

**AMENDED AND RESTATED EXCLUSIVE FRANCHISE  
AGREEMENT BY AND BETWEEN CITY OF COVINA  
AND ARAKELIAN ENTERPRISES, INCORPORATED**

THIS FRANCHISE AGREEMENT, made this 15th day of February in the year 2011 by and between the CITY OF COVINA, a municipal corporation duly organized and existing under the Constitution and Laws of the State of California ("CITY"), and ARAKELIAN ENTERPRISES, INCORPORATED, a California corporation ("CONTRACTOR") dba Athens Services.

WITNESSETH:

WHEREAS, the CONTRACTOR provided non-exclusive refuse collection services to the CITY from 1985 through 1992 and then began providing exclusive refuse collection services to all commercial, industrial, and residential units in the CITY on January 1, 1993; and

WHEREAS, such services have been provided under a series of franchise agreements; and

WHEREAS, the CITY and CONTRACTOR desire to supersede all prior franchise agreements through execution of this Franchise Agreement;

NOW, THEREFORE, the CITY and CONTRACTOR agree as follows:

**ARTICLE I. DEFINITIONS**

Section 1.01 AB 939 - "AB 939" shall include (i) the California Integrated Waste Management Act of 1989 which requires cities to reduce the amount of waste disposed by 25% by 1995 and 50% by the year 2000 through a variety of programs including promotion of source reduction, recycling, and composting and (ii) the Solid Waste Per Capita Disposal Measurement Act.

Section 1.02 Barrel - A receptacle with a capacity of 60 to 90 gallons, in colors blue, black and green provided by CONTRACTOR.

Section 1.03 Bin - Metal or plastic receptacle designed to be lifted and emptied mechanically for use at Residential, Commercial and Industrial Units.

Section 1.04 Broker - An individual or group of individuals that act as an agent or intermediary between the seller and buyers of Recyclable Materials. Normally, they do not take physical possession of the materials.

Section 1.05 Bulky Waste - Stoves, refrigerators, water tanks, washing machines, furniture and other waste materials other than Construction and Demolition Waste, Hazardous Waste or Stable Matter with weights or volumes greater than those allowed in Barrels.

Section 1.06 Bundle - Tree, shrub and brush trimmings which are securely tied together forming an easily handled package not exceeding four feet in length or 35 lbs. in weight.

Section 1.07 City - City of Covina, California.

Section 1.08 Commercial Refuse - All Bulky Waste, Garbage, Rubbish and Stable Matter originating from stores, business offices, commercial warehouses, hospitals, educational, health care, military, and correctional institutions, non-profit research organizations, and government offices. Commercial Refuse does not include construction and demolition waste.

Section 1.09 Commercial Unit - A site zoned for a commercial business and which generates Commercial Refuse.

Section 1.10 Construction and Demolition Waste - Waste building materials resulting from construction, remodeling, repair or demolition operations.

Section 1.11 Contract Documents - This Franchise Agreement, the Contract Performance Bond, Insurance Certificates and any addenda or changes to the foregoing documents agreed to by the CITY and the CONTRACTOR including Exhibit A – Schedule of Rates, Exhibit B – Rate Adjustment, Exhibit C – Recyclable Materials to be Collected, Exhibit D – Green Waste Materials to be Collected, Exhibit E – Street Sweeping Services, Exhibit F – AB 939 Reporting Quantities, and Exhibit G – Sort Line Analysis.

Section 1.12 Contractor - The person, corporation or partnership performing Refuse collection and disposal under this Franchise Agreement with the CITY.

Section 1.13 Dealer – A person or firm who purchases Recyclable Materials, processes them to meet consumer standards, and transports them to the market.

Section 1.14 Disposal Site - A Refuse depository including but not limited to sanitary landfills, transfer stations, material recovery facilities, and incinerators, permitted or approved to receive Residential and Commercial Refuse from governmental bodies and agencies having jurisdiction and requiring such licenses, permits or approvals.

Section 1.15 End User – Firms or individuals that purchase Recyclable Materials for use as feedstock to replace the use of virgin raw materials.

Section 1.16 Franchise Agreement - This Contract Document which grants the CONTRACTOR an exclusive franchise for Residential and Commercial Refuse, Green Waste and Recyclables collection in the City of Covina.

Section 1.17 Garbage - Every accumulation of waste (animal, vegetable and/or other matter) that results from the preparation, processing, consumption, dealing in, handling, packing, canning, storage, transportation, decay or decomposition of meats, fish, fowl, birds, fruits, grains or other animal or vegetable matter (including, but not by way of limitation, all putrescible or easily decomposable waste animal or vegetable matter which is likely to attract flies or rodents); except (in all cases) any matter included in the definition of Bulky Waste, Construction and Demolition Waste, Hazardous Waste, Rubbish or Stable Matter.

Section 1.18 Green Waste - Yard waste and landscape debris such as grass clippings, leaves, weeds, tree trimmings and other plant materials separated from Residential, Commercial and Industrial Refuse.

Section 1.19 Green Waste Container - A receptacle used by Producers to separate Green Waste from Residential Refuse.

Section 1.20 Green Waste Processing Center - Center which accepts Green Waste for the purpose of organically breaking it down to create a compost material or for alternate use as an approved waste diversion under AB 939.

Section 1.21 Hazardous Waste - Any chemical, compound, mixture, substance or article which is designated by the United States Environmental Protection Agency or appropriate agency of the State to be "hazardous" as that term is defined by or pursuant to Federal or State law.

Section 1.22 Industrial Refuse - All Garbage, Rubbish, Bulky Waste, and Stable Matter originating from mechanized manufacturing facilities, factories, refineries, construction and demolition projects, and publicly operated treatment works.

Section 1.23 Industrial Unit - A site zoned for an industrial business and which generates Industrial Refuse.

Section 1.24 Landfill - A disposal facility or part of a facility where solid waste is placed in or on land, for which there exists a current Solid Waste Facility Permit issued by the local enforcement agency and concurred by the California Integrated Waste Management Board.

Section 1.25 Material Recovery Facility - A facility that is permitted to receive shipments of mixed waste, refuse and commingled Recyclable Materials; a facility that performs sorting, baling, and waste transfer functions.

Section 1.26 Nondisposal Facility - All solid waste facilities required to obtain a permit pursuant to Article 1 of Chapter 3 of Part 4, of the Public Resources Code (commencing with Section 44001) except a disposal facility or a transformation facility.

Section 1.27 Producer - An occupant of a Residential, Commercial or Industrial Unit who generates Refuse, Recyclable Materials, or Green Waste.

Section 1.28 Recyclable Materials - Materials such as metal, aluminum, glass, paper and plastic, or other materials which can be used for constructive purposes rather than depositing them into a landfill.

Section 1.29 Recycling Container - A receptacle used by Producers to separate Recyclable Materials from Residential, Commercial and Industrial Refuse

Section 1.30 Recycling Processing Centers - Facilities, such as buyback centers and Material Recovery Facilities that receive shipments of Recyclable Materials and process, sort, separate, and bale Recyclable Materials.

Section 1.31 Recycling Services - Collection of Recyclable Materials or Green Waste that is separated by the Producer and placed into a Recycling Container or Green Waste Container and transported to a Recycling Processing Center or Green Waste Processing Center.

Section 1.32 Residential Refuse - Garbage, Rubbish, Bulky Waste, and Stable Matter generated from single family or multiple family dwellings.

Section 1.33 Residential Unit - A site occupied by a building which is zoned for residential occupation and whose occupants generate Residential Refuse.

Section 1.34 Residue – Material contained in the Recyclable Materials stream, which remains after all Recyclable Materials have been removed.

Section 1.35 Reuse – The ability to use a product, which might otherwise enter the waste stream, more than once in its same form and for the same purpose (e.g., a soft drink bottle is reused if it is returned to and refilled by the bottle company).

Section 1.36 Rubbish - All waste wood, wood products, tree trimmings, grass cuttings, dead plants, weeds, leaves, dead trees or branches thereof, chips, shavings, sawdust, printed matter, paper, pasteboard, rags, straw, used and discarded mattresses, used and discarded clothing, used and discarded shoes and boots, combustible waste pulp and other products such as are used for packaging, or wrapping crockery and glass, ashes, cinders, floor sweepings, mineral or metallic substances, and any and all other waste materials not included in the definition of Bulky Waste, Construction and Demolition Waste, Garbage, Hazardous Waste, Stable Matter, or Special Wastes.

Section 1.37 Secondary Materials – Any Recyclable Material that is removed or diverted from the waste stream and used in place of a primary or raw material in the manufacturing of a product.

Section 1.38 Special Wastes - Flammable waste, containerized waste (e.g., a drum, barrel, portable tank, box, pail, etc.), waste transported in large containers, liquid waste, sewage sludge, waste from pollution control processes, residue and debris from the cleanup of a spill or release of chemical substances, commercial products, contaminated soil, dead animals, waste water, explosive substances, radioactive materials, infectious waste, hazardous materials, and medical waste.

Section 1.39 Stable Matter - All manure and other waste matter normally accumulated in or about a stable, or any animal, livestock or poultry enclosure, and resulting from the keeping of animals, poultry or livestock.

## ARTICLE II. EXCLUSIVE FRANCHISE AGREEMENT

### Section 2.01 Grant of Exclusive Franchise

This Franchise Agreement grants an exclusive right as provided herein and pursuant to Covina City Council Resolutions 87-4866 and 89-5063, Chapter 8.08 of the Covina Municipal Code and to future amendments to Chapter 8.08 (hereinafter, 'Chapter 8.08') and California

Public Resources Code Section 40059(a) (1) to ARAKELIAN ENTERPRISES, INC., dba Athens Services, a California corporation (CONTRACTOR) for collection, processing, transportation, and disposal of Residential Refuse, Commercial Refuse and Industrial Refuse within the City of Covina.

The grant of this exclusive right shall extend to the collection and transportation of Recyclable Materials and Green Waste generated by Residential, Commercial and Industrial Units, except as otherwise provided herein.

#### Section 2.02 Scope of Franchise: Exclusions

The franchise granted to CONTRACTOR shall be exclusive except as to the following categories of Refuse, Recyclable Materials and Green Waste listed in this Section 2.02. The granting of this franchise shall not preclude the categories of Solid Waste, Recyclable Materials and Green Waste listed below from being delivered to and collected and transported by others in the manner specifically described, provided that every Residential, Commercial and Industrial Unit within the City shall be required to maintain service equivalent to other similar residences, commercial establishments or industrial facilities:

- (a) Green Waste and other compostables removed from a premises by a gardening, landscaping, or tree trimming contractor as an incidental part of a total service offered by that contractor rather than as a hauling service;
- (b) By-products of sewage treatment, including sludge, grit and screenings;
- (c) Hazardous Waste;
- (d) Individual Residential, Commercial and Industrial Units may sell or donate Recyclable Materials separated or removed from Residential, Commercial and Industrial Refuse, as applicable, or may compost Green Waste, subject to applicable federal and state laws, rules and regulations; provided, however, that no consideration may be paid to any entity other than CONTRACTOR for collecting, processing or transporting such Recyclable Materials or as a consulting fee for recycling services. A discount or reduction in price for collection, disposal and/or recycling services for any form of unsegregated or segregated Residential, Commercial or Industrial Refuse is not a sale or donation of Recyclable Materials; and
- (e) A construction contractor may utilize its own trucks and employees to remove building materials from a construction site; provided that such construction contractor must deposit such building materials at CONTRACTOR's MRF facility and achieve a 50% diversion rate. Contractors not utilizing their own trucks and employees or not achieving 50% diversion, must contract for service with CONTRACTOR.

#### Section 2.03 Franchise Area Defined

The Franchise Area granted by this Franchise Agreement shall be all residential, commercial, industrial, and construction premises located in the City of Covina and may be subject to change pursuant to Chapter 8.08.

#### Section 2.04 Annexation Covered by Existing Franchise

The exclusive right granted to the CONTRACTOR through this Franchise Agreement 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. The exclusive right in each annexed territory shall commence ninety (90) days after each such annexation is completed, unless the CITY determines otherwise.

#### Section 2.05 Acceptance; Waiver

CONTRACTOR agrees to be bound by and comply with all the requirements of Chapter 8.08 and this Franchise Agreement. CONTRACTOR waives CONTRACTOR's right to challenge the terms of this Franchise Agreement and Chapter 8.08 under Federal, State or local law, administrative regulation, or individual agreements with Producers as such laws, regulations, or Producer agreements existing as of the date of execution of this Franchise Agreement. CONTRACTOR waives any right or claim to serve the CITY or any part of the CITY under any prior grant of franchise, contract provision, license or permit issued or granted by any governmental entity including any right under Section 49520 of the Public Resources Code.

#### Section 2.06 Scope of Work

The intention of this Franchise Agreement is to cover all services being provided by CONTRACTOR as of the effective date hereof. The work under this Franchise Agreement shall consist of the items contained in the Franchise Agreement, including all the supervision, materials, equipment, labor and all other items necessary to complete said work in accordance with the Contract Documents.

### ARTICLE III. RESIDENTIAL COLLECTION

#### Section 3.01 Residential Refuse Collection

- (a) CONTRACTOR shall provide curbside collection service for the collection of Residential Refuse to each Residential Unit one (1) time per week. Barrels shall be placed at curbside not before twenty-four (24) hours prior to the scheduled collection day (but before 6:00 a.m.) and removed within twenty-four (24) hours after the collection day.
- (b) The CONTRACTOR shall provide, at no additional charge, special collection of Bulky Waste and Bundles of Green Waste upon request of any customer; provided however, that CONTRACTOR shall not be required to make more than 70 such special collections per day.
- (c) Collection of Residential Refuse from multi-family units shall be provided either on a basis equivalent to curbside or alley single family service, or will be provided to central location(s) throughout a multi-family residential complex. Collection of Residential Refuse contained in Barrels at a central location(s) may be subject to a rate different than single family collection rates and limited to multi-family complexes with 3 or fewer

units. These rates are set forth in Exhibit A and will be adjusted in accordance with Exhibit B.

Section 3.02 Location of Barrels, Bulky Waste Items and Bundles of Green Waste for Collection

Each Barrel, Bulky Waste Item and Bundle of Green Waste shall be placed at curbside for collection. Curbside refers to that portion of right-of-way adjacent to paved or traveled CITY roadways (including alleys). Barrels, Bulky Waste and Bundles of Green Waste shall be placed as close to the roadway as practicable, against the curb, without interfering with or endangering the movement of vehicles or pedestrians. When construction work is being performed in the right-of-way, Barrels, Bulky Waste Items and Bundles of Green Waste shall be placed as close as practicable to an access point for the collection vehicle. CONTRACTOR may decline to collect any Barrel, Bulky Waste Item and Bundle of Green Waste not so placed, or that is contaminated, and shall place a notice on any item not collected explaining the reason for non-collection.

Section 3.03 Automated Refuse, Green Waste, and Recycling Service

The CONTRACTOR shall provide automated refuse, green waste, and recycling collection service for Residential Units using Barrels to dispose of refuse, and shall not impose any fee or charge for Barrel delivery except as provided herein. The program consists of the following responsibilities:

- (a) CONTRACTOR shall supply and distribute to each Residential Unit one black, 90-gallon Barrel for the collection of Residential Refuse, one blue, 90-gallon Barrel for the collection of Recyclable Materials and one green, 90-gallon Barrel for the collection of Green Waste. As an alternative, low income Residential Unit customers, as determined by the City, can elect to receive a black 30-gallon or 60-gallon Barrel for the collection of Residential Refuse. In the event, however, that more than five percent (5%) of the Residential Unit customers in City request 30-gallon or 60-gallon Barrels, CONTRACTOR and CITY will meet and confer to agree upon pricing for additional 30-gallon and 60-gallon Barrels above the five percent threshold. Condominium units and other multi-family units receiving Barrel service on a door-to-door basis, shall be provided, at the customer's option, with either two 60-gallon Barrels, one black, one blue and one 90-gallon green or three 90-gallon Barrels, provided that the Barrel size and number to be distributed to multi-family complexes of 3 or fewer units will be determined jointly by CONTRACTOR and CITY working with the owners and occupants of these complexes of 3 or fewer units. Other multi-family complexes of 4 or more units requiring collection service at a central location(s) shall be assessed on an individual basis and be provided with Bins to meet their individual needs.
- (b) CONTRACTOR shall provide automated curbside collection service for the collection of Residential Refuse, Green Waste and Recyclable Materials to each Residential Unit one (1) time per week. Barrels shall be placed at curbside not before twenty-four (24) hours prior to scheduled collection day (but before 6:00 a.m.) and removed within twenty-four (24) hours after collection day.

- (c) The CONTRACTOR shall collect the Recyclable Materials which are identified in Exhibit C. The CITY shall have the right to initiate an amendment to this listing of materials. CITY and CONTRACTOR shall mutually agree on the amended list of materials to be collected with both parties also agreeing on arrangements to educate customers about the added materials, how collection of these materials is to be accomplished, and any additional collection charges for the added materials. CONTRACTOR shall collect the additional materials pursuant to mutual agreement on these points.
- (d) Upon collection of Recyclable Materials, CONTRACTOR shall transport said materials to one of CONTRACTOR's facilities or to a subcontracted facility licensed to receive and process such materials and equipped to process such materials in an effort to obtain the diversion rate provided in this Franchise Agreement.
- (e) CONTRACTOR shall collect Green Waste which is identified in Exhibit D. The CITY shall have the right to initiate an amendment to this listing of materials. The CITY and CONTRACTOR shall mutually agree on the amended list of materials to be collected with both parties also agreeing on arrangements to educate the customers about the added materials, how collection of these materials is to be accomplished, and any additional collection charges for the added materials. CONTRACTOR shall collect the additional materials pursuant to mutual agreement on these points.
- (f) Upon collection of Green Waste, CONTRACTOR shall transport said materials to Puente Hills Landfill for use by the landfill as alternative daily cover (ADC) unless it is beyond the CONTRACTOR's ability to do so. It is the responsibility of the CONTRACTOR to notify the CITY within thirty (30) days after there is any indication that the Disposal Site or Green Waste Processing Center may not be accessible to the CONTRACTOR for deposit of Green Waste collected from Covina. Upon closure of the Puente Hills Landfill, Green Waste shall be processed and composted by CONTRACTOR at one of its facilities. The disposal rate for Green Waste processed at CONTRACTOR's facilities shall be between the average to lowest price per ton charged for comparable processing at CONTRACTOR's facilities.
- (g) CONTRACTOR shall provide Barrel rollout service for disabled customers at no charge. These customers shall be defined as persons who qualify and receive a written letter from their physician indicating that they are physically unable to roll out Barrels used for Residential Refuse, Green Waste, and Recyclable Materials collection. CONTRACTOR shall provide free manual roll out services for this category of residents due to their physical limitations. For customers not qualified for free roll out service, CONTRACTOR shall provide roll out service to those who order and agree to pay for such service. The monthly charge for such services is set forth in Exhibit A of this Franchise Agreement. The following conditions shall apply to all pay roll out services:
  - (i) Barrels must be accessible and any debris surrounding Barrels will not be picked up by CONTRACTOR's personnel.



- (ii) Roll out service shall be available at rates specified in Exhibit A for Barrels located fifty (50) feet or less from truck pick-up point (it is understood that this distance will cover the majority of households requesting this service).
- (iii) Rates for roll out service as established in Exhibit A shall be subject to a rate adjustment pursuant to Exhibit B.
- (h) If any Barrel is not used by the customer in the manner specified by the automated collection program, the CONTRACTOR shall use a bilingual (English, Spanish) red tag to advise the customer of proper use.
- (i) CITY and CONTRACTOR shall work together to prevent the frequent change in number and size of Barrels issued to one Residential Unit or to a multi-family complex. This may involve the application of a fee for Barrel delivery. The amount of the fee, and criteria for its application, must be approved by the CITY prior to it being applied.

#### ARTICLE IV. COMMERCIAL AND INDUSTRIAL COLLECTION

##### Section 4.01 Service Provided

At a minimum, CONTRACTOR shall offer and provide upon request to all Residential, Commercial and Industrial Units, Barrel collection service at least one (1) time per week, and Bin collection service in Bin size capacities of one-and-a half (1.5) cubic yards, two (2) cubic yards and three (3) cubic yards, and collection service to each customer for each Bin size at a frequency of one (1) time per week, two (2) times per week, three (3) times per week, four (4) times per week, five (5) times per week, and six (6) times per week. Up to thirty (30) cubic yard Roll-Off Bin service shall also be provided upon request. All Producers shall have a right to change Bin sizes and frequency of service upon thirty (30) days notice and CONTRACTOR shall provide such service and adjust the customer rate to correspond with the service level changes according to the rates established in this Franchise Agreement. If a multi-family complex of 3 or fewer units elects to have Barrel collection service, the rate will be established in accordance with other rates as set forth in Exhibit A or as otherwise modified.

##### Section 4.02 Location of Bins for Collection

CONTRACTOR shall provide Bins for Residential, Commercial and Industrial Units whenever customers request their use, and shall not impose any fee or charge for delivery of such Bins, other than in connection with temporary or roll-off services. Each Bin shall be placed in an accessible, outside location on a hard surface according to individual agreement. CONTRACTOR may decline to collect Refuse in Bins not so placed.

##### Section 4.03 Material Recovery Facility Processing

- (a) The CONTRACTOR will process the entire commercial and industrial waste stream through its Material Recovery Facility (MRF).
- (b) The CONTRACTOR will provide a monthly report in the form attached hereto as Exhibit F within forty-five (45) days after the end of each month.

- (c) The rates for processing the commercial and industrial waste stream through the CONTRACTOR'S MRF, which include collection, processing, transportation and disposal, are attached to this Franchise Agreement as Exhibit A.

## ARTICLE V. RECYCLING SERVICES

### Section 5.01 Scope of Services

- (a) Upon receipt of Recyclable Materials, CONTRACTOR shall perform sorting and baling functions appropriate to ensure that the Recyclable Materials recovered are segregated into marketable units. That is, CONTRACTOR shall process Recyclable Materials such that the materials are in a form desirable to recycling Dealers, Brokers and End Users as Secondary Materials or that can be Reused.
- (b) After CONTRACTOR performs sorting and baling functions, CONTRACTOR shall market or sell Recyclable Materials to Dealers, Brokers and End Users as Secondary Materials or as Reuse materials or items. CONTRACTOR shall not knowingly allow any of its employees, agents or buyers such as Dealers, Brokers, or End Users to dispose of any of the CITY'S Recyclable Materials as Residential Refuse into a Landfill.
- (c) CONTRACTOR shall ensure that all Residential Refuse and Residue, which may be inadvertently discarded by Residential Unit occupants along with Recyclable Materials, is properly disposed of at a Landfill in accordance with all state and local laws and regulations.
- (d) It is the intention of CONTRACTOR to provide processing and disposal services for Recyclable Materials collected from Residential Units; Hazardous Wastes are excluded from the scope of work included in this Franchise Agreement.
- (e) The CITY and the CONTRACTOR may make additions to the Scope of Services as noted in this Section 5.01 by mutual written agreement only.

### Section 5.02 Standards of Performance

CONTRACTOR and CITY agree as follows:

- (a) During the term of this Franchise Agreement, adequate facility processing capacity shall be available to accommodate the CITY's generation of Recyclable Materials.
- (b) CONTRACTOR shall strictly observe and protect the rights of privacy of the residents of the CITY, and shall use commercially reasonable efforts to comply with all applicable laws and regulations concerning privacy. That is, information on Recyclable Materials which identifies individual CITY residents shall not be revealed to any person, governmental unit, private agency, or company, unless upon the authority of a court of law, by statute, or upon valid authorization of the CITY's resident.
- (c) The reports provided pursuant to Section 11.03 on amount of Recyclable Materials recovered by CONTRACTOR from the CITY shall be based on accurate samples of the

CITY's Recyclable Materials loads. Loads are to be sampled and reported to the CITY at least one time per year or more frequently if requested by CITY. CONTRACTOR is required to notify the CITY of the time and location of the sampling thirty (30) days in advance and shall accommodate the CITY's involvement in the sampling process if requested.

## ARTICLE VI. COLLECTION AT CITY FACILITIES

### Section 6.01 Service Provided

- (a) CONTRACTOR shall provide free of charge collection services for all Refuse (Residential, Commercial and Industrial as defined herein) for all CITY facilities (including by way of example, but not limited to, City Hall, City Yard, Parks, Police and Fire Building, Library, Recycle Center, Joslyn Center, Girl Scout House and CITY street receptacles) and shall provide necessary Bins as required, free of charge, in accordance with a collection schedule to be established by CITY's City Manager or his designee.
- (b) CONTRACTOR shall provide free of charge collection of separated green waste at CITY's Maintenance Yard. CONTRACTOR shall report to the CITY where the materials are taken and the tonnage of the materials. This information shall be reported to the CITY with the information as required in Section 8.01.
- (c) CONTRACTOR shall provide free of charge up to thirty-five (35) Bins annually to the CITY to be used as directed by the CITY for communitywide and neighborhood clean up events to be held in the CITY at various times throughout the year scheduled at least two weeks prior to the date such Bins are needed.
- (d) CONTRACTOR shall provide an annual contribution of ten thousand dollars (\$10,000) towards a project in the CITY as directed by the CITY that shall promote beautification or cleanliness in the CITY.

## ARTICLE VII. BULKY WASTE COLLECTION

CONTRACTOR shall collect Bulky Waste and Bundles from Residential Units (including multifamily Residential Units) at curbside on an on-call basis and free of charge, and deliver these materials to Nondisposal Facilities, Materials Recovery Facilities, or Recycling Processing Centers for recovery of Recyclable Materials when it is reasonable to do so; otherwise the materials will be delivered to a Disposal Site. The following conditions shall apply:

### Section 7.01 Customer Service

(i) Bulky Waste and Bundles are to be collected on a Residential Unit's regularly scheduled collection day or, in the case of a multifamily Residential Unit with Bin service, on the residential collection day for the residential district in which the multifamily Residential Unit is located; (ii) CONTRACTOR is to be notified by customer twenty-four (24) hours in advance that items need to be collected; otherwise items will be collected the following regularly scheduled collection day; (iii) the number of pick-ups per day shall be limited to seventy (70) and the items

per household shall be limited to a volume equivalent to approximately two (2.0) cubic yards. Customers requesting Bulky Waste or Bundle collection on an excessively frequent basis, e.g., weekly or biweekly, shall not be continually serviced.

Section 7.02 Restrictions

(i) CONTRACTOR may use trucks used to service the City of West Covina and shall be allowed to commingle Bulky Waste items or Bundles collected in West Covina with Bulky Waste items and Bundles collected in the City of Covina; (ii) Section 10.02(c) of this Franchise Agreement shall apply to the collection of Bulky Waste and Bundles from Residential Units with tonnage of these materials reported based on a daily distribution of number of pick-ups, Covina vis-a-vis West Covina; (iii) No pick-ups beyond that allowed through this section shall be provided by CONTRACTOR.

Section 7.03 Reporting

CONTRACTOR shall report to the CITY the number of monthly pick-ups and the amount of Bulky Waste and Bundles disposed of on a monthly basis pursuant to Section 11.01 of this Franchise Agreement.

Section 7.04 Compliance With Applicable Laws

CONTRACTOR shall comply with the metallic discards legislation, Assembly Bill 1760, in handling of Bulky Waste items. CONTRACTOR shall also use commercially reasonable efforts to be in material compliance with all other applicable laws, regulations, and/or orders promulgated, adopted, or enforced by any governmental agency.

ARTICLE VIII. CONSTRUCTION WASTE AND DEMOLITION DEBRIS

CONTRACTOR shall provide for the collection, transportation, processing and disposal of Construction and Demolition Waste collected from projects occurring on private property. CONTRACTOR shall provide such containers, bins, impoundments or vehicles as agreed with the Customer. The processing rate per ton will be between the average to lowest cost for comparable processing charged by CONTRACTOR in Los Angeles County.

ARTICLE IX. STREET SWEEPING SERVICES

CONTRACTOR shall sweep CITY streets in accordance with the specifications set forth in Exhibit E attached hereto and incorporated by this reference. CITY shall pay to CONTRACTOR the fees for all street sweeping services in accordance with Exhibit A attached hereto and incorporated by this reference.

ARTICLE X. OPERATION

Section 10.01 Hours of Operation

Collection of Refuse shall not start before 6 a.m. or continue after 6 p.m. on the same day. Exceptions to collection hours shall be effected only upon the mutual agreement of the

CITY and CONTRACTOR, or on a one-time basis when CONTRACTOR reasonably determines that an exception is necessary in order to complete collection on an existing collection route due to unusual circumstances.

Section 10.02 Routes of Collection

Collection routes shall be established by the CONTRACTOR for the following Producers: (1) Residential Units disposing of Residential Refuse using Barrels and Bundles; (2) Residential Units discarding Recyclable Materials using Barrels; (3) Residential Units discarding Green Waste using Barrels and (4) Residential, Commercial and, Industrial Units using Bins to dispose of Refuse.

- (a) For Residential Units receiving Barrel collection service, CONTRACTOR shall designate geographic areas within the CITY limits and identify households, by street address, to be served within the designated areas as well as the service frequency and day of week of service. Each route so designated shall be assigned to specified collection vehicles which will be identified by number. CONTRACTOR has submitted a map and the route information, as specified herein, and shall continue to do so either at the request of the CITY or when there are major changes in such information in order to denote changes in geographical areas served, households served and any changes in collection vehicle assignments. CONTRACTOR shall provide this information separately for Refuse collection routes and Recycling Service routes. CONTRACTOR may be forced to reroute trucks or use trucks from one route to service another route due to circumstances outside the control of the CONTRACTOR.
- (b) CONTRACTOR shall establish collection routes for Residential Units, Commercial Units, and Industrial Units receiving Bin service, separately from Residential Barrel service customers. Each route so designated shall be assigned to specified collection vehicles which will be identified by number. For all Bin routes, the customer name, address, frequency of service, and size of Bin for each Bin shall be reported to the CITY. CONTRACTOR shall submit this information in order to denote changes in truck assignments and other route information. The information to be provided shall be formatted similarly as in the following example:

MONDAY

Route 1, Truck 46

<u>Truck #</u>	<u>Day</u>	<u>Customer</u>	<u>Address</u>	<u>Frequency</u> <u>Week</u>	<u>Bin Sz</u> <u>Yds</u>
46	Mon	Customer A	St Address	5	3.0
46	Mon	Customer B	St Address	3	3.0
46	Mon	Customer C	St Address	1	1.5

Route 2, Truck 47

<u>Truck #</u>	<u>Day</u>	<u>Customer</u>	<u>Address</u>	<u>Frequency</u> <u>Week</u>	<u>Bin Sz</u> <u>Yds</u>
47	Mon	Customer D	St Address	5	3.0
47	Mon	Customer D	St Address	5	3.0
47	Mon	Customer E	St Address	1	1.5

Route 3, Truck 46

<u>Truck #</u>	<u>Day</u>	<u>Customer</u>	<u>Address</u>	<u>Frequency</u> <u>Week</u>	<u>Bin Sz</u> <u>Yds</u>
46	Tue	Customer A	St Address	5	3.0
46	Tue	Customer F	St Address	3	3.0
46	Tue	Customer G	St Address	1	1.5

Route 4, Truck 47

<u>Truck #</u>	<u>Day</u>	<u>Customer</u>	<u>Address</u>	<u>Frequency</u> <u>Week</u>	<u>Bin Sz</u> <u>Yds</u>
47	Tue	Customer D	St Address	5	3.0
47	Tue	Customer D	St Address	5	3.0
47	Tue	Customer H	St Address	1	1.5

A listing of all commercial Barrel and Bin customers with routine or regular monthly service shall be provided to the CITY upon request. For each Bin customer, bin size and frequency of service shall be provided. One of the purposes of this information will be to comply with AB 939.

- (c) Specified and identified collection vehicles containing Residential Refuse from Barrel service customers are not to collect Refuse from Residential Units, Commercial Units, or Industrial Units, using Bins to dispose of their Refuse, and vice versa. Any collection by route assigned vehicles of any Refuse, Residential or otherwise, not within the CITY'S jurisdiction is prohibited under this Franchise Agreement.
- (d) CONTRACTOR shall cooperate with the CITY on establishing separate routes serving Residential Units, Commercial Units and Industrial Units, for the purpose of reporting disposal amounts from these categories of Producers. As a fallback measure, the disposal weights from these Producers may be calculated on the basis of volume.
- (e) CITY reserves the right to reasonably change the configuration of any route. The CONTRACTOR shall cooperate and give written notice to the affected Refuse customers of any changes by the CITY or the CONTRACTOR. One truck may service multiple routes due to the volume of residential refuse or green waste collected on a particular day.

### Section 10.03 Holidays

The following shall be holidays for purposes of this Franchise Agreement:

New Year's Day  
Memorial Day  
Independence Day  
Labor Day  
Thanksgiving Day  
Christmas Day

CONTRACTOR may decide to observe any or all of the above mentioned holidays by suspension of collection service on the holiday, but such decision in no manner relieves CONTRACTOR of its obligation to provide collection service at least once per week. In the event that CONTRACTOR elects to suspend collection service on any holiday, CONTRACTOR shall provide service on the following day, and shall not impose any fee or charge for overfilled Bins for such postponed collection.

### Section 10.04 Public Access and Service Complaints

- (a) CONTRACTOR's office hours shall be, at a minimum, from 8:00 a.m. to 5:00 p.m., Monday through Friday, and 8:00 a.m. to 12:00 p.m. noon on Saturday. A representative of CONTRACTOR shall be available during office hours for communication with the public at CONTRACTOR's principal office. In the event that a customer complaint cannot be rectified during normal business hours over the telephone, a representative of CONTRACTOR shall agree to meet with the customer at a location agreeable to CONTRACTOR and the customer which is located within the CITY. Notwithstanding the foregoing, any CITY facility shall be deemed to be agreeable to CONTRACTOR for purposes of this paragraph. Normal office hours telephone numbers shall either be a local or toll free call.
- (b) All customer complaints shall be directed to CONTRACTOR. CONTRACTOR shall record all complaints received by mail, by telephone, or in person (including date, name, address of complainant, and nature of complaint). CONTRACTOR shall use its best efforts to resolve all complaints by close of business of the second business day following the date on which such complaint is received. Service complaints may be investigated by the City Manager or the City Manager's designee. If the complaint cannot be resolved by the City Manager's designee, the matter may be referred to the City Manager for review.
- (c) CONTRACTOR shall maintain records listing the date of customer complaints, the customer, describing the nature of the complaint or request, and when and what action was taken by the CONTRACTOR to resolve the complaint. All such records shall be maintained for a period of one year and shall be available for inspection by CITY. CONTRACTOR shall prepare monthly summaries of customer complaints. The summaries shall be available and delivered upon request to the City Manager or the City Manager's designated representative.

#### Section 10.05 Collection Equipment

- (a) The CONTRACTOR shall provide an adequate number of vehicles for regular collection services. All vehicles shall be registered with the Department of Motor Vehicles of the State of California, shall be kept clean, safe, and in good repair and shall keep all collected materials covered during transportation. Such vehicles shall be kept and maintained free from any leaks, including, without limitation, leaks of hydraulic oil, brake fluid, engine oil, fuel, or transmission fluid. Each vehicle shall have clearly visible on each side the identity and telephone number of the CONTRACTOR. All regular collection vehicles utilized in the CITY shall be painted a uniform color and shall have the words COVINA DISPOSAL prominently painted on two sides of the vehicle. All Bins shall be painted a uniform color also, and repainted, repaired, and/or cleaned as necessary to avoid the production of offensive odors or a dilapidated or rusted appearance.
- (b) During the term of this Franchise Agreement, CONTRACTOR shall not introduce into service in Covina vehicles previously used elsewhere that are not “alternative-fuel heavy-duty vehicles” or “pilot-ignition heavy-duty vehicles,” as those terms are defined in Rule 1193 adopted by the South Coast Air Quality Management District, as it may be amended. Notwithstanding the foregoing, CONTRACTOR may use vehicles not meeting the criteria in the preceding sentence on a temporary basis, not to exceed thirty (30) days. In providing services under this Agreement, CONTRACTOR shall comply in all respects with: (i) Rule 1193; (ii) the “Final Regulation Order” adopted by the California Air Resources Board regarding diesel particulate matter control measures for solid waste collection vehicles, including all implementing regulations, as they may be amended; and (iii) all other applicable rules, statutes, orders, or other forms of mandate issued or adopted by a government agency with jurisdiction over air quality. Upon request from CITY, CONTRACTOR shall provide records of all collection vehicles in service in Covina, including fuel source and engine and chassis numbers. In addition to any indemnification obligations set forth elsewhere in this Agreement, CONTRACTOR shall defend, indemnify, and hold harmless CITY against any fines, penalties, losses, or claims arising out of CONTRACTOR’s failure to comply with this paragraph.

#### Section 10.06 Office

The CONTRACTOR shall maintain an office or such other facilities through which it can be contacted within a reasonable distance to provide local service. It shall be equipped with sufficient telephones and shall have a responsible person in charge from 8:00 a.m. to 5:00 p.m. on regular collection days. CONTRACTOR shall provide fifteen (15) days notice in accordance with Section 20.13 prior to any changes of office location or mailing address.

#### Section 10.07 Hauling

- (a) In order to prevent drainage into the storm drain system and to prevent litter from entering streets and storm drains and comply with the National Pollutant Discharge Elimination System (NPDES) Municipal Permit, refuse hauled by the CONTRACTOR



shall be so contained, tied or enclosed that leaking, spilling or blowing onto the streets, alleys, roadways, and gutters is reasonably prevented.

- (b) CONTRACTOR shall not cause or permit the private property or CITY streets or property to be littered with trash or other debris because of CONTRACTOR's activities under this Franchise Agreement. CONTRACTOR shall clean up any such trash or debris in the immediate vicinity of any Barrel, Bin and/or storage area that results from collection services under this Franchise Agreement. In the event of repeated litter not caused by CONTRACTOR directly, CONTRACTOR shall first notify the customer and, if litter continues, CONTRACTOR may request the CITY's assistance to rectify the situation.

#### Section 10.08 Disposal

All Refuse collected for disposal by the CONTRACTOR shall be hauled to CONTRACTOR-selected Disposal Sites. The charge for disposal shall be included in the rate set forth in this Franchise Agreement for each Residential, Commercial and industrial Unit serviced by the CONTRACTOR.

#### Section 10.09 Notification

The CONTRACTOR shall notify all Commercial and Industrial Producers about complaint procedures, bin rates, regulations, and day(s) for scheduled Refuse collection. The CONTRACTOR shall also notify all Residential Refuse Producers about complaint procedures, residential rates and days for scheduled Refuse collection.

#### Section 10.10 Point of Contact

All dealings, contacts, etc., between the CONTRACTOR and the CITY shall be directed by the CONTRACTOR to CITY'S City Manager or his or her designee and by the CITY to CONTRACTOR'S Executive Vice President.

#### Section 10.11 Impoundment of Unauthorized Bins

In the event an unauthorized provider of solid waste services sets out Bins anywhere in the CITY, in violation of the exclusivity provision set forth in Article 2.00 of this Franchise Agreement, the CITY may delegate to CONTRACTOR the authority to remove and impound such Bins upon terms to be agreed upon by the CITY and CONTRACTOR at such time. CONTRACTOR agrees to indemnify and hold CITY harmless against all claims and causes of action arising out of CONTRACTOR's failure to comply with CITY's Municipal Code in connection with impounding any such Bins.

#### Section 10.12 Food Waste Pilot Program

CONTRACTOR shall initiate a commercial food waste pilot program for the disposal or composting of food waste from restaurants and other commercial food service businesses located in the CITY. Prior to the initiation of such program, the CITY and CONTRACTOR shall agree upon the terms of the pilot program. At the conclusion of the pilot program, CITY and

CONTRACTOR shall meet and confer regarding the continuation and/or expansion of the program.

## ARTICLE XI. REPORTING AND ROUTE AUDITING

### Section 11.01 Monthly Reports of Disposal

- (a) In order to comply with AB 939, related laws and regulations, to properly manage waste reduction programs, the CONTRACTOR shall provide monthly reports by the 20th of each month following the reporting month on the amount of waste collected, diverted, and disposed from all Barrel and Bin service customers, including (1) Residential Units with Barrel service, (2) Residential Units, Commercial Units and industrial Units with Bin service. The information provided for each category of customers shall reflect the Disposal Site destination point where the Refuse was taken and disposed. The tonnage will be included in this monthly report and will be totaled for each category of refuse customer. This report shall be formatted as set forth in Exhibit F attached hereto.
- (b) The refusal, failure, or neglect of the CONTRACTOR to file any of the reports required or the inclusion of any material false or misleading statement or representation made knowingly by the CONTRACTOR in such report is prohibited under this Franchise Agreement.

### Section 11.02 Route Auditing

In order to verify reports of disposal amounts collected by CONTRACTOR from each designated route, the CITY shall be entitled to conduct an audit of any designated route upon demand. The audit demand will be made by the CITY by telephone forty-eight (48) hours prior to the regularly scheduled collection day of the designated route. Telephone notice shall be followed by written notice and facsimile transmission (FAX) to the CONTRACTOR. The audit demand shall entitle the CITY to conduct a physical route audit of any or all designated routes for the purposes of verifying customers served, disposal amounts collected, and any other information as may be deemed necessary and beneficial to the CITY or Producers including identification of excess service. The standard route audit will include minimally: (1) verification that the collection vehicle is empty when beginning the route; (2) verification of the addresses which are served by the designated collection vehicle; (3) verification of the landfill to which the refuse is taken; and (4) the quantity of refuse in tons collected from the designated route.

### Section 11.03 Reporting on Processing Costs and Recyclable Materials Value

CONTRACTOR shall provide to the CITY a monthly report which reflects (1) a breakdown of the type of Recyclable Materials recovered from the CITY; (2) the total pounds (lbs.) of each Recyclable Materials type; (3) the value of each Recyclable Materials type on a per ton basis (the California Redemption Value (CRV) for all appropriate commodity items shall also be included in the commodity market value on a per ton basis); (4) the total value of each Recyclable Materials type based on the number of pounds recovered; (5) the total value of all Recyclable Materials recovered (Gross Commodity Market Proceeds); and (6) the amount of the Residue and the cost to handle and dispose of this material. The report shall provide CITY with the net monthly revenue/cost for processing the total amount of Recyclable Materials processed

through CONTRACTOR's Material Recovery Facility. The report shall be due to the CITY by the twenty-fifth (25<sup>th</sup>) day of the month following the reporting month. The report shall be formatted similarly to the one that appears in Exhibit G.

## ARTICLE XII. COMPLAINTS AND PERFORMANCE REVIEW

### Section 12.01 Resolution of Disputed Customer Complaints

- (a) The CONTRACTOR shall notify all new customers of the complaint arbitration procedure set forth below at the time they apply for or are provided service.
- (b) A customer dissatisfied with CONTRACTOR's decision regarding a complaint may ask the CITY to review the complaint. To obtain this review, the customer must request CITY review within thirty (30) days of receipt of CONTRACTOR's response to the complaint or within forty-five (45) days of submitting the complaint to the CONTRACTOR, if the CONTRACTOR has failed to respond to the complaint. The CITY may extend the time to request its review for good cause.
- (c) Before reviewing the complaint, the City Manager shall refer it to the CONTRACTOR. If the CONTRACTOR fails to cure the complaint within ten (10) days, the City Manager shall review the customer's complaint and determine if further action is warranted. The City Manager may request written statements from the CONTRACTOR and customer, and/or oral presentations.
- (d) The City Manager shall determine if the customer's complaint is justified, and if so, what remedy, if any, shall be imposed. The remedy under this section shall be limited to a rebate of customer charges related to the period of breach of any of terms of this Franchise Agreement or a penalty of up to \$100.00 for any single event or series of related events, or any actual damages, provided that the CITY's remedies shall not be so limited to the extent that the customer's complaint reveals a material breach of this Franchise Agreement by CONTRACTOR.
- (e) The City Manager may delegate these duties to a designee. The decision of the City Manager or his designee shall be final on any matter under Five Thousand Dollars (\$5,000.00). In the event of a decision on a matter awarding Five Thousand Dollars (\$5,000.00) or more, CONTRACTOR may seek review pursuant to Section 12.04.

### Section 12.02 Review of Performance, Quality of Service, and Franchise Compliance

- (a) At CITY's sole option, within ninety (90) days of the anniversary of the effective date of this Franchise Agreement, and each year thereafter throughout the term of the Franchise Agreement, CITY may hold a public hearing at which the CONTRACTOR shall be present and shall participate, to review the CONTRACTOR's performance and quality of service. The reports required by this Franchise Agreement regarding customer complaints shall be utilized as the 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,

- (b) Within thirty (30) days after the conclusion of the public hearing, CITY shall issue a report with respect to the adequacy of performance and quality of service. If any noncompliance with the franchise is found, CITY may direct CONTRACTOR to correct the inadequacies in accordance with Sections 12.03 and 12.04.

Section 12.03 Imposition of Damages or Termination

- (a) If the City Manager determines that CONTRACTOR's performance pursuant to this Franchise Agreement has not been in conformity with reasonable industry standards which are obtainable in similar cities in Southern California, the provisions of this Franchise Agreement, the requirements of Chapter 8.08, including but not limited to, cooperating with the CITY and providing information to allow the CITY to comply with AB 939 (as to the waste stream subject to this Franchise Agreement) or any other applicable Federal, State, or local law or regulation, including but not limited to the laws governing transfer, storage or disposal of Special Wastes, the City Manager may advise CONTRACTOR in writing of such deficiencies. The City Manager may, in such written instrument, set a reasonable time within which correction of all such deficiencies is to be made. Unless otherwise specified, a reasonable time for correction shall be sixty (60) days from the receipt by the CONTRACTOR of such written notice. The City Manager shall review the CONTRACTOR's response and refer the matter to the City Council or decide the matter and notify the CONTRACTOR of that decision, in writing. A decision or order of the City Manager shall be final and binding on CONTRACTOR if the CONTRACTOR fails to file a "Notice of Appeal" with the City Manager within thirty (30) days of receipt of the City Manager's decision. Within ten (10) working days of receipt of a Notice of Appeal, the City Manager shall refer the appeal to the City Council for proceedings in accordance with Section 12.03, or refer the matter to a hearing officer as provided in Section 12.04.
- (b) The City Council, in such case, shall set the matter for hearing. The City Council shall give CONTRACTOR, and any other person requesting the same, fourteen (14) days written notice of the time and place of the hearing. At the hearing, the City Council shall consider the report of the City Manager indicating the deficiencies, and shall give the CONTRACTOR, or its representatives and any other interested person, a reasonable opportunity to be heard.
- (c) Based on the evidence presented at the public hearing, the Council shall determine by Resolution whether the Franchise Agreement should be terminated or liquidated damages imposed. If, based upon the record, the City Council determines that the performance of CONTRACTOR is in breach of any material term of this Franchise Agreement or constitutes a material violation of any provision of any applicable Federal, State, or local statute or regulation as it directly relates to refuse/recycling operations in the CITY, the City Council, in the exercise of its sole discretion, may terminate the Franchise Agreement or impose liquidated damages, as defined below. The decision of the City Council shall be final and conclusive, subject to referral by CITY or by CONTRACTOR of the matter for an administrative hearing pursuant to Section 12.04. CONTRACTOR's performance under this Franchise Agreement is not excused during the period of time

prior to the City Council's final determination as to whether such performance is deficient.

- (d) The right of termination or to impose liquidated damages is in addition to any other rights of CITY upon a failure of CONTRACTOR to perform its obligations under this Franchise Agreement.
- (e) The CITY further reserves the right to terminate CONTRACTOR's franchise or impose liquidated damages in the event of any of the following:
  - (i) If the CONTRACTOR practices, or attempts to practice, any fraud or deceit upon the CITY as determined pursuant to administrative hearing procedures set forth herein.
  - (ii) If the CONTRACTOR becomes insolvent, unable, or unwilling to pay its debts, or upon listing of an order for relief in favor of CONTRACTOR in a bankruptcy proceeding.
  - (iii) If the CONTRACTOR fails to provide or maintain in full force and effect the worker's compensation, liability, indemnification coverage, or cash bonds as required by the Franchise Agreement.
  - (iv) If the CONTRACTOR willfully violates any orders or rulings of any regulatory body having jurisdiction over the CONTRACTOR relative to this Franchise Agreement, provided that the CONTRACTOR may contest any such orders or ruling by appropriate proceedings conducted in good faith, in which case no breach of the franchise shall be deemed to have occurred.
  - (v) If the CONTRACTOR ceases to provide services as required under this Franchise Agreement over all or a substantial portion of its Franchise Area for a period of seven (7) days or more, for any reason within the control of CONTRACTOR.
  - (vi) If the CONTRACTOR willfully fails to make any payments required under the Franchise Agreement and/or refuses to provide CITY with required information, reports, and/or test results in a reasonable timely manner as provided in the Franchise Agreement.
  - (vii) Any other act or omission by the CONTRACTOR which materially violates the terms, conditions, or requirements of this Franchise Agreement, Chapter 8.08, as it may be amended from time to time or any order, directive, rule, or regulation issued thereunder and which is not corrected or remedied within the time set in the written notice of the violation or, if the CONTRACTOR cannot reasonably correct or remedy the breach within the time set forth in such notice, if the CONTRACTOR should fail to commence to correct or remedy such violation within the time set forth in such notice and diligently effect such correction or remedy thereafter.
- (f) Liquidated Damages

- (i) The CITY finds, and the CONTRACTOR agrees, that as of the time of the execution of this Franchise Agreement, it is impractical, if not impossible to reasonably ascertain the extent of damages which shall be incurred by the CITY as a result of a material breach by CONTRACTOR of its obligations under this Franchise Agreement. The factors relating to the impracticability of ascertaining damages include, but are not limited to, the fact that: (1) substantial damage results to members of the public who are denied services or denied quality or reliable service; (2) such breaches cause inconvenience, anxiety, frustration, and deprivation of the benefits of the Franchise Agreement to individual members of the general public for whose benefit this Franchise Agreement exists, in subjective ways and in varying degrees of intensity which are incapable of measurement in precise monetary terms; (3) that services might be available at substantially lower costs than alternative services, and the monetary loss resulting from denial of services or denial of quality or reliable services is impossible to calculate in precise monetary terms; and (4) the termination of this Franchise Agreement for such breaches, and other remedies are, at best, a means of future correction and not remedies which make the public whole for the past breaches.
- (ii) Accordingly, the City Council may, in its discretion, assess liquidated damages not to exceed the sum of Seven Hundred and Fifty Dollars (\$750.00) per day, for each calendar day that service is not provided by CONTRACTOR, except for service interruptions beyond control of CONTRACTOR, in accordance with this Franchise Agreement as noticed by CITY. The amount of the liquidated damages shall be increased by the past year's consumer price index for the Los Angeles-Anaheim-Riverside Area on April 1 and effective July 1 of each year. In addition, the Council may order the assessment against the performance bond required by Section 18.01, the termination of the Franchise Agreement or both and shall have a maximum limit of Fifty Thousand Dollars (\$50,000).
- (iii) The CITY finds, and the CONTRACTOR acknowledges and agrees, that the above described liquidated damages provisions represent a reasonable sum in light of all the circumstances. Said liquidated damages sums shall be applicable to each calendar day of delay during which CONTRACTOR has been found by the City Council to be in material default pursuant to this Section. The CONTRACTOR shall pay any liquidated damages assessed by the City Council within ten (10) days after they are assessed and upon payment, such assessment shall be in lieu of any actual damages.

#### Section 12.04 Administrative Hearing Procedures

- (a) Should CONTRACTOR contend that the CITY is in breach of this Franchise Agreement, it shall file a request with the City Manager for an administrative hearing on the allegation.
- (b) If either the City Manager, the City Council, or CONTRACTOR refers a matter to a hearing officer, or if the CONTRACTOR should allege a breach of the franchise by the CITY, CITY and CONTRACTOR shall mutually agree on a hearing officer. If agreement is not reached within twenty (20) working days of the filing of the allegation

of breach, then CONTRACTOR shall select the hearing officer from a list of three potential hearing officers who are retired California Superior Court judges or Appellate Court justices, none of whom are related to the parties, prepared by the City Manager and approved by the City Council.

- (c) The hearing shall be conducted according to California Code of Civil Procedure Section 1280, et seq. The exclusive venue shall be in Los Angeles County, California. A hearing officer to whom a matter is referred shall have the authority to (i) order the CITY or the CONTRACTOR to undertake remedial action to cure the breach and to prevent occurrence of similar breaches in the future; (ii) assess damages and/or levy a penalty upon the CONTRACTOR consistent with the terms of this Franchise Agreement; or (iii) find there has been no breach. If the hearing officer finds there has been no breach, such a decision precludes the CITY from conducting a default hearing. For any occurrence or series of related occurrences, the penalty may be up to Five Thousand Dollars (\$5,000.00). The amount of penalty shall be reasonably related to the seriousness of the breach of the Franchise Agreement.
- (d) The party losing the hearing shall be liable for the hearing officer's fees.
- (e) Any failure of the CONTRACTOR to comply with the hearing officer's order shall be deemed a material breach of the Franchise Agreement, and may be grounds for termination of the Franchise Agreement.
- (f) The hearing officer shall commence the hearing within thirty (30) days of selection unless the parties and the hearing officer otherwise agree. Any party to the hearing may issue a request to compel reasonable document production from the other party. Disputes concerning the scope of document production and enforcement of document requests shall be subject to agreement by the parties, or if agreement is not reached within twenty (20) days of that document request, then by disposition by order of the hearing officer. Any such document request shall be subject to the propriety right and rights of privilege of the parties, and the hearing officer shall adopt procedures to protect such rights. Except as may be otherwise specifically agreed by the parties, no other form of pretrial discovery shall be available to the parties; provided that if either party notifies the hearing officer that a material violation of the franchise or rights in connection therewith is claimed by either party, the provisions of Code of Civil Procedure Section 1283.05 shall apply.
- (g) Neither party may communicate separately with the hearing officer after the hearing officer has been selected. All subsequent communications between a party and a hearing officer shall be simultaneously delivered to the other party. This provision shall not apply to communications made to schedule a hearing or request a continuance.
- (h) Until final judgment is entered from the hearing officer proceeding under the foregoing provisions and the time for appeal or other post-judgment petition has expired, the imposition or enforcement of any penalties or sanctions provided in the Franchise Agreement and related to the subject matter of the hearing shall be stayed. The hearing officer may modify or cancel any proposed penalties or sanctions upon a finding that the

party subject thereto acted with substantial justification or if the interests of justice so require.

- (i) The measure of damages for any fraud or deceit practiced or attempted by CONTRACTOR on CITY is the amount specified in section 12.03(f) Liquidated Damages and said amount shall run from the date of the fraud or deceit (as found by the hearing officer) until the date of hearing officer's decision.
- (j) Any party to a hearing may petition the Superior Court in Los Angeles County, California to confirm, correct, or vacate the award. Any proceedings on appeal shall be in accordance with California Code of Civil Procedures § 1294 and 1294.2.

ARTICLE XIII. EFFECTIVE DATE

The effective date of this Franchise Agreement shall be March 1, 2011.

ARTICLE XIV. NONDISCRIMINATION

The CONTRACTOR shall not discriminate against any person because of race, sex, age, creed, color, religion or national origin.

ARTICLE XV. INDEMNITY

Section 15.01 Indemnification of City

The CONTRACTOR shall defend and indemnify, save harmless, and exempt the CITY, its officers, agents, servants, and employees from and against any and all suits, actions, legal proceedings, claims, demands, damages, costs, expenses, and attorneys' fees incident to any work done in the performance of this Franchise Agreement, except with respect to handling or transportation of Special Waste, arising out of a willful or negligent act or omission of the CONTRACTOR, its officers, agents, servants and employees; provided, however, that the CONTRACTOR shall not be liable for any suits, actions, legal proceedings, claims, demands, damages, costs, expenses and attorneys' fees to the extent arising out of a willful or negligent act or omission of the CITY, its officers, agents, servants and employees.

Section 15.02 Special Waste Indemnification

CONTRACTOR shall indemnify, defend with counsel approved by CITY, and hold harmless CITY and its officers, employees, servants and agents from and against all costs, expenses, losses, liabilities, judgments, fines, penalties, claims, causes of action and administrative proceedings arising directly from, or directly attributable to, the handling or transportation of Special Waste from the time that it is collected by CONTRACTOR until the time that it is deposited by CONTRACTOR at a Disposal Site, except that if the Special Waste is knowingly collected by CONTRACTOR then until the time that it is lawfully deposited by CONTRACTOR at a Disposal Site. 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", 42 U.S.C. Section 9607(e), and California Health



and Safety Code Section 25364, to defend, protect, hold harmless and indemnify CITY from liability to the extent specifically provided in this section.

#### Section 15.03 Indemnification of Contractor

The CITY shall defend, indemnify, save harmless and exempt the CONTRACTOR, its officers, agents, servants and employees from and against any and all suits, actions, legal proceedings, claims, demands, damages, costs, expenses and attorneys' fees arising out of or resulting in any way from a willful or negligent act or omission of the CITY, its officers, agents, servants or employees; provided, however, that the CITY shall not be liable for any suits, actions, legal proceedings, claims, demands, damages, costs, expenses and attorneys' fees arising out of or resulting in any way from a willful or negligent act or omission of the CONTRACTOR, its officers, agents, servants or employees.

#### Section 15.04 AB 939 Indemnification

CONTRACTOR agrees to protect, defend, indemnify, and hold harmless CITY against any fines imposed by the California Department of Resources Recycling and Recovery or its successor due to the failure of CITY to divert from landfills at least fifty percent (50%) of the CITY's entire waste stream, or such lesser percentage equal to the landfill diversion goals imposed on local governments by the California Department of Resources Recycling and Recovery as it may be amended from time to time provided that CITY's failure to accomplish the landfill diversion goals imposed by AB 939 is not due to any negligent or willful act of CITY.

Should the State Legislature or the California Department of Resources Recycling and Recovery alter the material requirements of AB 939 by increasing the amount of refuse that local jurisdictions must divert from landfills or transformation, then the CITY and CONTRACTOR shall meet and confer to discuss CONTRACTOR's recycling and other waste diversion efforts to seek to achieve compliance with AB 939, or any succeeding legislation through programs and at rates mutually agreed upon by CONTRACTOR and CITY. The CITY, subject to the provisions of applicable law and available resources, shall lend its full support and cooperation to CONTRACTOR's recycling efforts.

#### ARTICLE XVI. LICENSES AND TAXES

The CONTRACTOR shall obtain all licenses and permits (other than the license and permit granted by the Franchise Agreement) and promptly pay all taxes required by the CITY and any other governmental entity.

#### ARTICLE XVII. TERM OF THIS FRANCHISE AGREEMENT

The term of this Franchise Agreement shall be for a period of twenty (20) years commencing on March 1, 2011 provided, however, on each March 1, the term of this Franchise Agreement shall be extended one (1) year, so that the full term of the Franchise Agreement shall remain twenty (20) years. Within 15 business days after each such extension, CONTRACTOR shall pay CITY Two Hundred Thousand Dollars (\$200,000) for such extension ("Extension Fee").

Notwithstanding the foregoing paragraph, should either party desire that said one-year extension provision be terminated, such party shall give the other party written notice of intent to terminate at least one hundred and twenty (120) days prior to, and written notice of termination at least sixty (60) days prior to any March 1. During the sixty (60) day period following the notice of intent to terminate, the parties shall meet and negotiate in good faith at the request of either party; the CITY shall be represented by the City Manager or by other persons designated by the City Manager. If the notice of termination is given, it shall terminate the one-year extension provision, and the Franchise Agreement shall remain in full force and effect for the balance of the term then outstanding. In the case of termination, an effective date of October 19<sup>th</sup> shall be used to coincide with the original effective date of this contract. If the one-year extension provision is terminated, the CONTRACTOR shall no longer be obligated to pay the Extension Fee.

#### Section 17.01 Rate Guarantee

The CITY's rates for residential and commercial refuse, recycling and green waste collection services will be between the average to the lowest for comparable cities receiving the same or similar services from an exclusive franchisee in the following areas: Los Angeles and Orange Counties. That portion of the rate that is used to compensate the CONTRACTOR for collection service will be the basis for comparison. For residential services, costs for collection of recyclables and green waste will be considered. Disposal costs, billing charges, CITY fees and other miscellaneous fees will not be part of the rate comparison.

For purposes of this Section, the CITY and CONTRACTOR agree to limit the number of comparable cities to not more than twenty (20) but not less than ten (10), and use reasonable means in determining which cities are comparable, considering such factors as exclusive franchisee provided services, types of services, government subsidies, distance to landfills, rate effectiveness periods and length of contract term.

This survey will be conducted by CITY staff as directed by City Council between January 1 and July 1, and not more than every two years. The CITY and the CONTRACTOR shall agree on the cities to be used for the comparison. If the CITY and the CONTRACTOR do not agree on comparable cities in Los Angeles and Orange counties, the sample area shall be extended to include cities in San Bernardino and Riverside counties.

This section of the Franchise Agreement shall not be used to increase rates, only to lower them if they are found to not meet the guarantee provided in the first paragraph of this Section. If any of Covina's rates are found to be above the average, then Covina's rate(s) shall be set at a level equal to the average of the survey cities' rates for the comparable service(s). The new rate(s) shall be effective upon agreement of CITY and CONTRACTOR.

If the CONTRACTOR does not agree with the survey method and results, the CONTRACTOR may select a consultant approved by the CITY to check and verify the results. The CONTRACTOR must present the consultant's findings within 60 days of the CITY's approval of the consultant to the City Council. The City Council may take action to certify the CITY staff survey results or the consultant's results. The City Council certification of the results shall be final and shall serve as the basis for the rate comparison and any rate reductions. The

CITY shall pay consultant costs if the City Council certifies the consultant's findings and if CITY staff survey results are found to be in error; otherwise CONTRACTOR shall pay consultant costs.

If the CONTRACTOR does not approve of a lowering of the rate(s) based on the City Council certified survey results, and within 30 days of the CITY's approval of the contract amendment setting forth new rate(s), then the rate(s) shall not be lowered and the CITY's sole remedy shall be the termination of the automatic one-year extension of the term of this Franchise Agreement in Section 14.00 and a reduction of the remaining term of this Franchise Agreement to five (5) years from the date of termination. The CITY shall provide a notice of termination to the CONTRACTOR in writing if the CONTRACTOR does not approve of a lowering of the rate(s) within 30 days pursuant to this section, and this notice shall fulfill all the requirements in this Franchise Agreement to terminate the automatic one-year extension in Article XVII.

ARTICLE XVIII. INSURANCE

The CONTRACTOR shall at all times during the Franchise Agreement maintain in full force and effect Employer's Liability, Worker's Compensation, Public Liability and Property Damage insurance, including contractual liability coverage for the provisions of Article XV. All insurance shall be by insurers with a Best rating of "A-" or better and for policy limits listed herein. Policy amounts shall be adjusted by amount equal to change in Consumer Price Index not more frequently than every three (3) years. CONTRACTOR agrees to furnish the CITY certificates of insurance or other evidence satisfactory to the CITY to the effect that such insurance has been procured and is in force. Each such policy shall name CITY and its elected officials, officers and employees as additional insured. CONTRACTOR shall notify CITY if it receives any notice from an insurer issuing any policy of insurance required herein that the policy of insurance has been, is, or will be canceled, terminated, rescinded, expired or reduced below the limits required herein and CONTRACTOR is unable or unwilling to replace such insurance prior to the effective date of cancellation, termination, rescission, reduction or expiration. CONTRACTOR shall provide such notice no later than seventy-two (72) hours after receiving notice from the insurer if the effective date of cancellation, termination, rescission, reduction or expiration will occur within that period. Otherwise, such notice shall be provided no later than seventy-two (72) hours prior to such effective date. The certificates shall contain substantially the following express obligation:

"This is to certify that the policies of insurance described herein have been issued to the insured for whom this certificate is executed and are in force at this time. In the event of cancellation or material change in a policy affecting the certificate holder, thirty (30) days prior written notice will be given the certificate holder."

For the purpose of the Franchise Agreement, the CONTRACTOR shall carry the following types of insurance in at least the limits specified below:

<u>Coverages</u>	<u>Limits of Liability</u>
Worker's Compensation	Statutory

Employer's Liability	\$1,000,000
Bodily Injury Liability (except Automobile)	\$1,000,000 each person \$2,000,000 aggregate
Automobile Bodily Injury Liability	\$5,000,000 each occurrence
Automobile Property Damage Liability	\$1,000,000 each occurrence
Excess Umbrella Liability	\$7,000,000 each occurrence \$7,000,000 aggregate

Each insurance policy with respect to public liability insurance may provide for a self-insured retention of an amount of \$300,000, with the result that the CONTRACTOR is its own insurer to that extent. CONTRACTOR shall maintain access to sufficient sources of funds to pay claims within the self-insured retention amount.

ARTICLE XIX. BOND

Section 19.01 Performance Bond

- (a) The CONTRACTOR will be required to furnish a corporate surety bond, an irrevocable letter of credit, time certificate of deposit, or savings passbook as security for the performance of this Franchise Agreement. Said security shall be in the amount of Two Hundred Thousand Dollars (\$200,000.00).
- (b) Premium for the bond(s) described above shall be paid by the CONTRACTOR. A certificate from the surety showing that the bond premiums are paid in full shall accompany the bond.
- (c) The surety on the bond shall be a duly authorized corporate surety company authorized to do business in the State.
- (d) CITY may draw upon the bond to collect liquidated damages imposed pursuant to this Franchise Agreement.

Section 19.02 Power of Attorney

Attorneys-in-fact who sign performance bonds or contract bonds must file with each bond a certified and effectively dated copy of their power of attorney.

ARTICLE XX. BASIS AND METHOD OF PAYMENT

Section 20.01 Rates

The maximum Residential, Commercial and Industrial Unit refuse collection rates chargeable by CONTRACTOR are specified in Exhibit A attached hereto and made a part hereof. The configuration of certain driveways may force the CONTRACTOR to provide manual collection that is more costly than automated collection. These addresses will be charged a rate that is twice the single family rate.

#### Section 20.02 Adjustment to Rates

The rates set forth in Exhibit A shall automatically be adjusted pursuant to the terms of Exhibit B attached hereto and made a part hereof on July 1<sup>st</sup> of each year. CONTRACTOR shall provide CITY with notice of the new rates at least ninety (90) days prior to such date.

#### Section 20.03 Service Additions

The CITY may request the CONTRACTOR to provide additional services during the term of this Franchise Agreement which are not included in the existing scope of work. The CONTRACTOR shall provide reasonable and responsive proposals to the CITY on how such services are to be provided and state the cost for service additions. Additional service items shall be incorporated into this Franchise Agreement through an appropriate amendment. If the configuration of services provided through this Franchise Agreement is significantly altered through the addition of new services, the CITY and CONTRACTOR may mutually agree to change the methods for modifying rates. For services not listed in this Franchise Agreement which the CONTRACTOR currently provides, desires to provide or has been requested to provide, the CONTRACTOR shall make applications to the CITY to provide service and modify the Franchise Agreement.

#### Section 20.04 Rates and Adjustments for Recycling Services

- (a) Monthly Fee. For performing the recycling services rendered under this Franchise Agreement, CONTRACTOR shall be entitled to a fee payable monthly ("Monthly Fee") and reimbursement of processing and disposal costs. The fee and costs shall be calculated as follows:

(1) CONTRACTOR shall calculate the total sales proceeds from all sales of Recyclable Materials by CONTRACTOR, including CRV, for the applicable month ("Gross Commodity Market Proceeds") and report Gross Commodity Market Proceeds to CITY as part of the report required in Section 11.03. CONTRACTOR's Monthly Fee shall be equal to twenty percent (20%) of the Gross Commodity Market Proceeds.

(2) From Gross Commodity Market Proceeds less the Monthly Fee, CONTRACTOR shall subtract an amount equal to CONTRACTOR's costs for processing the entire tonnage of Recyclable Materials taken to CONTRACTOR's Material Recovery Facility ("Processing Cost") and the cost of transferring and disposing Residue at a Landfill or other similar suitable facility ("Disposal Costs"). The remaining amount shall be called "Net Commodity Market Proceeds" and shall be paid entirely to the CITY. (For an example of this calculation, see Exhibit G.)

(3) The baseline cost information, which will be applicable during the first year of this Franchise Agreement, shall be as follows:

Processing Cost	<b>\$47.04 per ton</b>
Disposal Costs	<b>\$60.87 per ton</b>
Landfill Fee)	<b>\$38.26 per ton</b>
Transfer Cost	<b>\$22.61 per ton</b>

- (b) Recycling Services Rate Adjustments. The Processing Cost as shown in Section 20.04(a) shall be adjusted up or down depending upon changes in the Consumer Price Index (CPI) for All Urban Consumers (all items) for the Los Angeles-Anaheim-Riverside Area with the years 1982-84 = 100 as published by the U.S. Department of Labor Bureau of Labor Statistics. The base for computing the rate adjustment will be the January index figure each year.

As soon as possible after the rate modification index date, CONTRACTOR shall send to CITY a comparative statement setting out (1) the index value for the index date; (2) the index value on the rate modification index date; (3) the net percentage change; and (4) the increase or decrease in the Processing Cost which may be charged for the ensuing year commencing on July 1.

That portion of the Disposal Costs which is attributed to the Residue transfer cost, Section 20.04(a), shall also be subject to an annual CPI adjustment as described above for Processing Cost adjustment.

The CONTRACTOR shall be entitled to a rate adjustment for that portion of Disposal Costs attributed to Landfill cost. CONTRACTOR shall be responsible for submitting sufficient information to the CITY to justify Disposal Costs increases due to changed Landfill costs. Rate adjustments for Landfill cost shall be allowed on a "pass through" basis.

#### Section 20.05 Billing

- (a) CONTRACTOR shall submit statements to and collect from all Residential Units on a quarterly basis in advance for all curbside collection services provided by CONTRACTOR.
- (b) CONTRACTOR shall submit statements to and collect from all Commercial, Industrial, and Residential Units on a monthly basis in advance for all bin collection services provided by CONTRACTOR.
- (c) At the time of request, CONTRACTOR shall submit statements to and collect from all Commercial, Industrial, and Residential Units for temporary services.

- (d) Payment terms for all customers are net thirty (30) days and are considered delinquent thereafter. Late fees at 1.5% per month will be assessed on all delinquent balances.

Section 20.06 Payment to CONTRACTOR for Billing Services

In consideration of CONTRACTOR providing residential billing services, CONTRACTOR shall incorporate into the service component of the residential rates set forth on Exhibit A attached hereto an amount equal to \$0.22 per month per customer (the "Billing Fee"). On each of the first, second and third anniversaries of the date of this Franchise Agreement, the Billing Fee will be increased by \$0.22 per month such that the Billing Fee will be equal to \$0.44, \$0.66 and \$0.88 per month immediately following the first, second and third anniversaries of this Franchise Agreement, respectively.

Section 20.07 Recycling Services Payments to CITY

Payments in connection with Recycling Services under this Franchise Agreement to the CONTRACTOR or to the CITY shall be made in accordance with the following:

- (a) For each month during the term of this Franchise Agreement, if Gross Commodity Market Proceeds received by CONTRACTOR are less than the total of CONTRACTOR's Processing Cost and Disposal Costs, CONTRACTOR shall submit an invoice to CITY with the monthly report as required by Section 11.03, requesting payment by CITY to CONTRACTOR in the amount of said Processing Cost and Disposal Costs that is not otherwise satisfied by Gross Commodity Market Proceeds. CITY shall promptly process the invoice and pay to CONTRACTOR the amount of said Processing Cost and Disposal Costs that is not otherwise satisfied by Gross Commodity Market Proceeds.
- (b) For each month during the term of this Franchise Agreement, if Gross Commodity Market Proceeds received by CONTRACTOR are more than the total of CONTRACTOR's Monthly Fee, Processing Cost, and Disposal Costs (and there are therefore Net Commodity Market Proceeds for that month), CONTRACTOR shall remit payment to the CITY in the appropriate amount as set forth in Section 20.04(a), at the time and along with the monthly report as required by Section 11.03.
- (c) For each month during the term of this Franchise Agreement, if Gross Commodity Market Proceeds received by CONTRACTOR are less than the total of CONTRACTOR's Monthly Fee, Processing Cost, and Disposal Costs (and there are therefore negative Net Commodity Market Proceeds for that month), CONTRACTOR shall receive a Monthly Fee equal to twenty percent (20%) of the total of the Gross Commodity Market Proceeds less Processing Cost and Disposal Costs, and CONTRACTOR shall remit the remaining balance to the CITY.

Section 20.08 Franchise Fee

As consideration for this Franchise Agreement and the rights granted herein, CONTRACTOR shall pay to CITY a fee equivalent to six percent (6%) of the gross amount of all monies for services pursuant to this Franchise Agreement collected by CONTRACTOR from

Residential, Commercial and Industrial Units within the CITY serviced by CONTRACTOR or any subsidiary, parent company, division, affiliate, partnership or joint venture of CONTRACTOR. This fee shall be applied to disposal cost increases when they occur such that CONTRACTOR's revenues are not affected and will be calculated on a monthly basis and shall be paid to CITY by CONTRACTOR within fifteen (15) days after the end of the month in which the monies were collected.

Section 20.09 Delinquent and Closed Accounts

If delinquent payments (as described in Section 20.05(d)) are not received within thirty (30) days, CONTRACTOR shall discontinue service and refer the respective premise to the CITY for public nuisance abatement proceedings, which CITY may decide whether to initiate in its sole and absolute discretion. A notice/warning of a pending stop service will be prepared by CONTRACTOR and delivered to the delinquent account owner and premise no less than seventy-two (72) hours prior to the service stoppage. If full payment by delinquent customer is not made to CONTRACTOR within fifteen (15) days after referral to the CITY for code enforcement purposes, the account may be cancelled by CONTRACTOR.

ARTICLE XXI. MISCELLANEOUS PROVISIONS

Section 21.01 Transferability of Franchise Agreement

No assignment of the Franchise Agreement or any right accruing under this Franchise Agreement shall be made in whole or in part by the CONTRACTOR without the express written consent of the CITY, which consent shall not be unreasonably withheld; in the event of any assignment, the assignee shall assume the liability of the CONTRACTOR. Transfer of CONTRACTOR'S stock between the Arakelian family members is exempt from obtaining written consent of the CITY, unless such a transfer results in a significant management or service impact on the CONTRACTOR. If a contemplated stock transfer results in the current management being transferred to new family members the CONTRACTOR shall notify the CITY and receive the CITY's written consent prior to the actual transfer of stock.

Section 21.02 Books and Records

- (a) CITY shall have the right, at all reasonable times, to inspect and audit CONTRACTOR's books and records pertaining to CONTRACTOR's revenues and CITY fees collected by CONTRACTOR. If, as a result of any such audit or inspection, it is determined that CONTRACTOR has under reported collections from Commercial, Industrial or Residential accounts, or collections of Integrated Waste Management Fees, CONTRACTOR shall remit to CITY the amount of franchise fee attributable thereto and shortfall in Integrated Waste Management Fees that is due to CITY. If the amount of franchise fee or Integrated Waste Management Fees paid to CITY is five percent (5%) or more underpaid on an annualized basis, CONTRACTOR shall pay CITY's cost of inspection and audit and remit delinquent amounts plus interest at the prime rate plus 3%. If audit reveals that no underpayment occurred, or that the underpayment was less than five percent (5%) of actual reported revenues and fee receipts, CITY shall bear sole



expense of audit and inspection with the CONTRACTOR remitting to CITY delinquent amounts plus interest at the prime rate.

- (b) If the audit reveals that CONTRACTOR overpaid CITY and that overpayment was less than five percent (5%) of actual reported revenues and fee receipts, CITY shall bear the expense of audit and inspection with CONTRACTOR withholding delinquent amounts from payments otherwise due to CITY, without interest. If the audit reveals that CONTRACTOR overpaid CITY and that overpayment was more than five percent (5%) of actual reported revenues and fee receipts, CONTRACTOR shall bear the expense of audit and inspection with the CONTRACTOR withholding delinquent amounts from payments otherwise due to CITY. Any excess reimbursed to CONTRACTOR shall be limited to ten percent (10%) of fees or revenues collected by CITY from CONTRACTOR after deducting the cost of the audit. Audits shall be limited to CONTRACTOR's books and records going back three (3) years preceding the date when the audit is commenced.

#### Section 21.03 Promotional Signage

CONTRACTOR shall cooperate with the CITY in allowing educational and promotional signage to be placed on collection vehicles serving the City of Covina. The CONTRACTOR shall not subject the CITY to any charges. The CITY shall pay any cost associated with the purchase and installation of such signage.

#### Section 21.04 Personnel

No employee of the CONTRACTOR shall continue to be so employed on any work under this Franchise Agreement who is found to be intemperate, troublesome, disorderly, inefficient, or otherwise objectionable, as determined by the City Manager or his designee, or who is convicted of any felony, or any offense consisting of driving while intoxicated, during the term of this Franchise Agreement.

#### Section 21.05 Ownership and Disposal of Refuse, Recyclables and Green Waste

Once Refuse, Recyclable Materials or Green Waste are placed by the Producer in a Bundle, Barrel, or Bin for collection, ownership of the materials shall transfer to the CONTRACTOR.

#### Section 21.06 Waiver

No acquiescence, failure or neglect of the CITY to insist on strict performance of any or all of the terms hereof shall be considered to constitute a waiver of any term or condition of the Franchise Agreement or any performance required thereunder, or of any remedy, damage or other liability arising out of such refusal, neglect or inability to perform at any time, nor shall the same affect in any manner any bond deposited by the CONTRACTOR.

#### Section 21.07 Default

CONTRACTOR shall not be considered in default hereunder if its performance has been prevented by acts of God, riot, war, or events beyond control of CONTRACTOR, provided that strikes or labor unrest shall not be considered events beyond control of CONTRACTOR. In the event this Franchise Agreement is terminated per Section 12.03 CITY shall have the right to utilize CONTRACTOR's equipment (trucks, bins and barrels) for refuse collection services in CITY for a period of ninety (90) days from the date of termination provided that CONTRACTOR is adequately compensated. In the event of default, all equipment shall remain property of CONTRACTOR. Equipment may be sold to the CITY at a mutually agreed upon price.

#### Section 21.08 Standards for Collection

The CONTRACTOR shall use its best efforts to ensure that no material, debris, rubbish, or liquids leak, fall or spill in handling. When any such leak or spill occurs, the CONTRACTOR shall immediately pick up the material and clean the area from the effect of such leak, and the material that fell or was spilled. If after notification, such clean up is not made, the City Manager or his designee may have this done and deduct such costs from any payment due the CONTRACTOR.

#### Section 21.09 Care and Handling of Barrels

All Barrels as herein defined, shall be replaced upright in the same location as the Barrel was placed for collection. CONTRACTOR shall be responsible for repairing or replacing damaged Barrels at no charge to the customer.

The CONTRACTOR shall not be required to service, dump or maintain any bins, roll-off containers, drop-off Barrels or other similar commercial containers which are not under the CONTRACTOR's ownership or control.

#### Section 21.10 Care of Contractor's Containers

The CONTRACTOR shall provide bins, drop-off bodies, and other containers which are clean, free of dents, and in a good state of repair. Routine maintenance shall be performed on all such containers and bins at least annually.

Users shall be responsible to keep these containers in a general state of cleanliness between such routine maintenance periods.

The CONTRACTOR shall maintain records on the maintenance schedules of these containers and provide these dates to the CITY upon request for any particular one.

#### Section 21.11 Performance Standard

The CONTRACTOR agrees that its performance of each of the provisions of this Franchise Agreement shall be to the reasonable industry standards set by the City Manager or his designee to ensure cleanliness, health, and sanitation in the collecting, handling and disposal of such rubbish with the CITY. All work shall be done in a thorough and workmanlike manner.

#### Section 21.12 Fees and Gratuities Prohibited

The CONTRACTOR shall not, nor shall he permit any agent, employee or subcontractor employed by him to request, solicit, demand, or accept, either directly or indirectly, any compensation or gratuity for the collection of Residential, Commercial and Industrial Refuse, Green Waste and Recycling Materials as herein defined, except such compensation as may herein be provided by this Franchise Agreement or as herein permitted.

#### Section 21.13 Notices

Notices given pursuant to the provisions of the Franchise Agreement between the CITY and the CONTRACTOR shall be given by United States Postal Service, postage prepaid, addressed as follows

(a) City Manager  
City of Covina  
125 East College Street  
Covina, CA 91723-2199

(b) CONTRACTOR, at its local office, as designated in writing by the CONTRACTOR.

In the alternative, notices may be given by personal service of such written notice by one party to the other. Notices shall be deemed given as of the time of personal service, or as of the time of deposit of the same in the course of transmission by the United States Postal Service.

#### Section 21.14 Time of the Essence

Time shall be of the essence of this Contract.

#### Section 21.15 Amendments to Franchise Agreement

This Franchise Agreement may be amended only by written amendment signed by the parties hereto. No oral amendments, agreements or understandings shall amend or alter any of the provisions hereof.

#### Section 21.16 Scope of Agreement

This Franchise Agreement, along with the exhibits hereto, contains the entire agreement of the parties.

#### Section 21.17 Proposition 218

The parties agree that the rates to be charged by CONTRACTOR to customers are set by CONTRACTOR as a private contractor in the market place. The CITY's role with respect to rate setting is to establish rate ceilings for the protection of customers given the exclusive status afforded CONTRACTOR by this Franchise Agreement and given the nature of the services it is to provide. Accordingly, the parties agree that this Franchise Agreement shall be construed to maintain the status of the rates CONTRACTOR chooses to charge its customers as privately-

established rates and not as property-related fees within the scope of Article XIII D of the California Constitution or taxes within the scope of Articles XIII A and XIII C of the California Constitution, provided that the parties recognize and acknowledge that neither party can control whether and how this Franchise Agreement is interpreted by a court of competent jurisdiction. Furthermore, the parties agree that the CITY may, out of an abundance of caution, agree to comply with the notice and hearing requirements of Proposition 218. In the event that the CITY decides to comply with such provisions, it shall do so promptly in order to ensure that such compliance is complete, including holding any protest hearing, no later than the rate adjustment date of July 1.

IN WITNESS WHEREOF, the parties hereto have caused this Franchise Agreement to be executed on the date first written above by their respective officers on their behalf duly authorized.

"CITY"

CITY OF COVINA, a Municipal corporation

Peggy A. Dell  
Mayor

ATTEST:

Cheri M. Salas  
City Clerk

APPROVED AS TO FORM:

[Signature]  
City Attorney

"CONTRACTOR"

ARAKELIAN ENTERPRISES, INC.,  
A California corporation

By: [Signature]

Name: Ron Arakelian, Jr.

Title: Chairman of the Board

By: [Signature]

Name: RON ARAKELIAN III

Title: Executive Officer

**EXHIBIT A  
CITY OF COVINA**

Schedule of Rates Effective March 1, 2011

		<b>New Service Comp</b>	<b>New Disposal Comp</b>	<b>New Net Rate</b>	<b>6% Franchise Fee</b>	<b>Waste Mgmt Fee</b>	<b>New Total Rate</b>	<b>Basic Service Rate</b>
<b>RESIDENTIAL</b>								
90 Gallon Black Barrel Service		10.38	3.79	14.17	0.90	1.93	17.00	25.14
60 Gallon Black Barrel Service		10.38	2.53	12.91	0.82	1.29	15.02	23.16
30 Gallon Black Barrel Service		10.38	1.27	11.65	0.74	0.65	13.04	21.18
90 Gallon Green Barrel Service		3.96	1.40	5.36	-	-	5.36	
90 Gallon Blue Barrel Service		2.78	-	2.78	-	-	2.78	
Additional 90 Gallon Black		10.16	3.79	13.95	0.89	1.93	16.77	
Additional 90 Gallon Green		3.96	1.40	5.36	-	-	5.36	
Additional 90 Gallon Blue		2.78	-	2.78	-	-	2.78	
Manual or Backyard Service		34.24	10.38	44.62	1.81	3.86	50.28	
Roll-Out Service		15.41	-	15.41	-	-	15.41	
<b>COMMERCIAL</b>								
1.5YD - First Bin	1X	63.60	22.21	85.81	5.48	6.16	97.45	
	2X	101.10	44.43	145.53	9.29	12.31	167.13	
	3X	138.57	66.64	205.21	13.11	18.47	236.78	
	4X	176.10	88.85	264.95	16.92	24.63	306.50	
	5X	213.59	111.06	324.65	20.73	30.79	376.17	
	6X	262.45	133.28	395.73	25.27	36.94	457.94	
1.5YD - Each Additional Bin	1X	50.11	22.21	72.32	4.62	6.16	83.10	
	2X	80.09	44.43	124.52	7.95	12.31	144.78	
	3X	108.59	66.64	175.23	11.19	18.47	204.89	
	4X	138.58	88.85	227.43	14.52	24.63	266.58	
	5X	168.58	111.06	279.64	17.86	30.79	328.29	
	6X	206.91	133.28	340.19	21.73	36.94	398.86	

2YD - First Bin	1X	73.09	29.62	102.71	6.56	8.21	117.48
	2X	112.09	59.23	171.32	10.94	16.42	198.68
	3X	151.14	88.85	239.99	15.32	24.63	279.94
	4X	190.17	118.47	308.64	19.70	32.84	361.18
	5X	229.21	148.09	377.30	24.08	41.05	442.43
	6X	281.82	177.70	459.52	29.33	49.26	538.11
2YD - Each Additional Bin	1X	58.08	29.62	87.70	5.60	8.21	101.51
	2X	88.11	59.23	147.34	9.40	16.42	173.17
	3X	119.61	88.85	208.46	13.31	24.63	246.40
	4X	149.65	118.47	268.12	17.12	32.84	318.08
	5X	181.16	148.09	329.25	21.03	41.05	391.33
	6X	223.34	177.70	401.04	25.61	49.26	475.91
3YD - First Bin	1X	80.65	44.43	125.08	7.99	12.31	145.38
	2X	123.90	88.85	212.75	13.59	24.63	250.97
	3X	167.12	133.28	300.40	19.18	36.94	356.52
	4X	210.32	177.70	388.02	24.78	49.26	462.06
	5X	253.59	222.13	475.72	30.38	61.57	567.67
	6X	309.26	266.55	575.81	36.77	73.89	686.47
3YD - Each Additional Bin	1X	64.17	44.43	108.60	6.94	12.31	127.85
	2X	98.40	88.85	187.25	11.96	24.63	223.84
	3X	132.57	133.28	265.85	16.98	36.94	319.77
	4X	166.80	177.70	344.50	22.00	49.26	415.76
	5X	201.07	222.13	423.20	27.03	61.57	511.80
	6X	244.73	266.55	511.28	32.65	73.89	617.82
<b>30YD Standard Roll-off (+ dump)</b>		254.02	Actual Cost	254.02	6% of service + disposal	30.73	Tons based #
<b>30YD C &amp; D Roll-off (+ dump)</b>		393.31	Actual Cost	393.31	6% of service + disposal	30.73	Tons based #
<b>3 Yard Temporary Bin</b>		140.00	140.00	8.94	2.84	151.78	
<b>Commercial Barrel</b>		25.09	11.86	36.95	2.36	3.28	42.59
<b>Sweeper Service</b>		12.78	2.41	15.19			15.19

## EXHIBIT B

### TO COVINA EXCLUSIVE FRANCHISE AGREEMENT

#### RATE ADJUSTMENT

Each of the rates provided by this Agreement consists of a Service Component and a Disposal Component.

The Service Component includes the costs of collection and hauling of all Refuse, including Recyclable Materials and Green Waste for all customers according to the terms set forth in this Agreement.

The Disposal Component shall be based on the per ton costs incurred by CONTRACTOR for disposal of all Refuse, processing of Recyclable Materials at CONTRACTOR's MRF (which costs are defined on a per ton basis as the "MRF Gate Fee") and for its disposal of Green Waste.

#### **Rate Adjustment Formula**

The Service Component will automatically be adjusted each July 1st in proportion to the increase or decrease in the cost of living as determined by the percentage change in the Consumer Price Index ("CPI") for the immediately previous twelve month period (February through January) for All Urban Consumers in the Los Angeles/Anaheim/Riverside area, or an equivalent index approved by mutual agreement in the event the CPI as described above is no longer published. CITY staff shall review all proposed rate increases solely for validity of the submitted data and, upon verification of data, approve the new Service Component rates.

The Disposal Component will automatically be adjusted in proportion to the increase or decrease in disposal costs as determined by the percentage change in the MRF Gate Fee. As soon as the information is available, CONTRACTOR shall submit documentation to the City Manager with evidence of the net change in disposal costs. CITY staff shall review the documentation in connection with the net change in disposal costs solely for validity of the submitted data and, upon verification of data, approve the new Disposal Component rates. The net change in disposal costs will be added to or subtracted from the Disposal Component of the maximum rates to be effective the next billing cycle after written notification to the CITY. CONTRACTOR agrees it will not be entitled to any increase in the Disposal Component due to an increase in the MRF Gate Fee other than due to the occurrence of one or more of the following: (1) an adjustment in the non-disposal portion of the MRF Gate Fee directly proportional to the percentage change in the CPI, as described above, and (2) an increase in the Puente Hills Landfill tipping fee for residue from the MRF.

Between the date of this Franchise Agreement and the closure of the Puente Hills Landfill, estimated to be at the end of 2013, CONTRACTOR shall evaluate cost-effective Disposal Sites to be utilized upon the closure of the Puente Hills Landfill. Prior to the closure of the Puente Hills Landfill, CONTRACTOR shall propose its recommendation to CITY of the Disposal Site for disposal of residue from the MRF and the Disposal Component of the rate in connection



therewith. CONTRACTOR and CITY shall meet and confer to discuss the CONTRACTOR's disposal recommendation and rate.

### **Special Rate Adjustment**

In the event circumstances beyond the control of CONTRACTOR impose or generate extraordinary costs in the performance of the Agreement, CONTRACTOR may petition CITY to determine if an adjustment in compensation is warranted to avoid undue financial hardship on CONTRACTOR. For each request, CONTRACTOR shall prepare a schedule documenting the extraordinary costs. Such request shall be prepared in a form acceptable to CITY with support for assumptions made by CONTRACTOR in preparing the estimate of extraordinary costs. CITY shall review CONTRACTOR's request and, in CITY's sole judgment, make the final determination on the adjustment.

## EXHIBIT C

### TO COVINA EXCLUSIVE FRANCHISE AGREEMENT

#### RECYCLABLE MATERIALS TO BE COLLECTED

Aluminum Cans	Magazines
Aseptic Packaging (Drink Boxes, milk cartons)	Metal Coat Hangers
Brochures	Newspaper
Cardboard	Paper
Cardboard egg cartons	Paper tubes
Cardboard 12-soda container boxes	Phone Books
Cereal boxes (inside liner removed)	All recyclable plastics (#1 to #7)
Computer paper	Plastic bags
Coupons	Plastic bottles
Glass bottles and jars	Plastic plates/cups/utensils
Glass cosmetic bottles	Plastic wrap
Junk mail	Styrofoam
Kleenex boxes	Tin Cans
Laundry bottles	Used envelopes
Ledger boxes	Wrapping paper
	Yogurt containers

**EXHIBIT D**

TO COVINA EXCLUSIVE FRANCHISE AGREEMENT

GREEN WASTE MATERIALS TO BE COLLECTED

All materials accepted by area landfills as alternative daily cover (ADC):

Brush  
Tree Trimmings  
Grass  
Leaves

Palm fronds will not be accepted with green waste.

## EXHIBIT E

### TO COVINA EXLUSIVE FRANCHISE AGREEMENT

#### STREET SWEEPING SERVICES

##### ARTICLE I. SERVICE DESCRIPTION

Section 1.01 The Contractor agrees to perform the Service as follows: Conduct a complete Street Sweeping Service in designated areas of the City.

- (a) The Service consists of Contractor sweeping and/or cleaning public streets (including curbed medians) and paved alleys, including furnishing of water and disposal of all debris, and other incidental and appurtenant work necessary for the proper completion of this service.
- (b) The Contractor shall receive payment only for those actual curb miles swept.
- (c) The Contractor will supply the City with a list of all Subcontractors that will aid the Contractor in completion of this service. This list will be in compliance with the California Public Contract Code, Section 4104.

Section 1.02 For the purpose of carrying out the service, the Contractor shall perform the work delineated below.

- (a) The Contractor shall sweep and/or clean twice per month, all public streets, paved alleys and curbed medians within the City to the standards specified in this Contract.
- (b) All sweeping shall be done between the hours of 3:00 a.m. and 11:00 a.m., with the exception of the following: Covina Downtown sweeping including Shopper's Lane shall be completed prior to 7:00 a.m. on Monday, Wednesday, and Friday. Prospero Park sweeping shall be completed after 9:00 a.m. every Tuesday and Azusa Avenue will be swept every Tuesday.
- (c) Sweeping shall consist of one pass at a speed not to exceed six (6) miles per hour; and, while sweeping, water, supplied by Contractor, will be used to minimize dust. The word sweeping shall define an operation and the method shall be limited to the use of a power broom or vacuum street sweeper.
- (d) Curbed areas that cannot be swept with street sweeping equipment approved by the State of California, such as, but not limited to, narrow cul-de-sacs, median noses and portions of left turn pockets, shall be hand cleaned to the City's satisfaction, or the Contractor will be ordered by the City to redo those areas not swept or done to the established standards at the Contractor's own expense.

- (e) The Contractor has sole responsibility of furnishing all necessary water pertaining to this service. Contractor is responsible for utilizing a City of Covina fire hydrant and obtaining water from only City of Covina fire hydrants. A map of City owned fire hydrants has been provided to Contractor and is available from the City at Contractor's request.
- (f) Debris will be deposited at the City Yard in a designated area. The debris will be disposed of by the City.
- (g) The Contractor shall maintain at least one sweeper on 24-hour availability for emergencies as determined by the City. The Contractor shall provide such emergency service on a one hour response, or other directed time frame, as specified by the City. Failure to meet the specified response deadline shall result in the Contractor's forfeiture of payment for that service.

## ARTICLE II. PAYMENT

Section 2.01 The City agrees to pay the Contractor in accordance with the following:

- (a) Curb Miles (CM) or each portion thereof shall be paid at the rate set forth on Exhibit A to the Franchise Agreement and such rate shall be adjusted as set forth on Exhibit B to the Franchise Agreement.
- (b) Emergency Response shall be paid at the rate of eighty five dollars (\$85.00) each hour, for one-hour response.
- (c) The Contractor shall receive payment only for those actual curb miles swept, or actual hours performing work in an emergency response.
- (d) The unit price to be paid shall be full compensation for the items of work and all appurtenant work, including (but not limited to) furnishing all labor, equipment, tools, materials, maintenance, supervision, incidentals, and paying of all water fees.
- (e) Whenever any portion of the work is performed by the City at the Contractor's request, or at City determination upon notification to Contractor, the cost thereof shall be charged against the Contractor, and will be deducted from any amount due or becoming due from the City.
- (f) Whenever immediate action is required to prevent impending injury, death, property damage, or whenever precautions which are the Contractor's responsibility have not been taken and are reasonably expected to be taken, the City may, after reasonable attempt to notify the Contractor, cause such precautions to be taken. The City shall charge the cost thereof against the Contractor, or will deduct such cost from any amount due or becoming due from the City. City action or inaction under such circumstances shall not be construed as relieving the Contractor from liability.

Section 2.02 Measurement for payment of this Contract will be as follows:

- (a) The basis of measurement and payment shall be by the curb mile - or portion thereof. On streets and highways it shall be measured toward the center of the right of way from and parallel to the curb face. Measurement of medians will be continuous and no deduction will be made for left turn pockets or intersecting streets.
- (b) Improved alleys will be measured as 2 curb miles per mile of length.
- (c) Additional sweeps that require the total width of the street to be swept shall be measured on the basis of width of street in feet divided by five to determine curb miles per mile of length.

Section 2.03 Payment to the Contractor shall be requested in the following manner:

- (a) The Contractor shall submit claim for payment within the first five (5) work days, to the City every month for work completed during the previous month. The claim shall enumerate the scheduled curb miles swept monthly, as shown on an attached tachometer tape, and additions or deletions ordered by the City or its representatives. The claim, when submitted by the Contractor, shall constitute legal certification that the work claimed for payment was completed in accordance with the terms of the Franchise Agreement.
- (b) Payment will be made within thirty (30) days after receipt of a claim by the City. Payment shall not be construed to be acceptance of any of the work.

### ARTICLE III. PERFORMANCE

Section 3.01 The Contractor shall perform all work necessary to complete the contract in a satisfactory manner established by the City and shall furnish all necessary equipment, tools, labor, materials, supervision, maintenance, incidentals, and water. Water will be purchased from the City of Covina. The meters will be read and billed monthly.

Section 3.02 The primary objective of street sweeping is to remove all leaves, paper, dirt, rocks, glass, bottles, cans, and other debris to ensure free flow of water in the gutter and to maintain streets in a state of cleanliness. The City will make the final determination as to whether the work has been satisfactorily completed and will order the Contractor to redo areas not swept at all or not done to the satisfaction of the City.

Section 3.03 All debris and refuse collected by the Contractor shall become City property. Contractor shall dispose of all refuse and debris collected during sweeping operations at the designated area in the City Yard.

Section 3.04 The City shall monitor the Contractor's work in order to measure objective standards set forth in this agreement, such as compliance with all terms and conditions of said Contract, change order rate, cleanliness of swept streets and alleys and performance of subcontractor.

- (a) Only competent workers shall be employed for this work. Any person employed, who is found to be incompetent, intemperate, troublesome, disorderly or otherwise objectionable, or who fails or refuses to perform the work properly and in an acceptable manner, shall be immediately removed from the work site by the Contractor and not be re-employed for work under this contract.

Section 3.05 In order to facilitate the Contractor's ability to receive both written and verbal directions from City staff, at all times during the term of this Franchise Agreement, Contractor shall ensure that at least one member of any crew assigned to perform the work under this Franchise Agreement shall have the ability to speak both English and the language spoken by the majority of individuals composing the crew (e.g., Spanish, Chinese, etc.).

Section 3.06 The Contractor shall be responsible for the protection of public property and shall exercise due caution to avoid damage to such property. All property damage resulting from the Contractor's street sweeping operations shall be repaired at the Contractor's expense and to the satisfaction of the City. Contractor is required to submit a written report of said damages to the City on the same day damages occur and a written follow-up report submitted to the City as Contractor completes repair of damages.

Section 3.07 The Contractor's street sweeping operations shall cause no unnecessary public inconvenience. The access rights of the public shall be considered at all times.

Section 3.08 Changes in the work, either additions or deletions, shall be made in the following manner:

- (a) Changes requested in writing by the Contractor, which do not materially affect the work and which are not detrimental to the work or to the interests of the City, may be granted by the City to facilitate the work, when approved in writing by the City. If such changes are granted, they shall be made at a reduction in cost or at no additional cost to the City. Nothing herein shall be construed as granting a right to the Contractor to demand acceptance of such changes.
- (b) The City may change the plans, character of the work, quantity of work, or scope of the work, provided the total arithmetic dollar value of all such changes, both additive and deductive, does not change the then existing rate by more than ten percent (10%). Should it become necessary to exceed this limitation, the change shall be by a written amendment to the Franchise Agreement. If changes do not result in an adjustment to the then existing rate by more than ten percent (10%), both parties may agree to proceed with the change by written Change Order as specified below.
  - (i) Change Orders shall be in writing and state the dollar value of the change or establish method of payment, and, when negotiated prices are involved, shall provide for the Contractor's signature indicating acceptance.
  - (ii) The City may, without Council approval, order changes in work that do not exceed ten percent (10%), as stated in the above paragraph.

- (c) Changes resulting from schedule disruption, such as, but not limited to inclement weather, holiday or observance, fire, flood, parade, public gathering, riot or other natural or unanticipated occurrence, will be implemented by the City, possibly requiring the Contractor to sweep affected areas prior to the next sweeping schedule. As such, this cleaning will be performed by the Contractor at the delineated rate in effect at the time and will not be considered additional cleaning as defined above.
  - (i) When sweeping area is not swept due to holiday or observance, the subject sweeping area shall, when ordered by the City, be swept within two (2) working days of the regularly scheduled cleaning day without interruption in the regular sweeping schedule. Any such requested sweeping shall be performed by the Contractor at the curb mile price in effect at the time and shall not be considered additional sweeping.
  - (ii) In the event the Contractor is prevented from completing the sweeping as provided in the approved schedule because of reasons other than holidays, or observation, it will be required to complete the sweeping services so deferred within two (2) calendar days without interruption in the regular sweeping schedule.
- (d) One or limited time only work will be classified as "extra work" when the City determines that it is not covered by the then existing rates. Payment for extra work will be made at a price agreed upon between the City and the Contractor or, when the price cannot be agreed upon, the City will pay for the extra work based on the accumulation of actual cost.
- (e) The Contractor shall notify the City in writing of any changed conditions promptly upon discovery. Upon investigation, if the City determines the conditions are changed and will materially increase or decrease the costs of any portion of the work, a Change Order will be issued, upon agreement between the Contractor and the City, adjusting the compensation for such portion of the work. If both parties are unable to reach agreement, the City may direct the Contractor to proceed.
  - (i) If the City determines that the conditions of which it has been notified do not justify an adjustment in compensation, the Contractor will be so notified in writing. This notice shall advise the Contractor of its obligation to notify the City, in writing, if the Contractor disagrees.
  - (ii) If the Contractor disagrees with such determination, it may submit a written notice of potential claim to the City before commencing the disputed work, and in no terms will the Contractor be excused on account of that disagreement from any scheduled work provided for by this Franchise Agreement, but shall proceed with all work to be performed under the Franchise Agreement. However, the Contractor shall retain any and all rights provided either by the Franchise Agreement or by law which pertains to the resolution of disputes and protests between the contracting parties. All "disputed work" shall be brought forth to and decided upon by the City Council.



#### ARTICLE IV. WORK SCHEDULE

Section 4.01 A complete schedule of sweeping has been submitted to the City. The schedule shall include the curb miles of street, alleys and medians to be swept daily as well as the daily starting time. Also, a route map has been submitted as part of the schedule, showing streets, alleys and medians swept each day by the Contractor. The Contractor shall indicate the daily sweeping route on the maps in an appropriate and understandable manner that is acceptable to the City. Changes in the schedule for the convenience of the Contractor will require written approval by the City prior to being included in the work. The City reserves the right to require the Contractor to sweep specific areas on specified days and at specified times of the day. The following guidelines will generally be applicable:

- (a) Sweeping of streets that have posted parking restrictions specified for street sweeping shall only be swept during the posted day and hours.
- (b) Areas shall not be swept on the same day refuse pickup is scheduled. Sweeping shall be scheduled the day after refuse pickup. The Contractor shall be responsible for determining when refuse pickups are scheduled. City will provide refuse pickup schedule.
- (c) All sweeping shall be accomplished between the hours of 3:00 a.m. and 11:00 a.m. with the exception of Downtown Covina including Shopper's Lane sweeping to be completed prior to 7:00 a.m.
- (d) Arterials shall not be swept during peak traffic hours.

Section 4.02 To minimize public inconvenience, the Contractor shall diligently pursue the work to comply with the approved sweeping schedule. If, as determined by the City, the Contractor fails to pursue the work to the extent that the above purpose is not being accomplished, the Contractor shall, upon orders from the City, immediately take steps necessary to fully accomplish said purpose. All costs of pursuing the work as described herein shall be included in the current rate. Should the Contractor fail to take the necessary steps to fully accomplish said purpose, after orders of the City to do so, the City may suspend the work in whole or in part, until the Contractor takes said steps. If this should exceed 10 days, the City shall engage alternative means to provide this service. The Contractor will be responsible for all costs in excess of the amount it would have been entitled to if it had provided the service.

#### ARTICLE V. SUSPENSION OF WORK

Suspension of work and/or work performed by others will be executed in the following manner:

Section 5.01 If the Contractor fails to commence street sweeping work on the date specified, to execute the street sweeping work in the manner and at such locations as specified, or fails to maintain a street sweeping work program which will ensure the City's interest, a written notice by the City will be served upon the Contractor demanding satisfactory compliance with the terms of this Exhibit. If the Contractor does not comply with such notice within five (5) days after receiving it, or after starting to comply, fails to continue, the City may exclude it from the work

site and complete the street sweeping work by alternative means. Any cost incurred by the City due to use of alternative means will not relieve the Contractor from liability or any cost incurred in excess of what would have been paid to Contractor if Contractor had performed the street sweeping work.

Section 5.02 The street sweeping work may be suspended in whole or in part when determined by the City that the suspension is necessary in the interest of the City. The Contractor shall comply immediately with any written order of the City suspending street sweeping work. Such suspension shall be without liability to the Contractor on the part of the City except as otherwise specified above. If street sweeping work is suspended through no fault of the City, all expenses and losses incurred by the Contractor during such suspensions shall be borne by the Contractor.

#### ARTICLE VI. CONTRACTOR'S EQUIPMENT

Section 6.01 The Contractor shall furnish and maintain in good and safe condition all equipment as required for the proper execution of the street sweeping services. Such equipment shall meet all requirements of applicable ordinances and laws. The City may reject any piece of street sweeping equipment not meeting these requirements.

Section 6.02 The Contractor shall provide adequate sweeping and pickup equipment and a disposal truck properly maintained mechanically and in appearance. Sweepers shall be equipped with a tachograph. The Contractor shall provide backup street sweeping equipment adequate to ensure completion of scheduled work in the event scheduled equipment is down mechanically, to resweep an unsatisfactory area or to provide any additional sweeps ordered by the City. All street sweeping vehicles shall be clearly marked with the Contractor's name and telephone number prominently displayed for purposes of identification.

Section 6.03 Tachograph charts shall be U.S. 65 Part No. 840-0009/068287 or City approved equal. The tachograph charts shall provide the following information:

- (a) The name of the sweeper operator and the equipment identification number;
- (b) The date and the time of day of starting and finishing;
- (c) Total number of miles traveled by sweeper;
- (d) Deadhead miles (broom up); distance and speed during which sweeping did not take place;
- (e) Sweeper miles (broom down); distance and speed traveled by sweeper during sweeping; and
- (f) Time period when the sweeper was not in motion.

#### ARTICLE VII. RECORDKEEPING

Section 7.01 In addition to other data filed with the City by the Contractor, the Contractor shall file a report with the City enumerating the following information for the previous month:

- (a) Curb miles swept each day;
- (b) Scheduled curb miles swept and areas missed;
- (c) Scheduled curb miles swept and areas swept;
- (d) When missed areas were swept;
- (e) Number of complaints received each day;
- (f) Reasons scheduled sweeping was not done or completed as scheduled;
- (g) Waste Tonnage Summary; and
- (h) Tachograph charts for each day of sweeping.

**EXHIBIT F****TO COVINA EXCLUSIVE FRANCHISE AGREEMENT****City of Covina**

AB 939 Reporting Quantities

For the Month Ending July 31, 2010

**Waste Disposal Summary in Tons**

Facility	Residential Rubbish	Green Waste	Commercial	Industrial	Total Tonnage
Puente Hills Landfill	938.07	627.30	-	177.24	1,742.61
Athens Transfer	41.58	-		389.65	431.23
Innovative Waste	-	-	-	-	-
Downey Area Recycle & Transfer				-	-
Nu-Way				224.00	224.00
American Waste				-	-
Athens MRF	202.82		1,658.73		1,861.55
<b>Total Tonnage</b>	<b>1,182.47</b>	<b>627.30</b>	<b>1,658.73</b>	<b>790.89</b>	<b>4,259.39</b>

**Diversion Summary in Tons**

Office/Computer Paper	-		14.87		14.87
Newsprint	-		24.70		24.70
Glass	6.63		5.91		12.54
Cardboard	18.96		70.12		89.08
Ferrous (Iron/Steel)	4.38		32.91		37.29
Aluminum	0.61		2.04		2.65
Plastics	13.91		17.06		30.97
Yard Waste	8.52	627.30	486.26		1,122.08
Mixed Paper	128.25		58.44		186.69
Concrete			6.55	224.00	230.55
Non-Disposed Tonnage					-
Transformation			191.10		191.10
	181.26	627.30	909.95	224.00	1,942.52

Diversion					45.61%
-----------	--	--	--	--	--------

## EXHIBIT G

### TO COVINA EXCLUSIVE FRANCHISE AGREEMENT

#### City of Covina: Sort Line Analysis

For the Month Ending July 31, 2010

Inbound Tons	202.82	
Conversion to pounds	x 2,000	
Weight in pounds:	405,640	lbs.

Commodity	Characterization % Commodity Weight (lbs.)	Market Value Per Ton	Market Value Per Commodity
	(a)	(b)	((a) / 2000) * (b)
ONP Weight	36.65% 148,667	\$150.14	\$11,160.44
OCC Weight	9.35% 37,927	\$158.76	\$3,010.67
Sorted Office Weight	3.21% 13,021	\$165.00	\$1,074.24
Mixed Paper Weight	23.37% 94,798	\$121.30	\$5,749.50
Aluminum Cans Weight	0.30% 1,217	\$3,400.00	\$2,068.76
Glass-3 Mix Weight	1.27% 5,152	\$64.00	\$164.85
Glass-3 Mix Non CRV Weight	2.00% 8,113	\$0.00	\$0.00
HDPE- Natural Weight	1.66% 6,734	\$525.00	\$1,767.58
HDPE- Color Weight	0.46% 1,866	\$430.00	\$401.18
PETE Weight	0.80% 3,245	\$1,730.00	\$2,807.03
Other Plastic Weight	3.94% 15,982	\$104.67	\$836.43
Tin Cans Weight	1.44% 5,841	\$92.00	\$268.70
Tin Serap Weight	0.72% 2,921	\$188.09	\$274.67
Wood Weight	1.32% 5,354	(\$5.00)	(\$13.39)
Green Waste Weight	2.88% 11,682	(\$19.95)	(\$116.53)
<b>SUBTOTAL</b>	<b>89.37%</b> <b>362,520</b>		<b>\$29,454.12</b>

Residue	10.63%		
Weight	43,120	(\$60.87)	(\$1,312.39)
Total %	100%		
Total Weight	405,640		\$28,141.73

Gross Sales	\$	29,454.13
Proc. Share (20%)	\$	(5,890.83)
Handling Fees	\$	(9,540.65)
Landfill Fees	\$	(1,312.40)
Net to City	\$	12,710.25