. Contractor will continue to perform the new or changed service while the appropriate adjustment in compensation is being determined.

6.10 Title to Solid Waste

A. General. Solid waste collected by Contractor is the property of Contractor from the time it is placed into Contractor's collection vehicle until it has been properly delivered to the Disposal Site or Transfer Station, at which time it becomes the property of the owner or operator of the Disposal Site or Transfer Station.

B. Commercial/Industrial Recycling. Recyclable Material collected from Commercial/Industrial Waste Generators is the property of Contractor (subject to City's interest in the revenues to be received from their sale) from the time it is placed in Contractor's collection vehicle until it is sold or properly delivered to a recycling operation, including the Transfer Station.

C. Residential and Multi-Unit Recyclables/Yardwaste Recycling. Recyclable Material (including Yardwaste) collected as part of programs servicing Residential Premises and Multi-Unit Residential Premises is the property of Contractor (subject to City's interest in the revenues to be received from their sale) from the time it is placed in Contractor's collection vehicle until it is sold or properly delivered to a recycling operation, including the Transfer Station.

6.11 Non-Discrimination

Contractor will not discriminate in the provision of service (including with respect to any City employee working with Contractor) or the employment of persons engaged in performance of this Agreement (including application for that employment) on the basis of the fact or perception of a person's race, color, creed, religion, national origin, ancestry, age, sex, sexual orientation, gender identity, marital status, age, weight, height or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status).

6.12 Change in Collection Schedule

Contractor will obtain written approval from City prior to any change in collection operations that results in a change in the day on which solid waste collection occurs at Residential Premises. City approval will not be withheld unreasonably. Contractor will comply with the requirements in Section 1.04G of Exhibit 5.02 regarding notice to customers of changes in operations.

6.13 Transition to Next Contractor

If Contractor is not awarded a franchise to continue to provide solid waste collection services following termination or expiration of this Agreement, Contractor will cooperate fully

with City and the subsequent contractors to assure an orderly and effective transition. Cooperation includes agreeing to sell collection bins and containers to the next contractor at their fair market value and providing route maps, route lists and other similar information to City for the next service provider.

In connection therewith, Contractor acknowledges that the provisions of Public Resources Code Sections 49520-49523 have no application to this Agreement and agrees, to the extent such sections may have application, to waive whatever rights they may afford.

6.14 Report of Accumulation of Solid Waste: Unauthorized Dumping

Contractor will direct its drivers to note (1) the addresses of any Premises at which they observe that solid waste is accumulating and is not being delivered for collection and (2) the address, or other location description, at which solid waste has been dumped in an apparently unauthorized manner. Contractor will deliver the address or description to City within 8 Working Days of its observation.

6.15 Audit of City Billings

Contractor will audit City's billings to Waste Generators under Section 6.01A, including:

- (1) ensuring that component rates match onsite for service inventory and frequency;
- (2) adjusting service levels as needed (for example, too much refuse or garbage service, too little Commercial/Industrial cardboard service, etc.);
- (3) verifying that additional cans are being recorded and reported to City properly;
- (4) identifying addresses such as residences, businesses in strip malls or multi-tenant industrial complexes that set out materials without subscribing to service and establishing an account;
- (5) verifying if rear-yard service is still being provided or needed;
- (6) verifying that push-out service is being provided and all services are coded properly for push-out;
- (7) auditing recycling services: multi-family carts, multi-family oil boxes, split-carts, Commercial/Industrial

cardboard bins; verifying that container exists at address, being serviced, correcting type and container number;

- (8) noting any needed repairs, graffiti, bins that need cleaning or repainting, and unauthorized solid waste containers;
- (9) enforcement information, including:
 - a. overflowing Containers,
 - b. messy enclosures,
 - c. Hazardous Waste,
 - d. odor,
 - e. disease vectors,
 - f. severely damaged enclosure.

The purpose of the audits is to determine (1) if services and containers conform to standards and (2) that the amount that City is billing each Waste Generator is correct in terms of the level of service (i.e., frequency of collection, size of container, location of container) being provided to that Waste Generator by Contractor. Contractor will audit 1/6th of the customer accounts each month and submit to City a written report on that audit by the 15th day of the following month, so that City will receive reports on a monthly basis which will cover the entire list of customers twice each year.

6.16 Prevailing Wages

The parties acknowledge that the services provided by Contractor do not constitute a "public work" and are not subject to any of the provisions of the Public Works law, Labor Code Sections 1720-1901, nor of the regulations promulgated thereunder. However, until and unless otherwise directed by City, Contractor will pay its field and shop employees wages and benefits equivalent to the general prevailing rate of wages applicable to the work to be done, as determined by the Director of the California Department of Industrial Relations. Contractor may provide any combination of wages and benefits so long as the hourly cash equivalent of such combination equals the corresponding prevailing wage rate. Future determinations of prevailing wages in relevant job classifications will be obtained from the Department by City and provided to Contractor from time to time.

City may presume that wage rates paid by Contractor in excess of the prevailing wages determined by the Department of Industrial Relations are unreasonable for purposes of

determining Contractor's Payment to the extent of the excess. Contractor may present evidence demonstrating that those wages are reasonable notwithstanding their being in excess of prevailing wage rates.

6.17 Operations Audits

In addition to City's rights under Sections 6.03 and 6.04, City may conduct, at its expense, detailed audits of Contractor's operations utilizing either or both its own employees and independent consultants. Contractor will cooperate with City and its consultants in those audits. If cooperation entails efforts by Contractor beyond those that are required under Sections 6.03 and 6.04, Contractor may notify City and City will reimburse Contractor for the reasonable cost of Contractor's additional efforts.

ARTICLE 7 FRANCHISE FEE

7.01 Amount

A. For the 12-month period commencing July 1, 2004 and ending June 30, 2005 and each corresponding 12-month period thereafter, Contractor will pay to City, as partial consideration for the rights and privileges accorded by the franchise granted to it by City, a Franchise Fee equal to \$1,454,319.36.

B. City may, in its sole discretion, increase the Franchise Fee to an amount larger than that provided for in the preceding paragraph. If City elects to increase the Franchise Fee, the increase will become effective on the immediately following July 1, and Contractor's Payment will be adjusted accordingly.

C. The Franchise Fee will be adjusted annually in the manner set forth below to reflect changes in the San Francisco-Oakland-San Jose Metropolitan Area Consumer Price Index (Urban Wage Earners and Clerical Workers; 1982-84 = 100) compiled and published by the United States Department of Labor, Bureau of Labor Statistics (the "**Index**"). The Franchise Fee will be adjusted for FY 2005-2006 by 100% plus the percentage increase in the Index level from April 2004 to December 2004, and for fiscal years after FY 2005-2006, the change in the Index between the December immediately preceding the commencement of the fiscal year and the Index as of the prior December.



For example, the Index as of April 2004 was 194.7. The Franchise Fee for 2005-2006 will be adjusted by multiplying \$1,454,319.36 (the Franchise Fee for Fiscal Year 2004-2005) by 100% plus the percentage change in the Index from April 2004 to December 2004. The Franchise Fee for FY 2006-2007 will be adjusted by multiplying the Franchise Fee for Fiscal Year 2005-2006 by 100% plus the percentage change in the Index between December 2004 and December 2005. The Franchise Fee will be adjusted in a similar manner by changes in the Index from December to December for subsequent years.

D. The full amount of the Franchise Fee is an operating expense when computing Contractor's Payment, but the Franchise Fee is subtracted from the Projected Annual Cost of Operations in order to determine profit under Section 8.03Ab2

7.02 Time and Method of Payment

Contractor will pay the Franchise Fee in the following manner. City will deduct 1/12th of the annual Franchise Fee from the monetary payments otherwise due to Contractor from City under Section 8.03, provided that City is billing substantially all Waste Generators as contemplated by Section 6.01 and that Contractor is providing solid waste collection service.

If Contractor is not providing solid waste collection service although this Franchise and Agreement have not been terminated and City has had to undertake other arrangements for that service pursuant to Article 10, Contractor will pay the Franchise Fee in equal monthly installments of 1/12th of the annual Franchise Fee, in cash, on the first day of each month that it is not providing solid waste collection services. City may recover those Franchise Fee payments from any performance bond, letter of credit or other performance assurance provided by Contractor under this Agreement.

ARTICLE 8 COMPENSATION

8.01 General

The "Contractor's Payment" provided for by this Article is the full, entire and complete compensation due to Contractor from City for furnishing all labor, equipment, materials and supplies and other things necessary to perform all the services

required by this Agreement in the manner and at the times prescribed. Contractor's Payment includes all costs for the items mentioned above and also for all taxes, insurance, bonds, overhead, profit and all other costs necessary to perform the services in accordance with this Agreement.

8.02 City Approval of Capital Expenses

Contractor will obtain City approval prior to making any capital investment in excess of \$50,000 if that investment has not previously been included in Contractor's Payment.

8.03 Contractor's Payment

Contractor's compensation ("Contractor's Payment") will be determined as described below.

[8.03]A. Determination of Contractor's Payment for Fourteenth Year (July 1, 2004-June 30, 2005) and Subsequent Periods

Contractor's Payment for subsequent years of the Franchise, commencing with the Fourteenth Year of the Term beginning on July 1, 2004, is determined as follows:

[8.03A]1. General. On or before January 31, 2004, and on or before each January 31 of each succeeding calendar year of the Term, Contractor will submit a **Request for Calculation of Contractor's Payment** covering the following year of the Term. For example, in January 2004, Contractor will submit a request covering Year Fourteen that begins on July 1, 2004. This request will be based on the audited financial statement submitted under Section 8.07F for the preceding fiscal year, in the format specified by City and organized so as to facilitate the calculations required by this Section, following the Chart of Accounts in Exhibit 8.03A1, and be accompanied by (1) such supporting schedules as deemed necessary by City and (2) a statement signed by the President or Vice President, if available (and if neither is available by the Administrative Officer) and the Chief Financial Officer of Contractor that as of the date of submission, the financial information submitted is complete and correct to the best of their knowledge and belief.

[8.03A]2. Determination of Contractor's Payment

for the Fourteenth Year of the Term. Contractor's Payment for Year Fourteen consists of:

- (1) the "Projected Cost of Operations for Year Fourteen" (PAC06) calculated as set forth in the following paragraph Section 8.03Ab, plus
- (2) profit for Year Fourteen (P6) calculated as set forth in the next succeeding paragraph (Section 8.03A2b).

[8.03A2]a. Projected Cost of Operations. Projected Cost of Operations for Year *Fourteen*" consists of the sum of:

Projected Labor-Related Costs (PL6);
Projected Vehicle-Related Costs (PV6);
Projected Other Costs (P06); and
Projected Net Interest Expense and
Depreciation Expense (NID6)

Each of these projected costs and expenses is corroborated, adjusted and escalated/projected as provided in Exhibit 8.03A.

[8.03A2]b. Profit. Profit for Year *Fourteen* is calculated as follows:

The Franchise Fee payable under Section 7.01C is subtracted from the Projected Annual Costs of Operations for Year *Fourteen* (PAC014), and the difference is the "Net Cost for Year *Fourteen*" ("NC14").

Profit for Year *Fourteen* equals the quotient of NC14 divided by nine hundred and fifteen one-thousandths (0.915), less NC14. That is,

Profit (PAC014-Fr. Fee Yr 14)
Year *Fourteen*= ----- - (PAC014-Fr.Fee Yr
14)
0.915

[8.03]A. Incentive Payments. Any incentive payments allowed in accordance with Exhibit 8.03D are added to Contractor's Payment.

[8.03]B. Determination of Contractor's Payment for Fourteenth and Following Years. Contractor's Payment for the Fourteenth Year of the Term and each year of the Term thereafter

is determined following the same procedure as described in Section 8.03A, except that references to Year *Fourteen* will refer to the year for which Contractor's Payment is being calculated and references to Years Twelve and Thirteen will refer to the 2 years of the Term immediately preceding the year for which Contractor's Payment is being calculated.

[8.03]C. Variances from Projections.

1. Subject to Section 8.03C2, Section 8.03D and Section 8.06B below, Contractor will retain any income from actual costs during any year being less than those projected for that year when establishing Contractor's Payment for that year, except with respect to reconciliation of the following costs:

(1) actual / projected capitalized maintenance costs in Section C2d of Exhibit 8.03A, and

(2) actual costs of interest and depreciation described in Section C4 ("Reconciliation plus Projection of Net Interest and Depreciation Expense") of Exhibit 8.03A.

Similarly, except for the preceding two items, Contractor will not be compensated for actual costs during any year being greater than those projected for that year when establishing Contractor's Payment for that year. In addition, except for those preceding two items, calculations of Contractor's Payments for future years will not attempt to adjust for past variances of actual costs from those that had been projected. However, City may reduce Contractor's Payments to recoup prior overpayments due to subsequently discovered fraud or misrepresentation in financial data submitted by Contractor to City.

[8.03C]2. Notwithstanding the prior Subparagraph 8.03C1, adjustments will take into account the effect of extraordinary, uncontrollable changes in the cost of performance. To that end, and in the limited circumstances described in this Subparagraph 8.03C2, Contractor's Payment may be adjusted to reflect changes in cost between those projected in calculating Contractor's Payment and those actually incurred.

Contractor's Payment will be increased or decreased to the extent that a specific cost, incurred in the prior year, over which Contractor could not have exerted control, differs from the projected change in the amount of the cost by twice the projected change in the cost and the aggregate

of all such increases and/or decreases equals or exceeds 5% of Contractor's Payment in the prior year. That adjustment will be made in the year following the year in which the difference occurred. The full amount of the difference will be accounted for if the 5% threshold is reached.

[8.03C]3. The adjustments contemplated by this Subsection 8.03C are entirely distinct from the cost control incentive program described in following Subsection 8.03D.

[8.03]D. Incentive Program. Commencing with Year Fourteen of the Term and for each year thereafter, Contractor's Payment will be determined in accordance with the Incentive Program described in Exhibit 8.03D.

[8.03]E. Schedule. Contractor will submit its Request for Determination of Contractor's Payment on or before the January 31 that immediately precedes the commencement of the year with respect to which the calculation is to be performed. City will use its best efforts to make the adjustment effective by July 1 of the same year. However, City will not make any retroactive adjustment to compensate for any delay in determining Contractor's Payment that results from the failure of Contractor to respond promptly and completely to requests of City for information related to any of the determinations required by this Section.

8.04 Time of Payment

City will pay Contractor's Payment determined under Section 8.03, reduced by the offsets under Section 8.05, (and adjusted, if appropriate, under Section 8.06) in monthly installments on the 25th day of each month, for service rendered the preceding month.

8.05 Offsets to Contractor's Payment

Contractor's Payment made each month is reduced by the sum of the following:

1/12th of the Franchise Fee due to City under Section 7.01.

The billings issued and cash received for services provided by Contractor under Section 6.01B and billed

directly by Contractor during the preceding month.

Liquidated Damages, if any, due under Section 6.07 for failure to achieve the performance standards during the preceding month.

8.06 Adjustments for Changes

A. General. If City has directed a change in scope of work under Section 6.09 and either party believes that the change will increase or decrease the costs of providing service, the party that believes Contractor's Payment should be adjusted will within 30 calendar days submit to the other party a proposed adjustment and the parties will thereafter meet and discuss the matter. Contractor will promptly provide all relevant schedules, supporting documentation and other financial information requested by City to evaluate the necessity for an adjustment and the amount thereof. City's Director of Public Works will participate in key meetings regarding those adjustments.

Pursuant to a recommendation from the Director of Public Works, within 90 days of the submission of the Proposed Adjustment City will determine the amount of the adjustment, if any, and will thereafter adjust Contractor's Payment accordingly. Any adjustments are effective as of the date the change in service is implemented.

If Contractor is dissatisfied with the recommendation of the Director of Public Works it may appeal that decision to City Manager. If an appeal is to be taken, Contractor will promptly (and in any case within 15 days of its receipt of the Director of Public Works decision) submit a full written statement of the following:

- (1) each item with which it disagrees;
- (2) the reasons for its disagreement;
- (3) the amount which it believes Contractor's Payment should be adjusted for each of those items.

Contractor will submit copies of all financial and operational data on which it relies. The City Manager will meet with Contractor to review the appeal and will issue his or her decision (increasing or decreasing the amount of the recommended adjustments) within 30 days after receipt of Contractor's complete appeal.

If Contractor is dissatisfied with the City Manager's decision, it may appeal that decision to the City Council. If an appeal is to be taken, Contractor will promptly (and in any case within 15 days of its receipt of the City Manager's decision) submit to the City Clerk (with a copy to the City Manager and the City Attorney) a full written statement in the same form as prescribed above. The City Council will consider the appeal at a public meeting held within 60 days after the filing of Contractor's appeal.

B. Adjustments for Specific Changes in Year Fifteen.

Contractor may incur \$92,412 additional operating and capital costs, beginning in Year 15, in order to comply with the newly amplified performance specifications and standards prescribed in the following provisions of this Restated Agreement:

- 5.11A (Care of Private and City Property)
- 5.15C (Cleaning, Painting, Maintenance)
- 5.16F (Employee Conduct and Courtesy; Training)
- 6.05D (Telephone)
- 6.05F (E-mail Access)
- 6.15 (Audit of City Billings).

Contractor's projection of these \$92,412 additional capital and operating costs, as shown on Exhibit 8.06B, will be paid to Contractor in 12 monthly installments as part of the Contractor Payment for Year 15.

When it prepares its Contractor Payment Request for Year 16, Contractor will reduce that request to the extent, if any, that the sum of the actual costs of items listed in Exhibit 8.06B is less than the sum of the projected costs of those items.

8.07 Maintenance of Financial Records

A. General. In order to effectuate the periodic reviews of Contractor's Payment contemplated by Section 8.03 and the occasional reviews of adjustments under Section 8.06 due to changes directed by City, which reviews do not necessarily coincide with the periodic reviews under Section 8.03, Contractor must maintain accurate, detailed financial information in a consistent format and to make such information available to City in a timely fashion. In order to assure the public of the accuracy of the review processes, Contractor's financial records must be confirmed by an audit conducted by an independent certified public accountant whose report thereon is

forwarded to City on a regular basis. This section is intended to effectuate these requirements.

B. Contractor's Accounting Records. Contractor will maintain in its office accurate and complete accounting records containing the underlying financial and operational data relating to, and the bases for computation of, all costs associated with providing service under this Agreement. Contractor will prepare or cause to be prepared the accounting records on an accrual basis, in accordance with Generally Accepted Accounting Principles consistently applied. Contractor will adhere throughout the Term to "Generally Accepted Accounting Principles" then in effect, published by the American Institute of Certified Public Accountants.

Contractor's operating year for both accounting and all other record keeping purposes must be the Fiscal Year.

C. Inspection of Records. City, and auditors and other agents selected by City, may, during regular business hours, conduct onsite inspections of the records and accounting systems of Contractor and make copies of any documents relevant to this Agreement, including records and accounting systems with respect to subscriptions and services billed by City, rear-yard services and roll-off services billed by Contractor.

D. Retention of Records. Contractor will retain all records and data required to be maintained under this Agreement for a period of at least 3 years following the close of each of Contractor's fiscal years, and for such further time as may be designated by City to enable it to complete any review or audit commenced during that 3-year period.

E. Delivery of Financial Reports to City. Contractor will deliver to City the financial reports, in the format and at the time required by Section 8.03E.

In addition, Contractor will provide City with financial information in such format, and at such times, as City may reasonably require in order to monitor Contractor's financial activities and conduct the compensation review processes described in this article.

F. Delivery of Financial Statements, Other Documents, and Auditor's Report.

Within 120 days after the close of each fiscal year (i.e., by October 28) Contractor will deliver to City 8 copies of its audited financial statements for the preceding fiscal year together with such other documents as may be required by City which show in detail the financial condition of Contractor and the results of its operations under this Agreement. These statements must have been examined by an independent certified public accountant and be accompanied by the accountant's report containing (1) the accountant's representation that it has examined Contractor's financial statements in accordance with Generally Accepted Auditing Standards and (2) the accountant's unqualified opinion that such statements have been prepared in accordance with Generally Accepted Accounting Principles consistently applied and fairly reflect the results of operations and Contractor's financial condition.

At the same time that Contractor delivers its accountant's representation and opinion, Contractor will also deliver:

audited consolidated financial statements of Contractor's ultimate parent company (if any) for such fiscal year, together with the related opinion of the independent certified public accountant that examined those financial statements.

a statement disclosing whether any of Contractor's subcontractors or suppliers are subsidiaries, or otherwise affiliates, of Contractor or Contractor's parent company or companies.

City may prescribe the contents of supplemental schedules to be included with the financial statements required.

G. Affiliates. Contractor will maintain its accounting records on a basis showing the results of Contractor's operations under this Agreement separately from operations in other locations, as if Contractor were an independent entity providing service only to City. Contractor must not combine, consolidate or in any other way incorporate its costs and revenues associated with providing service to City with costs and revenues associated with other operations conducted by Contractor in other locations, or with those of Affiliates.

Whether or not there are contractual or extra-contractual relationships between Contractor and Affiliates, if Contractor is owned or controlled by another corporation, then the financial reports and auditor's opinions required of such Contractor are also required of such "parent company" which constitutes an "Affiliate" for purposes of this Section.

H. Definition of "Affiliate". For purposes of this Agreement, all businesses, (including corporations, limited and general partnerships and sole proprietorships) that are directly or indirectly related to Contractor by virtue of direct or indirect ownership interests or common management are deemed to be "affiliated with" Contractor and included within the term "Affiliates" as defined and used in this Agreement. An Affiliate includes a business in which Contractor owns a direct or indirect ownership interest, a business that has a direct or indirect ownership interest in Contractor and/or a business that is also owned, controlled or managed by any business or individual who has a direct or indirect ownership interest in Contractor. For purposes of determining whether an indirect ownership interest exists, the constructive ownership provisions of Section 318(a) of the Internal Revenue Code of 1986, as in effect on the date of this Agreement, applies; provided, however, that (i) "10 percent" is substituted for "50 percent" in Section 318(a)(2)(C) and in Section 318(a)(3)(C) thereof; and (ii) Section 318(a)(5)(C) is disregarded. For purposes of determining ownership under this paragraph and constructive or indirect ownership under Section 318(a), ownership interests of less than 10 percent is disregarded and percentage interests is determined on the basis of the percentage of voting interest or value that the ownership interest represents, whichever is greater.

I. Review of Audited Financial Statement. With its own employees or by means of a consultant, City may review the audit plan and work papers of any of the independent certified public accountants who give opinions on the audited financial statements that Contractor must furnish pursuant to Section 8.07.F. and G. If that review gives rise to any questions, or differences of opinion regarding Contractor's compliance with this Agreement, Contractor and its accountant(s) will meet with City and its consultant, if any, to answer those questions and to discuss the differences of opinion.

ARTICLE 9

INDEMNITY, INSURANCE, BOND

9.01 Indemnification

Contractor indemnifies and holds harmless City, its officers, employees, agents and volunteers, from and against any and all loss, liability, penalty, forfeiture, claim, demand, action, proceeding, suit or enquiry of any and every kind and description (including injury to and death of any person and damage to property or for contribution or indemnity claimed by third parties) ("**Liabilities**") arising or resulting from and in any way connected with the following:

(1) the negligence or willful misconduct of Contractor, its officers, employees, agents, volunteers and/or subcontractors in performing services under this Agreement;

(2) the failure of Contractor, its officers, employees, agents, volunteers and/or subcontractors to comply in all respects with the provisions of this Agreement, applicable laws (including the Environmental Laws) and regulations, and/or applicable permits and licenses; and/or

(3) the acts of Contractor, its officers, employees, agents, volunteers and/or subcontractors in performing services under this Agreement for which strict liability is imposed by law (including the Environmental Laws).

This indemnity applies regardless of whether the Liabilities are also caused in part by the negligence of others, including that of any of the indemnitees; provided, however, that this indemnity does not apply if the loss or damage to a third party resulted from an act or omission of Contractor, its officers, employees agents and volunteers, which act or omission is solely the result of its or their following a negligent, express direction or order of an officer, employeeagent or volunteer of City. Contractor's indemnification described in this Section is intended to operate as an agreement pursuant to 42 U.S.C. Section 9607(e) and California Health and Safety Code Section 25364, to insure, protect, hold harmless and indemnify City from Liabilities.

Upon demand of City, at Contractor's sole cost and expense Contractor will defend (with attorneys acceptable to City) City, its officers, employees, agents and volunteers against any claims, actions, suits or other proceedings, whether judicial, quasi-judicial or administrative in nature, arising or resulting

from any events described in the immediately preceding paragraph.

Contractor's duty to indemnify and defend survives the expiration or earlier termination of this Agreement.

9.02 Insurance

A. Types and Amounts of Coverage. At Contractor's sole cost and expense, Contractor will procure and maintain in force at all times during the Term the following types and amounts of insurance.

1. Workers' Compensation and Employer's Liability. Contractor will maintain workers' compensation insurance covering its employees in statutory amounts and otherwise in compliance with the laws of the State of California. Contractor will maintain Employer's Liability insurance in an amount not less than \$1 million per accident or disease.

2. Public Liability. Contractor will maintain comprehensive general liability insurance with a combined single limit of not less than \$10 million per occurrence and \$10 million aggregate covering all claims and all legal liability for personal injury, bodily injury, death, and property damage, including the loss of use thereof, arising out of, or occasioned in any way by Contractor's performance of, or its failure to perform, services under this Agreement. Contractor will report to City the occurrence of any personal injury to third parties within 8 Working Hours thereof, and any property damages in the next monthly report submitted in accordance with Section 6.03.

The insurance required by this subsection includes:

- a. Premises Operations;
- b. Independent Contractor's Protective;
- c. Products and Completed Operations;
- d. Personal Injury Liability with Employment Exclusion deleted;
- e. Broad Form Blanket Contractual,

including Contractor's Obligation under Section 9.01;

- f. Automobile Liability that includes Owned, Non-Owned, and Hired Motor Vehicles;
- g. Broad Form Property Damage, including Completed Operations.

3. **Physical Damage.** Contractor will maintain comprehensive (fire, theft and collision) physical damage insurance covering the vehicles and equipment used in providing service to City under this Agreement, with a deductible or self-insured retention not greater than \$1,000.

The insurance policies required by this Section must be issued by an insurance company or companies authorized to do business in the State of California with a rating in the most recent edition of Best's Insurance Reports of size category XV or larger and a rating classification of A or better, except that Workers' Compensation insurance must be provided by a carrier with a size category of VIII or larger.

B. Required Endorsements

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

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

City Manager
City of Sunnyvale
456 W. Olive Avenue
Sunnyvale, CA 94086"

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

(a) "Thirty (30) days prior written notice shall be given to the City of Sunnyvale in the event of cancellation, reduction of coverage, or non-renewal of

this policy. Such notice shall be sent to:

City Manager
City of Sunnyvale
456 W. Olive Avenue
Sunnyvale, CA 94086

(b) "The City of Sunnyvale, its officers, employees, agents and volunteers are additional insureds on this policy."

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

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

C. Delivery of Proof of Coverage. Contractor will furnish the City with certificates of insurance and additional insured endorsements for all insurance coverage required hereunder, in form and substance satisfactory to City. Certificates must show the type and amount of coverage, effective dates and dates of expiration of policies and have all required endorsements. If City requests, Contractor will promptly deliver to City copies of each policy, together with all endorsements.

Contractor will furnish renewal certificates of insurance and additional insured endorsements periodically and at least

annually to City to demonstrate maintenance of the required coverage throughout the Term.

D. Other Insurance Requirements

1. If Contractor delegates any services to a subcontractor, Contractor will require its subcontractor to provide statutory workers' compensation insurance and employer's liability insurance for all of the subcontractor's employees engaged in the work. The liability insurance required by subsection 9.02.A.2 must cover all subcontractors, or the subcontractor must furnish evidence of insurance provided by it meeting all of the requirements of this Section 9.02.

2. Contractor will comply with all requirements of the insurers issuing policies. Carrying insurance does not relieve Contractor from any obligation under this Agreement. If any claim is made by any third person against Contractor or any subcontractor on account of any occurrence related to this Agreement, Contractor will 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 monies due Contractor.

The Public Liability insurance required by Section 9.02.A.2 must be written on an "occurrence," rather than a "claims made" basis, if such coverage is obtainable. If it is not obtainable, Contractor must arrange for "tail coverage" to protect City from claims filed after the expiration or termination of this Agreement relating to incidents that occurred prior to such expiration or termination.

9.03 Faithful Performance Bond

Throughout the Term, Contractor must file with City and continue to maintain for the benefit of City, a bond securing Contractor's faithful performance of its obligations under this Agreement. The principal sum of the bond must be \$3 million. The form of the bond must be as set out in Exhibit 9.03. The bond must be executed as surety by a corporation authorized to issue surety bonds in the State of California, with a financial condition and record of service satisfactory to City.

Contractor will, if requested by City, procure and file a replacement performance bond in the same form as Exhibit 9.03, in the 16th and 26th years of the Term. The amount of the bond, if required, must be \$3 million multiplied by a fraction, the numerator of which is Contractor's Payment in the 15th or 25th years, respectively, of the Term and the denominator of which is Contractor's Payment in the first year of the Term. Prior to requesting an increase in the \$3 million performance bond, City will discuss the request with Contractor, recognizing that bond markets have a tendency to change with respect to accessibility and cost.

In lieu of a performance bond, City and Contractor may agree that Contractor will provide for the issuance of an irrevocable stand by letter of credit (the "**Letter of Credit**") by a bank approved by City in its sole discretion (the "**Bank**") for the benefit of City. Under the Letter of Credit, City may draw, in one or more drawings, an aggregate amount up to \$2 million (the "**Stated Amount**") upon the occurrence of (1) an Event of Default defined in Section 11.01, (2) Contractor's failure to timely pay any moneys due City, (3) Contractor's inability to regularly pay its bills as they become due, or (4) Contractor's failure to timely pay any solid waste management facility for recyclables processing, composting or disposal services provided under this Agreement, as evidenced to the satisfaction of City. City and Contractor may agree that Contractor will increase the aggregate amount of the Letter of Credit in conjunction with determination of Contractor's payment in accordance with Section 8.03. Any incremental costs or savings incurred by Contractor to secure the increased aggregate amount will be included in the calculation of Contractor's payment for the next rate year. The expiration date of the Letter of Credit must be no less than the term of this Agreement provided in Section 4.02 (the "**Stated Expiration Date**"), unless it provides that it will not be terminated, modified or not renewed except after prior written notice by certified mail, return receipt requested, to City 60 days in advance or termination or failure to renew. The Letter of Credit may expire on the date on which the Bank receives a certificate from City saying that the term has expired or this Agreement has been terminated and Contractor owes City no money under this Agreement or that Contractor has substituted an alternative letter of credit or other security document acceptable to City in City's sole discretion. The form of the Letter of Credit, including the procedures for and place of demand for payment and drawing certificate attached thereto, is subject to approval of City in its sole discretion. The Letter of Credit must be transferable to any successor or assignee of City.

ARTICLE 10 CITY'S RIGHT TO PERFORM SERVICE

10.01 General

A. City Rights. If Contractor, for any reason whatsoever, fails, refuses or is unable to collect and transport any or all Solid Waste that it is required by this Agreement to collect and transport, at the time and in the manner provided in this Agreement, for a period of more than 48 hours, then upon notice to Contractor, City may take the following action or actions:

- (1) perform, or cause to be performed, such services itself with its own or other personnel without liability to Contractor and/or
- (2) take possession of any or all Service Assets and to use those Service Assets to collect and transport any Solid Waste generated within City.

If City exercises this right to use and possession of those Service Assets, Contractor will furnish City with immediate access to all of its business records related to all Waste Generator subscription (including service and complaint information), routing, and its billing of accounts for services that are not billed by City under Section 6.01A. Contractor hereby gives all Waste Generators the right to use and possession of Containers theretofore provided by Contractor or thereafter distributed by City or City's representative, which right of Waste Generators to use and possession may be exercised only in the event City exercises its right to use and possession. A copy of the Vehicle Lease under which Contractor leases to City vehicles to provide solid waste collection and disposal services is attached as Exhibit 10.01.

In that event Contractor will:

- (1) fully cooperate with City to effect the transfer of possession of property to City for City's use.
- (2) if City so requests, keep in good repair and condition all of such property, provide all motor vehicles with fuel, oil and other service, and provide such other service as may be necessary to maintain said property in operational condition.

(3) allow City to immediately engage all or any Contractor personnel necessary or useful for the collection and transportation of Solid Waste, including, if City so desires, employees previously or then employed by Contractor. If City so requests, Contractor will further furnish City the services of any or all management or office personnel employed by Contractor whose services are necessary or useful for Solid Waste collection and transportation operations.

City's exercise of its rights under this Article 10

- (1) does not constitute a taking of private property for which compensation must be paid,
- (2) does not create any liability on the part of City to Contractor, and
- (3) does not exempt Contractor from the indemnity provisions of Section 9.01, 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 officers, employees and agents in the operation of Service Assets during the time City has taken possession of those Service Assets.

B. Service Asset Documentation. Any document ("**Service Asset Document**"), entered into after the date Contractor executes this Extended and Second Restated Agreement including

(i) subscription and routing software and
(ii) a lease, financing contract, acquisition over time, mortgage or other instrument establishing a security interest to or by Contractor, that encumbers or limits Contractor's interest in Service Assets, including any replacement or substitute equipment,

will:

(1) allow any guarantor of Contractor's obligations under this Agreement to assume Contractor's obligations and to continue use of Service Assets in performing Services;

(2) allow any Contractor's surety to assume Contractor's obligations and to continue use of Service Assets in performing Services during the remaining term of surety's bond; and

(3) allow City to assume Contractor's obligations and to continue use of Service Assets in performing Services.

C. Insurance. Contractor will maintain in full force and effect all insurance required in accordance with Section 11.01 during City's possession of Service Assets.

By granting City and Waste Generators the right to possession and use of Service Assets Contractor hereby declares as follows:

(1) City and Waste Generators are permitted users for purposes of liability insurance policies that Contractor must procure and maintain under this Agreement, and

(2) City and Waste Generators use and possession is not intended to be and is not transfer of ownership for purposes of any liability policies.

Furthermore, if City and Waste Generators have possession and use of Service Assets, Contractor will execute whatever documentation its liability insurers require in order to ensure that City and Waste Generators are protected and covered by Contractor's general and automobile policies, including requesting and executing endorsements to those policies, provided that Contractor is not obligated to pay any additional cost of those endorsements unless City reimburses Contractor for those costs. Contractor hereby gives City the right to pay for any endorsements, additional premiums or other costs. Contractor hereby gives City the right to call and confer with Contractor's insurance broker to determine what, if any, documentation or actions are necessary to achieve protection satisfactory to City, which right City may exercise only in the event of its use and possession of Service Assets. By executing this agreement, Contractor directs its insurance broker to cooperate with and take direction from City under those circumstances, which authorization Contractor may not rescind without City consent.

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

**10.02 Temporary Possession for Service Interruptions
Caused by Events Beyond Contractors Control**

If as permitted by Section 10.01A City takes possession of any Service Asset, then in the event that Contractor's failure, refusal or inability to collect and transport any or all Solid Waste is caused by any of the events listed in Section 11.05 that excuse Contractor from performing its obligation under this Agreement, City will pay to Contractor (or Contractor's assignee, Comerica Bank-California under The Assignment of Lease Proceeds, Including All Payment of Lease Proceeds, Subordination of Interest, and Other Terms entered into among Comerica Bank-California, the City and Contractor as of December 28, 1992, appended as Attachment 10.02) the following amounts:

- (1) with respect to any vehicles listed on Exhibit A to the Vehicle Lease, the rental payments shown on Exhibit B to the Vehicle Lease; and
- (2) with respect to facilities used by Contractor to collect and transport Solid Waste under this Agreement, the reasonable rental value thereof

for the period of City's possession, but City is excused from any other obligation to pay Contractor monies under this Agreement for that period.

**10.03 Temporary Possession for Service Interruptions
Caused by Other Events**

If as permitted by Section 10.01A City takes possession of any Service Assets, then in the event that Contractor's failure, refusal or inability to collect and transport any or all Solid Waste is caused by labor unrest (such as strikes, work stoppages or slowdown, sickout, lockouts, picketing or other concerted job action) or any event other than events listed in Section 11.05 that excuse Contractor from performing its obligations under this Agreement, then City is not obligated to pay to Contractor or any other person any rental, or any other charge or compensation whatsoever, except to Contractor's assignee, Comerica Bank-California described in Section 10.02, with respect to those vehicles described in item (1) of Section 10.02, the rental payments described in item (1) of Section 10.02.

10.04 Duration of City's Possession

City has no obligation to maintain possession of Contractor's property and/or continue its use in collecting and transporting Solid Waste for any period of time and may at any time, in its sole discretion, relinquish possession to Contractor.

City's right to retain temporary possession of Contractor's property, and to provide Solid Waste collection services, continues until Contractor can demonstrate to City's satisfaction that it is ready, willing and able to resume such services.

ARTICLE 11 DEFAULT AND REMEDIES

11.01 Events of Default

All provisions of the Franchise and this Agreement to be performed by Contractor are considered material. Each of the following constitutes an event of default ("**Event of Default**") under this Agreement:

A. Contractor fails to perform its obligations under this Agreement and fails to cure such breach within 2 days of receiving notice from City specifying the breach except, with respect to failure to perform its obligations under Section 12.02 (Compliance with Law) within 60 days of Violation, as defined in Section 12.02;

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

C. There is a seizure or attachment of, or levy on, the operating equipment of Contractor, including without limit its vehicles, maintenance or office facilities, or any part thereof;

D. There is any termination or suspension of the transaction of business by Contractor, including without limit, due to labor unrest including strike, work stoppage or slowdown,

sickout, picketing, or other concerted job action lasting more than 2 days;

E. Contractor files a voluntary petition for debt relief under any applicable bankruptcy, insolvency, debtor relief, or other similar law now or hereafter in effect, or consents to the appointment of or taking of possession by a receiver, liquidator, assignee, trustee, custodian, sequestrator (or similar official) of Contractor for any part of Contractor's operating assets or any substantial part of Contractor's property, or makes any general assignment for the benefit of Contractor's creditors, or fails generally to pay Contractor's debts as they become due or takes any action in furtherance of any of the foregoing;

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

G. Contractor fails to provide reasonable assurances of performance as required under Section 11.07 by the time required by City.

H. Contractor incurs an Event of Default as defined in Section 8.01B of the Consent and First Amendment to Agreement between the City of Sunnyvale and Specialty Garbage and Refuse Service, Inc. for the Collection of Solid Waste dated as of the 17th day of December, 1992 by and among the City, Specialty Garbage and Refuse Service, Inc. and Contractor, for failure to perform obligations or covenants under Section 7.01 (Encumbrance of Properties) thereof.

I. Contractor breaches any provision of Section 12.05.

11.02 Right to Terminate Upon Default

Upon an Event of Default, City may terminate the Franchise and this Agreement upon a further 10 days notice without the need for any hearing, suit or legal action.

11.03 Possession of Property Upon Termination

A. In Event of Default. If City terminates this Agreement in accordance with Section 11.02, City may take possession of any and all of Contractor's Service Assets and use those Service Assets to collect and transport any Solid Waste generated within City. City may retain the possession of those Service Assets until other suitable arrangements can be made for the provision of Solid Waste collection services, including the grant of a franchise to another solid waste hauling company.

B. Upon Expiration of this Agreement. Within 2 weeks prior to the expiration of this Agreement, City may direct Contractor to transfer unencumbered free and clear title, ownership and other rights to use and possession (such as leasehold interests) and possession of all, but not part, of Service Assets (excluding land) to City, without encumbrance or lien other than those in existence as of the date Contractor executed the Extended and Second Restated Agreement simultaneously upon City payment of the aggregate net book value thereof (if any), depreciated on a straight line basis in accordance with Section C4b or Exhibit 8.03A. Within 2 weeks of City's notice and simultaneously with that payment, Contractor will fully effectuate that transfer. Waste Generators' possession of Containers will be deemed possession by City if necessary to exercise this right. CITY'S ACQUISITION RIGHTS SURVIVE THE EXPIRATION OF THIS AGREEMENT.

C. Records and Service Asset Documentation. Upon City direction, Contractor will furnish City with immediate access to Waste Generator subscription (including service and complaint information), routing, and all of its business records related to its billing of accounts for services that are not billed by City under Section 6.01A. Contractor will comply with its obligations with respect to Service Asset Documentation as defined in and in accordance with Section 10.01B.

D. Undepreciated Assets. Contractor has no right to recover amounts equal to any undepreciated asset value remaining upon expiration or earlier termination of this Agreement from City or Waste Generators. Neither City nor Waste Generators must compensate Contractor for that undepreciated asset value, except to the extent that value is reflected in the net book value of assets purchased by City at City's option in accordance with Section 11.03B.

11.04 City's Remedies Cumulative; Specific Performance

City's right to terminate the Contract under Section 11.02 and to take possession of Contractor's properties under Section 11.03 are not exclusive, and City's termination of this Agreement does not constitute an election of remedies. Instead, they are in addition to any and all other legal and equitable rights and remedies that City may have.

By virtue of the nature of this Agreement, the urgency of timely, continuous and high quality service, the lead time required to effect alternative service, and the rights granted by City to Contractor, the remedy of damages for a breach hereof by Contractor is inadequate and City is entitled to injunctive relief.

11.05 Excuse From Performance

The parties are excused from performing their respective obligations under this Agreement if they are prevented from so performing by reason of floods, earthquakes, other "acts of God," 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 strike, work stoppage or slowdown, sickout, picketing, or other concerted job action is not an excuse from performance and Contractor will continue to provide service notwithstanding the occurrence of any or all of such events.

Within 2 days after the party claiming excuse from performance has given notice thereof to the other party, it will further give the other party notice of the facts constituting such cause and asserting its claim to excuse under this Section.

If either party validly exercises its rights under this Section, the parties hereby waive any claim against each other for any damages sustained thereby.

The partial or complete interruption or discontinuance of Contractor's services caused by one or more of the events described in this Section does not constitute an Event of Default under this Agreement. However, the existence of an excuse from Contractor's performance will not affect City's rights to perform services under Sections 10.01 and 10.02.

Furthermore, if Contractor is excused from performing its obligations under this Agreement for a period of 14 days or more, City may nevertheless, in its sole discretion, terminate this Agreement by giving 10 days notice. In that event of termination, the provisions of Section 11.03 will apply.

11.06 Relationship of Liquidated Damages to Right to Terminate

City's right to recover liquidated damages under Section 6.07 for Contractor's failure to meet the service performance standards does not preclude City from obtaining equitable relief for persistent failures to meet such standards nor from terminating this Agreement for such failures.

11.07 Right to Demand Assurances of Performance

If Contractor

- (1) suffers the imposition of liquidated damages under Section 6.07;
- (2) is the subject of any labor unrest including work stoppage or slowdown, sickout, picketing or other concerted job action;
- (3) appears in the reasonable judgment of City to be unable to regularly pay its bills as they become due; or
- (4) is the subject of a civil or criminal proceeding brought by a federal, state, regional or local agency for violation of an Environmental Law,

then at its option and in addition to all other remedies it may have, City may 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 is an event of default for purposes of Section 11.01.

11.08 CNG Vehicles and Fueling

Contractor will comply with all provisions within Contractor's control of all agreements ("**Funding Agreements**") in the form presented by the Bay Area Air Quality Management

District or other agency ("**Funding Agency**") to City, as those Funding Agreements may be supplemented and amended by the Funding Agency. Contractor will comply with all Funding Agreements whose form presented by the Funding Agency is amended, with concurrence of the Funding Agency, if Contractor has reviewed and approved those amendments to Funding Agreements and agreements of other granting agencies, including the Funding Agreements listed in Exhibit 11.08 as it may be amended by City to reflect termination of existing Funding Agreements and additions of new ones.

Reference in this Section to "Funding Agreement" includes amended, supplemented or similar additional agreements. Specific citations to the Funding Agreement include comparable provisions in those agreements.

Contractor will not sell any refuse truck identified in any Funding Agreement purchased as part of the project described in any Funding Agreement, without consent of City. City may condition that consent, including payment of funds to the Funding Agency necessary in the judgment of the Funding Agency to comply with any provision of the Funding Agreement. Contractor will operate those refuse trucks only inside the areas prescribed in the Funding Agreements until date provided in any Funding Agreement. Contractor will maintain fueling station requirements, including public throughput of therms, in accordance with the Funding Agreement.

Contractor will promptly provide City upon City request contracts between Contractor and fuel vendors for provision of fuel to collection vehicles or any other related goods, services or benefits accruing to Contractor. Contractor will secure City approval of any amendments thereto or any additional fuel contracts in advance of entering into those amendments or additions.

Contractor's obligations described in this Section survive the expiration or earlier termination of this agreement, and Contractor acknowledges that City may specifically enforce those obligations.

ARTICLE 12 OTHER AGREEMENTS OF THE PARTIES

12.01 Relationship of Parties

The parties intend that Contractor will perform the services required by this Agreement as an independent contractor engaged by City and not as an officer or employee of City nor as a partner of or joint venturer with City. No employee or agent or Contractor is, or may be deemed to be, an employee or agent of City. Except as expressly provided in this Agreement, Contractor has the exclusive control over the manner and means of conducting the solid waste collection services performed under this Agreement, and all persons performing such services. Contractor is solely responsible for the acts and omissions of its officers, employees, subcontractors and agents. Neither Contractor nor any of its officers, employees, subcontractors and agents may obtain any rights to retirement benefits, workers' compensation benefits, or any other benefits that accrue to City employees by virtue of their employment with City.

12.02 Compliance with Law

In providing the services required under this Agreement, Contractor will at all times, at its sole cost, comply with all applicable laws of the United States, the State of California and City and with all applicable regulations promulgated by federal, state, regional or local administrative and regulatory agencies, now in force and as they may be enacted, issued or amended during the Term.

If Contractor is determined, in a final decision by the National Labor Relations Board or a court, to have engaged in unfair labor practices in violation of the National Labor Relations Act, as amended, 29 U.S.C. Section 158, et seq., which have occurred during the Term of this Agreement, City may terminate the Franchise and this Agreement upon 10 days' notice, without the need for any hearing, suit, or legal action.

The enumeration of City's right to terminate in the immediately preceding paragraph is not in derogation of City's right to treat Contractor's Violation of other laws as an Event of Default under Section 11.01, for purposes of Section 11.02.

"Violation" means:

- (1) any written notice, assessment or determination of non-compliance with Environmental Law, or
- (2) any written notice, assessment or determination of material non-compliance with other applicable law described in the first paragraph of this Section,

from any Regulatory Agency to Contractor, whether or not a fine or penalty is included, assessed, levied or attached, where "Regulatory Agency" means any federal, State or local governmental agency that regulates collection and transportation of Solid Waste, including California Department of Transportation, California Department of Motor Vehicles, EDD, U.S. Immigration and Naturalization Services, or other health and safety department thereof, and the Local Enforcement Agency applicable to services under this Agreement.

12.03 Governing Law

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

12.04 Jurisdiction

Any lawsuits between the parties arising out of this Agreement must be brought and concluded in the courts of the State of California, which has exclusive jurisdiction over such lawsuits.

With respect to venue, this Agreement is made in and will be performed in Santa Clara County.

12.05 Assignment

A. Assignment Consent. Except as provided in Section 12.06, neither party may assign its rights nor delegate or otherwise transfer its obligations under this Agreement to any other person without the prior consent of the other party, where "assign" and "assignment" is defined in this Section below. This assignment provision is material in accordance with Section 11.01. Any assignment made without the consent of the other party is void and the attempted assignment by Contractor constitutes an Event of Default under Section 11.01.

B. Definition of "Assign" and "Assignment". For purposes of this Section, "assign" or "assignment" includes, but is not limited to,

(i) any sale, exchange or other transfer of substantially all of Contractor's assets dedicated to service under this Agreement to a third party;

(ii) any issuance of new stock to a person *other than any of the* shareholders of Contractor identified to City as of the date of execution by Contractor of this Extended and Second Restated Agreement, as represented and warranted to City by Contractor as of that date; and any sales, exchanges and/or other transfers of 10% or more of the common stock of Contractor outstanding as of that date *other than* between any of those shareholders;

(iii) any dissolution, reorganization, consolidation, merger, recapitalization, stock issuance or reissuance, voting trust, pooling agreement, escrow arrangement, liquidation or other transaction to which Contractor or any of its shareholders is a party which results in a change of ownership or control of 10% or more of the value or voting rights in the stock of Contractor (provided that changes in ownership or control between the shareholders named in item (ii) do not constitute assignments);

(iv) any assignment by operation of law, including:

- insolvency or bankruptcy;
- making assignment for the benefit of creditors;
- writ of attachment of an execution being levied against Contractor;
- appointment of a receiver; and
- taking possession of any of Contractor's tangible or intangible property;

(v) substitution by a surety company providing any performance bond of another person for Contractor to perform services;

(vi) any combination of the foregoing (whether or not in related or contemporaneous transactions) which has the effect of any such transfer or change of ownership, management or control,

(vii) transfer of stock or other ownership interest in Contractor by a personal representative of the transferor following the death or incapacity of the transferor to a person other than a child or other issue of the transferor;

(ix) "assignment" as defined in preceding items (i) - (viii) of or by an Affiliate that provides Goods or Services to Contractor, where "Goods or Services" means all goods or services used in providing Services, including labor, leases (other than the land lease by Contractor of the site of its operations and maintenance facility), subleases, equipment, supplies and capital related to furnishing Services; insurance, bonds or other credit support if the insurer is an Affiliate or a captive of Contractor or any Affiliate; and legal, risk management, general and administrative services. (For example, if Contractor leased its vehicle fleet from an Affiliate, and more than 10% of the stock of the Affiliate was sold, that sale would constitute an "assignment".)

Despite the preceding definition of "assign" and "assignment", the terms "assign" and "assignment" do not include any transfer of stock or other ownership interest in Contractor:

(i) by a transferor in his or her individual name to the transferor and his or her spouse, as trustee(s) of a revocable trust for the benefit of such transferor and spouse;

(ii) to a child or other issue of the transferor by reason of the death or disability of the transferor where it is established to the satisfaction of City that the transferee has been active in the business on a substantially full-time basis prior to such transfer;

(iii) to a personal representative of the transferor by reason of the death or incapacity of the transferor, but only for such period as is reasonably necessary to arrange for the disposition of such interest.

C. Acknowledgements. Contractor acknowledges that this Agreement involves rendering a vital service to City's residents and businesses, and that City has selected Contractor to perform the services specified in this Agreement based on (1) Contractor's experience, skill and reputation for conducting its solid waste management operations in a safe, effective and responsible fashion, at all times in keeping with applicable solid waste management laws, regulations and good solid waste management practices, and (2) Contractor's financial resources to maintain the required equipment and to support its indemnity obligations to City under this Agreement. City has relied on each of these factors, among others, in choosing Contractor to perform the services to be rendered by Contractor under this Agreement.

D. Requests for Assignment. If Contractor requests City's consideration of and consent to an assignment, City may deny or approve Contractor's request in City's complete discretion. Contractor will submit its request for City consent to City together with any documentation City may request, including audited financial statements. City is not obligated to consider any proposed Assignment by Contractor if Contractor is in breach of this Agreement at any time during the period of City's consideration. Contractor will make any request for consent to Assignment in the form and manner prescribed by City.

E. Assignment Fee and Cost Reimbursement. Together with submitting to City its request for Assignment, Contractor will compensate City in the minimum, a non-refundable amount of a \$10,000 assignment fee. Contractor will thereafter pay City any additional reasonable Direct Costs incurred by City in excess of that amount for considering Contractor's request for Assignment, incurred by City to determine whether or not it is in the public interest to approve Contractor's request for Assignment, investigate the suitability of any proposed assignee and to review, prepare and finalize any documentation required by City as a condition of City approval. For purposes of this Section, the term "**proposed assignee**" refers to the proposed transferee(s) or other successor(s) in interest pursuant to the Assignment. "**Direct Costs**" include wages (including benefits) of City staff; the costs of materials, support services, and supplies (such as mailing and courier fees, phone charges, fees to access financial and other reported information); and payments to subcontractors, consultants, attorneys, accountants and other professionals having expertise in solid waste industry and service contracting.

F. Enforcement Cost Reimbursement. Contractor will further pay City the reasonable Direct Costs defined in preceding subsection 12.05E incurred by City to enjoin Contractor's Assignment without City consent or otherwise enforce this provision within 30 days of City's request for that payment. Those Direct Costs include fees of attorneys, consultants and expert witnesses, exhibit preparation and court costs of preparing for, prosecuting, defending or otherwise conducting mediation, arbitration or judicial proceedings.

12.06 Subcontracting

Contractor will not engage any subcontractors without the prior consent of City, except for those whom Contractor has identified in writing to City prior to engaging their services. Contractor may engage a subcontractor that is an Affiliate of Contractor only if Contractor has first solicited bids in good faith from 3 subcontractors that are not Affiliates, and Contractor's Affiliate submits the lowest bid for substantially the same services as covered by the competitive bids.

12.07 Binding on Successors

The provisions of this Agreement inure to the benefit of and are binding on the successors and permitted assigns of the parties.

12.08 Parties in Interest

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

12.09 Waiver

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

12.10 Contractor's Investigation

Contractor represents and warrants that it is familiar with the number and type of Waste Generators in City and the nature of the Solid Waste generated.

12.11 Condemnation

Contractor acknowledges that this Agreement implements the grant of a franchise pursuant to Article XVI of the Sunnyvale City Charter and Section 8.16.090 of the Sunnyvale Municipal Code. City fully reserves the rights to acquire Contractor's property utilized in the performance of this Agreement, by purchase or through the exercise of the right of eminent domain, in accordance with the procedure described in Section 1605 of City Charter. Contractor agrees that, pursuant to Section 1605 of the City Charter, in fixing the price to be paid, the court must value the property to be acquired at its fair market value, except that no allowance be made for franchise value, good will, going concern, earning power, or increased value of right of way.

12.12 Notice

All notices, demands, requests, proposals, approvals, consents and other communications that this Agreement requires, authorizes or contemplates must, except as provided in Section 10.01, be in writing and must either be personally delivered to a representative of the parties at the address below or be deposited in the United States mail, first class postage prepaid, addressed as follows:

If to City: City Manager
 City of Sunnyvale
 456 West Olive Avenue
 Sunnyvale, California 94086

with a copy to:

City Attorney
City of Sunnyvale
456 West Olive Avenue
Sunnyvale, California 94086

If to Contractor: Bay Counties Waste Services, Inc.
 3355 Thomas Road
 Santa Clara, CA 95054
 Attention: President

with a copy to:

David Cohen, Esq.
Cohen & Ostler
525 University Avenue, Suite 410
Palo Alto, CA 94301

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

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

12.13 Representatives of the Parties

References in this Agreement to "City" means the City Council and all actions to be taken by City mean actions taken by the City Council except as provided below. The City Council may delegate, in writing, authority to the City Manager, the Director of the Department of Public Works and/or to other City officials and may permit those officials, in turn, to delegate in writing some or all of such authority to subordinate officers. Contractor may rely upon actions taken by such delegates if they are within the scope of the authority properly delegated to them.

Contractor will designate in writing a responsible officer who will serve as the representative of Contractor in all matters related to this Agreement and will inform City in writing of such designation and of any limitations upon his or her authority to bind Contractor. City may rely upon action taken by such designated representative as actions of Contractor unless it is outside the scope of the authority delegated to him/her by Contractor as communicated to City. Contractor will use best efforts to provide City with notice of change in this designation no later than 30 days prior thereto, including the professional qualifications of the person Contractor proposes to newly designate.

ARTICLE 13 MISCELLANEOUS AGREEMENTS

13.01 Exhibits

Each of the Exhibits identified by the title "Exhibits" and a number matching the Section that it references or other

distinguishing letter, is attached to this Agreement, incorporated in this Agreement and made a part of this Agreement by this reference, whether or not they are mentioned or specifically referred to in any other Section of this Agreement.

13.02 Entire Agreement

This Agreement, including the Exhibits, represents the full and entire Agreement between the parties with respect to the matters covered in this Agreement.

13.03 Section Headings

The article headings and section headings in this Agreement are for convenience of reference only and are not intended to be used in the construction of this Agreement nor to alter or affect any of its provisions. References to numbered Sections in this Agreement and its Exhibits refer to Sections in this Agreement, unless otherwise referenced. Reference to a subsection is to the Section in which that subsection occurs. For example, reference to subsection A in the body of Section 6.01 would be to Section 6.01A.

13.04 References to Laws

Reference to laws includes all rules and regulations promulgated under those laws as well as all future amendments to or recodifications / restatements of those laws.

13.05 Interpretation

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

Use of the word "including," "includes" or other forms thereof means "including, without limitation," "including, but not limited to" and "including, at a minimum."

Use of the word "may" includes "is not obligated."

Failure of either party to exercise its right to approve or disapprove any item will not be deemed a breach of an obligation.

13.06 Amendment

This Agreement may not be modified or amended in any respect except by a writing signed by the parties.

13.07 Severability

If any non-material provision of this Agreement is for any reason deemed to be invalid and unenforceable, the invalidity or unenforceability of such provision will not affect any of the remaining provisions of this Agreement, which will be enforced as if such invalid or unenforceable provision had not been contained in this Agreement. Determination of materiality with respect to this Section does not derogate the materiality with respect to all other provisions for the purpose of, and in accordance with, Section 11.01.

13.08 Counterparts

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

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

ATTEST:

CITY CLERK
by

By: Susan A. Ramos
Susan A. Ramos
City Clerk

CITY OF SUNNYVALE ("City"),

Dean J. Chu
Dean J. Chu
Mayor

APPROVED AS TO FORM:

Joan A. Borger
Joan A. Borger
City Attorney

BAY COUNTIES WASTE SERVICES,
INC.

By: Robert Molinaro
Robert Molinaro
President

ATTEST name and signature:

Jerry Nabhan
Jerry Nabhan
Corporate Secretary

(Handwritten mark)

EXHIBIT 5.02
DETAILED SCOPE OF SERVICES

RESIDENTIAL REFUSE CONTAINERS

1.01 Containers for Residential Refuse

A. Contractor to Provide Refuse Carts for Unlimited Refuse Collection Service. Contractor will provide each Residential Waste Generator subscribing to unlimited collection service with the Waste Generator's choice of a 64 or 96-gallon plastic wheeled cart for storage of Refuse as determined by Customer preference. Contractor will provide carts by the next regularly scheduled collection service day for that Waste Generator's route following that Waste Generator's request for service. Contractor will procure those carts in a color and design approved by City. If a residential Waste Generator does not wish to use the cart, Contractor will remove the cart from the Waste Generator's premises.

B. Waste Generators to Provide Refuse Cans for Baseline Refuse Collection Service. Waste Generators residing in Residential dwellings who subscribe to baseline (single can) residential service will provide, at their sole expense, a 32-gallon plastic or metal can for storage of Refuse.

C. Curbside Location of Containers. Contractor will collect the following containers at curbside:

- (1) plastic wheeled carts provided for unlimited service in accordance with subsection 1.01A
- (2) standard metal or plastic (maximum 32-gallons in size) containers, plastic bags, and boxes not larger than 3' x 2' x 2' or weighing more than 25 pounds
- (3) 32-gallon standard plastic or metal container for baseline service in accordance with subsection 1.01B.

SOLID WASTE COLLECTION PROGRAM STANDARDS

1.02 Holidays. Contractor need not maintain regular collection schedules on the following holidays: Thanksgiving Day, Christmas and New Years Day. In years when these holidays fall on a regular collection day, Contractor will make collection for these holidays 1 day following the holiday. If the holidays fall on a Saturday, Contractor will make collections the following Monday.

2 weeks prior to the holiday, Contractor will send a direct mail flyer to affected Waste Generators announcing the pick-up schedule for each holiday.

1.03 Customer Service Performance Standards. Contractor will provide customer services at not less than the levels set forth in this Section.

A. Customer Service System. Contractor will maintain a computerized customer service system that contains sufficient information to answer customer service inquiries and has the capacity to maintain an account history of at least 18 months. Contractor will maintain any older account information on microfiche or a comparable system acceptable to City for a minimum of 5 years. Contractor will give City access to these records during Working Hours.

B. Customer Service Records. Contractor will make all customer service records and logs kept by Contractor available to City upon City request and at no cost to City.

C. Access to Customer Service Department. Contractor will provide City access to Contractor's customer service department at any time during regular City business hours for purposes including monitoring the quality of customer service or researching customer complaints.

D. Telephone System. Contractor will install telephone equipment in accordance with Section 6.05D of the Agreement.

E. Complaint Documentation. Contractor will maintain daily complaint logs in accordance with Section 6.06. Contractor will retain those logs for a minimum of 24 months and make them available to City at all times.

Contractor will respond to all complaints received within the time required under Section 6.06 of the Agreement. If appropriate, Contractor will make written communication of the response of Contractor to the caller within 5 Working Days of receipt of the complaint.

Contractor will date-stamp all written Waste Generator complaints and inquiries when received. If appropriate, Contractor will make written communication of the response of Contractor to the Waste Generator within 5 Working Days of receipt of the inquiry. Contractor will resolve all written

complaints and inquiries to the satisfaction of City, within 10 Working Days of receipt of the complaint or inquiry.

[1.03]F. Record of Non-Collection. If Contractor does not collect any Solid Waste delivered by Waste Generators for collection, Contractor will leave a tag at least 2" by 6" indicating the reasons for refusal to collect the Solid Waste, either in writing or by means of a check system. At City request, Contractor will deliver a copy of that tag, along with the name and address of the party tagged to City on the day after the tagging.

In addition, Contractor will maintain at its place of business a log book listing all taggings, containing the names and addresses of the parties involved, and recording the date of the tagging, nature of same and date and manner of disposition of each case. Contractor will keep that log so that it may be conveniently inspected by representatives of City upon request. Contractor will retain that log for the Term.

G. Customer Satisfaction Survey. At City's own expense, City may conduct surveys to determine customer satisfaction. If, as a result of any survey City determines that adequate customer service quality is not being maintained, Contractor will take whatever action is deemed necessary by City to bring service to an acceptable level. The results of surveys will be made available to Contractor upon request.

H. Route Documents. Contractor will maintain a routing system and make available to City upon request and at no cost to City, documents containing at least the following original information:

- (1) maps, lists and sequence of all stops on all routes
- (2) route number, name, address, day and type of collection
- (3) streets serviced
- (4) for accounts billed by Contractor, those addresses without active accounts and the date service terminated
- (5) addresses subscribing to one of the special service options and which option it is
- (6) detailed service information reported by City (such as location of containers on a corner lot)

I. Notice of Service Complaints. City will print a message (which contains the Contractor's telephone number) on the

utility bill describing that service complaints or questions should be phoned directly to the Contractor. All bills generated by Contractor for roll-off and "on-call" service will include a message containing Contractor's telephone number and directing Waste Generators with complaints to call Contractor directly.

[1.03]J. Coordination with City's Utility Billing System

1. **Access to City's Database.** Contractor will remotely access City's database of City's utility billing system for the sewer, water and garbage services, using a Virtual Private Network (VPN) or other method directed by City.

2. **Tie Line.** The Contractor will provide a direct voice communications phone link between Contractor and City. The Contractor will bear the cost of installing the phone line as well as the monthly charges. The phone link will allow both the City staff and the Contractor's staff to transfer phone calls from Waste Generators to the appropriate City or Contractor service staff. City's Information Management Department will work with Contractor to implement the phone link.

3. **City-Initiated Service.** City's Revenue Division will record and notify Contractor of all service orders received from Waste Generators whose billing is maintained by City in its utility billing system, such as some Waste Generators who request "on-call" service. Service orders include:

- (1) starting new service,
- (2) changing existing service level,
- (3) stopping existing service
- (4) changing identity of Waste Generator (ownership or occupancy)
- (5) changing container size, type or number,
- (6) changing frequency of pickup,
- (7) changing container location,
- (8) subscribing to backyard service for disabled or elderly in accordance with Section 1.04B, and
- (9) subscribing to push-out service at Commercial/Industrial or Multi-Unit Residential Premises.

If Contractor receives service orders from Commercial/Industrial Waste Generators and their billing is maintained by City, Contractor will transfer telephone

calls to City's Revenue Division and transmit non-telephonic orders to City via Contractor's electronic transfer system for recording in City's municipal utility billing system.

4. Contractor-Billed Service: On-call Roll-off.

Contractor will record and implement, as described in preceding paragraph 3, all service orders that Contractor receives from Waste Generators, whose service accounts are not programmed into City's utility billing system, including roll-off and most "on-call" service requested from Contractor by Waste Generators.

5. Other Data Needs.

Contractor will transmit monthly (or as soon as possible upon direction of City, not less than 2 Working Hours) to City information about all service that Contractor provides (such as on-call), including the names and addresses of Waste Generators, bin size, number and dates of pick-ups and amounts billed. City may request such other information from Contractor as City needs to monitor the Agreement. Staff from City's Information Management Services Department and Contractor will work together to implement exchange of this data.

K. Monthly Reporting. By the 5th day of each month Contractor will deliver to City a complaints report in accordance with Section 6.06 of the Agreement printed on recycled paper in accordance with Section 6.03 of the Agreement. City may review this report and audit selected items on a sample basis.

L. Hazardous Waste and Medical Waste Training. Contractor will train its employees to identify and not collect Hazardous Waste or Medical Waste during the performance of their duties.

M. Collection Regardless of Difficulty. Contractor will provide collection service regardless of the difficulty in making collection or the quantity of solid waste generated by subscribers to unlimited service if it is safe for Contractor's personnel to do so.

N. Entry onto Private Property.

1. If a homeowner's association provides bins for the association members' use, unless specifically forbidden, Contractor may enter onto private property to collect the Refuse in the association's bin.

2. Disabled and Elderly Rear Yard Service; Push Out Service. Contractor may enter onto private property to provide rear yard services to the disabled or elderly in accordance with Section 1.04B1 and push out service to Waste Generators who subscribe to push out service in accordance with Section 1.04B2.

Contractor will promptly repair any damage caused to private property resulting from actions under its control and/or negligence on the part of its employees or agents.

O. Push Out Service. Upon direction of Waste Generator and specification in that Waste Generator's service subscription, Contractor will provide push out service for Solid Waste (including Refuse and Recyclable Materials) to Multi-Unit Residential Premises and Commercial/Industrial premises. Contractor will commence push out service on the next regularly scheduled collection service day for that Waste Generator's route following that Waste Generator's request for push out service. Push out services are comprised of exiting from the collection vehicle, moving the Waste Generator's container from its storage place to vehicle for collection, and returning it to its storage place.

RESIDENTIAL REFUSE COLLECTION PROGRAM

1.04 Single-Unit Dwellings

A. Regular Services. Contractor will collect Refuse delivered to curbside at Residential premises of Waste Generators subscribing to unlimited or baseline service in accordance with Section 1.01A or B, respectively, at least once each week, Monday through Friday, on the same regularly scheduled collection day determined by Contractor. Contractor will commence collection on the next regularly scheduled collection service day for that Waste Generator's route following that Waste Generator's request for service.

B. Rear Yard Services for Disabled or Elderly. At the request of City, Contractor will collect Solid Waste (including Refuse, Recyclable Material and Yardwaste) in the rear yard of Residential premises of Waste Generators who are disabled or elderly, at least once each week, Monday through Friday, on the same regularly scheduled collection day determined by

Contractor. Contractor will commence collection on the next regularly scheduled collection service day for that Waste Generator's route following City's request for service. For purposes of this Section "disabled or elderly residents" are those Waste Generators who, due to age or disability are physically unable to bring their containers to the curb. City will determine whether a Waste Generator is eligible for this type of service. Rear yard service is comprised of exiting from the collection vehicle, moving the Waste Generator's container from its storage place to vehicle for collection, and returning it to its storage place.

[1.04]C. Special Pickup Services. Contractor will provide special pickup service for furniture, appliances, and other large bulky items at the request of Waste Generators in accordance with the rate schedule provided by City. Contractor will report to City the following information:

- (1) the amount of Solid Waste it collects,
- (2) the charges to be billed to the Waste Generator,
- (3) the Waste Generator name, address, account number, and
- (4) all other pertinent information required by City to bill Waste Generators for this service in accordance with Section 6.01 of the Agreement.

D. Spring and Fall Special Collections at Residential Premises. Contractor will conduct a 4-week spring clean-up collection and a 4-week fall clean-up collection annually for all Residential Waste Generators in accordance with Section 5.04B of the Agreement, regardless of whether those Waste Generators subscribe to baseline or unlimited collection service in accordance with Section 1.01A or B, respectively, held on various dates specified by City. Spring and fall clean-ups will consist of at least 4 separate pickups in each 4-week period coinciding with the Waste Generators' regular pickup schedule. Contractor will not accept loose rocks and dirt, and automobile parts. Contractor will accept Solid Waste that includes:

- (1) tree trimmings and wood tied in bundles that are less than 1 foot in diameter and 4 feet in length,
- (2) bundled newspapers and magazines,
- (3) old household items, furniture and appliances; and
- (4) unauthorized containers.

Contractor will send all Waste Generators a direct mail flyer announcing each spring and fall cleanup at least 3 weeks prior to the event, including any information provided by City.

Contractor will submit the flyer to City's Director of Public Works for approval 1 month prior to the mailing deadline.

Contractor will also place an ad in a newspaper of general circulation in the City advertising each special collection event 1 week prior to the event. Contractor will submit the size and text of the ad to City's Director of Public Works for approval 3 weeks prior to the publication date.

Contractor will cooperate with City's efforts to recycle or promote re-use of items collected during special cleanup events, including wood and yard trimmings, furniture, toys, household appliances and clothing.

[1.04]E. Container Specifications. Contractor will collect Refuse delivered in the following containers:

- (1) carts provided by Contractor, and
- (2) containers provided by Waste Generators, including cans, plastic bags, and cardboard boxes weighing no more than 25 pounds and measuring not more than 3' x 2' x 2'.

F. Collection Schedule and Routes. Contractor will give City written collection schedules and maps in accordance with Section 6.05E of the Agreement. Each December Contractor will mail collection schedules (including a holiday pick-up schedule) for the entire upcoming calendar year directly to each Waste Generator. Contractor will submit the schedule together with any other Customer correspondence to City for approval 1 month prior to the deadline for mailing.

G. Change of Collection Days. Contractor will send City written notice of changes in regularly scheduled collection days at least 30 days before notifying Waste Generators of the change. Contractor will obtain City's written approval prior to notifying Waste Generators of the change, which approval will not be withheld unreasonably. At least 30 days prior to the change, Contractor will give affected Waste Generator direct written notice. Contractor will also publish an announcement approved by City in a newspaper of general daily circulation.

H. Routing. Contractor will collect Refuse from Residential premises using 8 one-person automated routes and 2 two-person semi-automated rear load routes.

RESIDENTIAL CURBSIDE RECYCLING PROGRAM

[1.04]I. Residential Curbside Recycling Program.

1. Residential Recyclable Materials; Frequency; Commencement etc. Contractor will collect the following Recyclable Materials on the same day as Refuse collection ("**Residential Recyclable Materials**"):

- (1) newspapers,
- (2) glass,
- (3) metal
- (4) cans,
- (5) motor oil,
- (6) used motor oil filters,
- (7) household batteries,
- (8) plastic containers,
- (9) cardboard, and
- (10) additional materials required by City.

Contractor will collect Residential Recyclable Materials from:

- (1) the curb of all Residential premises within the City,
- (2) the curb or close-by areas of specified Multi-Unit Residential premises within the City as directed by City, and
- (3) at City request, the rear yard or other designated areas of disabled or elderly Residential Waste Generators.

Contractor will operate 5 routes to collect Residential Recyclable Materials.

[1.04I]2. Program Publicity. The Contractor will provide program publicity, including at least 2 flyers mailed to all Sunnyvale residents each year and approved by City prior to mailing.

3. Equipment.

a. Containers. Contractor will provide each Residential premise with a 64-gallon Toter split-cart (or other container approved by City) in color and design approved by City, by the next regularly scheduled collection service day for that Waste Generator's route following that Waste Generator's request for service.

b. Collection Vehicles. Contractor will collect Residential Recyclable Materials using 5 semi-automated split-body vehicles. Contractor will procure trucks with bodies that carry newspaper and containers in separate compartments and provide space for collecting cardboard and household batteries and racks that hold and provide secondary containment for used oil jugs and oil filters.

4. Used Oil and Oil Filter Recycling Program.

a. Collection. Contractor will collect used oil and oil filters each week from Waste Generators who are eligible to participate in the residential curbside recycling program.

Contractor will deliver used oil and oil filters to the Transfer Station or other facility specified by City.

b. Customer Education. Contractor will provide Waste Generators with written information approved by City about the used oil and oil filter recycling program, including clear instructions on how to properly place the containers for collection.

c. Container Specifications. Contractor will provide program participants with zipper lock plastic bags for used oil filter collection and plastic screw top 1 gallon jugs for used oil collection, or other container agreed upon between City and Contractor.

[1.0414]c. Container Labels. Contractor will label the zipper lock bags and jugs to indicate that they are for the curbside used oil filter and used oil recycling program, describe their handling procedures, and list Contractor's telephone number.

d. Container Delivery and Replacement. Contractor will deliver jugs for recycling used oil and containers for recycling used oil filters requested by participants by the participant's next regularly scheduled Refuse collection day. When Contractor collects 1 jug or container, respectively, from a participant, Contractor will leave an empty replacement jug or container. When Contractor collects 2 jugs or containers, respectively, from a participant, Contractor will leave 2 replacement jugs

or containers. When Contractor collects more than 2 used jugs or containers, respectively, from a participant, Contractor will leave 2 replacement jugs or containers.

RESIDENTIAL YARDWASTE RECYCLING PROGRAM

[1.04]J. Residential Yardwaste Recycling Program

1. Amount of Yardwaste to be Collected. Contractor will collect unlimited quantities of Yardwaste that Waste Generators have separated and delivered for collection at Residential premises in the City. Contractor will commence collection on the next regularly scheduled Refuse collection day. Contractor will collect Yardwaste in:

(1) 64 or 96 gallon capacity cart provided by Contractor in accordance with paragraph 1.05J4 below,

(2) separate containers up to 32 gallons capacity (including paper bags no greater than 20 gallons in capacity) identified by color, signage or proximity to the Yardwaste cart as containing Yardwaste, and

(3) tied bundles not exceeding 4 feet in length and 1 foot in diameter.

Contractor will consider Yardwaste contained in plastic bags to be refuse and Contractor will collect it with refuse, unless otherwise directed in writing by City.

[1.04J]2. Location of Yardwaste to be Collected.

Contractor will collect Yardwaste that has been separated and delivered for collection at the curbside, or at rear yard locations by occupants who are eligible for rear yard collection of Refuse as elderly or disabled, in accordance with Section 1.04B of this Exhibit.

3. Frequency of Collection. Contractor will collect Yardwaste each week on the same day as Refuse collection, from each Residential premise.

4. Yardwaste Carts. Contractor will provide each Residential premise with a 96 or 64 gallon capacity wheeled cart for Yardwaste, by the next collection service day for

that Residential premises route following that Residential Waste Generator's request for service. Yardwaste carts must be of a color and design acceptable to City.

5. Trucks. Contractor will collect the Yardwaste using 5 one-person automated vehicles, subject to City approval of the specifications of the trucks prior to purchase as described in Section 5.14B of the Agreement.

6. Number of Routes. Contractor will operate 4.8 routes to collect Yardwaste from Residential premises

7. Public Education. Contractor acknowledges that public education is important to encourage participation in the Yardwaste recycling program, to help increase route efficiency by having Yardwaste clearly identifiable, and to minimize contamination. Semi-annually, Contractor will prepare and mail to all residents a pamphlet including:

- (1) an update on the Yardwaste program,
- (2) reminders of acceptable materials,
- (3) a list of sources of information on Yardwaste available to residents, and
- (4) related information.

Contractor will submit the pamphlet to City for review and approval prior to distribution.

MULTI-UNIT RESIDENTIAL PREMISES REFUSE COLLECTION PROGRAM

1.05 Multi-Unit Residential Premises

A. Services. Contractor will collect Refuse at Multi-Unit Residential premises on days and at frequencies that the Waste Generator and Contractor mutually determine, at least once each week, Monday through Saturday. Contractor will commence collection on the next regularly scheduled collection day following that Waste Generator's request for service. Contractor will provide push-out service described in Section 1.04B2 of this Exhibit at request of Multi-Unit Residential Premises Waste Generators.

B. Containers. Contractor will provide bins in sizes requested by the Waste Generators for storage of Refuse by the next

Working Day following that Waste Generator's request for service. Waste Generators may elect to provide their own bins for storage of Refuse. Contractor will maintain its bins and keep them clean, odor free and in good repair. Contractor will paint and steam clean its bins at least once each year, or more frequently at the request of City.

MULTI-UNIT RESIDENTIAL PREMISES RECYCLING PROGRAM

[1.05]C. Multi-Unit Residential Premises Recycling Program

1. Collection of Recyclable Materials.

a. Regular Collection. Contractor will collect the following Recyclable Materials ("**Multi-Unit Residential Recyclables**") from all Multi-Unit Residential Premises within the City once each week (Monday through Friday). Contractor will commence collection on the Waste Generator's next regularly scheduled Refuse collection day. Multi-Unit Residential Recyclables include:

- (1) newspaper,
- (2) glass,
- (3) metal cans,
- (4) plastic containers,
- (5) used motor oil, and
- (6) oil filters.

b. Special Collection. If a Multi-Unit Residential Premises has an occasional need for extra collection, Contractor will provide pickup within 48 hours from the first 2 requests in a calendar year. Contractor is not--required to provide a special collection upon receipt of a third request. However, Contractor will thereafter provide additional service (e.g., by supplying more carts in sufficient numbers) at no extra cost.

Contractor will make recycling services available to every resident of the City, either through this Multi-Unit program or through the existing Residential curbside collection program.

[1.05C]2. **Hours of Collection.** Contractor will collect Multi-Unit Residential Recyclable Materials between the hours of 7 a.m. and 8 p.m. daily.

3. **Equipment.** Contractor will furnish all equipment necessary for collection of Multi-Unit Recyclable Materials from all Multi-Unit Residential Premises.

a. **Collection Carts.** Contractor will provide each Multi-Unit Residential Premises with 96 gallon capacity, wheeled carts with lids by the next Working Day (except Saturday) following that Multi-Unit Residential Premises' request for service that are compatible with side load collection vehicles and manufactured by Otto Industries, Inc. (Model No. Otto 95) or Toter, Inc. (Model No. 60001) or equivalent approved by City. Contractor will imprint the carts with the recycling logo and the type of material to be placed in each cart (e.g., "newspaper"). Contractor will also affix labels describing the desired contents of each cart (e.g., "Newspapers" or "Bottles and Cans") to each cart. The cart color(s), imprints and labels are subject to City approval. Contractor will promptly replace lost and damaged carts that cannot be repaired. Contractor will clean carts at a frequency sufficient to maintain them in a clean and attractive condition.

If a Multi-Unit Residential Premises consistently has more Multi-Unit Residential Recyclable Materials than can be accommodated by the number of carts that Contractor initially distributes, Contractor will distribute additional carts and/or increase the frequency of collection as needed without charge.

[1.05C3]b. **Used Motor Oil Jugs and Zipper Bags.** Contractor will contact the owner or manager of each Multi-Unit Residential complex to determine whether they wish to participate in the collection of used motor oil. For each complex that elects to participate, Contractor will deliver a secondary containment storage container and 4 to 9 empty plastic screw-top 1-gallon jugs by the next Working Day (except Saturday) following that owner or manager's request for service.

Contractor will also deliver 4 to 9 heavy duty zipper lock plastic bags with the oil jugs, to be used for the collection of used oil filters.

Contractor will label the jugs and bags to indicate their recycling purpose, handling procedures and Contractor's telephone number. The content and appearance of the label are subject to City approval.

Contractor will place the jugs and plastic bags in the storage container that will act as secondary containment. Contractor will purchase a total of 3,000 one-gallon jugs, 3,000 oil filter bags, and 350 storage containers for program start-up. Contractor will purchase jugs, bags and containers as needed to replace lost or damaged jugs/bags/containers or to accommodate growth in participation.

Contractor will collect used motor oil and filters weekly and at the same time leave a clean, empty plastic jug and bag to replace each one of those collected. Contractor will clean storage containers at least once annually and will maintain storage containers so that they are clean and in compliance with applicable regulations at all times.

4. **Trucks.** Contractor will collect the Multi-Unit Recyclable Materials initially using one-person semi-automated side load vehicles having the following specifications:

(1) **Body** -side-loading split body, 40 cubic yard capacity.

(2) **Compartments**-two compartments, divided as follows:

(i) 16-22 cubic yard compartment, with compactor, for newspaper;

(ii) 15-21 cubic yard compartment, with compactor, for commingled materials.

(3) **Racks** that hold and provide secondary containment for used oil jugs and oil filters.

[1.05C]5. **Waste Generators' Household Containers.** City or Contractor may distribute individual household containers