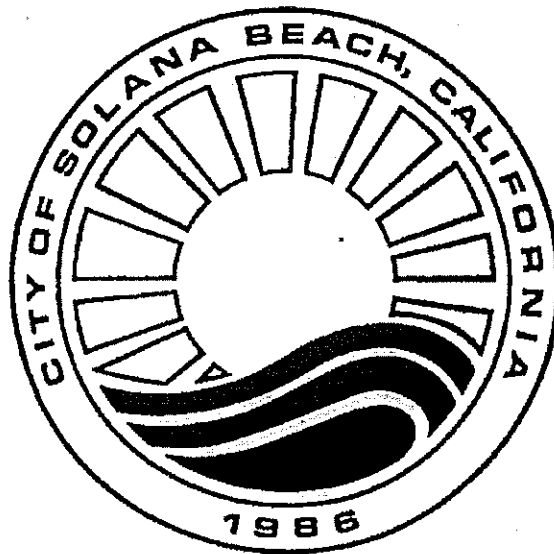


**AMENDED AND RESTATED
SOLID WASTE
FRANCHISE AGREEMENT
CITY OF SOLANA BEACH
AND
EDCO WASTE & RECYCLING
SERVICES, INC.**



FRANCHISE AGREEMENT

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AGREEMENT

This Amended and Restated Agreement ("Agreement") is made and entered into effective July 1, 2018 by and between the CITY OF SOLANA BEACH, a municipal corporation, hereinafter referred to as "the City," and EDCO WASTE & RECYCLING SERVICES, INC., a California Corporation, hereinafter referred to as "Contractor."

WITNESSETH

WHEREAS, the SOLANA BEACH Municipal Code describes and regulates the collection of solid waste, recyclables, manure, green waste, and other compostables within the City; and

WHEREAS, the City is authorized to provide collection of solid waste, recyclables, manure, yard waste, and other compostables within the City by contract; and

WHEREAS, the City, for the purpose of ensuring the continued protection and preservation of the public health, welfare, and convenience of the people of the City, deems it advisable to provide for the collection of solid waste, recyclables, manure, yard waste, and other compostables within the City by contract with Contractor; and

WHEREAS, state law mandates the City to meet the diversion requirements of AB939 (and subsequent amendments); and

WHEREAS, the City entered into agreements with Contractor for commercial solid waste and recycling collection services (the "Commercial Franchise Agreement") and with Coast Waste Management, Inc., a California Corporation and USA Waste of California, Inc., a Delaware corporation (collectively "Waste Management") for residential solid waste and recycling collection services (the "Residential Franchise Agreement", effective August 1, 1993, and as amended by those certain agreements and amendments dated February 8, 2002 and March 1, 2005, and

WHEREAS, Waste Management has assigned the Residential Franchise Agreement to Contractor effective December 31, 2017, and the City and Contractor desire to enter into this Agreement for the purpose of integrating the residential and commercial solid waste and recycling collection services and restating all agreements and understandings between the Parties; and

WHEREAS, this Agreement will supersede all other agreements for solid waste, recyclables, manure, yard waste, and other compostables collection services in the City of SOLANA BEACH (except those that may exist through other public institutions); and

WHEREAS, City desires to maintain maximum flexibility in this Agreement to meet rapidly changing solid waste disposal and diversion laws and regulations.

NOW, THEREFORE, in consideration of the premises and of the covenants and conditions hereinafter contained, the City and the Contractor mutually agree as follows:

ARTICLE 1. DEFINITIONS; DELEGATION OF AUTHORITY

A. Whenever any term used in this Agreement has been defined by the provisions of the SOLANA BEACH Municipal Code, the definitions contained in said Code shall govern the meaning of such words for the purpose of this Agreement, unless any such word is otherwise specifically defined herein or unless it is obvious from the context hereof that another meaning is necessarily intended.

B. The administration of this Agreement shall be under the supervision and direction of the City Manager (or authorized representative) and the actions specified in this Agreement to be taken by the City shall be taken by the City Manager or his or her designees unless otherwise stated or specified.

C. The term "bulky item" means all discarded household waste matter which is too large to be placed in a covered container or *in excess of 50 lbs.* Items include household appliances (stoves, refrigerators, washing machines, dryers, dishwashers) commonly referred to as white goods, water tanks, mattresses, furniture and similar large items. Bulky items do not include debris from construction, demolition, renovation or remodeling or abandoned automobiles, trucks, motorcycles or parts thereof.

D. The term "garbage" means all animal and vegetable refuse from kitchens and household waste that shall have been prepared for, or intended to be used as, or shall have resulted from the preparation of food; all table refuse; and every accumulation of animal and vegetable refuse that attends the preparation, consumption, decay, dealing in or storage of meats, fish, fruits or vegetables, or other putrescible waste.

E. The term "refuse" includes garbage, commercial garbage and rubbish, excepting therefrom hazardous or bulky items.

F. The term "recyclables," as it is used in this Agreement, shall mean "recyclable materials" as defined in SOLANA BEACH Municipal Code and shall refer only to recyclable material that has been discarded, thrown away, or abandoned by its owner. Newspapers, bottles and cans that an owner has set out for curbside pickup are examples of discarded recyclables, excluding used motor oil for collection at curb line.

G. The term "rubbish" means combustible and non-combustible non-putrescible waste.

H. The term "solid waste" means all garbage, refuse, rubbish, manure, construction and demolition debris and other materials and substances discarded or rejected as being spent, useless, worthless, or in excess to the owners at the time of such discard or rejection and which are normally disposed of, or collected from residential (single family or multi-family), commercial, industrial, governmental and institutional establishments, and which are acceptable for disposal at Class III landfills in California, but excluding all recyclable materials, green waste, and waste not acceptable for disposal at Class III landfills in California.

ARTICLE 2. REPRESENTATIONS AND WARRANTIES OF THE CONTRACTOR

2.1 Corporate Status

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

2.2 Corporate Authorization

Contractor has the authority to enter into and perform its obligation under this agreement under its Articles of Incorporation and Bylaws, and the persons signing this Agreement on behalf of the Contractor have authority to do so.

ARTICLE 3. TERM OF AGREEMENT

3.1 Effective Date and Term of Agreement

The term of this agreement shall commence on, July 1, 2018 and expire on December 31, 2022, provided however, that commencing January 1, 2019 and every year thereafter, automatic one-year extensions shall be applied to said Agreement, so that the term of the Agreement shall be a minimum of four years.

Should either party desire that the automatic one-year renewal and extension provision be terminated, such party shall give the other written notice within thirty (30) days prior to January 1 of any year of the Agreement. Such notice will terminate the automatic one-year renewal and extension provision and the Agreement shall remain in effect for the balance of the term then outstanding.

3.2 Conditions to Effectiveness of Agreement

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

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

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

ARTICLE 4. FRANCHISE

4.1 Grant of Franchise: Scope of Franchise

A. Grant of Franchise. The City hereby grants unto the Contractor, and the Contractor shall have throughout the duration of this Agreement, the exclusive right to engage in the business of collecting solid waste, recyclables, manure, green waste and other compostables accumulating within the boundaries of the City as the same now exists, that is required to be accumulated and offered for collection to the Contractor in accordance with this Agreement and the City Municipal Code.

B. Annexations. This right extends to any territory annexed to the City hereafter except to the extent that collection within such territory so annexed would be unlawful or violate the legal rights of another person. Unless Contractor acquires or has acquired the collection rights of any other person then collecting

solid waste, recyclables, manure, green waste, or other compostables within any annexed territory at the time such annexation is effective, said exclusive right in each annexed territory shall commence not more than ninety (90) days after each such annexation is completed.

C. Scope of Franchise; Exclusions. The franchise granted to Contractor shall be exclusive except as to the following categories of solid waste, recyclables, green waste and other compostables listed in this **Subsection C**. The granting of this franchise shall not preclude the categories of solid waste, recyclables, manure, green waste and other compostables listed below from being delivered to and collected and transported by others, provided that nothing in this Agreement is intended to or shall be construed to excuse any person from obtaining any authorization from the City which is otherwise required by law:

1. Manure, green waste and other compostables removed from a premises by a manure removal, gardening, landscaping, or tree trimming contractor as an incidental part of a total service offered by that contractor rather than as a hauling service.
2. Household Hazardous Waste and Hazardous Waste.
3. Auto parts and bodies.
4. Medical Waste (as defined in the California Waste Management Act) which shall be handled in the manner prescribed by the County Health Officer and in accordance with the California Health and Safety Code.
5. Solid waste exempted pursuant to Solana Beach Municipal Code.

D. Exclusions for Recyclables. Furthermore, the provisions of this Agreement shall not preclude individual householders and commercial businesses from managing recyclable materials through other recycling methods, or the sale or donation of recyclable materials, provided that such householders shall still be required to pay the recycling service fee of Contractor. The provisions of this Agreement shall not preclude or prohibit City or any officer or employee thereof or any public entity delegated the ability to do so by the City Council from itself collecting, removing, disposing or diverting of solid waste, recyclables, manure, green waste, and other compostables in the regular course of their respective duties as such officers or employees; notwithstanding, the City shall be responsible for reporting all such diversion.

4.2 Prior Agreements and Amendments

This Franchise Agreement is intended to carry out City's obligations to comply with the provisions of the California Integrated Waste Management Act of 1989, ("AB939") as it from time to time may be amended, and as implemented by regulations of the California Integrated Waste Management Board ("Regulations"), as

they from time to time may be amended. In the event that AB939 or other state or federal laws or regulations prevent or preclude compliance with one or more provisions of this Franchise Agreement, such provisions of the Franchise Agreement shall be modified or suspended as may be necessary to comply with such state or federal laws or regulations. The parties shall endeavor in good faith to reduce any such amendment into signed writing. Except for any amendment necessitated by a change in the law, no other amendment of this Agreement shall be valid unless in writing duly executed by the parties.

4.3 Franchise Fee Agreement

Effective July 1, 2018, the Contractor agrees to pay the City a franchise fee of ten percent (10%) of Contractor's adjusted gross revenue recorded for all services rendered within City limits during the preceding calendar quarter. Contractor shall pay the City on or before the 30th day of April, July, October and January throughout the duration of this Agreement. "Adjusted Gross Revenue" means the gross receipts obtained by the Contractor from fees collected from waste generators for solid waste collection services provided by the Contractor in the City of Solana Beach under this Agreement. The sums herein agreed to be paid to the City by Contractor shall be in lieu of any and all permit or truck fees that are collected by the City.

4.4 NPDES Pollution Prevention Fee

The Contractor, upon direction from the City, agrees to bill each commercial customer subscribing to regularly scheduled waste collection services within City limits, a monthly fee to fund NPDES pollution prevention programs, (NPDES fees), initiated by the City. This fee, as established by City Council Resolution and/or Ordinance will be reflected as a separate line item on the commercial waste collection billing statements and shall be a "pass through" cost to customers. Franchise fees will not apply to NPDES fees.

The Contractor shall pay the City, on a quarterly basis, all sums collected from this fee assessment during the previous billing cycles and provide accounting reports reflecting the fees billed and paid with each quarterly payment. The Contractor shall not be responsible for any NPDES fees not paid by the customers. All uncollected fees shall be the City's responsibility to recover from the ratepayer.

Notwithstanding any other provision of this Agreement, the collection of NPDES fee is expressly contingent upon the establishment of the fee by a formal action of the City Council.

ARTICLE 5. WASTE COLLECTION SERVICES

5.1 General

The services set out here are in addition to those set forth in Article 7 and the remainder of this Agreement. The work to be done by Contractor pursuant to this Agreement shall include the furnishing of all labor, supervision, equipment, materials, supplies, and all other items necessary to perform the services required. The enumeration of, and specification of requirements for, particular items of labor

or equipment shall not relieve Contractor of the duty to furnish all others, as may be required, whether enumerated or not.

The work to be done by Contractor pursuant to this Agreement shall be accomplished in a thorough and professional manner so that the residents and businesses within the City are provided reliable, courteous and high-quality solid waste, recyclables, manure, yard waste and other compostables collection and diversion services at all times. The enumeration of, and specification of requirements for, particular aspects of service quality shall 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 the Agreement or not.

The Contractor agrees to submit route maps for all collection routes to the City Manager for review and approval. Start and end points for each daily single unit residential route are to be clearly indicated.

5.2 Contingency Plan

Contractor shall submit to City, within 90 days of the effective date of the agreement, a written contingency plan demonstrating Contractor's arrangements to provide vehicles and personnel and to maintain uninterrupted service during mechanical breakdowns or other emergencies, excluding events described in **Section 11.5**. This plan shall be consistent and coordinated with the **Emergency Plan of the City of Solana Beach** (A copy of which will be provided to the Franchise Contractor).

5.3 Scope of Services

A. General. The work to be done by Contractor pursuant to this Agreement shall include the furnishing of all labor, supervision, equipment, materials, supplies, and all other items necessary to perform the services required.

B. Changes in Services. City may require changes in existing services or the addition of new services and Contractor shall comply with such changes.

C. Solid Waste Disposal. Contractor shall be obligated as set forth herein to provide for the lawful collection, transportation, and disposal of refuse from within the City to a permitted disposal site consistent with the policies, contracts, and requirements of the Regional Solid Waste Association (RSWA) of which the City is a member.

D. Recyclable Materials. Recyclable Materials placed at the curbside for collection shall be deemed the property of Contractor and, thereafter, the Contractor may market or dispose of in any manner the Contractor deems to be economically feasible. The Contractor shall be responsible for all marketing and sale of Recyclable Materials collected hereunder and shall be entitled to all proceeds therefrom. Subject to Contractor's obligations under **Section 7**, Recyclable Materials which are collected by the Contractor may be disposed of in a landfill if the Contractor has considered other alternatives and, has found the materials to be unmarketable.

5.4 Single Unit Residential Services.

See Attachment A.

5.5 Multi-Unit Residential Collection Services.

See Attachment A.

5.6 Commercial Service.

See Attachment A.

5.7 Additional Services.

See Attachment A.

5.8 Services To Be Provided At No Charge.

See Attachment A.

5.9 Contractor's Inability to Provide Service

If at any time during the effective period of this Agreement, should a customer of the Contractor request a collection service except for a special pick-up as set out in **Section 5.7** (such as bin service for construction or demolition cleanup) from the Contractor which the Contractor cannot render within two full working days from the date of the customer's initial request for service, the City Manager reserves the right to direct such customer to seek other providers who can provide such collection service regardless of the fact that such other provider does not hold a franchise with City for collection services.

5.10 Hours of Collection

Unless the City Council determines and directs otherwise, the Contractor agrees that it shall not allow any residential solid waste, recyclables, manure, yard waste or other compostables collections to be made except between the hours of 6:30 a.m. and 6:00 p.m. within or near residential areas, Monday through Friday. Collection may be made on Saturday if a holiday occurs within the preceding week or if inclement weather precludes collection on a weekday. Collections at commercial establishments will be permitted Monday through Saturday beginning at 6:30 a.m. provided that there are no complaints from residents about the early morning noise disruption. Collection may continue until 6:00 p.m. There shall be no pickup on Sundays.

5.11 Collection Standards

A. Care of Private Property. Reasonable care shall be used by the Contractor's employees in handling all privately owned collection containers and enclosures, and all damage caused by the negligence or carelessness of the Contractor's employees shall be promptly adjusted with the owner thereof. All collection containers after emptying thereof by the Contractor's employees shall be returned to within five (5) feet of the location from which the same were picked up

by the Contractor's employees, upright with lids properly placed to insure same are not deposited in any driveway, sidewalk, or street. Contractor shall ensure that its employees close all gates opened by them in making collections, unless otherwise directed by the customer, and avoid crossing landscaped areas. City shall refer complaints about damage to private property to Contractor.

B. Noise. Collection operations shall be conducted as quietly as possible and shall conform to applicable Federal, State, County and City noise level regulations. The City may conduct random checks of noise emission levels to ensure such compliance. Contractor will promptly resolve any complaints of noise to the satisfaction of the City Manager or a designee.

5.12 Litter Abatement.

A. Minimization of Spills. Contractor shall use due care to prevent solid waste, recyclables, manure, yard waste, and other compostables from being spilled or scattered during the collection or transportation process. If any such material is spilled during collection, the Contractor shall promptly clean up all spilled materials.

B. Clean Up. During the collection transportation process, the Contractor shall clean up litter in the immediate vicinity of any solid waste, recyclables, manure, yard waste, and other compostables storage area (including the areas where collection bins and debris boxes are delivered for collection). The Contractor shall discuss instances of repeated spillage not caused by it directly with the customer responsible and will report such instances to the City. City will attempt to rectify such situations with the customer if Contractor has already attempted to do so without success.

C. Covering of Loads. Contractor shall cover all open debris boxes and compactor openings during transport from one collection region of the City to another (over major arterials), to the disposal site or any processing facility. No material shall be transported to the disposal site or any processing facility in vehicle hoppers unless such hopper openings are equipped with a hopper cover.

5.13 Collection, Transportation and Disposal of Solid Waste

Contractor shall be obligated as set forth herein to provide for the lawful collection, transportation, and disposal of refuse from within the City to a permitted disposal site consistent with the policies, contracts, and requirements of the Regional Solid Waste Association (RSWA) of which the City is a member.

A portion of the rate charged by the contractor is based, in part, on Contractor's transportation costs and transportation-related costs to haul the waste to transfer stations and/or landfills. Pursuant to the RSWA Contract, the disposal destination may change. If the destination changes, it must be reasonable and notice must be given to all affected by the change. During the term of this Agreement, Contractor shall not change whether by increase or decrease the present transportation costs or transportation-related costs to haul the municipal solid waste to transfer stations and/or landfills should a change of destination occur.

Contractor agrees to provide the City with guaranteed capacity at the Escondido Resource Recovery facility for all waste streams associated with this Agreement.

5.14 Processing of Solid Waste

Contractor, pursuant to the provisions of **Article 5.13**, prior to disposal, may direct any or all portions of the waste stream collected under this Franchise to a material recovery, composting, transformation or any other permitted solid waste processing facility, for processing of any materials contained therein. The City Council reserves the right to designate such a facility or may disapprove Contractor's choice. Facility operators will not be required to place for collection by Contractor any non-processable fractions following processing. In addition to the provisions of **Section 7.3 and 7.4**, Contractor agrees to assist the City in identifying loads suitable for processing at material recovery, composting, transformation or any other solid waste processing facilities, and to modify routes or storage and collection procedures, as directed by the City Manager, to increase the quality or recoverability of materials generated by customers.

Contractor shall maintain accurate records of the quantities of solid waste, recyclables, manure, green waste, and other compostables or materials transported to the processing facility and will cooperate with City in any audits or investigations of such quantities. These records shall be made available to the City on a regular basis as necessary to fulfill the City's obligation under AB939 (as amended).

5.15 Vehicles

A. General. Contractor shall provide a fleet of collection vehicles sufficient in number and capacity to perform efficiently the work required by the Agreement in strict accordance with its terms. Normal weekly route collections in residential service areas will be accomplished using no more than three (3) trucks in that neighborhood. However when large and bulky items are placed for collection that are beyond the capacity of the normal servicing vehicles, a fourth truck may be dispatched for the special service. The Contractor agrees to maintain each piece of equipment used by it in the performance of this Agreement in good order and repair. Contractor shall have available on collection days sufficient back-up vehicles for each type of collection vehicle used (i.e., residential, commercial and roll-off) to respond to equipment breakdowns (so as to guarantee service is rendered on the scheduled day), complaints and emergencies. The City Manager reserves the right to inspect any and all of Contractor's equipment upon reasonable notice to Contractor. All such vehicles shall have watertight bodies designed to prevent leakage, spillage or overflow. All such vehicles shall comply with the noise abatement requirements of this Agreement. All route vehicles shall use natural gas within six months of the start of this Agreement.

B. Specifications. All vehicles used by Contractor in providing solid waste, recyclables, manure, yard waste, and other compostables collection services shall be registered with the California Department of Motor Vehicles and shall meet or exceed all legal standards. Contractor agrees to maintain all of its collection vehicles in compliance with the provisions of the California Vehicle Code, including but not limited to, Sections 27000(b), 23114, 23115, 42030, 42032, and all Vehicle

Code sections regarding smog equipment requirements. Contractor's vehicles and records shall be inspected bi-annually in accordance with the mandatory California highway Patrol "Bi-Annual Inspection Terminal Program" (BIT). Said inspection will be scheduled by the Motor Carrier Division of the California Highway Patrol (CHP). Contractor is required to obtain a satisfactory rating. Contractor shall notify the City Manager in the event of a failure. The City Manager reserves the right to re-inspect any and all collection vehicles upon reasonable notice.

C. Vehicle Identification. Contractor's name, local telephone number, and a unique vehicle identification number designated by Contractor for each vehicle shall be prominently displayed on all vehicles, in letters and numbers no less than two and one-half (2 1/2) inches high. Contractor shall place "serving the City of Solana Beach" on the collection vehicles.

D. Cleaning and Maintenance.

1. General. Contractor shall 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. All trucks, trailers, and other conveyances or equipment, including bins, used to collect, haul, or transport garbage or rubbish shall at all times be kept clean, in good repair, and well and uniformly painted, to the satisfaction of the City Manager. Each truck shall be so constructed and used that rubbish, garbage, oil or grease will not blow, fall, or leak out of the truck onto the street. All refuse shall be transported by means of vehicles equipped with watertight bodies fitted with close fitting covers. A broom and a shovel shall be carried on each truck at all times for this purpose.

2. Cleaning. Collection vehicles shall be thoroughly washed at a minimum of one (1) time per week, and thoroughly steam cleaned on a regular basis so as to present a clean appearance and minimize odors. All vehicles shall be painted as required so as to present a satisfactory appearance, or as directed by the City Manager, in his/her reasonable judgment. All graffiti shall be removed from vehicles within one (1) business day. The City Manager may inspect vehicles at any time to determine compliance with sanitation requirements. Contractor shall make vehicles available to the County Health Department for inspection.

3. Maintenance. Contractor shall (i) inspect each vehicle daily to ensure that all equipment is operating properly. Vehicles which are not operating properly shall be taken out of service until they are repaired; and (ii) perform all scheduled maintenance functions in accordance with the manufacturer's specifications and schedule. Contractor shall keep accurate records of all vehicle maintenance, recorded according to date and mileage, and shall make such records available to the City Manager upon request to the extent necessary to perform the inspections described in **Section 6.5**.

4. Repairs. Contractor shall repair, or arrange for the repair of, all of its vehicles and equipment, including dents or other body damage, for which repairs are needed so as to maintain all equipment in a neat, safe and

operable condition. Contractor shall maintain accurate records of repair, which shall include date/mileage, nature of repair and the signature of a maintenance supervisor or mechanic that the repair has been properly performed.

5. Storage. Contractor shall arrange to store all vehicles and other equipment in safe and secure locations(s) in accordance with City's applicable zoning regulations if stored within the City.

6. Inventory. Contractor shall furnish sufficient equipment to provide all service required under this Agreement, including backup collection vehicles. Upon written request, Contractor shall furnish the City a current vehicle inventory.

E. Operation. Vehicles shall be operated in compliance with the California Vehicle code, and all applicable safety and local ordinances. Contractor shall not load vehicles in excess of the manufacturer's recommendations or limitations imposed by state or local weight restrictions on vehicles.

5.16 Solid Waste Containers

A. Residential. Contractor will provide a total of two 32, 64 or 96 gallon wheeled carts to each single-family residential unit in the city. One can is to be used for solid waste containment and the other cart for single stream commingled recycling containment. Additional recycling carts will be provided at no extra charge by Contractor to each single family residential unit plus any applicable NPDES fee. Up to two (2) additional carts for solid waste containment are available for rent at the rate of \$3.06 per container per month plus any applicable NPDES fee with a minimum rental period of six months. These containers are the property of Contractor and are not to be removed from the premises of the resident. Contractor will be responsible for the repair of the carts necessitated by normal wear and tear. Repair of damage due to misuse or abuse of the container by the resident will be charged to the resident. Replacement of missing carts will be billed at the actual replacement cost. Alternatively, extra carts may be purchased in lieu of rental from Contractor at manufacturer's cost plus tax, freight and assembly. Residential customers may purchase up to two (2) additional carts (32, 64, or 96 Gallon) for both solid waste and recycling containment. Updated cart costs will be supplied to City staff annually as part of regular CPI rate adjustment request. These containers are the property of the purchaser, and therefore repair and replacement costs will be the responsibility of the owner. Contractor is not responsible for cart repairs or warranty for carts purchased by residents. Containers other than those provided by Contractor for solid waste and recycling collection are considered non-acceptable and will not be serviced. The combined weight of the carts and their contents shall not exceed 150 pounds. Carts exceeding this weight limit will not be serviced. Contractor shall exchange all single family residential solid waste and recycling carts within six months of the start of this Agreement.

B. Commercial Can Service. The standard size container for residential services shall not exceed a standard 32-gallon container (specifically designed metal or plastic trashcan). The combined weight of the container and contents shall not

exceed 50 pounds unless the container is designed and contractor equipped for mechanical lifting. Contractor shall affix to every metal or plastic refuse container deemed unserviceable, a bilingual, Spanish/English tag advising that such a container is unsuitable for storing solid waste, recyclables, manure, yard waste, or other compostables for collection and the continued use of that container will result in its disposal. All cartons and boxes used to contain solid waste will be disposed of along with their contents. Contractor shall exchange all commercial carts within six months of the start of this Agreement.

C. Multi-Unit, Commercial, Container, Industrial. Contractor shall provide bins and debris boxes for storage of solid waste which shall 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 shall meet applicable federal regulations on solid waste bin safety. All containers shall be painted the Contractor's standard color and shall prominently display the name and telephone number of the Contractor in letters and numbers no less than one and one-half (1 1/2) inches high. To attain certain economies, some customers may request specialized services such as compactors, roll-off, or custom-built containers, etc. The sale, lease, rental of such equipment, or their provision by the customer, may be negotiated by the latter and the Contractor. Information relating to any such agreements shall be provided to the City Manager upon request. Contractor shall exchange all multi-unit and commercial containers within six months of the start of service under this Agreement.

D. Cleaning, Painting, Maintenance. Once every three (3) years Contractor shall replace, clean or repaint all commercial containers or as needed to present a clean appearance. In addition, Contractor shall do the same upon 48 hours if so directed by City Manager in his/her reasonable judgment. Contractor shall maintain all containers in a functional condition and shall remove graffiti within five (5) business days.

E. Repair and Replacement. Contractor shall repair or replace all customer-owned residential and non-residential containers damaged by collection operations, normal wear and tear excluded.

5.17 Personnel

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

B. Driver Qualifications. All drivers shall be trained and qualified in the operation of collection vehicles and must have in effect a valid license, of the appropriate class, issued by the California Department of Motor Vehicles. The Contractor shall maintain Photostat copies of the licenses for all vehicle operators.

C. Identification Badge. Contractor shall require its drivers, and all other employees who come into contact with the public, to wear suitable identification.

D. Safety Training. Contractor shall provide suitable operational and safety training for all of its employees who utilize or operate vehicles or equipment.

Contractor shall train its employees involved in collection process to identify, and not to collect, hazardous or medical waste.

E. No Gratuities. Contractor shall not permit its employees to demand or solicit, directly or indirectly, any additional compensation or gratuity from members of the public for the collection of solid waste, recyclables, manure, yard waste, and other compostables under this Agreement.

F. Employee Appearance and Conduct. All operation and maintenance employees, shall be attired in suitable and acceptable uniforms which are subject to approval by the City Manager. Contractor shall use its best efforts to assure that all employees present a neat appearance and conduct themselves in a courteous manner. Contractor shall regularly train its employees in customer courtesy, shall prohibit the use of loud or profane language, and shall instruct collection crews to perform the work as quietly as possible. If any employee is found not to be courteous or not to be performing services in the manner required by this Agreement, Contractor shall take all appropriate corrective measures.

G. Provision of Field Supervision. Contractor shall designate one qualified employee as on-site supervisor of field operations who shall be equipped with a vehicle and mobile telephone. The field supervisor will check on collection operations, coordinate improvements to service, resolve field problems, and respond to service complaints of customers either in person or by telephone when such complaints cannot be resolved by the contractor's customer service representative (CSR). The field supervisor will be expected to respond to unresolved complaints within two working hours and to correct field deficiencies within one working day.

5.18 Hazardous Waste

If the Contractor determines that waste placed in any container for collection or delivered to any facility is hazardous or medical waste or other waste that may not legally be disposed of at Class III landfills or presents a hazard to Contractor's employees, the Contractor shall have the right to refuse to accept such waste. The customer will be contacted by the Contractor and requested to arrange proper disposal. If the customer cannot be reached immediately, the Contractor shall, prior to leaving the premises, leave a bilingual, Spanish/English tag at least 3" x 5" indicating the reason for refusing to collect the waste, in which case a copy of the tag, along with the address of premises (and the name of the customer, if known) shall be delivered to the City Manager by the following business day.

If the waste is delivered to the disposal site before its presence is detected and the customer cannot be identified or fails to remove the waste after being requested to do so, the Contractor shall arrange for its proper disposal. The Contractor shall make a good faith effort to recover the cost of disposal from the customer, and the cost of this effort, as well as the cost of disposal shall be chargeable to the customer. The Contractor shall be entitled to include the costs incurred under this Section as an operating expense for purposes of Rate Review under Article 8 and shall include all sums recovered by it from customers as "Other Income."

5.19 Review of Performance and Quality of Service and Industry Changes.

At the City Council's sole option, with sixty (60) days written notification to the Contractor, it may conduct a public hearing at which the Contractor shall be present and shall participate, to review the Contractor's performance and quality of service and to provide for technological and regulatory changes. The reports required by this Franchise Agreement regarding customer complaints shall be utilized as one basis for review. In addition, any customer may submit comments or complaints during the review meetings, either orally or in writing, and these shall be considered. These hearings may be scheduled by City Council at its discretion throughout the term of this Agreement.

Within thirty (30) days after the conclusion of the public hearing, the City Council shall issue a report with respect to the matters raised at the hearings. If any noncompliance with the Franchise is found, City Manager may direct Contractor to correct the inadequacies in accordance with the terms of this Agreement. Any change in scope of services or equipment shall be reflected in an amendment to this Agreement.

ARTICLE 6. OTHER COLLECTION-RELATED SERVICES, STANDARDS AND AGREEMENTS

6.1 Billing

In consideration of the services and promises of the Contractor, the City hereby delegates to the Contractor the right and authority to collect from the persons served by the Contractor the prices for such service as is provided by this Agreement.

The Contractor agrees that it shall neither charge nor collect any sum or sums in excess of, or in addition to, the amounts specified in this Agreement for any solid waste, recyclables, manure, yard waste, and other compostables collection services made pursuant to this Agreement. The Contractor agrees that the City shall be under no obligation to collect or to enforce collection of any sums due to the Contractor for services rendered under this Agreement except as specifically provided in this Agreement or in the Solana Beach Municipal Code, and Contractor does hereby release the City from any and all liability for the payment of any sum or sums which may become due to the Contractor for the collection or removal of solid waste, recyclables, manure, yard waste, or compostables under the terms of this Agreement.

The Contractor will bill residents no less frequently than on a quarterly basis. The Contractor shall have the right to bill and collect for its services in advance of the rendering of services hereunder, but shall refund any unused portion equal to one month or more of the amount collected in the event of disruption, revision, or termination of the services or when residential premises are vacant for at least a one month period and prior notice of such vacancy has been given to the Contractor. Termination of services as referred to in this paragraph refers to customer requested termination of service pursuant to relocations, extended absences, etc. In the event of nonpayment of collection fees within the prescribed payment period, the Contractor will, after 45 days delinquency, notify the customer of its intent to terminate service for reason of nonpayment; a copy of the

notification will be provided to the Assistant City Manager. Should payment remain delinquent after 60 days, a second notification, will be issued to the customer specifying the exact date that service will be discontinued. Services terminated due to nonpayment of collection fees may be reinstated with the payment of the delinquent amount(s) plus a reinstatement charge as specified in **Exhibit 2** attached hereto. Customers may, on an individual basis, request annual or monthly payment schedules, and the Contractor will work in good faith with individual customers to reasonably satisfy such requests.

As part of the billing procedure, the Contractor shall provide envelopes, return envelopes, and messages with bilingual text (English and Spanish) related to solid waste management issues in with their normal billing to the extent such envelopes, return envelopes, and messages may be deemed necessary by the Assistant City Manager. These messages shall include but are not limited to pick-up times, collection rules, holidays, information regarding community clean-up events, Christmas tree collection procedures, and similar information. The language of any such messages shall be reviewed and approved by the Assistant City Manager prior to their distribution. The costs of producing and printing such notices shall be the sole responsibility of the City. The costs for the distribution of such notices shall be the sole responsibility of the Contractor.

Contractor also agrees to insert informational media with the billings, at Contractor's expense when said insert(s) do not increase the Contractor's basic mailing costs. Assistant City Manager will provide not less than thirty (30) days' notice to Contractor prior to the mailing date of any proposed mailing to permit Contractor to make appropriate arrangement for inclusion of the City's materials. Assistant City Manager will provide Contractor the mailers at least (15) days prior to the mailing date. When said insert(s) exceeds the Contractor's basic mailing cost, the City will pay Contractor for added weight costs; however, the Contractor will inform the Assistant City Manager when proposed insert(s) will exceed the Contractor's basic mailing costs in order to decide whether placing the insert(s) is the most cost-effective manner to convey said public notice(s).

The Contractor shall maintain copies of said billings and receipts, each in chronological order, for a period of three (3) years after the date of service for inspection by City. The Contractor may, at its option, maintain those records in computer form, on microfiche, or in any other manner, provided that the records can be preserved and retrieved for inspection and verification in a timely manner. The Assistant City Manager shall have the right to request changes to the billing format to itemize certain appropriate charges or to otherwise reasonably clarify the billing. The Contractor will cooperate with the City to revise its billing format as necessary to itemize appropriate charges from time to time, however, once any billing format is approved by the Assistant City Manager, if any future changes to the billing format result in substantial costs, those costs may be recovered by Contractor pursuant to this Agreement. Contractor shall not itemize the franchise fee or any other special fees except with the written consent of the City Manager.

6.2 Annual Reports

The Contractor shall submit annual reports with respect to its operations pursuant to this Agreement. The annual report shall be submitted not later than four (4) months following the end of the Contractor's annual accounting period. The report shall be in a format which will allow the City Manager and Council to compare the revenue of the Contractor with the franchise fee paid and the appropriate adjustments to the franchise fee calculated pursuant to this Agreement. As part of the report, the Contractor will calculate the actual franchise fee owed, shall set forth the quarterly franchise fee payments actually made, and shall show the appropriate additional franchise fees owed to the City or the overpayments of the franchise fee actually owed for the annual period. This report includes customer-billing information by class of service and number of services.

6.3 Annual Audit

At the request of the City Manager the reports submitted by the Contractor pursuant to **Section 6.2** may be audited and certified to by an independent certified public accounting firm mutually approved by the City Manager and the Contractor. The Contractor will bear the expense of said audit where a 4% underpayment of franchise fees is discovered. If the Contractor and City Manager fail to mutually agree on the selection of a certified public accounting firm within five (5) months prior to the end of the Contractor's annual accounting period (for that accounting period), the City Manager shall submit the names of five certified public accounting firms from which the Contractor shall select one. The Contractor shall notify the City Manager of its choice not later than fifteen (15) days from the date of receipt of said list.

6.4 Record Keeping

The Contractor shall maintain such accounting and statistical records as shall be necessary to develop the reports described in **Section 6.2**.

A. Quarterly Revenue Report. Contractor shall provide to City annual reports regarding the number of customers served and revenue received for each class of service. The City shall have the right, during normal business hours and upon reasonable advance notice given to Contractor by the City, to inspect the records of Contractor for purposes of verifying the information provided.

B. Solid Waste Reports. Contractor shall keep monthly records of the total solid waste collected, for the following service categories: single unit residential, commercial/industrial bin service (includes multi-unit complexes), roll-off services, and other special services as may be provided by Contractor. Contractor may provide waste generation estimates for those categories of services which can not be readily segregated from one another. Contractor shall provide copies of reports to City within 10 days after the end of each quarter.

C. Recycling Reports. Contractor shall keep records documenting the total monthly quantity of each recyclable material collected and program participation rates for each recycling program. Report copies will be provided to City within 16 days of the end of each quarter. Contractor shall provide City with an annual report,

reporting the overall diversion rate and associated recycling tonnage for the previous year.

D. Financial Records. Contractor shall maintain accurate financial accounting records as necessary to prepare and submit the reports required herein.

E. Other Reports. Contractor shall provide City with any other report required by the City for the City to comply with existing or future local, state or federal reporting requirements.

F. Right To Inspect Records. The City shall have the right, during normal business hours and upon reasonable advance notice given to the Contractor, to inspect, review and audit all reports and records that it shall deem necessary to evaluate performance provided for in this Agreement. Inspection, reviews and audits of Contractor's records shall be conducted at Contractor's place of business. Any such inspection, review or audit shall be at the expense of the City.

6.5 Inspection by City

The City Manager shall have the right to observe and review Contractor's operations and enter Contractor's premises for the purposes of such observations and review at all reasonable hours with reasonable notice.

6.6 Public/Customer Service and Accessibility

A. Office Location. Contractor shall provide a local business office within twenty miles of the City available to its customers for purposes of carrying out its obligations under this Agreement.

B. Office Hours. Contractor's office shall be open to the public from 8:00 a.m. to 5:00 p.m. Monday through Friday. The office may be closed on Saturdays and Sundays and those holidays recognized by the Contractor. The Contractor shall notify the City Manager of the holidays recognized by the Contractor.

C. Availability of Representatives. A representative of the Contractor shall be available at the Contractor's office during office hours to communicate with the public in person and by telephone. A suitable drop box or collections mechanism shall be provided in the Contractor's office for the receipt of payments.

D. Telephone. Contractor shall maintain a toll-free telephone system in operation at its office at all times. Contractor shall install telephone equipment, and have available service representatives sufficient to handle the volume of calls typically experienced on the busiest days. Telephone service shall be provided from 8:00 a.m. to 5:00 p.m. Monday through Friday and from 8:00 a.m. to 12:00 p.m. on Saturday. Contractor shall also maintain an after-hours telephone number for use during other than normal business hours. Contractor shall have a representative or voice mail available at said after-hours toll-free telephone number during all hours other than normal office hours. If customers are unable with reasonable effort to reach Contractor's office by phone, or are subject to waiting

time "on hold" of more than two (2) minutes prior to reaching a customer service representative, the City Manager may require that Contractor install additional telephone lines or hire additional customer service representatives.

The Assistant City Manager shall be provided with an emergency phone number.

E. Consumer Information. Contractor shall provide bilingual brochures which provide general service information covering refuse, green waste, and recycling collection, special event collection, household hazardous waste collection, and buy back center to all curbside residences, commercial customers and manager/owner of multi-unit complexes. Brochures will be provided to all new customers, and to the Chamber of Commerce and City Hall for additional distribution.

Contractor will submit printer's proofs of the information cards to City Manager prior to distribution and will incorporate City's comments in the final version distributed to the public.

6.7 Service Complaints

The Contractor agrees to maintain a written log of all oral and written service complaints registered with the Contractor from customers within the City. Contractor shall be responsible for the prompt and courteous attention to, and prompt and reasonable resolution of, all customer complaints. Contractor shall record in a separate log all written and oral complaints, noting the name and address of complainant, date and time of complaint, nature of complaint, and nature and date of resolution. This complaint log shall be retained by the Contractor for at least one (1) year after the last entry and City Manager may review the log at any reasonable time.

Contractor shall respond to all complaints from customers within two working hours and to correct deficiencies within one (1) working day. In particular, if a complaint involves a failure to collect solid waste, recyclables, manure, green waste, and other compostables from a premises required by this Agreement, Contractor shall collect the solid waste, recyclables, manure, green waste, and other compostables in question within one (1) working day following receipt of the complaint, provided it has been placed for collection in accordance with the City's Municipal Code or this Agreement.

6.8 City's Right to Change Scope of Work

The City Manager or Council may require changes in collection or disposal methods and the Contractor shall comply.

6.9 Title to Solid Waste

It is expressly understood that all solid waste becomes the property of Contractor at the time of collection, except as provided for recyclables and green waste materials pursuant to applicable law.

Notwithstanding, the Contractor shall be obligated as set forth herein to provide for the lawful collection, transportation, and disposal of refuse from within the City

to a permitted disposal site, consistent with the policies, goals, procedures and requirements of the Regional Solid Waste Association (the "Association"), of which the City is a member.

6.10 Nondiscrimination

Contractor shall not discriminate in the provision of service hereunder on account of race, religious creed, color, national origin, ancestry, physical handicap, medical condition, marital status, or sex of such persons or as otherwise prohibited by law.

6.11 Change in Collection Schedule

Contractor shall notify City Manager seven (7) days prior to, and residential customers not later than the day prior to, any change in residential collection operations which results in a change in the day on which solid waste, recyclables, manure, yard waste or compostables collection occurs. Contractor will not permit any customer to go more than seven (7) days without service in connection with a collection schedule change.

6.12 Report Accumulation of Solid Waste: Unauthorized Dumping

Contractor shall 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 shall deliver the address or description to City Manager within three (3) working days of such observation in order to protect health, safety and welfare.

ARTICLE 7. CALIFORNIA INTEGRATED WASTE MANAGEMENT ACT OF 1989 (AB939): OPERATIONAL AND REPORTING REQUIREMENTS

7.1 Curbside Recycling Program

City presently has in place a residential curbside recycling and green waste collection program. City also has in force an Ordinance that requires commercial/industrial recycling. Contractor shall keep these programs in place on the same terms and conditions until such time Contractor develops and City Council approves an equivalent or improved recycling program. Should the City determine that under its California Recycling Market Development Zone (RMDZ) designation, recyclable materials should be provided exclusively for sale to a business or industry that uses said recyclables in a remanufacturing process and is located within the RMDZ, the City may direct Contractor to make said recyclables exclusively available to such business or industry.

7.2 Other Recycling/Diversion Programs

In addition to the residential curbside and commercial/industrial recycling programs, within 180 days after execution of this Agreement, Contractor shall develop and, following City Council approval, implement programs to implement the findings and goals of the AB939 Source Reduction and Recycling Element (SRRE) and all

elements and requirements of Public Resources Code sections 41000 et seq. and other applicable state and federal law and regulations, including but not limited to:

- Public Recycling Bins for a Limited Number of Parks, or Other Strategic Community Areas to be Provided Without Charge to the City
- City Hall Recycling Program
- Debris Box Materials
- Commercial Cardboard
- Bar and Restaurant Glass
- Office Paper and Other Business recycling
- Recycling/diversion at the Source

The Contractor and City Manager shall agree on the schedule, format, and content for the additional programs to be presented to the Council. From time to time "grant" monies for special programs may be made available to the City. These funds will be actively pursued by the City to improve its programs for solid waste diversion and will be used in concert with the Contractor to offset expenses to customers under the guidelines and administrative procedures established for such programs by the City Manager.

7.3 Solid Waste Diversion

Given the full cooperation of the City, Contractor guarantees to the City of Solana Beach that the diversion requirements of applicable state and federal law and regulations will be fully satisfied at all times during the initial term and any extended term of the Agreement. Contractor represents and warrants that this Agreement, and the plans, services and programs contemplated by this Agreement are sufficient for the City to comply with all applicable laws and regulations.

AB939 Penalties. Indemnification Specifically. Contractor shall indemnify, defend (with counsel reasonably acceptable to City) and hold harmless City from and against all fines and /or penalties imposed by the California Integrated Waste Management Board in the event the source reduction and recycling goals or any other requirements under AB 939 or other applicable local, state or federal laws or regulations are not complied with by the City regarding the waste stream collected pursuant to this Agreement subject to the following restrictions:

a. Contractor's obligations contained in this section shall not be enforceable if the Board imposed penalty is based solely upon the failure of the City to establish and maintain a source reduction and recycling element pursuant to Section 41000 et seq. of the California Public Resources Code after Contractor has advised the City of the need to establish or maintain such an element.

b. Any Board imposed penalty based upon the City's failure to meet the solid waste diversion requirement imposed by section 41780 et seq. of the

California Public Resources Code resulting in whole or in part from Contractor's breach of contract or noncompliance with any other authorization, shall be apportioned in accordance with the percentage of fault of the City and Contractor as adjudicated by a court or finder of fact.

7.4 Annual AB939 Reporting Requirements

To assist the City in its planning to meet the requirements of AB939 as it exists on the date of execution of this Agreement and as it may be amended from time-to-time, Contractor shall:

-Record on a monthly basis the daily quantities of solid waste collected and disposed at each disposal facility used by the Contractor.

-Record on a monthly basis the daily quantities of recyclables, green waste, other compostables, and any materials destined for transformation facilities collected according to: (1) material types consistent with the City's Solid Waste Generation Study; (2) program; and (3) processing facility/markets to which the materials are delivered.

All disposal and diversion tonnage shall also be further disaggregated according to the source of generation as follows:

Residential Solid Waste — Solid waste originating from single and multiple-unit dwellings.

Commercial Solid Waste - Solid waste originating from stores; business offices; commercial warehouses; hospitals; educational, health care, military, and correctional institutions; nonprofit research organizations; government offices; and multi-unit residential complexes.

Industrial Solid Waste - All solid waste placed in debris boxes.

Other Sources - Solid waste originating from such sources as state and national parks and recreational areas; provided, however that estimation of self-haul waste which is classified as an 'Other' source will be the responsibility of City.

This monthly information shall be given to the City Manager to note within AB939 documentation submittals to the California Integrated Waste Management Board (CIWMB).

Contractor shall also provide to the City Manager an annual Waste Disposal and Diversion Report based upon these daily records by the 31st of January (and at other times as may be requested). This report shall include total tonnage disposed by waste source and disposal facility; total tonnage diverted by waste source, material type, and program; and the specific solid waste processing facility or market to which the materials were delivered.

All reports shall be adequate to meet City's reporting requirements to the California Integrated Waste Management Board, and to the County of San Diego throughout

the Term of this Franchise Agreement. Contractor shall also provide any other reports required by AB939.

7.5 AB939 Staffing Position

The Contractor shall dedicate adequate staff to implement and monitor AB939 requirements on behalf of City, throughout the term of this Agreement, in accordance with the City's integrated waste management programs identified in its Source Reduction and Recycling Element (SRRE).

7.6 Public Outreach Program

The Contractor will develop and implement a public education program on source reduction, reuse, recycling, composting and secondary materials usage and availability as required by the Public Education Component of the City's SRRE and AB939. This requirement may include, but is not limited to public and school presentations, mailers, and brochures, as set out on **Exhibit "1"** attached and incorporated here.

7.7 Waste Composition Studies

Contractor agrees to cooperate with City on all future waste composition studies, at no additional cost to the City, including but not limited to, modification of routes, or collection of individual accounts identified by the City Manager for purposes of obtaining desired waste composition data. Contractor further agrees to deliver a reasonable number of targeted loads to a nearby location or locations specified by the City Manager as reasonably agreed by Contractor for purposes of conducting waste composition analysis.

7.8 Use of Recycled Materials

Contractor shall use recycled paper as part of all publicity, billing, and other management and operational activities associated with the performance of this Agreement where commercially reasonable. Opportunities for use of other recycled materials, including but not limited to the purchase of collection containers with recycled material content shall also be pursued, with a cost/benefit analysis provided to the City Manager.

7.9 Compliance with Laws

Contractor shall develop and, upon the City Council's approval, implement within a timely manner, plans and programs to meet new or existing requirements of AB939, Public Resources Code sections 41000 or similar state and federal laws or regulations.

7.10 Food Waste Organics Diversion Program

Contractor and City recognize there is currently a lack of food waste processing infrastructure in the region to expand the collection of food waste into green waste collection programs. Contractor and City agree to work cooperatively to develop sustainable infrastructure to achieve the objectives of AB 1826.

As infrastructure is developed by the Contractor, Contractor shall submit a proposal to the City within three hundred sixty five (365) days of the start of this Agreement detailing a program to collect source separated food waste and organics from single family residential customers. The program and its cost shall be subject to the City Council's approval.

As infrastructure is developed by the Contractor, Contractor shall submit a proposal to the City within three hundred sixty five (365) days of the start of this Agreement detailing a program to collect source separated food waste and organics from commercial generating customers. The program and its cost shall be subject to the City Council's approval.

Contractor shall develop, produce and deliver public education materials to all customers in a City-approved source separated food waste and organics program. All materials shall be subject to the advance written approval of the City Manager.

Prior to the start of any approved source separated food waste and organics program, Contractor shall meet with all commercial customers and hold at least two (2) workshops for residential customers to provide training, materials to be collected and required food waste capacity. Training programs are subject to the advance written approval of the City Manager.

ARTICLE 8. SERVICE RATES AND REVIEW

8.1 Contractor's Rates: General

Contractor shall perform the responsibilities and duties described in this Agreement in consideration of the exclusive right to collect from and charge customers for solid waste, recyclables, manure, yard waste, and other compostables services rendered, at rates fixed by the City from time to time. Contractor does not look to the City for payment of any sums under this Agreement.

The Contractor shall provide the services required by this Agreement, charging no more than the rates allowed by **Exhibit 2** until otherwise adjusted. Thereafter, the rates may be increased only as hereinafter set forth.

In addition to the revenues specified by the rate format on **Exhibit 2**, Contractor may charge and receive fees for performing special services (including but not limited to, the hauling and disposal of bulky waste in excess of or dissimilar to that collected weekly, servicing locked bins) as agreed upon in separate contracts between Contractor and each customer requesting such special services.

8.2 Rate Review

Rates may only be increased because of tipping fee increases or cost of living increases in accordance with **Section 8.3**. The Contractor may submit an application for rate review under **Section 8.3** not more often than once annually. The complete application shall be submitted not later than April 1 of each contract year starting in 2019 and each subsequent contract year thereafter for the next contract year starting on July 1 in 2019 and each subsequent year thereafter. The

City Council will take action on the request as soon as possible and will complete the rate review process by May 31st of the then current contract year.

8.3 Rate Format

Any rate adjustment necessitated by cost of living or tipping fee changes will be calculated according to the following provisions:

A. Formula. Rate adjustments will be calculated as shown in **Exhibit 2**.

B. Tipping Fees. This component is considered separately from the base rate. No CPI increase will be applied but any increases and decreases will be passed through as set out in this Subsection. Tipping fee increases or decreases are intended to be "pass through" expenses and will be dealt with accordingly in the review process by the City.

The monthly rate shall be adjusted upward or downward due to the Contractor's increased or decreased costs resulting from changes in the tipping fees and any duly authorized fees, assessments or taxes to be collected along with tipping fees.

Contractor shall notify the City Manager of any increase or decrease. Along with such notification, Contractor shall provide a revised schedule of rates showing the effect of any such increase or decrease on the monthly rate per class of service. The tipping fee component shall be adjusted annually as designated in the RSWA Disposal Agreement. Once reviewed by the City, any approved increase or decrease shall be effective as of the date stipulated by the City.

C. Base Rate. The base rate subject to any CPI adjustments will be the monthly rates minus landfill disposal component and franchise fee component. The new base rate will be the result of applying the adjustment described in **Exhibit 2**. The resulting new base rate will be the base rate unless and until properly adjusted pursuant to this Agreement. The new monthly rates will be the sum of the base rate and the tipping fees, costs, and/or taxes specified in **Exhibit 2**.

D. Applicable CPI Adjustment. The increase or decrease in the Consumer Price Index (CPI) for the previous 12-month period (December through December) for All Urban Consumers in the Los Angeles, Riverside, Anaheim area will be applied to the base rate of **Subsection B**. Thereafter, the CPI adjustment, when approved, will be effective July 1 of each year. CPI shall be capped at 4% annually.

E. Adjustment Calculation Example. **Exhibit 2** provides sample rate adjustment calculations for a hypothetical collection service using the terms, conditions, definitions and formula of this **Section 8.3**.

8.4 Publication of Rates

Following City approval a rate adjustment, the Contractor shall provide immediate written notice to subscribers of rate changes, which notice may be provided with, or as part of a regular billing. Contractor may provide a schedule of tipping fees along with customer billings.

8.5 Mediation and Arbitration

If a dispute arises out of or relates to rate adjustments, or any computation thereof, and if said dispute cannot be settled by negotiation, the parties agree first to try in good faith to settle the dispute by mediation under the Commercial Mediation Rules of the American Arbitration Association, before resorting to arbitration, litigation, or some other dispute resolution procedure.

Claims, disputes and other matters in question between the parties to this Agreement, arising out of or relating to rate adjustments or the computation thereof, shall be decided by arbitration in accordance with the rules of the American Arbitration Association then obtaining, unless the parties mutually agree otherwise. No arbitration arising out of or relating to rate adjustments, or any computation thereof, shall include, by consolidation, joinder or in any other manner, any additional person not a party to this Agreement except by written consent containing a specific reference to this Agreement and signed by Contractor, City, and any other person sought to be joined. (Any consent to arbitration involving an additional person or persons shall not constitute consent of any dispute not described therein or with any person not named or described therein.) This Agreement to arbitrate and any agreement to arbitrate with an additional person or persons duly consented to by the parties to this Agreement shall be specifically enforceable under the prevailing arbitration law.

Notice of the demand for arbitration is to be filed in writing with the other party to this Agreement and with the American Arbitration Association. The demand is to be made within a reasonable time after the claim, dispute or other matter in question has arisen. In no event is the demand for arbitration to be made after the date when institution of legal or equitable proceedings based on such claim, dispute or other matter in question would be barred by the applicable statute of limitations.

The award rendered by the arbitrators shall be final and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof. Rates in effect at the time such dispute is submitted to resolution shall remain in effect pending resolution of such dispute. The effective date of any rate adjustment, whether retroactive or prospective, shall be determined by the arbitrator.

ARTICLE 9. INDEMNITY, INSURANCE, BOND

9.1 Indemnification of City

A. Indemnification Generally. Separate and distinct from the insurance provisions found in this Agreement, Contractor agrees to defend, with counsel to be agreed upon by both parties, indemnify, and hold harmless, City and its agents, officers, servants, and employees from and against any and all claims, demands, damages, liabilities, costs or expenses for any damages or injuries to any person or property, including but not limited to, injury to Contractor's or City's employees, agents or officers which arise from or are connected with or are caused or claimed to be caused by acts or omissions of City, Contractor, or their agents, officers or employees, in the preparation, bidding, execution, administration, or performance of this Agreement, or in performing the work or services herein, and all costs and

expenses of investigating and defending against same; provided, however, that Contractor's duty to indemnify and hold harmless shall not include any claims or liability arising from the negligence or intentional tort of the City, its agents, officers or employees, determined by a court of competent jurisdiction.

B. Hazardous Materials Indemnification. Contractor shall indemnify, defend, with counsel to be agreed upon by both parties, protect and hold harmless City, its officers, employees, agents, assigns and any successor or successors to City's interest from and against all claims, actual damages (including but not limited to special and consequential damages), natural resources damages, punitive damages, injuries, costs, response, remediation and removal costs, losses, demands, debts, liens, liabilities, causes of action, suits, legal or administrative proceedings, interest, fines, charges, penalties and expenses (including but not limited to attorney's and expert witness fees and costs incurred in connection with defending against any of the foregoing or in enforcing this indemnity) of any kind whatsoever paid, incurred or suffered by, or asserted against, City or its officers, employees, or agents arising from or attributable to any repair, cleanup or detoxification, or preparation and implementation of any removal, remedial, response, closure or other plan (regardless of whether undertaken due to government action) concerning any hazardous substance or hazardous wastes at any disposal or processing facility where solid waste is or has been transported, transferred, processed, stored, disposed of or has otherwise come to be located by Contractor or its activities pursuant to this Agreement resulting in a release of any hazardous substance into the environment. The foregoing indemnity is intended to operate as an agreement pursuant to Section 107(e) of the Comprehensive Environmental Response, Compensation and Liability Act, "CERCLA," also known as "Superfund," 42 U.S.C. Section 9607(e), and California Health and Safety Code Section 25364, to defend, protect, hold harmless and indemnify City from all forms of liability under CERCLA, other statutes or common law for any and all matters addressed in this provision. This provision shall survive the expiration of the term of this Agreement.

Notwithstanding the above, the foregoing indemnity shall be void and of no force or effect with respect to the RSWA disposal facility, or any other location where solid waste, recyclables, green waste and other compostables have come to be located due to the designation of a disposal or processing facility by City, or City's disapproval of a disposal or processing facility designated by Contractor.

The requirements of this **Section 9.1 (B)** need not be separately insured or bonded by Contractor. The only security for the performance of this Section is the faithful performance security required by **Section 9.3**. City accepts the otherwise unsecured indemnification covenant of Contractor set forth in this Section. Any other indemnification agreement covering the same subject matter of which the City is beneficiary shall be primary to the indemnification agreement of this Section.

9.2 Insurance

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

1. Comprehensive General Liability: \$5,000,000 combined single limit per occurrence for bodily injury and property damage.
2. Automobile Liability: \$5,000,000 combined single limit per accident for bodily injury and property damage.
3. Workers' Compensation and Employers Liability: Workers' compensation limits as required by the Labor Code of the State of California.

B. Deductibles and Self-Insured Retentions. Any significant deductibles or self-insured retentions must be declared to and approved by the City's Risk Manager. At the option of the City's Risk Manager, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City, its officials, employees, agents or volunteers; or the Contractor shall procure an additional letter of credit or bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.

C. Other Insurance Provisions. The policies are to contain, or be endorsed to contain, the following provisions:

1. General Liability and Automobile Liability Coverage.
 - a. The City, its officials, employees, agents and volunteers are to be covered as insured as respects: liability arising out of activities performed by or on behalf of the Contractor; services, products and operations of the Contractor; premises owned, leased or used by the Contractor; or vehicles owned, leased, hired, or borrowed by the Contractor. The coverage shall contain no special limitations on the scope of protection afforded to the City, its officials, employees or volunteers.
 - b. The Contractor's insurance coverage shall be primary insurance as respects the City, its officials, employees, agents and volunteers. Any insurance or self-insurance maintained by the City, its officials, employees or volunteers shall be excess of the Contractor's insurance and shall not contribute with it. The City, its officers, agents, employees and volunteers shall be named as additional insured.
 - c. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the City, its officials, employees, agents, or volunteers.
 - d. Coverage shall state that the Contractor's insurance shall apply separately to each insured against whom claim is made or suit is

brought, except with respect to the limits of the insurer's liability and in no case shall the insurer's total liability be increased.

2. All Coverage.

Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, modified, or canceled by either party, reduced in coverage or in limits except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the City's Risk Manager.

D. Acceptability of Insurers. The insurance policies required by this section shall be issued by an insurance company or companies admitted to do business in the State of California and with a rating in the most recent edition of Best's Insurance Reports of size category VII or larger and a rating classification of A- or better, or the equivalent thereof as approved by the City Attorney and City Council.

E. Verification of Coverage. Contractor shall furnish the City's Risk Manager with endorsements of coverage required by this Section. The endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The endorsements must be received and approved by the City Risk Manager before work commences. The City's Risk Manager reserves the right to review all required insurance policies, at any time, at Contractor's facility upon reasonable notice to Contractor.

F. Subcontractors. Contractor insurance shall provide City with coverage for the acts of Contractor's subcontractors under its policies, shall furnish separate endorsements for each subcontractor, or in the alternative, Contractor shall demonstrate that any subcontractor separately maintains such coverage. All coverage for subcontractors shall be subject to all of the requirements stated herein.

G. Required Endorsements

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

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

City Manager
City of Solana Beach
635 South Highway 101
Solana Beach, CA 92075

2. The Public Liability policy shall contain endorsements or policy terms in substantially the following form:

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

City Manager
City of Solana Beach
635 South Highway 101
Solana Beach, CA 92075

b. "The City of Solana Beach, its officers, employees, agents, and volunteers are additional insured on this policy."

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

d. "The City, its officers, agents, employees and volunteers shall be named as additional insured and such inclusion shall not affect the City's rights as respects any claim, demand, suit or judgment brought or recovered against the Contractor. The policy shall protect Contractor and the City in the same manner as though a separate policy had been issued to each, but this shall not operate to increase the Contractor's liability as set forth in the policy beyond the amount shown or to which the Contractor would have been liable if only one party had been named as an insured."

H. Other Insurance Requirements. The carrying of insurance shall not relieve Contractor from any obligation under this Agreement. If any claim exceeding the amount of any deductibles or self-insured reserves is made by any third party against the Contractor or any subcontractor on account of any occurrence related to the Agreement, the Contractor shall promptly report the facts in writing to the insurance carrier and to the City Manager.

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

The Public Liability insurance required by Section 9.2 shall 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 the City from claims filed after the expiration or termination of the Agreement related to incidents which occurred prior to such expiration or termination.

9.3 Faithful Performance Security

Concurrently with execution of this Agreement, the Contractor shall deliver to the City a Letter of Credit or a performance bond, from an admitted surety insurer, in the amount of Two Hundred Fifty Thousand Dollars (\$250,000), which secures the faithful performance of this Agreement, including, without limitation, payment of any penalty and the funding of any work to cure a breach of this Agreement. The bond

shall contain the original notarized signature of an authorized officer of the surety and affixed thereto shall be a certified and current copy of his power of attorney. The bond shall be unconditional and remain in force during the entire term of the Agreement and shall be null and void at the conclusion of the term of this Agreement only if the Contractor promptly and faithfully performs all terms and conditions of this Agreement.

9.4 Forfeiture of Performance Bond

A. Partial Forfeiture of Performance Bond. In the event the contractor shall for any reason become unable to, or fail in any way to, perform as required by this Agreement, the City may declare a portion of the performance bond which is necessary to recompense and make whole the City, forfeited to the City. Upon partial forfeiture of the performance bond, the Contractor shall restore the performance bond to its face amount within 30 days of the City's declaration.

B. Full Forfeiture of Performance Bond. In the event the Contractor shall for any reason become unable to, or fail in any way to, perform as required by his Agreement, and the City determines to terminate this Agreement, as provided for, the full amount of the performance bond established pursuant to Section 9.3 shall forfeit to the City.

ARTICLE 10. CITY'S RIGHT TO PERFORM SERVICE

10.1 General

In addition to any and all other legal or equitable remedies, in the event that the Contractor, for any reason whatsoever, fails, refuses or is unable to collect, transport or deliver to the appropriate solid waste management facility, or in accordance with all of the terms of the Agreement, any or all solid waste, recyclables, manure, green waste, or other compostables which it is required by the Agreement to collect and transport, at the time and in the manner provided in this Agreement, for a period of more than seventy-two (72) hours, and if, as a result thereof, solid waste, recyclables, manure, yard waste, or other compostables should accumulate in the City to such an extent, in such a manner, or for such a time that the City Manager should find that such accumulation endangers or menaces the public health, safety or welfare, then the City Manager shall have the right, but not the obligation, upon twenty-four (24) hours prior written notice to Contractor during the period of such emergency as determined by City Manager, (1) to cause to be performed, such services itself with its own or other personnel without liability to Contractor; and/or (2) to take possession of any of all of Contractor's land, equipment and other property used or useful in the collection and transportation of solid waste, recyclables, manure, yard waste, and compostables and to use such property to collect and transport any solid waste, recyclables, manure, yard waste, and compostables generated within the City which Contractor would otherwise be obligated to collect and transport pursuant to this Agreement. Notice of the Contractor's failure, refusal or neglect to collect and transport solid waste in accordance with all of the terms of the Agreement may be given orally by telephone to the Contractor at its principal office and shall be effective immediately. Written confirmation of such oral notification shall be sent to Contractor within twenty-four (24) hours for oral

notification. If the Contractor's failure to collect for more than 72 hours for an event referenced in **Section 11.5**, the City would meet and confer during the 24-hour notification period.

Contractor further agrees that in such event:

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

(2) It will, if City Manager so requests, and to the extent feasible, keep in good repair and condition all of such property, provide all motor vehicles with fuel, oil and other service, and provide such other service as may be necessary to maintain said property in operational condition.

(3) The City shall assume responsibility for the proper and normal use of such equipment and facilities while in its possession.

(4) Contractor shall provide all necessary billing information and Contractor and City Manager shall determine how to bill, in what amounts, and the distribution of amounts received.

The City's exercise of its rights under this **Section 10** (1) does not constitute a taking of private property for which compensation must be paid; and (2) will not create any liability on the part of City to Contractor except with respect to any liability arising from the City's active negligence or intentional misconduct in the use or operation of the equipment or facilities; and (3) does not exempt Contractor from the indemnity provisions of **Section 9**, 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 negligence or intentional misconduct of City, its officers, employees, agents, or volunteers acting under this Section; and (4) does not terminate this Agreement, unless termination occurs under other provisions of this Agreement.

10.2 Duration of City's Possession

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

ARTICLE 11. DEFAULT AND REMEDIES

11.1 Events of Default

Without waiving the respective rights of either party in the event of default, then each of the following shall constitute an event of default ("event of default") by Contractor hereunder:

A. Failure to Perform. Contractor fails to perform its respective obligations under this Agreement, and: (1) the failure or refusal of Contractor to perform as required by **Article 5** or **Sections 9.2, 5.13 or 5.14** of this Agreement is not cured within ten (10) business days after receiving notice of the breach; or (2) in

the case of any other breach of the Agreement, the breach continues for more than thirty (30) calendar days after written notice, provided that where such breach cannot be cured within (30) days, Contractor shall not be in default of this Agreement if Contractor shall have commenced such action required to cure the particular breach within the period specified above, and it continues such performance diligently until complete.

B. Misrepresentation. 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 the representation or disclosure is made, that appears as part of this Agreement.

C. Seizure or Attachment. There is a seizure or attachment (other than a prejudgment attachment) of, or levy affecting possession on, the operating equipment and facilities of such proportion as to substantially impair Contractor's ability to perform under this Agreement and which cannot be released, bonded, or otherwise lifted within seventy-two (72) hours excluding weekends and holidays.

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

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

F. Reasonable Assurances of Performance. Contractor fails to provide reasonable assurances of performance as required under **Section 11.6.**

11.2 Right to Terminate Upon Default

Upon a default by either party, after any required notice and opportunity to cure as provided in Section 11.1, the other party shall have the right to terminate this Agreement without need for any hearing, suit or legal action.

11.3 Possession of Property Upon Termination

In the event of termination by the City for default of the Contractor, the City shall have the right to take possession of and use in the provision of services enumerated under this Agreement any and all of Contractor's land, equipment, and other property (excepting solid waste) used or useful in the collection and transportation of solid waste and the billing and collection of fees for these services. The City shall have the right to retain the possession of such property until other suitable arrangements can be made for the provision of solid waste collection services, which may include the award of an agreement with another waste hauling company, but in no case for more than 45 days. If the City retains possession of commercial equipment following termination after the period of time for which Contractor has already been paid by means of bills issued in advance of providing service for the class of service involved, the Contractor shall be entitled to the reasonable rental value of such property.

Contractor shall furnish the City with immediate access to all of its business records related to its billing of accounts for services.

11.4 City's Remedies Cumulative: Specific Performance

City's right to terminate the Agreement under **Section 11.2** and City's right to take possession of the Contractor's properties under **Section 11.3** are not exclusive, and the City's termination of the Agreement shall not constitute an election of remedies. Instead, they shall be in addition to any and all other legal and equitable rights and remedies which the 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 the Contractor, the remedy of damages for a breach hereof by Contractor may be inadequate and shall be entitled to seek injunctive relief.

11.5 Excuse from Performance

The parties shall be excused from performing their respective obligations hereunder in the event they are prevented from so performing by reason of floods, earthquakes, other "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 but not limited to strike, work stoppage or slowdown, sick-out, picketing, or other concerted job action conducted by Contractor's employees or directed at Contractor is not an excuse from performance and Contractor shall be obligated to continue to provide service notwithstanding the occurrence of any or all of such events; provided, that in the case of labor unrest or job action by City's employees or directed at a third party (e.g. customer) over whom Contractor has no control, the inability of Contractor to make collections due to the unwillingness or failure of the City or the third party, as the case may be, to provide reasonable assurance of the safety of Contractor's employees while making collections or to make reasonable accommodations with respect to container placement and point of delivery, time of collection or other operating circumstances to minimize any

confrontation with pickets or the number of persons necessary to make collections shall, to that limited extent, excuse performance and provided further than the foregoing excuse shall be conditioned on Contractor's cooperation in making collection at different times and in different locations.

The party claiming excuse from performance shall, within two (2) days after such party has notice of such cause, give the other party notice of the facts constituting such cause and asserting its claim to excuse under this Section. Notwithstanding, Contractor in the event of a catastrophic event shall comply with City's emergency preparedness plan.

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

Notwithstanding the foregoing, however, (1) the existence of an excuse from performance will not affect the City's rights under **Section 10**; and (2) if Contractor is excused from performing its obligations hereunder for any of the causes listed in this Section for a period of thirty (30) days or more, other than as the results of third party labor disputes where service cannot be provided for reasons described earlier in this section, the City shall nevertheless have the right, in its sole discretion, to terminate this Agreement by giving ten (10) days' notice, in which case the provisions of **Section 11.3** will apply.

11.6 Right to Demand Assurances of Performance

If Contractor (1) is the subject of any labor unrest including work stoppage or slowdown, sick-out, picketing or other concerted job action; (2) appears in the reasonable judgment of City to be unable to regularly pay its bills as they become due; or (3) is the subject of a civil or criminal investigation, charge, or judgment or order entered by a federal, state, regional or local agency for violation of a law relating to performance under this Agreement, and the City Manager believes in good faith that Contractor's ability to perform under the Agreement has thereby been placed in substantial jeopardy, the City Manager may, at his or her option and in addition to all other remedies the City may have, demand from Contractor reasonable assurances of timely and proper performance of this Agreement, in such form and substance as the City Manager believes in good faith is reasonably necessary in the circumstances to evidence continued ability to perform under the Agreement. If Contractor fails or refuses to provide satisfactory assurances of timely and proper performance in the form and by the date required by City Manager, such failure or refusal shall be an event of default for purposes of **Section 11.1**.

ARTICLE 12. OTHER AGREEMENTS OF THE PARTIES

12.1 Relationship of Parties

The parties intend that Contractor shall perform the services required by this Agreement as an independent contractor engaged by City and not as an officer or employee of the City nor as a partner or joint venturer with the City. No employee or agent of Contractor shall be or shall be deemed to be an employee or agent of the City. Except as expressly provided herein, Contractor shall have the exclusive control over the manner and means of conducting the solid waste, recyclables,

manure, yard waste, and other compostables collection services performed under this Agreement, and all persons performing such services. Contractor shall be solely responsible for the acts and omissions of its officers, employees, subcontractors and agents. Neither Contractor nor its officers, employees, subcontractors and agents shall obtain any rights to retirement benefits, workers' compensation benefits, or any other benefits which accrue to City employees by virtue of their employment with the City.

12.2 Compliance with Law

In providing the services required under this Agreement, Contractor shall at all times comply with all applicable laws of the United States, the State of California and the 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 of this Agreement and any extension thereof.

12.3 Governing Law

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

12.4 Jurisdiction

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

With respect to venue, the parties agree that this Agreement is made in and will be performed in San Diego County.

12.5 Assignment

Except as provided herein, Contractor shall not assign its rights nor delegate or otherwise transfer its obligations under this Agreement to any other person without the prior written consent of the City. Any such assignment without the consent of the City shall be void and the attempted assignment shall constitute a material breach of this Agreement.

For purposes of this Section, "assignment" shall include, but not be limited to (1) a sale, exchange or other transfer of substantially all of Contractor's assets dedicated to service under this Agreement to a third party; (2) a sale, exchange or other transfer of 50% or more of the outstanding common stock of Contractor, unless the change results merely in one of several prior owners increasing his or her ownership; (3) any reorganization, consolidation, merger recapitalization, stock issuance or re-issuance, 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 50% or more of the value or voting rights in the stock of Contractor unless the change results merely in one of several prior owners increasing his or her ownership; and (4) 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. For purposes of this Section, the term "proposed assignee" shall refer to the proposed transferee(s) or other successor(s) in interest pursuant to the assignment.

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

If Contractor requests City's consideration of and consent to an assignment, City Council may deny or approve such request in its complete discretion. No request by Contractor for consent to an assignment need be considered by the City Council unless and until Contractor has met all of the following requirements in paragraphs A, B, and C. Notwithstanding any provision to the contrary in this section, parties agree that City shall not unreasonably withhold consent to an assignment to an affiliate of the Contractor if the Contractor has met all the requirements contained in paragraphs B and C as outlined below. For purposes of this section, "affiliate" shall mean any corporation that controls Contractor, is controlled by Contractor, or is under common control. Notwithstanding the above, these provisions shall not apply to interfamily reorganizations of future holdings of the Company.

- A. Contractor shall undertake to pay City the amount, as determined by the City Manager, of its reasonable direct and indirect administrative expenses, including but not limited to consultant costs and attorney's fees, investigation costs necessary to investigate the suitability of any proposed assignee, and to review and finalize any documentation required as a condition for approving any such assignment;
- B. Contractor shall furnish City Manager with audited financial statements of the proposed assignee's operations for the immediately preceding three (3) operating years;
- C. Contractor shall furnish City Manager with satisfactory proof: (i) that the proposed assignee has at least five (5) years of solid waste management experience of a scale equal to or exceeding the scale of operations conducted by Contractor under this Agreement; (ii) that in the last five (5) years, the proposed assignee has not suffered any citations or other censure from any federal, state or local agency having jurisdiction over its waste management operations due to any significant failure to comply with state, federal or local waste management laws and that the assignee has provided with Assistant City Manager with a complete list of such citations and censures; (iii) that the proposed assignee has at all times conducted its operations in an environmentally safe and conscientious fashion; (iv) that the

proposed assignee conducts its solid waste management practices in accordance with sound waste management practices in full compliance with all federal, state and local laws regulating the collection and disposal of waste, including hazardous waste as identified in Title 22 of the California Code of Regulations; and (v) of any other information required by Assistant City Manager to ensure the proposed assignee can fulfill the terms of this Agreement in a timely, safe and effective manner.

At the point of transition, Contractor will cooperate with City and subsequent Contractor(s) or subcontractor(s) to assist in an orderly transition which will include Contractor providing route lists and billing information.

In connection therewith, Contractor acknowledges that the provisions of Public Resources Code Section 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.

Any application for a franchise transfer shall be governed by the following conditions:

Any application for a franchise transfer shall be made in a manner prescribed by the Assistant City Manager. The application shall include a deposit in an amount determined by the Assistant City Manager sufficient to meet the costs identified above. Additional bills in excess of the amount deposited shall be supported with evidence of the expense or cost incurred. The applicant shall pay such bills within (30) days of receipt. Any such amounts are over and above any franchise fee specified in this Agreement.

Under no circumstances shall any proposed assignment be considered by City is Contractor is in default at any time during the period of consideration.

12.6 Subcontracting

Contractor shall not engage any subcontractors for collection of solid waste, recyclables, manure, green waste, or other compostables without the prior written consent of the City Manager, which consent shall not be denied unreasonably. All of the requirements of **Section 9** shall apply to subcontractors.

12.7 Binding on Successors

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

Manager in writing of such designation and of any limitations upon his or her authority to bind the Contractor. The City may rely upon actions taken by such designated representative as action of the Contractor unless they are outside the scope of the authority delegated to him/her by the Contractor as communicated to City Manager.

ARTICLE 13. MISCELLANEOUS AGREEMENTS

13.1 Entire Agreement

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

13.2 Section Headings

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

13.3 References to Laws

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

13.4 Interpretation

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

13.5 Amendment

This Agreement may not be modified or amended in any respect except by a writing signed by the parties. This agreement shall include any amendment(s) properly approved and executed.

13.6 Severability

If any provision of this Agreement is for any reason deemed to be invalid and unenforceable, the invalidity or unenforceability of such provision shall not affect any of the remaining provisions of this Agreement which shall be enforced as if such invalid or unenforceable provision had not been contained herein.

13.7 Counterparts

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

13.8 Exhibits

Each of the following Exhibits is attached hereto and incorporated herein and made a part hereof by this reference.

- Exhibit 1 - Recycling Public Education Program
- Exhibit 2 - Rate Increase Worksheet Example

13.9 Signatures

Each signatory and party hereto hereby warrants and represents to the other party that it has legal authority and capacity and direction from its principal to enter into this Agreement, and that all resolutions or other actions have been taken so as to enable it to enter into this Agreement.

IN WITNESS WHEREOF, the City and Contractor executed this Agreement effective as of the date first set forth above.

Dated: _____

Dated: July 1, 2018

CITY:

CONTRACTOR:

City of Solana Beach
Mayor

EDCO WASTE & RECYCLING SERVICES,
INC., a California Corporation

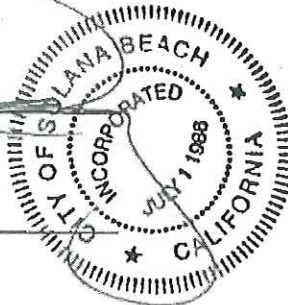
By: *Dave A. Zito*
Mayor

By: *[Signature]*
[NAME] President

By: *Blair Walsh*
[NAME] Vice President

ATTEST:

[Signature]
Angela Ivey, City Clerk



APPROVED AS TO FORM:

[Signature]
Johanna N. Canlas, City Attorney

EXHIBIT 1

Recycling Public Education Program

Mailers

Contractor will develop meaningful periodic mailers that will encourage recycling and reduction of the waste stream. Mailers may also be used to educate public on aspects of AB939. Such mailers will be inserted in regularly scheduled billing and will be sent to residents/commercial accounts upon approval by the City Manager.

Brochures

Contractor will design brochures and instruction pamphlets for changes in service to be distributed to residents, i.e., brochure explaining how to use changing services. Contractor will produce and distribute a quarterly newsletter on recycling, service parameters, holiday schedules and other items relating to sustainability efforts

School Presentations

Contractor will do presentations for school class rooms/assemblies to educate children on reduction, reuse and recycling elements of the waste stream.

Commercial/Industrial Customers

Contractor will provide free consultative service to commercial, industrial and general business customers regarding "best approach" to fully implementing cost-effective recycling programs.

Other

Contractor will be generally available to speak at civic group meetings and will participate in community activities that relate to the environment. Contractor will be responsible for setting up an information/vendor booth at four City of Solana Beach special celebration events to provide public education and information regarding recycling and solid waste disposal. Contractor will maintain a City specific page on a web site with access to public education, holiday schedules, collection schedules, contact information, and other information helpful to customers.

EXHIBIT 2

RESIDENTIAL RATE ADJUSTMENT FORMAT

(EXAMPLE)

RESIDENTIAL SERVICES:

Trash service, Green Waste, Curbside recycling, Excl NPDES		
TOTAL SOLID WASTE SERVICES RATE 96 Gal		<u>\$21.53</u>
Less: Landfill Disposal Component	\$ 4.18	
Franchise Fee component (10% of Total Rate)	\$ 2.15	
TOTAL SUBTRACTION		<u>\$ (6.33)</u>
NET OPERATING EXPENSES (NOE)		<u>\$ 15.20</u>
ADD: CPI Adjustment (CPI% x NOE) (.02 x 15.20)	\$ 0.30	
Franchise fee for CPI adj. \$NOE x (10% Fran. Fee) (\$1.52 - \$.30)	\$ 0.03	
ADD: Add back disposal component from orig. base	\$ 4.18	
Add back franchise fee	\$ 2.15	
TOTAL ADDITIONS		<u>\$ 6.66</u>
NEW SOLID WASTE SERVICES RATE		<u>\$ 21.86</u>

Landfill Disposal Component = Fees charged for disposal charged under RSWA contract for the projected year.

NOE= Part of Total Rate attributable to Contractor operating expenses including general operating expenses, overhead, profit, etc.

Franchise Fee = Is set at a base of 10%

CPI = Change in the Los Angeles, Riverside, Orange County Consumer Price Index

EXAMPLE uses 2% for an assumption of the CPI increase

COMMERCIAL RATE ADJUSTMENT FORMAT

(Example)

Commercial Service rate 3 yard bin 1 time per week, Excl NPDES		
TOTAL SOLID WASTE SERVICES RATE		<u>\$101.63</u>
LESS: Landfill disposal component	\$ 39.12	
Less: Franchise Fee component (10% of Total Rate)	\$ 10.16	
TOTAL SUBTRACTION		<u>\$ (49.28)</u>
NET OPERATING EXPENSES (NOE)		\$52.35
ADD: CPI Adjustment (CPI % x NOE) (.02 X \$52.35)	\$ 1.05	
Add :Franchise fee for CPI adj. \$NOE x (10% Fran. Fee) (\$1.05/.9 -\$1.05)	\$ 0.12	
ADD: Add back in Disposal component from original base rate	\$ 39.12	
Add back franchise fee component from original base rate	\$ 10.16	
TOTAL ADDITIONS		<u>\$ 50.45</u>
NEW SOLID WASTE SERVICES RATE		<u><u>\$102.80</u></u>
Proposed rate one, 3 yard bin 1 time per week	\$ 102.80	
LESS: Existing rate, one 3-yard bin 1 time per week	\$ 101.63	
Difference (\$102.80 — \$101.63 = \$1.17) = NET CHANGE	\$ 1.17	
NET CHANGE: Divide the difference by the existing rate which will equal the Net Change	1.15%	

ROLL OFF RATE ADJUSTMENT FORMAT

(Example)

ROLL OFF SERVICE:

Present Haul Rate	\$ 255.28	
LESS: Franchise fee for haul ($\$255.28 \times .10\%$)	\$ 25.53	
NET OPERATING EXPENSE		\$ 229.75
Add: CPI Adjustment $CPI \times NOE$ ($.02 \times \$229.75$)	\$ 4.60	
Add 10% Franchise fee Adjustment for CPI ($\$4.60 / .9$)-\$4.60	\$ 0.51	
ADD BACK: Base Franchise Fee	\$ 25.53	
TOTAL ADDITIONS		\$ 30.64
NEW HAUL RATE		\$ 260.39
		+ Disposal Fee

Attachment A

5.4 Single Unit Residential Services.

Contractor shall provide the following residential Collection services:

A. Solid Waste Collection. Contractor shall, once per week, collect from all Single-Unit Residential premises all authorized solid waste placed in the street next to the curb line prior to Contractor's normal weekly collection time. In no event shall contractor be required to service in excess of three (3) 96 gallon solid waste carts per residence Contractor shall not be required to service any trash carts weighing more than 150 pounds or overloaded such that the lids will not fully close. Only materials placed inside the carts will be collected. Bundled or unbundled, solid waste materials not containerized will not be removed.

B. Green Waste Collection. Contractor shall, once per week, collect from all Single-Unit Residential premises all separated green waste placed at curbside prior to Contractor's normal weekly collection time. In no event shall the Contractor be required to collect in excess of nine (9) thirty-two (32) gallon containers (specifically designed metal or plastic trash cans) or the equivalent in number in terms of cans, bags (biodegradable only, no plastic) and/or bundles. Bundled materials are to be cut to no more than four feet (4') in length and tied into bundles not to exceed two feet (2') in diameter, Contractor shall not be required to collect from cans, bags or bundles which weigh more than fifty (50) pounds, or which are damaged to such a degree as to render such cans and/or bags unserviceable. Contractor will not be required to collect unbundled or loose green waste. Green waste collection will be on the same day as Solid Waste collection.

The City shall have the option of an automated green waste collection program. Upon the City's request, Contract shall present an overview, plan of operations and public education plan for an automated green waste collection program. Such a program shall include that the Contractor will provide up to three 95 gallon green waste collection carts to each single family residential unit at no additional charge. Implementation of an automated green waste collection program shall be subject to the prior approval of the City Council.

C. Curbside Recycling Collection. Contractor shall, once per week, collect from all Single Unit Residential premises, all commingled single stream recyclable material (designated paper materials, glass, plastics, cans, aluminum) placed in the street next to the curblin prior to Contractor's normal weekly collection time. In no event shall Contractor be required to service in excess of three (3) 96 gallon commingled single stream recycling carts per residence. Contractor shall not be required to service any recycling cart weighing more than 150 pounds or overloaded such that the lids will not fully close. Only materials placed inside the carts will be collected. Bundled or unbundled recycling materials not containerized will not be collected. The collection of recyclable materials shall be on the same day as solid waste collection. Recyclable material shall be transported to the Contractor's facility for processing or delivered directly to a secondary materials purchaser. In all

case Contractor shall maintain accurate records of amounts and type of curbside material collected. Such records shall be available to City after City has provided reasonable notice. Recyclables collection will be the same day as trash and green waste.

D. Christmas Tree Collection. Contractor shall collect from all Single-Unit Residential premises, Christmas trees placed at the curbside prior to Contractor's normal weekly collection time, on the first two scheduled pick-up days after New Year's Day. Christmas Trees shall be cut to four foot (4') lengths to be eligible for collection. Trees shall be diverted by Contractor to a green waste or composting facility.

E. Curbside Set Outs. Residential Solid Waste, Green Waste and Recyclable Materials shall be placed curbside for collection prior to 7:00 a.m. on the scheduled day of collection. Such placement shall not be before 4:00 p.m. on the day prior to scheduled collection day, and shall be removed before 12:00 noon on the day following scheduled collections.

F. Call Back Service. The collection of "late set out" solid waste will be deferred to the following week's scheduled pick-up. However, Contractor shall offer "call back service" for an additional charge.

5.5 Multi-Unit Residential Collection Services.

Contractor shall provide the following Multi-Unit Residential collection services:

A. Solid Waste Bin Service. Contractor shall provide multi-unit residential sites with one (1) or more bins for use in the storage and collection of solid waste matter. The size of bin(s) and the frequency of collection (which shall not be less than once per week) shall be determined between the customer and Contractor. Bins shall be placed on hard, flat surface locations which are accessible to Contractor. Bins which must be moved for servicing, by Contractor, (in excess of fifteen (15) feet) shall be subject to an additional "Roll Out Charge". Bins supplied by Contractor shall at all times be maintained by Contractor in a well-kept appearance and shall display Contractors name and telephone number.

B. Solid Waste Container Service. In those situations where the Contractor and (customer agree that container service in lieu of bin service is appropriate, Contractor shall, once per week, collect waste matter which has been stored and containerized in customer provided thirty-two (32) gallon metal or plastic containers (specifically designed for trash). In no event shall Contractor be required to collect in excess of four (4) containers per residential unit in any multi-unit site, at any one time. Contractor shall not be required to collect from containers which are in excess of fifty (50) pounds, or are damaged to such a degree as to render them unserviceable. Such containers will be tagged as to the reasons for non pick-up.

C. Recycling Collection Service. Contractor shall collect, remove and transport all recyclable materials from multi-unit residential premises in the City. Contractor shall provide each multi-family unit complex with an

appropriate number of wheeled carts. Collection shall be scheduled by Contractor. All recyclable material shall be transported to Contractor's processing facility for processing or delivered directly to a secondary materials purchaser if it is economically feasible to do so. In all cases Contractor must maintain accurate records of type and amounts of recyclable materials collected from multi-unit residential customers. These records must be available to City after reasonable notification.

D. Christmas Tree Collection. Contractor shall arrange with complex owners, managers, associations, as may be appropriate, to collect Christmas trees during the first two weeks after New Year's Day. Christmas trees shall be cut to four (4) foot lengths to be eligible for collection. Trees shall be diverted by Contractor for deposit at a green waste or composting facility. The contractor may in addition identify and publish the location of centralized collection (drop-off) sites.

E. Additional Pick-up. Additional unscheduled pick-ups will be made available as requested by complex owner, manager or associations. Such service is subject to charges.

5.6 Commercial Service.

Contractor shall provide the following solid waste and recycling collection services to commercial premises:

A. Solid Waste Bin Collection Service. Contractor shall provide to the owner, lessee or proprietor of all commercial premises which generate waste matter with one(1) or more bins for use in the collection of such waste matter. The size of the bin(s) and the frequency of their collection (which shall not be less than once per week) shall be determined between the customer and Contractor. Bins shall be placed on hard, flat surface locations which are accessible to Contractor. If such bins must be moved by Contractor in excess of fifteen (15) feet, they are subject to an additional "Roll Out Charge". Bins supplied by Contractor shall, at all times, be maintained by Contractor in a well-kept appearance and shall be marked with reflectorized material where such bins are or may reasonably be expected to be located in the public right-of-way.

B. Solid Waste Container Service. In those situations where the customer and Contractor agree that container service for commercial establishments generating small amounts of waste matter is appropriate, Contractor shall, once per week, collect from such waste matter which has been stored and containerized in customer provided thirty-two (32) gallon containers (specifically designed for trash). In no event shall Contractor be required to collect amounts in excess of four (4) containers per commercial establishment at any one time, or the equivalent in number of containers. Contractor shall not be required to collect containers which weigh more than fifty (50) pounds, or which are severely damaged to such a degree as to render unserviceable. Such containers will be appropriately tagged as to the reason for non pick-up.

C. **Recycling Collection Service.** Contractor shall continue to expand the Commercial Recycling program to collect, remove and transport recyclable materials from such commercial premises in the City as required by applicable laws or as requested by customer. Contractor will provide each participating commercial premises with wheeled-carts or bins as appropriate for each commercial premises. Recyclable materials shall be initially transported to Contractor's processing facility, for processing or delivered directly to a secondary materials purchaser. In all cases, Contractor must maintain accurate records of type and amounts of recyclable materials collected from single-unit residential customers. These records must be available to City after City has provided reasonable notice.

D. **Consulting Services.** The Contractor shall provide consulting services, at no additional charge, to commercial and multi-unit customers to evaluate customer waste generation and to assist customer in establishing effective recycling and waste diversion programs and, in addition, to advise customers in overall service needs.

E. **Roll-off Services.** Contractor shall provide rental and servicing of debris boxes (15-40 cubic yards) to customers requesting roll-off service on both a scheduled and unscheduled (on-call) basis. Roll-off service shall include the servicing of Contractor or customer owned compactors.

5.7 **Additional Services.**

A. **Bulky Item Collection.** Contractor shall provide "On Call" bulky item collection service to single-unit and multi-unit residential customers and to commercial customers. Request for bulky item collection must be received by 12:00 p.m. (noon) on the day prior to the customer's regularly scheduled service day. Such service shall be provided at a flat rate (as set forth in Exhibit B for one(1) item except that a surcharge is allowable to service and certify refrigerators or other appliances that contain freon or similar contaminants. No more than an additional four (4) items may be collected at the same time from the same customer and will be handled by Contractor for an additional flat rate charge per item in accordance with the City Council approved rate structure. The availability of this special on call service and associated prices will be published by Contractor and distributed annually to all customers. Bulky items shall also be collected from residential units free of charge during the annual city wide clean-up day (as set forth in Section 5.8).

B. **Insta-Bin Services.** Contractor shall provide insta-bin service to all customers upon request. Requesting customers shall be provided a commercial three (3) cubic yard bin for one time use (one load), on a temporary basis, for one (1) to seven (7) days. Such service is subject to charges mutually agreed upon between the Contractor and customers. Charges will be based on container delivery and removal, and all fees associated with disposal.

C. **Buy-Back Center.** Contractor shall maintain a public "buy back center" which shall be open to purchase recyclable materials for at least thirty-five (35) hours per week, Tuesday through Saturdays. The buy-back center

will also serve as a drop-off location for donated recyclable materials. The City may request Contractor to accept additional types and amounts of material accepted at the Center provided that such modifications do not conflict with applicable state laws and regulations.

D. Mandated Programs/Street Sweeping/Litter Abatement. Contractor shall, in an effort to assist in litter abatement, provide funding for a portion of the street sweeping in the City. Effective July 1, 2018, the amount paid annually shall be Forty Five Thousand Dollars (\$45,000) which shall increase annually by the adjusted CPI percentage. These amounts shall be paid quarterly to the City on the schedule as provided for in Section 4.3.

5.8 Services To Be Provided At No Charge.

A. Semi-Annual Clean-up Events. Contractor shall perform at no cost to City or residents two annual clean-up events on a mutually agreed to Saturdays. The one (1) day collection events will be limited to residents of the City of Solana Beach. Collection event material shall be limited to refuse and green waste and up to four bulky items. Residents shall be required to set-out material to be collected by 7:00 a.m. on the day of the event. Contractor shall accurately record the disposal tonnage and diversion tonnage for such event. Public information and event announcement shall be published by the City and distributed through the City's residential billing.

B. Residential Household Hazardous Waste Collection. Effective July 1, 2018, Contractor shall provide Thirty Thousand Dollars (\$30,000) to the City annually to be utilized for special one day collection event, disposal at the two permanent facilities or for a special door-to-door pick up at the sole discretion of the City of Solana Beach. This amount shall increase annually by the adjusted CPI percentage. These amounts shall be paid quarterly to the City on the schedule as provided for in Section 4.3.

Contractor shall assist the City in the application process for obtaining Household Hazardous Waste grant monies made available through the State of California. Such grant monies would be used towards additional programs.

C. Fire Prevention-Fuel Reduction. Contractor shall, at no cost to the City provide roll-off containers for green waste collected by the City in conjunction with a fuel reduction program administered by the City. Containers will be located at a City designated facility during the one (1) week event. Material received, as first choice will be taken to a mulching or composting site. Other unrecyclable material will be landfilled.

D. City Facilities Collection. At no cost to the City, Contractor shall collect and dispose of all solid waste recyclables, yard waste, and compostables generated at premises owned and/or operated by the city/including bus stops. Contractor shall make collections from cans Monday through Friday or on Saturdays following non-working holidays twice a week. In addition, Contractor shall pick-up any bulky items which have been discarded or deposited, by City, in 40 cubic yard roll-off containers located at the City Maintenance Yard upon request from City. It is estimated that such

items amount to no more than fifteen (15) 40-cubic yard containers annually. Contractor acknowledges that the City desires to increase City container collection scope and frequency to include the Highway 101 corridor and City parks as agreed to by the City and Contractor over 2017 levels at no additional charge to the City.

E. Annual Community Grant Program. The Contractor, will pay to the City Fifteen Thousand Dollars (\$15,000) starting July 1, 2018 and annually thereafter at the anniversary of the agreement. The annual grant will be used by the City Council for funding a community grant program. This fund will be dispensed at the discretion of the City Council.

F. Annual Shred / Mulch / E Waste / U Waste Events

Contractor shall provide an annual Shred Day event at a City designated location at no additional charge. Contractor shall provide adequate staffing, advanced noticing to residents and accept papers for safe document destruction free of charge for residents. Collected material will be recycled in a manner consistent with AB 939.

Contractor shall annually provide compost or mulch to residents at a City designated location at no additional charge. Contractor shall provide adequate staffing, advanced noticing to residents and assistance in loading to residents. The mulch event may be combined with the Shred Event.

Contractor shall annually provide an E Waste collection event to residents at a City designated location at no additional charge. Contractor shall provide adequate staffing, advanced noticing to residents and assistance in receiving electronic waste from residents. The E Waste event may be combined with the Shred Event.

Contractor shall annually provide a Universal Waste collection event to residents at a City designated location at no additional charge. Contractor shall provide adequate staffing, advanced noticing to residents and assistance in receiving Universal Waste from residents. The Universal Waste event may be combined with the Shred Event.

G. Zero Waste Community Events

At the direction of the City Manager, Contractor shall participate in and promote recycling and other diversion techniques at community events and local activities. Such participation shall include, without cost to City, collection of trash and recycling material at the event and educational information promoting the goals of the City's efforts of working toward Zero Waste. Contractor shall not be required to provide free trash and recycling material collection services more than six events per year. One or more of the events may be designated a Zero Waste event.

H. Sharps Drop Off Program

Contractor shall provide a collection container at its local offices for residential use of hypodermic needles, pen needles, intravenous needles, lancets and other devices that are used to penetrate the skin for the delivery of medications at no cost to residents. Upon the City's request, Contractor shall also provide a drop off container at a City designated location at no additional cost to residents.

I. Household Battery Drop Off Program

Contractor shall provide a collection container at City Hall and its local offices for drop off of household batteries at no cost to residents. Upon the City's request, Contractor shall also provide a drop off container at a second City designated location at no additional cost to residents.

J. Donated Clothing, Shoes and Book Drop Off Program

Upon the City's request, Contractor shall place a secured collection container to receive clothing, shoes and books at a designated City location no cost to residents. Items shall be recovered for reuse in a manner consistent with AB 939.

FIRST AMENDMENT
TO THE SOLID WASTE FRANCHISE AGREEMENT
BETWEEN
THE CITY OF SOLANA BEACH AND EDCO WASTE & RECYCLING SERVICES, INC
DATED DECEMBER 8, 2021

This First Amendment to the Solid Waste Franchise Agreement between the City of Solana Beach and EDCO Waste and Recycling Services dated July 1, 2018 ("AGREEMENT") is made by and between the City of Solana Beach, hereinafter referred to as "CITY" and EDCO Waste and Recycling Services, hereinafter referred to as "FRANCHISEE," and together sometimes collectively referred to hereinafter as the "PARTIES." The date of this AGREEMENT is January 1, 2022.

Whereas, on December 31, 2017, Coast Management, Inc. assigned its Residential Franchise Agreement with the CITY dated August 1, 1993, and later amended, to the FRANCHISEE effective December 31, 2017; and

Whereas, on July 1, 2018, CITY and FRANCHISEE entered into the Amended and Restated Solid Waste Franchise Agreement which governs the removal of solid waste, recyclables, manure, green waste, and other compostables by FRANCHISEE within the CITY; and

Whereas, the PARTIES may only amend the AGREEMENT by a writing signed by both PARTIES pursuant to Section 13.5 of the AGREEMENT; and

Whereas, the State of California has, through enactment of AB 939 and subsequent related legislation including, but not limited to, the Mandatory Commercial Organics Recycling Act of 2014 (AB 1826) and the Short-Lived Climate Pollutants Bill of 2016 (SB 1383), directed the responsible State agency, and all local agencies, to promote a reduction in landfill disposal and to maximize the use of feasible waste reduction, reuse, recycling, and composting options in order to reduce the amount of material that must be disposed; and

Whereas, SB 1383 establishes regulatory requirements for jurisdictions, generators, haulers, solid waste facilities, and other entities to support achievement of State-wide organic waste disposal reduction targets; and

Whereas, on August 25, 2021, the CITY amended Chapter 6.20 of the Solana Beach Municipal code adopting measures to implement the mandates required by SB 1383 and made the following findings:

(a) The storage, accumulation, collection and disposal of garbage, trash, litter, rubbish, debris and other discarded matter, goods and materials are a matter of great public concern, in that improper control of such matters creates a public nuisance, can lead to air pollution, fire hazards, illegal dumping, insect breeding and rat infestation and other conditions affecting the health, welfare and safety of the residents of this and surrounding cities. The city council further finds that the periodic collection of garbage, rubbish and other refuse and recyclable material from all residences and places of business in the city benefits all occupants of residences within the city and, therefore, the occupants as hereinafter

defined are made liable for the payment of fees for the mandatory service as may be from time to time approved by city council resolution. The city council further declares that the regulations provided in this chapter are designated to eliminate such problems. The city council is authorized to adopt this chapter pursuant to California Constitution Article XI, § 7 and Division 30 of California Public Resources Code (Waste Management) including, without limitation, Sections 40057, 40058, 40059, 49300 and 49500 et seq. (Ord. 333 § 2, 2005; Ord. 177 § 1, 1993)

(b) State recycling law, Assembly Bill 939 of 1989, the California Integrated Waste Management Act of 1989 (California Public Resources Code Section 40000, et seq., as amended, supplemented, superseded, and replaced from time to time), requires cities and counties to reduce, reuse, and recycle (including composting) Solid Waste generated in their Jurisdictions to the maximum extent feasible before any incineration or landfill disposal of waste, to conserve water, energy, and other natural resources, and to protect the environment.

(c) State recycling law, Assembly Bill 341 of 2011 (approved by the Governor of the State of California on October 5, 2011, which amended Sections 41730, 41731, 41734, 41735, 41736, 41800, 42926, 44004, and 50001 of, and added Sections 40004, 41734.5, and 41780.01 and Chapter 12.8 (commencing with Section 42649) to Part 3 of Division 30 of, and added and repealed Section 41780.02 of, the Public Resources Code, as amended, supplemented, superseded and replaced from time to time), places requirements on businesses and Multi-Family property owners that generate a specified threshold amount of Solid Waste to arrange for recycling services and requires Jurisdictions to implement a Mandatory Commercial Recycling program.

(d) State organics recycling law, Assembly Bill 1826 of 2014 (approved by the Governor of the State of California on September 28, 2014, which added Chapter 12.9 (commencing with Section 42649.8) to Part 3 of Division 30 of the Public Resources Code, relating to Solid Waste, as amended, supplemented, superseded, and replaced from time to time), requires businesses and Multi-Family property owners that generate a specified threshold amount of Solid Waste, Recycling, and Organic Waste per week to arrange for recycling services for that waste, requires Jurisdictions to implement a recycling program to divert Organic Waste from businesses subject to the law, and requires Jurisdictions to implement a Mandatory Commercial Organics Recycling program.

(e) SB 1383, the Short-lived Climate Pollutant Reduction Act of 2016, requires CalRecycle to develop regulations to reduce organics in landfills as a source of methane. The regulations place requirements on multiple entities including Jurisdictions, residential households, Commercial Businesses and business owners, Commercial Edible Food Generators, haulers, Self-Haulers, Food Recovery Organizations, and Food Recovery Services to support achievement of Statewide Organic Waste disposal reduction targets.

(f) SB 1383, the Short-lived Climate Pollutant Reduction Act of 2016, requires Jurisdictions to adopt and enforce an ordinance or enforceable mechanism to implement relevant provisions of SB 1383 Regulations. This ordinance will also help reduce food insecurity by requiring Commercial Edible Food Generators to arrange to have the maximum amount of their Edible Food, that would otherwise be disposed, be recovered for human consumption.

Whereas, the PARTIES desire to memorialize the impacts of the above-referenced amendments in the form of this First Amendment to the AGREEMENT.

NOW, THEREFORE, in consideration of the promises and of the covenants and conditions hereinafter contained, it is agreed between the PARTIES that the AGREEMENT is hereby amended as follows:

1. A new recital is hereby added to read as follows:

“WHEREAS, SB 1383 Regulations and amendments to Chapter 6.20 of the Solana Beach Municipal Code require the CITY to implement collection programs, meet processing facility requirements, conduct contamination monitoring, provide education, maintain records, submit reports, monitor and enforce compliance, and fulfill other requirements; and, CITY has chosen to delegate some responsibilities to FRANCHISEE, acting as the CITY’s designee, through this AGREEMENT;”

2. ARTICLE 1. DEFINITIONS; DELEGATION OF AUTHORITY subsection A shall be revised to read as follows: “A. Whenever any term used in this Agreement has been defined by the provisions of the SOLANA BEACH Municipal Code, the definitions contained in said code shall govern the meaning of such words for the purpose of this Agreement.”
3. Article 3. TERM OF AGREEMENT subsection 3.1 Effective Date and Term of Agreement shall be amended as follows: The term of this agreement shall commence on January 1, 2022, and expire on December 31, 2027, provided however, that commencing January 1, 2023, and every year thereafter, automatic one-year extensions shall be applied to said Agreement, so that the term of the Agreement shall be a minimum of five years.
4. ARTICLE 5. WASTE COLLECTION SERVICES subsection 5.3 Scope of Service subsection (A) shall be amended as follows: “A. GENERAL. The work to be done by Contractor pursuant to this Agreement shall include the furnishing of all labor, supervision, equipment, materials, supplies, and all other items necessary to perform the services required. The scope of services supplied shall comply with the SOLANA BEACH Municipal Code as it may be amended from time to time.”
5. ARTICLE 5. WASTE COLLECTION SERVICES subsection 5.16 Solid Waste Containers subsection A. Residential. FRANCHISEE shall provide customers with a three-container organic waste collection program that complies with 14 CCR Section 18984.1, 18984.7, and 18984.8.
6. Subsection 5.20 under ARTICLE 5 is hereby added to the AGREEMENT to read as follows:

5.20 Organic Waste Collection Services; Operating and Reporting Requirements

A. Organic Waste Materials to be Collected. FRANCHISEE shall collect organic waste as required under applicable state laws and according to the SOLANA BEACH municipal code. Organic waste that is to be accepted for collection in the organics collection program include the following: food scraps, food-soiled paper, and yard trimmings. The PARTIES agree that materials may be added to or removed from this list from time to time by mutual consent or by amendment to the SOLANA BEACH Municipal Code. FRANCHISEE

shall not add or remove materials to or from this list without written approval from the City Manager or designee, or signed amendment to this AGREEMENT, and such approval shall not be unreasonably withheld. Compostable and biodegradable plastic, carpets, non-compostable paper, textiles, and prohibited container contaminants shall not be collected in the organics container.

B. Designated Organics Processing Facilities. During the term of the AGREEMENT, FRANCHISEE shall provide the identity of all processing facilities that will be used to manage recyclables and trash. Said list shall be updated annually in a report to the City Manager or designee.

C. Education and Outreach; Program Objectives. FRANCHISEE public education and outreach strategy shall focus on improving generators' understanding of the benefits of and opportunities for source reduction, reuse, and landfill disposal reduction. In general, FRANCHISEE-provided public education and outreach, which shall include all content required by this Section, should: (i) inform generators about the services that are provided under this AGREEMENT with specific focus on describing the methods and benefits of source reduction, reuse, and reduction of solid waste disposal; (ii) instruct generators on the proper method for placing materials in containers for collection and setting containers out for collection with specific focus on minimizing contamination of source separated recyclable materials and organics waste; (iii) clearly define excluded waste and educate generators about the hazards of such materials and their opportunities for proper handling; (iv) discourage generators from buying products if the product and its packaging are not readily reusable, recyclable, or compostable; (v) encourage the use of compost and mulch; and, (vi) encourage generators to purchase products/packaging made with recycled-content materials. The cumulative intended effect of these efforts is to reduce each generator's reliance on FRANCHISEE-provided solid waste container service and, ultimately, disposal, and FRANCHISEE agrees to support and not undermine or interfere with such efforts.

D. Franchisee Cooperation and/or Support for CITY or Third-Party Educational Efforts. FRANCHISEE acknowledges that they are part of a multi-party effort to operate and educate the public about the regional integrated waste management system. FRANCHISEE shall cooperate and coordinate with the City Manager or designee on public education activities to minimize duplicative, inconsistent, or untimely education campaigns. The FRANCHISEE shall cooperate with the implementation, expansion, or operation of public education and outreach programs or campaigns conducted by the CITY or their designee.

FRANCHISEE shall obtain approval from the City Manager or designee on all FRANCHISEE provided public education materials outside of the CITY's education plan, including, but not limited to, print, radio, television, or internet media before publication, distribution, and/or release. CITY shall have the right to request that FRANCHISEE include

CITY identification and contact information on public education materials and approval of such requests shall not be unreasonably withheld.

E. Annual Notice of Requirements. Not less than once per year during each rate year, FRANCHISEE shall prepare information specified in 14 CCR Section 18985.1(a) and make available in an electronic format through the FRANCHISEE's website.

F. Procurement of Recovered Organic Waste Products. All Route Collection vehicles used by FRANCHISEE under this AGREEMENT shall be powered by Renewable Natural Gas (RNG) whether generated by FRANCHISEE's Anaerobic Digestion Facility or purchased. Upon CITY's request, FRANCHISEE shall obtain and provide the CITY with a written certification by an authorized representative certifying that the in-vessel digestion facility produces the RNG in quantities corresponding to City's Organics Wastes collected by FRANCHISEE consistent with the requirements of 14 CCR Section 18993.1(h). FRANCHISEE shall maintain records of the amount of RNG purchased and shall report this information to the CITY on a biannual basis. FRANCHISEE shall allow the CITY to report this RNG usage toward the CITY's fulfillment of its annual recovered Organic Waste product procurement target in accordance with 14 CCR Section 18993.1.


G. Contamination Monitoring. FRANCHISEE shall perform contamination monitoring for prohibited container contaminants in a manner that is deemed appropriate by the CITY; complies with 14 CCR Sections 18984.5, 18984.11, 18998.1, and 18998.2, SOLANA BEACH Municipal Code Chapter 6.20, and other applicable law; and results in all routes being reviewed at least annually.

H. Reporting Requirements. FRANCHISEE shall provide access to and/or copies, as requested, of all records required by SB 1383 and the SOLANA BEACH Municipal Code to CITY on a quarterly basis, including the requirements of 14 CCR Sections 18984.4, 18984.6, 18984.14, and 18998.4.

I. Change in Laws. FRANCHISEE shall develop and, upon the City Council's approval, implement within a timely manner, programs to meet new requirements of local, state and federal laws. FRANCHISEE may request a rate increase or decrease as per this AGREEMENT.

7. Except as otherwise amended by the specific terms of this First Amendment, each and every term, condition, and obligation contained in this AGREEMENT is reaffirmed and remains in full force and effect.
8. This First Amendment may be executed in counterparts each of which shall be considered an original.

IN WITNESS WHEREOF, the PARTIES have executed this First Amendment of the AGREEMENT which shall become effective January 1, 2022.

BY:  _____ Dated 1/24/22

Steve South
President
EDCO Disposal

BY:  _____ Dated 2-7-22

Gregory Wade
City Manager
City of Solana Beach

Approved as to form:

BY:  _____ Dated 2-7-22

Johanna Canlas
City Attorney
City of Solana Beach