

RESOLUTION NO. 2007-090

Adopted by the Sacramento City Council

February 13, 2007

APPROVING THE OLD SACRAMENTO SOLID WASTE COLLECTION AND DIVERSION PROGRAMS REQUEST FOR PROPOSALS AND ESTABLISHING A FRANCHISE FEE FOR SOLID WASTE PROVIDER

BACKGROUND

1. The Old Sacramento Collection District was established by the City Council in 2000 to provide an effective and efficient integrated solid waste management system for Old Sacramento, including solid waste collection and recycling services.
2. The current, open-competition system for providing solid waste services in the Old Sacramento Collection District has resulted in difficulty in holding businesses accountable for adequate collection services. Further, inadequate collection services have led to increased litter in alleyways, overflowing garbage bins, and increased noxious odors, all of which have a harmful effect upon economic development in Old Sacramento and endanger public health and safety.
3. The needs of the Old Sacramento District and its business community are best served by the establishment of an exclusive franchise for the provision of collection services. City Code section 13.10.560 authorizes granting a single contractor the exclusive right to provide collection services in Old Sacramento. The release of this Request for Proposals, which meets the requirements of City Code section 13.10.610, advances implementation of the Old Sacramento Collection District.
4. During the term of the agreement, the contractor shall pay the City franchise fees for the exclusive right to engage in the business of collecting, transporting, and disposing of solid waste kept, accumulated, or generated in the Old Sacramento Collection District. The Old Sacramento Collection District ordinance does not establish a franchise fee; therefore, staff recommends the City Council establish the fee by resolution at this time. The franchise fee will be an amount equal to ten percent (10%) per year of the gross rate revenues, as defined in the collection services agreement, received by the contractor from the contractor's customers located within in the Old Sacramento Collection District.

BASED ON THE FACTS SET FORTH IN THE BACKGROUND, THE CITY COUNCIL RESOLVES AS FOLLOWS:

- Section 1. The City Manager is authorized to release the Solid Waste Collection and Diversion Programs Request for Proposals (RFP).
- Section 2. A franchise fee for the exclusive right to engage in the business of collecting, transporting, and disposing of solid waste kept, accumulated, or generated in the Old Sacramento Collection District is hereby established. The franchise fee shall be an amount equal to ten percent (10%) per year of the gross rate revenues, as defined in the Old Sacramento Collection District Solid Waste Collection and Diversion Services Agreement.

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Exhibit A Old Sacramento Solid Waste Collection and Diversion Programs Request for Proposals (RFP)

Adopted by the City of Sacramento City Council on February 13, 2007 by the following vote:

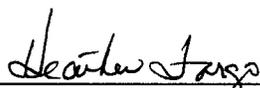
Ayes: Councilmembers, Cohn, Fong, Hammond, McCarty, Pannell, Sheedy, Tretheway, Waters, and Mayor Fargo.

Noes: None.

Abstain: None.

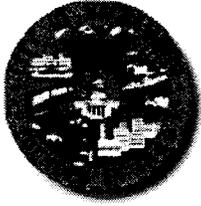
Absent: None.

Attest: 
Shirley Concolino, City Clerk



Mayor, Heather Fargo

CITY OF SACRAMENTO
OLD SACRAMENTO MANAGEMENT
DIVISION



REQUEST FOR PROPOSALS

FOR

**SOLID WASTE COLLECTION AND
DIVERSION PROGRAMS**

Release date: February 16, 2007

Proposal due date: April 6, 2007

Prepared by:



HILTON FARNKOPF & HOBSON, LLC

P074360001

CITY OF SACRAMENTO

OLD SACRAMENTO MANAGEMENT DIVISION

REQUEST FOR PROPOSALS

FOR

SOLID WASTE COLLECTION AND

DIVERSION PROGRAMS

Proposal Information: The City of Sacramento (City) Old Sacramento Management Division (OSM) is soliciting proposals from qualified companies to provide the following services to residents and businesses within the Old Sacramento Collection District (District) for a period of seven years for:

1. Collection of Solid Waste from Commercial and Multi-Family Accounts
2. Provision of Diversion Services for Commercial and Multi-Family Accounts

The services are exclusive except as noted in the attached Draft Collection Services Agreement (Attachment 1).

Only those companies that currently hold valid non-exclusive Commercial Solid Waste Collection Franchises with the Sacramento Regional Solid Waste Authority (SWA) OR can demonstrate the ability to obtain the SWA Franchise before the contract commencement date will be considered for this franchise. The selected company will be required to maintain its franchise with the SWA in good standing during the term of its franchise with the City. Municipal agencies that provide solid waste collection services within Sacramento County are not required to hold a SWA franchise agreement, and may submit proposals to the City for the requested services.

Copies of this Request for Proposal (RFP) package may be obtained from the City's website, <http://www.cityofsacramento.org/finance/bids>.

Pre-Proposal Meeting: The City will hold a pre-proposal meeting on Thursday, March 1, 2007 at 10 a.m. at:

**Old Sacramento Management Division
City of Sacramento
1111 Second Street, Suite 300
Sacramento, CA 95814
Phone: (916) 264-7032**

All interested parties are encouraged to attend the meeting.

Proposer Questions/Comments: All questions, requests for clarification, or requests for additional information regarding the RFP should be submitted in writing (via U.S. Postal Service, e-mail or fax, with confirmation request) to the following on or before March 8, 2007:

**Annabeth Stem, Administrative Officer
Old Sacramento Management
City of Sacramento
1111 Second Street, Suite 300
Sacramento, CA 95814
Fax: (916) 264-7286
Email: astem@cityofsacramento.org**

Proposal Forms: All proposals MUST include the required completed Proposal Forms in MS Excel format. To receive the blank Proposal Forms in Excel format, contact:

**Annabeth Stem, Administrative Officer
Old Sacramento Management
City of Sacramento
Phone: (916) 264-7032
Email: astem@cityofsacramento.org**

Proposal Submittal: All proposals must be received **by 3:00 p.m. on April 6, 2007**. Proposals received after this time and date may be rejected. Postmarks will not be accepted as proof of receipt. Proposers shall mail or hand-deliver proposal packages to:

**City Clerk
City of Sacramento
915 "I" Street, Room 106
Sacramento, CA 95814
(916) 808-7200**

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ATTACHMENTS

- Attachment 1 Draft Collection Services Agreement
- Attachment 2 Proposal Forms
- Attachment 3 Anti-Collusion Affidavit
- Attachment 4 Secretary's Certificate
- Attachment 5 District Map, Service Court Locations, and Account List
- Attachment 6 ESBD Program Requirements

Section I - Overview

OVERVIEW OF THE REQUEST FOR PROPOSALS

The City of Sacramento (City) Old Sacramento Management Division (OSM) is requesting proposals to provide garbage, rubbish and refuse (herein “solid waste”) collection and diversion services to residents and businesses within the Old Sacramento Collection District (District) for a period of seven years, commencing on January 1, 2008. The successful proposer will be responsible for providing all of the required services at the proposed rates. The requested collection services are summarized in Section III and described in detail in Attachment 1, the Draft Collection Services Agreement.

CITY’S OBJECTIVE

To provide an effective and efficient integrated solid waste management system for the area comprising the District, including solid waste collection and recycling services.

BACKGROUND

The City has found that the current, open competition system for providing solid waste services in the District has resulted in:

- Increased difficulty in holding businesses accountable for adequate collection services due to multiple collection companies and sharing of collection services by many businesses;
- Inadequate collection services have led to increased litter in alleyways and crowding of bins, and increased noxious odors, all of which have a deleterious effect upon economic development in the District, as well as endangering the public health and safety.

In addition, some collection providers of current collection services have refused to accommodate requests by businesses for recycling opportunities, which is contrary to adopted City policies that foster and promote recycling efforts.

Accordingly, the City Council (Council) has determined that the needs of the District, and its business community, are best served by the establishment of an exclusive franchise for the provision of collection services within the District.

CITY’S RIGHTS

The Council reserves the right to take any and all actions it deems in its interest related to this RFP. The Council may reject all proposals, and may thereafter instruct the City Manager to take such further action as the Council shall direct including, but not limited to, engaging in negotiations with one or more firms, persons or entities, or issuing a revised request for proposals in accordance with the procedures specified in Article VI of Chapter 13.10 of the Sacramento

City Code (Old Sacramento Collection District). The Council may also, in its discretion, waive any minor irregularities contained in a proposal.

Notwithstanding any other provision of Section 13.10.610 of the Sacramento City Code, the Council may, upon finding that it is in the best interests of the City and upon a vote of two-thirds of the Council, waive the competitive process and may instruct the City Manager to take such further action as the Council shall direct including, but not limited to, engaging in negotiations with one or more firms, persons or entities, or engaging in such other process as the Council may specify.

GENERAL RFP AGREEMENTS

This RFP shall not to be construed by any party as an agreement of any kind between the City and such party. This RFP does not obligate the City to accept any proposal, negotiate with any proposer, award an agreement, or proceed with the development of any project or service described in response to this RFP. The City has no obligation to compensate proposer(s) for the expense of preparing the proposal(s) and participating in this procurement process.

Proposals must comply fully with the requirements detailed in this RFP, including all attachments and addenda to the RFP. Required supporting documentation must be included and must be appropriately identified. The City may reject: incomplete proposals; proposals containing errors, inconsistencies, false, inaccurate or misleading information; proposals not submitted with the proper quantity of copies; or, proposals with other process or content errors or deficiencies.

Submission of a proposal shall constitute acknowledgment and acceptance of all the terms and conditions contained in this RFP and the Draft Collection Services Agreement, as appropriate, unless an exception to specific terms and/or conditions is expressed in writing in the proposal. Submittal of a proposal signifies proposer's commitment to provide the proposed services if selected. Proposals responding to this RFP may not be altered after submittal, except in response to City's request for clarification, and are firm for a period of 180 days from the date the proposal is submitted.

The City shall have the right (but not the obligation) to perform, and each proposer must agree to cooperate with, an investigation and review of each proposer's ability to perform the work required. Such cooperation by proposers shall apply not only to the verification of the proposer's capability and experience in the provision of services but also to the provision of any other component of work which may be required under this procurement.

PROCESS AND SCHEDULE

The proposal submittal process is described in Section IV. The key activities and completion dates are provided in Table 1 below.

Table 1 - RFP Schedule

COMPLETION DATE	ACTIVITY
February 16, 2007	City Issues RFP
March 1, 2007	City Holds Pre-Proposal Meeting
March 8, 2007	City Receives Final Written RFP and Draft Collection Services Agreement Questions/Comments from Proposers
March 15, 2007	City Issues Responses to Questions/Comments from Proposers and/or RFP Addendum
April 6, 2007	Companies Submit Proposals
April 30-May 4, 2007	Proposer Interviews Conducted (if necessary)
June 1, 2007	Announcement of Preferred Proposer
June 4, 2007	Contract Negotiations Begin
July 24, 2007	City Council Approves Selection of Contractor
July 25, 2007	Contractor Receives Formal Authorization to Proceed (Effective Date of Contract)
January 1, 2008	Contractor Commences Services (Contract Commencement Date)

SERVICE AGREEMENT COMMENTS

As previously noted, the Draft Collection Services Agreement is provided as Attachment 1 to this RFP. Proposers may submit written questions or comments related to the Agreement to the City’s consultant by March 8, 2007. The City may consider those comments and incorporate them, as it deems appropriate, into the Agreement along with any clarifications. Proposers will then be notified of any such changes or clarifications. Proposers are then to clearly note any exceptions to those agreements as part of their proposals, as specified in Item 7 (Exceptions to Agreements) of Section V of this RFP.

SUBCONTRACTORS

Proposers may not enter into agreements with subcontractors to provide services requested in the RFP.

Section II - Description of Current Services and Conditions

The information presented in this section is for information purposes only. The proposer agrees to indemnify and hold the City harmless from any claims of damages incurred by proposer for its reliance on this data. Each proposer should take whatever steps it believes are necessary to reasonably determine the actual collection service needs of the District and understand current and proposed service conditions in the District when preparing its proposal.

Description of Current Services

Commercial and multi-family automatic lift container, bin, and drop box collection services in the District are currently provided by various private firms under an open competition system. The current collection companies are regulated by Sacramento Regional Solid Waste Authority (SWA). The City's Solid Waste Division of the General Services Department currently services solid waste compactor accounts within the District and also provides source separated recycling services to various accounts.

Description of Service Area

The District means that area located in the City of Sacramento described as follows:

Beginning at the intersection of the center line of I Street and the center line of 2nd Street; thence easterly along the center line of I Street to the westerly right-of-way line of Interstate 5 Freeway; thence southerly along said right-of-way line to the point of intersection with the northerly right-of-way line of Neasham Circle; thence westerly along said northerly right-of-way line of Neasham Circle to the center line of Front Street (formerly The Embarcadero); thence northerly along the center line of Front Street to the intersection of the center line of J Street; thence easterly along the center line of J Street to the intersection of the center line of the alley in the block bounded by I, J, 2nd, Front Streets; thence northerly along the center line of said alley to the intersection of the center line of I Street; thence easterly along the center line of I Street to the point of beginning.

A map of the District is included in Attachment 5 as well as service court locations and a list of the businesses in the service area. The service area can contain up to 13 service courts where refuse and recycling containers are located. These 13 service courts currently contain the containers listed in Table 3.

Current service needs reflect a vacancy of 34,904 square feet. OSM has projected the solid waste and recycling capacity needs of its businesses and residents at full occupancy of the Old Sacramento buildings. To do this, the OSM relied upon waste generation benchmarks and conversion factors from the California Integrated Waste Management Board combined with square footage information related to the use of the space. Those square footage numbers are

located in Table 2 below and the related capacity requirements that this study has projected can be found in Table 3.

Table 2 - District Business Characteristics

Square Footage					Dwelling Units
Commercial Retail	Restaurant Retail	Non-Retail	Vacant	Total	
212,278	157,946	271,404	34,904	676,532	57

Table 3 - Solid Waste and Recyclable Materials Service Information

Material Type	Container Size	Number of Weekly Lifts		
		Current **	Projected at Full Capacity ***	Projected with Compactors at Full Capacity ****
Solid Waste	1 cubic yard	1		
Solid Waste	1.5 cubic yards	12		
Solid Waste	2 cubic yards	3.5		
Solid Waste	3 cubic yards	32		
Solid Waste	4 cubic yards	6	88	
Solid Waste	5 cubic yards	4		
Solid Waste (Compactors)	6 cubic yards	18		
Solid Waste (Compactors)	19 cubic yards	0	0	6
Commingled Recyclables*	2 cubic yards	3		
Commingled Recyclables*	3 cubic yards	3		
Commingled Recyclables*	4 cubic yards	2	88	88
Multi-Sort	90 Gallon	4		

Material Type	Container Size	Number of Weekly Lifts		
		Current **	Projected at Full Capacity ***	Projected with Compactors at Full Capacity ****
Recyclables*				

* Not to be included in the scope of the District’s exclusive franchise agreement.

** OSM conducted a survey to identify the current number of containers serviced and the frequency with which they are serviced.

*** OSM conducted an analysis to estimate the total volume of solid waste and recyclable materials generated in the District if it was fully occupied and estimated approximately 706 cubic yards per week of uncompacted materials would be generated. Assuming the materials would be collected in 4 cubic yard containers and half would be solid waste and half would be recyclables, OSM estimated 88 pick-ups per week for each material type (i.e., solid waste and recyclable materials).OSM takes no responsibility for the accuracy of the data or its estimate. It is the responsibility of the proposer to determine what they will need to provide adequate service to the District.

**** The City may be planning to consolidate all of the solid waste collection into large compactors to be shared by customers. The plan currently estimates a demand for six, 19-cubic yard compactors could be utilized for the collection of solid waste. Recyclable materials collection would still occur in standard sized bins or compactors as requested by customers.

EXISTING PROVIDERS RIGHT TO CONTINUE TO PROVIDE COLLECTION SERVICES

The City Council instructed City staff to notify collection companies operating in the City that “the City may provide or authorize exclusive solid waste handling services for residential, commercial and industrial accounts within the District...” Notices to the collection companies were dated June 21, 2005.

Pursuant to Section 49520 of the Public Resources Code and Section 13.10.600 of Chapter 13.10 of Sacramento City Code, a current collection service provider may continue to provide collection services within the District for a period of five years from the date that the City provides notice to the current collection service provider. The current rights of existing service providers will terminate with the expiration of the five-year notice on June 20, 2010. A current collection service provider who continues to provide collection services within the District during the five-year notice period shall:

- Possess and maintain a current and valid private refuse collector’s permit issued pursuant to Sections 13.10.080(D) and 13.10.150 of Chapter 13.10 (Garbage Collection and Disposal) of the Sacramento City Code, or a private collector’s permit issued pursuant to SWA Ordinance No. 1, as amended from time to time;
- Have contracts, executed prior to June 21, 2005 and with specified contract termination dates, with its customers for collection services and provide the City with a list of those contracts;

-
- Comply with the terms, conditions, and requirements of its City-issued private refuse collector's permit or SWA-issued private collector's permit;
 - Comply with the requirements of Chapter 13.10 (Garbage Collection and Disposal) of the Sacramento City Code including, but not limited to, the provisions concerning frequency and quality of service, as they may be amended from time to time; and,
 - Comply with the terms, conditions, and maximum rates set by the City for the contractor that entered into an exclusive Collection Services Agreement for solid waste collection and diversion services.

Section III - Scope of Requested Services

EXCLUSIVE NATURE OF FRANCHISE

Except as noted below and specified in the Draft Collection Services Agreement (Attachment 1) and Sacramento City Code Chapter 13.10, Article VI solid waste collection services for owners and tenants within the District shall be provided exclusively by the selected contractor except haulers that received five-year notice and have contracts with customers. No person, firm or entity who is not the contractor shall collect garbage, rubbish or refuse of any type within the District; and no owner or tenant within the District shall solicit collection service from, or enter into any contract with a provider of collection services who is not the selected contractor. The selected contractor will also be required to provide diversion services including collection of recyclable materials from customers requesting such service, but will not be granted the exclusive right to the collection of recyclable materials in the District.

COLLECTION SERVICES TO BE PROVIDED

1. Contractor shall provide an effective and efficient integrated waste management system for the area comprising the District, including solid waste collection and diversion services for commercial and multi-family accounts. Provision of recycling services for businesses and residents shall occur in strict conformance with the SWA Ordinance No. 2.
2. Providing collection services means providing solid waste collection service to any owner or tenant in the District.
3. Collection services for owners and tenants within the District shall be provided exclusively by the Contractor selected, except as specified in the Draft Collection Services Agreement consistent with Sacramento City Code section 13.10.600. The exclusivity of this franchise shall be limited only by the provisions of Section 49520 of the Public Resources Code requiring that existing service providers providing service under existing contracts are allowed to continue those contracts for up to five years after mailed notification pursuant to Section 49520 of the Public Resources Code.
4. Nothing in the RFP or Draft Collection Services Agreement shall be construed as to grant the Contractor exclusive right to collect recyclables within the District, provided that in the event that the laws of the State of California are amended to allow the City to grant an exclusive right to collect recyclables, the Contractor's authority shall be expanded to provide such rights.
5. Contractor shall provide a sufficient number of automatic lift containers, bins, drop boxes, or compactors of the appropriate size for the storage of solid waste on the service court locations specified in Attachment 5 unless OSM provides OSM-owned compactors. Under no circumstances shall collection containers be located on any property other than designated service courts, with the exception that the Firehouse Restaurant at 1110 Second Street shall

store their garbage and recyclables in their building and shall place their bins in front of their facility on Second Street for collection service. Contractor shall place containers only in locations approved by OSM, and shall obtain approval to relocate containers from OSM. OSM reserves the right to direct contractor to change container locations. Contractor shall provide equipment to ensure that compactors servicing multiple businesses accurately track each business individually for their use of the compactor and Contractor shall bill each user independently for their level of use.

6. Contractor shall provide a schedule identifying the day(s) solid waste will be collected at each service court. Authorized collection hours are 6 a.m. to 10 a.m., seven days per week.
7. Each container shall be: lockable; free of any dents and paint discolorations; in good condition; and newly painted in a color selected by the City after consultations with OSM. The Contractor's logo, the logo of OSM, and suitable informational lettering (including customer address and contact information) approved by OSM shall be the only markings on the container.
8. On at least a quarterly basis, each container will be steam cleaned, or cleaned by a pressure washing system that is equivalent to steam cleaning. This cleaning will be conducted off-site by the Contractor.
9. Contractor shall be responsible for any and all spillage resulting from the collection of the contents of the containers and shall immediately (before the collection vehicle leaves the area) pick up and otherwise remove all spillage. If the spillage contains any grease or grease-like waste, the Contractor shall be responsible for the pressure cleaning of the area of the spillage. If the Contractor's collection vehicle leaves the area without cleaning the spillage, the Contractor will, upon notification by the OSM or any customer, provide personnel to remove the spillage and clean the spillage area and may be subject to liquidated damages in accordance with the Collection Services Agreement.
10. In addition to responding to this RFP completely, proposers may include alternative garbage service programs which may be appropriate for an historic district for reducing the impact of garbage containers/facilities in the alleys. Any alternative program must be complete and must include all costs for equipment and labor to effectively implement the garbage storage/collection/removal program. Included must be the method of billing and collection of the fees for the garbage service. All proposals submitted must be in compliance with the standard programs and collection system described here-in. Alternative proposals may not be considered if proposals are not also responsive to the standard services requested.

Section IV - Proposal Submittal Process

Companies submitting proposals to the City shall follow the procedures described in this Section and the procedures included in any subsequent addendums to this RFP, which are issued by the City or its consultant.

STEP ONE – WRITTEN QUESTIONS

All questions, requests for clarification, or requests for additional information regarding the RFP should be submitted in writing (via U.S. Postal Service, e-mail or fax, with confirmation request) to the following on or before March 8, 2007:

Annabeth Stem, Administrative Officer
Old Sacramento Management
City of Sacramento
1111 Second Street, Suite 300
Sacramento, CA 95814
Fax: (916) 264-7286
Email: astem@cityofsacramento.org

STEP TWO –PRE-PROPOSAL MEETING

A pre-proposal meeting will be held at the Old Sacramento Management offices on March 1, 2007 at 10 a.m. Proposers may submit written questions related to the RFP and Draft Collection Services Agreement prior to the pre-proposal to Annabeth Stem, Administrative Officer as described in step one. In addition, oral and written questions will be accepted at the pre-proposal meeting. As appropriate, preliminary oral responses will be provided at that meeting. Additional questions may be submitted up to March 8, 2007. The City will respond in writing to all questions received by March 15, 2007. In the event of any inconsistencies between oral and written responses to questions, the written responses shall be used for the purposes of preparing proposals. The City may, at its discretion, issue a revised Draft Collection Services Agreement at that time.

STEP THREE – PROPOSAL SUBMITTAL

Proposers shall submit ten (10) bound double-sided copies and one (1) unbound single-sided copy of the complete proposal. In addition, a computer disk containing an electronic copy of all completed proposal forms (i.e., those provided in Attachment 2 of the RFP) shall be submitted in a sealed package. (To receive the blank Proposal Forms in Excel format, contact Annabeth Stem, Administrative Officer, Old Sacramento Management, City of Sacramento, phone (916) 264-7032 or email astem@cityofsacramento.org.) Proposals must be printed on a minimum of 30% post-consumer recycled content paper and bound copies must be double-sided.

The package shall be sealed and clearly labeled:

OLD SACRAMENTO COLLECTION DISTRICT PROPOSAL

FROM:

Name of Proposer: _____
Address: _____
Contact Person: _____
Telephone Number: _____
Fax Number: _____
E-mail: _____

The proposal may be mailed or hand delivered to:

City Clerk
City of Sacramento
915 "I" Street, Room 304
Sacramento, CA 95814

All proposals must be received by **3:00 p.m. on April 6, 2007**. Proposals received after this time and date may be returned unopened. Postmarks will not be accepted as proof of receipt.

Each proposal must be accompanied by surety made payable to the City in the amount of \$20,000 and in the form of a cashier's check. The purpose of the surety is to guarantee that the successful proposer will execute an Agreement with the City. If the selected proposer(s) does not execute the Collection Services Agreement, the City shall keep the surety to offset the potential cost associated with identification of an alternate service provider and schedule delays. Checks will be returned to all proposers no later than 60 days after the execution of the Collection Services Agreement with the successful proposer.

Pursuant to Sacramento City Code Section 13.10.620, proposals and accompanying information received from proposers shall be and remain confidential, and shall not be construed to be public records, until full and final completion of the procedures specified in Section 13.10.610. In the event that a proposer claims that information submitted with a proposal is or contains proprietary information, confidential information, or information which constitutes a trade secret, the proposer shall clearly mark "confidential" on that portion of the proposal claimed to be proprietary, confidential, or trade secret information. In the event that the city receives a request made pursuant to the California Public Records Act (Cal. Gov. Code § 6250 et seq.) for such information, the proposer shall execute an agreement meeting the approval of the City Attorney, which provides for defense and indemnification of the City in any action brought pursuant to the California Public Records Act. If the proposer fails to execute such an agreement within the time specified by the City Attorney, the material shall be deemed to be a public record and will be disclosed.

STEP FOUR – CLARIFICATION OF PROPOSAL INFORMATION

Proposers may be asked to clarify information through writing, interviews, or site visits with City staff or its consultant.

Section V - Proposal Requirements

This section includes an outline for the proposal as well as a description of the specific information to be included in each section of the proposal. At a minimum, the proposer is to provide all information required in this section as part of its proposal. Proposals should focus on demonstrating the proposers ability to fulfill the obligations of the Collection Services Agreement.

PROPOSAL OUTLINE

The following outline shall be used by proposers when completing their proposals:

- i. Title Page
- ii. Cover Letter (signed by the designated representative shown on Secretary's Certificate, Attachment 4, authorized to bind the proposing company)
- iii. Table of Contents
- 1.0 Company Description
 - 1.1 Business Structure
 - 1.2 Description of Proposer's Experience
 - 1.3 Information Regarding Litigation, Regulatory Actions, and Payment of Liquidated Damages
 - 1.4 Key Personnel
- 2.0 Technical Proposal for Collection Services
 - 2.1 Solid Waste Collection
 - 2.1.1 Collection
 - 2.1.2 Disposal
 - 2.2 Diversion Services
 - 2.2.1 Integrated Waste Management Plan
 - 2.2.2 Collection
 - 2.2.3 Processing
- 3.0 Proposal Forms
 - 3.1 General Proposal Information
 - 3.2 Operating Statistics
 - 3.3 Annual Operating Cost Estimate

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- 3.4 Commercial and Multi-Family Rate Proposal
 - 3.5 Drop Box and Compactor Rate Proposal
 - 4.0 Emerging and Small Business Development Requirements
 - 5.0 Criminal History
 - 6.0 Criminal History Check Authorization
 - 7.0 Exceptions to Collection Services Agreement
 - 8.0 Secretary's Certificate
 - 9.0 Anti-Collusion Affidavit
 - 10.0 Other Optional Information

1.0 Company Description

1.1 BUSINESS STRUCTURE

1. Provide documentation that the proposing company holds a valid franchise with the SWA OR demonstrate the ability to obtain the SWA Franchise before the contract commencement date.
2. Identify the legal entity(ies) that would execute the Collection Services Agreement. State whether each entity is a sole proprietorship, partnership, corporation, or joint venture. Describe in detail the relationship of the proposer to the executing entity. If the proposer is a joint venture, describe where the entities have collaborated before.
3. State the number of years the proposing entity(ies) have been organized and doing business under this legal structure. Proposal should include all the names of proposer's (and executing entities' if different than proposer's) owners/stockholders with greater than a 10% holding and creditors owed a debt greater than 10% of the company's total assets.
4. Identify other entities with common ownership and/or management.

1.2 DESCRIPTION OF PROPOSER'S EXPERIENCE

1. State whether the proposer is currently providing any services in the District, and if so, describe the type of services, the number of accounts, and number, size, and frequency of containers serviced.
2. State the approximate number of commercial and multi-family accounts and lifts per week the proposer is currently providing service to under its franchise with the SWA, if applicable.
3. Provide references from at least three jurisdictions within Sacramento County and neighboring counties where contractor is providing similar services including the:

name, address, and telephone number of each jurisdiction's representative responsible for administering the agreement.

1.3 INFORMATION REGARDING LITIGATION, REGULATORY ACTIONS, AND PAYMENT OF LIQUIDATED DAMAGES

Describe all past and pending civil, legal, regulatory, and criminal actions now pending or which have occurred in the past 5 years against key personnel (as identified by the proposer in Section 1.4), proposing entity, and all subsidiaries owned by proposing entity in California. List the amount of liquidated damages the proposing entity has paid, the name of the jurisdiction to which damages were paid, and the event(s) which triggered the damages.

1.4 KEY PERSONNEL

Provide the names, contact information and qualifications for the following key personnel:

- Regional Manager
- District Manager
- Site Manager
- Operations Manager
- Customer Service Manager

Also provide the name, contact information and qualifications for the person who will serve as the primary contact person for the City during the term of the Collection Services Agreement.

2.0 Technical Proposal for Collection Services

2.1 SOLID WASTE

2.1.1 COLLECTION

Each proposer shall describe how it plans to perform the solid waste collection services requested in the RFP and described in the Collection Services Agreement. Specifically, information should separately address multi-family, commercial, drop box, and compactor services. Include at a minimum:

- Type of vehicles (e.g., front-loader, rear-loader)
- Type and size of automatic lift containers, bins, drop boxes, and compactors
- Any special services and/or requirements

2.1.2 DISPOSAL

- A. **Disposal Site Information.** Identify the disposal site location, owner, and operator. Provide contact name and phone number of the site manager. Identify if the company that owns or operates the disposal site is the same as the proposing entity or a related-party entity.
- B. **Permits and Regulatory Compliance.** Provide contact names for the regulatory agencies that monitor facility compliance with applicable local, state, and federal laws and regulations. For each contact, provide the name of the regulatory agency, the contact person's name, title, and telephone number.
- C. **Costs.** Provide the per-ton disposal cost and, if applicable, per-ton transfer station fees effective on the commencement date of the Collection Services Agreement. List separately regulatory fees, taxes, and surcharges included in such cost.

2.2 DIVERSION SERVICES

2.2.1 INTEGRATED WASTE MANAGEMENT PLAN

Proposers shall describe, in detail, how they plan to comply with the Diversion and Recycling Requirements specified in Sections 7 and 8 of the Draft Collection Services Agreement. Specifically, information should separately address planned diversion operations, programs and/or methods for diversion of material from multi-family, commercial, drop box containers, and compactors. Include at a minimum:

- A description of any proposed source separation diversion; and
- A description of any diversion achieved through segregation of materials at a material recovery facility(ies).

2.2.2 COLLECTION

The following information is required for recyclable materials and organic collection services:

- Type of vehicles (e.g., front-loader, rear-loader);
- Type and size of automatic lift containers, bins, drop boxes, and compactors;
- Any special services and/or requirements; and,
- Sample of instructions and other public education materials that will be conveyed to customers.

2.2.3 PROCESSING

The following information is required for recyclable materials and organic materials processing services:

- A. **Processing Site Information.** Name, location, and description of the processing facility(ies) where (1) recyclable materials and (2) organic materials will be handled; name of the owner and operator of the facility(ies); contact name and phone number of the site manager; and, the current average monthly residue level of the processing site. Identify if the company that owns or operates the processing site is the same as the proposing entity or is a related-party entity.
- B. **Permits and Regulatory Compliance.** Provide contact names for the regulatory agencies that monitor the processing facility's compliance with applicable local, state, and federal laws and regulations. For each contact, provide the name of the regulatory agency, and the contact person's name, title, and telephone number.
- C. **Costs.** Provide the net per-ton revenue or net per-ton processing cost and, if applicable, per-ton transfer station fees effective on the commencement date of the Collection Services Agreement. List separately any regulatory fees, taxes, or surcharges included in such cost.

3.0 PROPOSAL FORMS

Proposal Forms 1 through 5 in Attachment 2 must be completed to document the proposer's proposed rates and other general information.

3.1 GENERAL PROPOSAL INFORMATION

Each proposer is required to complete Proposal Form 1 to document the company's proposal for the facilities to be used for disposal, processing, vehicle maintenance, and administration and equipment manufacturers and specifications.

3.2 OPERATING STATISTICS

Each proposer is to provide, on Proposal Form 2, operational statistics such as the number of full-time route personnel that will be required to service the District, the number of routes and route hours anticipated to service the District, and the tonnage of solid waste, recyclable materials, and organic materials anticipated to be collected in the District. This operational data will provide OSM with a basis for evaluating the reasonableness of each proposer's plans to service the District. For the purposes of preparing Form 2, use the current service level, or proposer's assessment of that service level, as the basis.

3.3 ANNUAL OPERATING COST ESTIMATE

On Proposal Form 3, each proposer is required to provide its estimated annual cost of operations to service the District listing costs separately for labor-related, vehicle-related, processing, disposal, and other cost. The annual operating cost information will provide OSM with a basis for evaluating the reasonableness of each proposer's plans to service the District. Note that the estimated annual operating costs shall be presented in current dollars. For the purposes of preparing Form 2, use the current service level, or proposer's assessment of that service level, as the basis.

3.4 COMMERCIAL AND MULTI-FAMILY RATE PROPOSAL

On Proposal Form 4, proposers are required to propose rates for collection of automatic lift containers and bins from commercial and multi-family customers. If the proposer is the selected franchise collector for the District, these proposed rates will be the company's compensation for providing service to District customers. Note that the proposed commercial and multi-family rates shall be presented for rate year one commencing January 1, 2008.

3.5 DROP BOX AND COMPACTOR RATE PROPOSAL

On Proposal Form 5, proposers are required to propose rates for collection of drop boxes and compactors in the District. If the proposer is the selected franchise collector for the District, these proposed rates will be the company's compensation for providing service to District customers. Note that the proposed drop box and compactor rates shall be presented for rate year one commencing January 1, 2008.

4.0 EMERGING AND SMALL BUSINESS REQUIREMENTS

On February 9, 1999, the Sacramento City Council adopted an emerging and Small Business Development (ESB D) program to provide enhanced opportunities for the participation of small business enterprise (SBE's) and emerging business enterprises (EBE's) in the City's contracting and procurement activities. More information regarding ESB D is contained in ATTACHMENT 7.

5.0 CRIMINAL HISTORY

Proposers shall provide a detailed criminal history (a) of each person, firm or entity who submits a response to the RFP; and (b) where the proposer is a firm or an entity, of each person who owns ten (10) percent or more of the shares of stock of a corporate entity proposer, or ten (10) percent or more of the assets of the proposing firm, or ten (10) percent or more of the interests of a partnership entity proposer.

6.0 CRIMINAL HISTORY CHECK AUTHORIZATION

Proposers are to submit the criminal history check which is to be signed by each person, firm or entity who submits a response to the RFP, and each person who under subsection 5.0 (Criminal History) above, is required to submit criminal history information, to allow the Chief of Police to conduct a criminal history check. The cost of the criminal history check thereof is to be paid for by such person, firm or entity.

7.0 EXCEPTIONS -TO AGREEMENTS

To provide proposers with a clear understanding of the roles, responsibilities, rights, and obligations of the selected contractor and the City, a Draft Collection Services Agreement has been included as Attachment 1 to this RFP. As previously noted, proposers may submit written questions or comments related to the Draft Collection Services Agreement to the City by March 8, 2007. The City may consider those comments and incorporate them, as it deems appropriate, into said agreement along with any clarifications. Any such changes to the agreement will be documented and forwarded to the proposers. Proposers are required to review these revisions to the Draft Collection Services Agreement prior to submittal of proposals to the City. This review process allows proposers to prepare the proposal and costs for services with full consideration of its rights and obligations.

The City expects the Draft Collection Services Agreement will be executed by the selected proposer in substantially the same form as presented in the revised draft of that agreement. Any proposed exceptions to the RFP and/or the proposed terms and conditions of the Draft Collection Services Agreement shall be described in detail by the proposer in their proposal. For each exception noted, proposer shall provide alternative language for the City's consideration. The City shall reserve the right to determine if the exceptions are reasonable. However, the number and nature of the comments will be compared to those noted by the other proposers during the proposal evaluation process and may be grounds for proposal rejection. If the City chooses to enter into negotiations with a proposer, the comments noted and recommended alternative Collection Services Agreement language will serve as a starting point for discussion. The proposer will be deemed to have accepted and agreed to any provisions of the RFP and/or proposed terms and conditions of the Draft Collection Services Agreement which have not been noted as exceptions in the proposal. With this understanding, the selected proposer may not initiate discussion with the City during negotiations related to Collection Services Agreement language for which no exceptions were noted. The City may wish to have the signed Collection Services Agreement in hand before City Council makes the final contractor selection.

8.0 ANTI-COLLUSION AFFIDAVIT

Each proposer shall complete and submit the Anti-Collusion Affidavit, Attachment 3.

9.0 SECRETARY'S CERTIFICATE

Each proposer shall complete and submit the Secretary's Certificate, Attachment 4.

10.0 OTHER OPTIONAL INFORMATION

Additional information or data relevant to the proposal is optional and may be included as an attachment.

Failure to provide all required information may be grounds for rejection of a proposal.

Section VI - Proposal Evaluation Criteria

The City Manager shall convene a panel of evaluators, which shall at a minimum include the City Manager or designee, a member or designee of the Historic Old Sacramento Foundation (formerly Old Sacramento Management Board), and a member of OSM. Proposals will be objectively evaluated based on various criteria that may include, but are not necessarily limited to:

Responsiveness (10%)

- Comprehensiveness and consistency of the proposal with respect to this RFP.
- Compliance with the RFP and procurement procedures.

Proposer's Qualifications (10%)

- Experience - Demonstrated experience of proposer and key personnel (those people who are implementing programs and providing on-going services to the District) providing the requested similar services to other jurisdictions. If the proposer is a joint venture, demonstrated experience of parties working together.
- Jurisdiction Satisfaction - Satisfaction of proposer's references for services received in the past five years (including, but not limited to, satisfaction with implementation, customer service, billing, payment of fees, reporting, and the handling of contractual issues).
- Litigation and Regulatory Action – Nature of past and pending civil, legal, regulatory, and criminal actions and history and nature of payments of liquidated damages.

Technical Proposal (20%)

- Operations - Reasonableness and reliability of proposed collection methods, equipment, and receptacles.
- Diversion Plan – Reasonableness of plan to comply with the Diversion and Recycling Requirements specified in the Draft Collection Services Agreement.

Proposed Cost (55%)

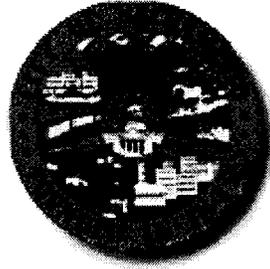
- Rates - Competitiveness of company's proposed Rate Year 1 rates based on estimated annual revenue.

Exceptions to Draft Collection Services Agreement (5%)

- Number and nature of exceptions to the RFP and Draft Collection Services Agreement.

The evaluation panel shall evaluate and score proposals and shall upon completion of the evaluation process provide a written recommendation to the City Council as to the responsible and qualified proposer whose proposal provides collection service at the lowest cost. A written notice of the evaluation panel's recommendation shall be provided to all proposers.

ATTACHMENT 1



**OLD SACRAMENTO COLLECTION DISTRICT
SOLID WASTE COLLECTION AND DIVERSION SERVICES
AGREEMENT
BETWEEN
THE CITY OF SACRAMENTO
AND
{INSERT CONTRACTOR'S NAME}**

{Date}

DRAFT FOR CITY REVIEW - January 31, 2007

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EXHIBITS

- A Collection Rates for Rate Period One
- B Service Court Locations

OLD SACRAMENTO COLLECTION DISTRICT
SOLID WASTE COLLECTION AND DIVERSION SERVICES AGREEMENT
BETWEEN
THE CITY OF SACRAMENTO
AND
{INSERT CONTRACTOR'S NAME}

This Agreement is made and entered into this _____ day of _____, 2007, by and between the CITY OF SACRAMENTO ("City"), and _____ ("Contractor").

RECITALS

WHEREAS, the Legislature of the State of California, by enactment of the California Integrated Waste Management Act of 1989 ("AB 939") (California Public Resources Code Section 40000 et seq.), has declared that it is in the public interest to authorize and require local agencies to make adequate provisions for Solid Waste handling within their jurisdictions; and,

WHEREAS, the City Council has found that the current open competition system for providing Solid Waste services in the Old Sacramento Collection District (District), has resulted in increased difficulty in holding businesses accountable for adequate services due to multiple Collection companies and sharing of services by many businesses; and,

WHEREAS, inadequate services have lead to increased litter in alleyways, crowding of bins; and increased noxious odors, all of which have a deleterious effect upon economic development in the District as well as endangering the public health and safety; and,

WHEREAS, some providers of current service have refused to accommodate business requests for Recycling opportunities, which in turn is contrary to AB 939 and adopted City policies fostering and promoting Recycling efforts; and,

WHEREAS, the City Council further finds that the needs of the District, and its business community are best served by establishing a Franchise for the provision of Collection services within the District; and,

WHEREAS, under Chapter 13.10, Article VI of the Sacramento City Code the City has the authority to provide for Collection service within the District through a Franchise agreement; and,

WHEREAS, the City Council desires, having determined through a competitive procurement for services that Contractor, by demonstrated experience, reputation and capacity is qualified to provide Collection services within the District, be engaged to perform such services on the basis set forth in this Agreement; and,

WHEREAS, the City has determined that the grant of such Franchise to Contractor is in the public interest; and,

WHEREAS, Contractor agrees to and acknowledges that it shall arrange for the proper Disposal of all Solid Waste Collected in the District and that the City is not instructing Contractor how to Collect, Transport or Dispose of Solid Waste so long as its operation is consistent with this Agreement and all related ordinances and resolutions.

NOW, THEREFORE, based on the mutual promises contained herein, the Parties agree as follows:

Section 1. DEFINITIONS

For purposes of this Agreement, unless a different meaning is clearly required, the following words and phrases shall have the following meanings respectively ascribed to them by this Article and shall be capitalized throughout this Agreement:

“Act” means the California Integrated Waste Management Act of 1989 (Division 30 of the California Public Resources Code), as amended, supplemented, superseded, and replaced from time to time.

“Agreement” means this Agreement between the City and _____ {Insert contractor’s name} for Collection of Solid Waste and Transportation of Solid Waste to the Approved Disposal Location, and Collection, Transportation, and Processing of Recyclable Materials and Organic Materials, including all exhibits, and any future amendments hereto.

“Applicable Law” means all Federal, State, and local laws, regulations, rules, orders, judgments, degrees, permits, approvals, or other requirement of any governmental agency having jurisdiction over the Collection, Transportation, Processing, and Disposal of Solid Waste, Recyclable Materials, and Organic Materials that are in force on the Effective Date and as they may be enacted, issued or amended during the Term of this Agreement.

“Approved Composting Site” means the _____ Composting site on _____ in _____, California, which was selected by Contractor, and approved by the City Manager. {Insert facility information once agreed upon by City and Contractor }

“Approved Disposal Location” means the _____ on _____ in _____, California, which was selected by Contractor, and approved by the City Manager. {Insert facility information once agreed upon by City and Contractor }

“Approved Recyclable Materials Processing Site” means the _____ on _____ in _____, California, which was selected by Contractor, and approved by the City Manager. {Insert facility information once agreed upon by City and Contractor }

“Automatic Lift Container” means a plastic refuse receptacle with a hinged lid that is designed to be lifted, dumped and returned by refuse packers that have a compatible mechanical lifting device.

“Bin” means a metal receptacle for the deposit of garbage or rubbish which shall: 1) have a close-fitting cover; 2) be leakproof and flyproof; 3) have handles or other devices to permit movement; 4) be free of sharp, rough or jagged surfaces or edges likely to cause injury; 5) utilize casters or other means for easy movement; and 6) be designed in a manner to be emptied mechanically by collection vehicles.

“Change in Law” means any of the following events or conditions which has a material and adverse effect on the performance by the Parties of their respective obligations under this Agreement (except for payment obligations):

-
-
- a. The enactment, adoption, promulgation, issuance, modification, or written change in administrative or judicial interpretation on or after the Effective Date of any Applicable Law; or
 - b. The order or judgment of any governmental body, on or after the Effective Date, to the extent such order or judgment is not the result of willful or negligent action, error or omission or lack of reasonable diligence of the City or of the Contractor, whichever is asserting the occurrence of a Change in Law; provided, however, that the contesting in good faith or the failure in good faith to contest any such order or judgment shall not constitute or be construed as such a willful or negligent action, error or omission or lack of reasonable diligence.

“City” means the City of Sacramento, a municipal corporation, and all the territory lying within the municipal boundaries of the City as presently existing or as such boundaries may be modified during the Term. Unless otherwise specified in this Agreement, any action authorized or required by the City may be taken by the City Council or by an agent designated by the City Council.

“Collection (or variation thereof)” means the act of Collecting Solid Waste, Recyclable Materials, Organic Materials, and other material at the place of generation in the City.

“Commencement Date” means the date specified in Section 4 when Collection, Transportation, Processing, Composting, and Disposal services required by this Agreement shall be provided.

“Commercial” shall mean of, from or pertaining to non-Residential Premises where business activity is conducted, including, but not limited to, retail sales, services, wholesale operations, manufacturing and industrial operations, but excluding businesses conducted upon Residential property which are permitted under applicable zoning regulations and are not the primary use of the property.

“Compactor” means a mechanical apparatus that compresses materials and/or the Container that holds the compressed materials. Compactors include Bin compactors of any size serviced by front-loading Collection vehicles and Drop Box Compactors of any size serviced by Drop-Box Collection vehicles. Compactors shall have the capability to track the usage of multiple users and systems should be available to bill each user independently based on their use of the Compactor.

“Complaint” means written or orally communicated statements made by members of the public, Customers, Owners, or Occupants of properties served by Contractor, or officers, employees or agents of City alleging non-performance or deficiencies in Contractor’s performance, or otherwise alleging a violation by Contractor of the provisions of this Agreement.

“Composting (or Compost)” includes a controlled biological decomposition of Organic Materials yielding a safe and nuisance free Compost Product.

“Construction and Demolition Debris” includes discarded building materials, packaging, debris, and rubble resulting from construction, alteration, remodeling, repair or demolition operations on any pavements, excavation projects, houses, Commercial buildings, or other structures. Construction refers to SIC Codes 1521 through 1794, 1796, and 1799. Demolition refers to SIC Code 1795.

“Containers” mean Bins, Automatic Lift Containers, Compactors, and Drop Boxes.

“Contractor” means _____ {Insert contractor’s name}, a corporation organized and operating under the laws of the State of _____ and its officers, directors, employees, agents, companies, and

Subcontractors to whom the City by virtue of this Agreement has been granted a Franchise for the services described in Section 6.

“Contractor’s Compensation” means the monetary compensation received by Contractor in return for providing services in accordance with this Agreement as described in Section 18.

“Contractor’s Proposal” means the proposal submitted by Contractor and received on _____ 2007 by the City in response to the City’s _____ 2007 Request for Proposals for Solid Waste Collection and Diversion Programs in the Old Sacramento Collection District and certain supplemental written materials incorporated by reference.

“Customer” means the Person whom Contractor submits billing invoice to and Collects payment from for Collection services provided to a Premises. The Customer may be the Occupant or Owner of the Premises provided that the Owner of the Premises shall be responsible for payment of Collection services if an Occupant of a Premises, which is identified as the Customer of Owner’s Premises, fails to make such payment.

“Designated Waste” means non-Hazardous Waste which may pose special Disposal problems because of its potential to contaminate the environment and which may be Disposed of only in Class II Disposal Sites or Class III Disposal Sites pursuant to a variance issued by the California Department of Health Services. Designated Waste consists of those substances classified as Designated Waste by the State of California, in California Code of Regulations Title 23, Section 2522 as may be amended from time to time.

“Disposal or Dispose (or variation thereof)” means the final disposition of Solid Waste at a Disposal Site.

“Disposal Site” means a facility for ultimate Disposal of Solid Waste.

“District” means the Old Sacramento Collection District defined in Section 13.10.570 of the Sacramento City Code.

“Diversion” means activities that reduce or eliminate the amount of Solid Waste from Solid Waste Disposal including, but not limited to, Recycling and Composting.

“Drop Box” means an open-top Container with a typical capacity of 6 to 50 cubic yards that is serviced by a roll-off Collection vehicle.

“Dwelling Unit” means any building or portion of a building used or designed for use as a residence by an individual or any group of individuals living together or as a family, but excepting therefrom units rented or leased for temporary residency, such as motel and hotel rooms.

“Effective Date” means the date on which the latter of the two Parties signs the Agreement and the date on which Contractor may begin to take actions and incur costs in preparation to provide Collection, Transportation, Processing, and Disposal services required by this Agreement.

“Federal” means belonging to or pertaining to the national government of the United States; or founded on or organized under the constitution of the United States.

“Food Scraps” means food scraps such as those Discarded Organic Materials that will decompose and/or putrefy including (i) all kitchen and table food waste, and animal or vegetable waste that attends or results

from the storage, preparation, cooking or handling of food stuffs, and (ii) paper waste contaminated with Food Scraps. Food Scraps is a subset of Organic Materials.

“Franchise” is the exclusive right and privilege of Contractor to Collect, Transport, and Process Solid Waste in accordance with the terms and conditions of this Agreement.

“Garbage” consists of dead animals, of not more than ten (10) pounds weight each, and of every accumulation of animal, vegetable, and other matter that attends the preparation, consumption, decay or dealing in, or storage of meats, fish, fowl, birds, fruits and vegetables, and any matter that will putrefy. The term “garbage” does not include dishwater or waste water.

“Generator” means any Person as defined by the Public Resources Code, whose act or process produces Solid Waste, Recyclable Materials, or Organic Materials as defined in the Public Resources Code, or whose act first causes Solid Waste to become subject to regulation.

“Gross Rate Revenue” means the actual monies remitted to Contractor by Customers and shall be determined in accordance with Generally Accepted Accounting Principles.

“Hazardous Waste” includes any waste material or mixture of wastes which is toxic, corrosive, flammable, an irritant, a strong sensitizer, which generates pressure through decomposition, heat or other means, if such a waste or mixture of wastes may cause substantial personal injury, serious illness or harm to humans, domestic animals, or wildlife, during, or as an approximate result of any disposal of such wastes or mixtures of waste as defined in Article 2, Chapter 6.5, Section 25116 of the Health and Safety Code. The terms “toxic,” “corrosive,” “flammable,” “irritant,” and “strong sensitizer” shall be given the same meaning as in the California Hazardous Substances Act (Chapter 13 commencing with Section 28740 of Division 21 of the Health and Safety Code) and under various federal, state, local, or municipal laws, rules, orders, regulations, statutes, ordinances, codes, decrees, or requirements of any government authority regulating, relating to, or imposing liability or standards of conduct concerning any hazardous substance, together with any amendments of or regulations promulgated under such laws, and any other federal, state, or local law, statute, ordinance, or regulation in effect prior to the time of adoption of this chapter or later enacted that pertains to occupational health or industrial hygiene, or the regulation or protection of the environment, including ambient air, soil, soil vapor, groundwater, surface water, or land use.

“Holidays” are defined as New Year’s Day, Fourth of July, Labor Day, Thanksgiving Day, and Christmas Day.

“Infectious wastes” includes: 1) equipment, instruments, utensils, and other fomites of a disposable nature from the rooms of patients who are suspected to have or have been diagnosed as having a communicable disease and must, therefore, be isolated as required by public health agencies; 2) laboratory wastes, including pathological specimens (i.e., all tissues, specimens of blood elements, excreta and secretions obtained from patients or laboratory animals) and disposable fomites (any substance that may harbor or transmit pathogenic organisms) attendant thereto; 3) surgical operating room pathological specimens including recognizable anatomical parts, human tissue, anatomical human remains and disposable materials from hospitals, clinics, outpatient areas and emergency rooms, as is also defined in Section 314 (d) of the California Administrative Code, Title 17; and 4) substances or matter which is defined as “infectious waste” under the California Code of Regulations.

“Landfill Tip Fee” means the per-Ton fee Contractor pays the owner or operator of the Approved Disposal Location for Disposal of Solid Waste.

“**Litter**” consists of litter, garbage, rubbish, waste matter, junk, debris, vehicle parts, and all other materials, things or objects which are made available for collection in connection with the abatement of any public nuisance or other actions taken pursuant to the provisions of Title 13 of the Sacramento City Code.

“**Mobile Trailer**” means a towable receptacle for the deposit, storage and transport of Solid Waste.

“**Multi-Family**” means any Residential Premises, other than a Single-Family or Multi-Plex Premises, with two or more dwelling units used for Residential purposes (regardless of whether residence therein is temporary or permanent) which receive centralized Collection service for all units on the Premises which are billed to one Customer at one address.

“**Occupant**” means the Person who occupies a Premises.

“**Organic Materials**” means those Discarded Materials that will decompose and/or putrefy and that the City’s Municipal Code permits, directs, and/or requires Generators to separate from Solid Waste and Recyclable Materials for Collection in specially designated Containers for Organic Materials Collection. Organic Materials include Yard Trimmings and Food Scrap such as, but are not limited to, green trimmings, grass, weeds, leaves, prunings, branches, dead plants, brush, tree trimmings, dead trees, small wood pieces, other types of organic yard waste, vegetable waste, fruit waste, grain waste, dairy waste, meat waste, fish waste, paper contaminated with Food Scrap or otherwise not accepted in the Recyclable Materials Collection program, pieces of unpainted and untreated wood, and pieces of unpainted and untreated wallboard. No Discarded Material shall be considered to be Organic Materials, however, unless such material is separated from Solid Waste and Recyclable Material.

“**Owner**” means the Person holding legal title to the land or building.

“**Party or Parties**” refers to the City and Contractor, individually or together.

“**Person(s)**” means any individual, firm, association, organization, partnership, corporation, business trust, joint venture, the United States, the State of California, the County of Sacramento, and special purpose districts.

“**Premises**” means any land or building in the City where Solid Waste, Recyclable Materials, or Organic Materials are generated or accumulated.

“**Processing Site**” means any plant or site used for the purpose of sorting, cleansing, treating or reconstituting Recyclable Materials for the purpose of making such material available for reuse.

“**Rate**” means the dollar unit to be charged a Customer by Contractor for providing Solid Waste Collection and Disposal, Recyclable Materials Collection and Processing services, and Organic Materials Collection and Processing services.

“**Rate Period**” means a 12-month period, commencing January 1 and concluding December 31 for which Rates are calculated.

“**Recyclable Materials**” means those Discarded Materials that the City Code permits, directs and/or requires Generators to set out in Recyclables Container for Collection for the purpose of Recycling. No Discarded Materials shall be considered Recyclable Materials unless such material is separated from Solid Waste and Organic Materials.

“Recycle or Recycling” means the process of sorting, cleansing, treating and reconstituting at a Recyclable Materials Processing Site materials that would otherwise be Disposed of at a landfill for the purpose of returning such materials to the economy in the form of raw materials for new, reused or reconstituted products.

“Refuse” includes waste paper; cardboard, wood, rubbish, trash, Waste Matter, and all other similar matter; but does not include any matter included in the definition of Garbage, Hazardous Wastes, and Infectious Wastes in this Section.

“Residential” describes any property, premises or place on which is constructed one or more buildings or other structures containing less than five dwelling units, but including structures containing any number of residential condominiums.

“Rubbish” consists of wood, leaves, dead trees or branches thereof, chips, shoes, hats, crockery, glassware, ashes, cinders, metals, garden refuse, and all other material not included under the term “garbage” or “waste matter.”

“Single-Family” means, notwithstanding any contrary definition in the City’s Municipal Code, any detached house or residence designed or used for occupancy by one family, provided that Collection service feasibly can be, and is, provided to such Premises as an independent unit.

“Solid Waste” means Garbage, Rubbish, or Refuse. Excluded from the definition of Solid Waste are Waste Matter, Construction and Demolition Debris, Hazardous Waste, Infectious Waste, Designated Waste, Source Separated Recyclable Materials, Source Separated Organic Materials, and radioactive waste. Notwithstanding any provision to the contrary, “Solid Waste” may include de minimis volumes or concentrations of waste of a type and amount normally found in Residential Solid Waste after implementation of programs for the safe Collection, Recycling, treatment and Disposal of Household Hazardous Waste in compliance with Section 41500 and 41802 of the California Public Resources Code as may be amended from time to time.

Solid Waste includes Salvageable Materials only when such materials are included for Collection in a Solid Waste Container.

“Source Separated” means the segregation, by the Generator, of materials designated for separate Collection for some form of Recycling, Composting, recovery, or reuse.

“Specialty Recyclable Material” means Recyclable Materials that are not specified as Traditional Recyclable Materials that can be Collected for purposes of Recycling by any Person operating under a valid permit issued by the City. Such Specialty Recyclable Material includes, but is not limited, to scrap metal weighing more than 10 pounds, Construction and Demolition Debris, pallets, and plastic film.

“State” means the State of California.

“Subcontractor” means a Party who has entered into a contract, express or implied, with the Contractor for the performance of an act that is necessary for the Contractor’s fulfillment of its obligations under this Agreement and approved by the City in accordance this Agreement for services such as, but not limited to, Collection, Transportation, Processing, Diversion, sales or marketing of Recyclable Materials or Organic Materials, staffing, public education, customer service, and billing, or other service whose cost is a substantial portion of the Contractor’s total annual cost.

“Term” means the Term of this Agreement, including extension periods if granted, as provided for in Section 4.

“Ton (or Tonnage)” means a unit of measure for weight equivalent to 2,000 standard pounds where each pound contains 16 ounces.

“Transportation” means the act of transporting or state of being transported.

“Waste Matter” consists of natural soil, earth, sand, clay, gravel, loam, manure, stones, bricks, brickbats, plaster, or portland cement.

“Yard Trimmings” means those Discarded Materials that will decompose and/or putrefy, including, but not limited to, green trimmings, grass, weeds, leaves, prunings, branches, dead plants, brush, tree trimmings, dead trees, small pieces of unpainted and untreated wood, and other types of organic waste. Yard Trimmings are a subset of Organic Materials. Yard Trimmings placed for Collection may not exceed six inches in diameter and five feet in length.

Section 2. GRANT AND ACCEPTANCE OF FRANCHISE

1. Subject to Sections 5 and 6.2, the City hereby grants to Contractor an exclusive Solid Waste Collection Franchise ("Franchise") authorizing Contractor to engage in the business of Collecting, Transporting and Disposing of Solid Waste kept, accumulated or generated in the District and to use the public streets and rights of way for such purpose.
2. Contractor hereby accepts the Franchise on the terms and conditions set forth in this Agreement, and all related ordinances and resolutions.

Section 3. REPRESENTATIONS AND WARRANTIES OF CONTRACTOR

1. **Corporate Status.** Contractor is a corporation duly organized, validly existing and in good standing under the laws of the State of California. It is qualified to transact business in the State of California and has the power to own its properties and to carry on its business as now owned and operated and as required by this Agreement.
2. **Corporate Authorization.** Contractor has the authority to enter into and perform its obligations under this Agreement. The Board of Directors of Contractor (or the shareholders, if necessary) has taken all actions required by law, its articles of incorporation, its bylaws, or otherwise, to authorize the execution of this Agreement. The Person signing this Agreement on behalf of Contractor has authority to do so.
3. **Agreement Will Not Cause Breach.** To the best of Contractor's knowledge, after reasonable investigation, neither the execution or delivery of this Agreement nor the performance of this Agreement by Contractor: (i) conflicts with, violates, or results in a breach of any Applicable Law; or (ii) conflicts with, violates or results in a breach of any term or condition of any judgment, order or decree of any court, administrative agency or other governmental authority, or any Agreement or instrument to which Contractor is a Party or by which Contractor or any of its properties or assets are bound, or constitutes a default thereunder.
4. **No Litigation.** To the best of Contractor's knowledge, after reasonable investigation, there is no action, suit, proceeding or investigation, at law or in equity, before or by any court or governmental authority, commission, board, agency or instrumentality decided, pending or threatened against Contractor wherein an unfavorable decision, ruling or finding, in any single case or in the aggregate, would materially adversely affect the performance by Contractor of its

obligations hereunder or which, in any way, would adversely affect the validity or enforceability of this Agreement or which would have a material adverse effect on the financial condition of Contractor or any surety guaranteeing Contractor's performance under this Agreement, which has not been waived by the City in writing.

5. **No Adverse Judicial Decisions.** To the best of Contractor's knowledge, after reasonable investigation, there is no judicial decision that affects the validity of this Agreement and may subject this Agreement to legal challenge.
6. **Ability to Perform.** Contractor possesses the business, professional, and technical expertise to manage, Collect, Transport, treat, store and Dispose of the Solid Waste and to manage, Collect, Transport, store, and Process Recyclable Materials and Organic Materials; and Contractor possesses the equipment, facility, and employee resources required to perform this Agreement.
7. **Contractor's Statements.** The Contractor's Proposal and any other supplementary information submitted to the City, which the City has relied on in awarding and entering this Agreement, do not: (i) contain any untrue statement of a material fact, or (ii) omit to state a material fact that is necessary in order to make the statements made, in light of the circumstances in which they were made, not misleading.
8. **Contractor's Investigation.** Contractor has made an independent investigation (satisfactory to it) of the conditions and circumstances surrounding the Agreement and the work to be performed hereunder. Contractor has taken such matters into consideration in enter this Agreement to provide services in exchange for the compensation provided for under the terms of this Agreement.
9. **Voluntary Use of Facilities.** The Contractor, without constraint and as a free-market business decision in accepting this Agreement, agrees to use the Approved Disposal Location for the purposes of Disposing of all Solid Waste Collected in the District, the Approved Recyclable Materials Processing Site for Processing all Recyclable Materials Collected in the District, and Approved Composting Site for Composting all Organic Materials Collected in the District. Contractor selected the Disposal Site and Processing Sites. Such decision by Contractor in no way constitutes a restraint of trade notwithstanding any Change in Law regarding flow control limitations or any definition thereof.

Section 4. TERM OF AGREEMENT

1. **Commencement Date.** The Commencement Date of this Agreement shall be January 1, 2008, and shall be the date Contractor commences provision of Collection, Transportation, Processing, and Disposal services described by this Agreement. During the time between the Effective Date and Commencement Date, Contractor shall perform any and all activities necessary to commence services on the Commencement Date.
2. **Term.** The Term of this Agreement shall be seven (7) years and shall end at midnight December 31, 2013, unless extended by City pursuant to Subsection 3 below.
3. **Option to Extend Term.** The City, at its sole discretion, shall have the option to extend this Agreement, up to sixty (60) months after December 31, 2013, i.e., until December 31, 2018, in periods of at least twelve (12) months each, pursuant to the terms and conditions of this Agreement. If the City elects to exercise the option, it shall give written notice of its election,

specifying the number of months by which it elects to extend the Term, to the Contractor, one-hundred eighty (180) calendar days prior to the initial expiration date or extended termination date of this Agreement.

Section 5. CONDITIONS FOR EFFECTIVENESS

The effectiveness of this Agreement is subject to Contractor's satisfaction of each and all of the conditions set forth below, each of which may be waived in whole or in part by the City.

1. **Accuracy of Representations.** The representation and warranties made by Contractor in Section 3 of this Agreement are true and correct on and as of the Effective Date.
2. **Absence of Litigation.** There is no litigation pending on the Effective Date in any court challenging the award or execution of this Agreement or seeking to restrain or enjoin its performance.
3. **Furnishing of Insurance.** Contractor has furnished evidence of the Insurance required by Section 21 of this Agreement.
4. **Effectiveness of City Council Action.** The City Council shall have taken action approving this Agreement and all Parties shall have signed the Agreement pursuant to Applicable Law prior to or on the Effective Date, provided that no restraining order of any kind has been issued.

Section 6. SCOPE OF AGREEMENT

1. **Scope of Agreement.** Subject to Subsection 6.2 below, the Agreement granted to Contractor shall be exclusive for Collection, Processing and/or Disposal of Solid Waste generated in the District, except as provided for in Section 13.10.590 of the City Code relating to the Collection of Garbage, Refuse and Rubbish in the District, or where otherwise precluded by Federal, State and local laws and regulations or where other current programs provide for Collection of Household Hazardous Waste. The Contractor shall be responsible for the following services:
 - 1.1. Collecting all Solid Waste generated in the District and placed by Generator for Collection.
 - 1.2. Offering and providing Source Separated Recyclable Materials and Organic Materials Collection services to any and all Customers requesting such service from the Contractor.
 - 1.3. Transporting Collected materials to the Approved Disposal Location, Approved Composting Site, or Approved Recyclable Materials Processing Site.
 - 1.4. Processing and marketing Recyclable Materials and Organic Materials Collected in the District by Contractor.
 - 1.5. Billing Customers for Collection services at Rates established by this Agreement and collecting payment from Customers.
 - 1.6. Providing customer service staff to assist Customers with complaints, requests or modifications to Collection service, billing questions, etc.
 - 1.7. Furnishing all labor, supervision, vehicles, Containers, other equipment, materials, supplies, and all other items and services necessary to perform its obligations under this Agreement.

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- 1.8. Paying all expenses related to provision of services required by this Agreement including, but not limited to, taxes, regulatory fees, pass-through costs, utilities, etc.
 - 1.9. Providing all services required by this Agreement in a thorough and professional manner so that residents, businesses, and the City are provided timely, reliable, courteous and high-quality service at all times.
 - 1.10. Performing all services in substantial accordance with the Contractor's Proposal and in full accordance with this Agreement at all times using best industry practice for comparable operations. If the Contractor's Proposal and Agreement conflict, the Agreement shall prevail.
 - 1.11. Complying with Applicable Law.
 - 1.12. Performing or providing all other services necessary to fulfill its obligations under this Agreement.
 - 1.13. Preparing and implementing a Diversion Plan and achieving the Diversion and Recycling Requirement established in Section 9.
 - 1.14. The enumeration and specification of particular aspects of service, labor, or equipment requirements shall not relieve Contractor of the duty of accomplishing all other aspects necessary to fulfill its obligations under this Agreement whether such requirements are enumerated elsewhere in the Agreement or not.
2. **Limitations to Scope.** This Agreement for the Collection, Transportation, Processing, and Disposal of Solid Waste granted to Contractor shall be exclusive except as to the following materials listed in this Section. The award of this Agreement shall not preclude the categories of Solid Waste, Recyclable Materials and Organic Materials listed below from being delivered to and Collected and Transported by others provided that nothing in this Agreement is intended to or shall be construed to excuse any Person from obtaining any authorization from City which is otherwise required by law.
- 2.1. Solid Waste handled by collection companies that received a 5-year notice from the City and that entered into agreements with customers prior to June 21, 2005, provided that this exception expires June 20, 2010.
 - 2.2. Solid Waste, Recyclable Materials, Organic Materials, and Construction and Demolition Debris which are removed from any Premises by the Generator, and which are Transported personally by the Owner or Occupant of such Premises or by his or her employees or a contractor whose removal of the Solid Waste, Recyclable Materials and/or Organic Materials are incidental to the service being performed.
 - 2.3. Recyclable Materials and Organic Materials handled by collection companies permitted or licensed to do business in the City.
 - 2.4. Recyclable Materials and Organic Materials which are Source Separated at any Premises by the Generator and donated to youth, civic, or charitable organizations;
 - 2.5. Containers delivered for Recycling under the California Beverage Container Recycling and Litter Reduction Act, Section 14500, et seq. California Public Resources Code;
 - 2.6. Organic Materials 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 at no additional or separate fee;

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- 2.7. Animal waste and remains from restaurants, slaughterhouses, or butcher shops for use as tallow (typically Collected in rendering pots);
 - 2.8. By-products of sewage treatment, including sludge, sludge ash, grit and screenings;
 - 2.9. Hazardous Waste and Designated Waste regardless of its source;
 - 2.10. Public schools located in the District.
3. **Grant of Exclusive Rights.** This grant to Contractor of an exclusive right and privilege to Collect, Transport, or Process and Dispose of Solid Waste shall be interpreted to be consistent with State and Federal laws, now and during the Term of the Agreement, and the scope of this exclusive right shall be limited by applicable State and Federal laws with regard to the matters contained in this Agreement. In the event that future judicial interpretations of current law or new laws, regulations, or judicial interpretations limit the ability of the City to lawfully provide for the scope of services as specifically set forth herein, Contractor agrees that the scope of the Agreement will be limited to those services and materials which may be lawfully provided and that the City shall not be responsible for any lost profits or losses claimed by Contractor to arise out of limitations of the scope of the Agreement set forth herein. In such an event, it shall be the responsibility of Contractor to minimize the financial impact to other services being provided as much as possible.
 4. **Subcontracting.** Contractor shall not engage any Subcontractors for Collection, Transportation, Processing, or Disposal of Solid Waste, Recyclable Materials, or Organic Materials without the prior written consent of the City.

Section 7. COLLECTION STANDARDS

1. **Care of Private Property.** Contractor shall use due care when handling Solid Waste, Recyclable Materials and Organic Materials Containers. Containers shall not be thrown from trucks, roughly handled, damaged or broken. Containers shall be returned to the Collection point upright, with lids properly secured. The City may levy liquidated damages for repeat occurrences in accordance with Section 34 of this Agreement. Contractor shall ensure that its employees close all gates and lock all locks opened by them in making Collections, unless otherwise directed by the Generator.

City shall refer Complaints about damage to private property to Contractor. Contractor shall repair all damage to private property caused by its employees.

2. **Litter Abatement**
 - 2.1 **Minimization of Spills.** Contractor shall use due care to prevent Solid Waste, Recyclable Materials and Organic Materials from being spilled or scattered during the Collection or Transportation process. If any Solid Waste, Recyclable Materials or Organic Materials are spilled during Collection, the Contractor shall promptly clean up all spilled materials.
 - 2.2 **Transfer Loads.** Contractor shall not transfer loads from one vehicle to another on any public street, unless it is necessary to do so because of mechanical failure; hot load (combustion of material in the truck); accidental damage to a vehicle or unless approved by the City.
 - 2.3 **Cleanup.** During Collection, the Contractor shall clean up Litter in the immediate vicinity of any Solid Waste, Recyclable Materials or Organic Materials storage area (including the areas where

Collection Containers are delivered for Collection) whether or not Contractor has caused the Litter. Each Collection vehicle shall carry a broom and shovel at all times for the purpose of cleanup of Litter. Cat-litter or similar absorbent material shall be used for liquid spill cleanups. The Contractor shall discuss instances of repeated spillage not caused by it directly with the Generator responsible and will report such instances to City. In situations where the Contractor has already attempted to do so without success, the City will attempt to rectify such situations with the Generator.

2.4 Covering of Loads. Contractor shall cover all open Drop Boxes at pick-up location prior to Transport to the Disposal Site or Processing Site.

3. **Hours of Collection.** Scheduled Collection of Solid Waste, Recyclable Materials and Organic Materials from Premises that are one hundred (100) feet or less from Single-Family Premises and Multi-Family Premises may occur only between the hours of 6:00 a.m. and 10:00 a.m. Collection of Solid Waste from Commercial Premises more than one hundred (100) feet from Single-Family Premises and Multi-Family Premises may occur only between the hours of 4:00 a.m. and 10:00 a.m. Contractor will promptly resolve any Complaints of noise during the morning or evening hours of the day to the satisfaction of the City.
4. **Noise.** All Collection operations shall be conducted as quietly as possible and shall conform to applicable Federal, State, County and City noise level regulations.
5. **Holiday Collection Schedule.** Collection may not occur on the Holiday but shall occur on the day following the Holiday, except when the Holiday falls on a Saturday or Sunday Collection shall occur on the first Monday following the Holiday. The Contractor shall provide at least a two (2) week advance notice to all Customers regarding the Holiday schedule changes.
6. **Permanent Changes in Service Days.** The regularly scheduled day for Collection may be changed with prior written approval from the City. Once approved, Customers shall be notified two (2) weeks prior to any schedule changes to Solid Waste, Recyclable Materials, and Organic Materials services. Contractor shall not permit any Customer to go more than seven (7) calendar days without service during a Collection schedule change.
7. **Load Inspection Program.** Contractor shall develop and implement a program to detect and discover Hazardous Waste and shall not knowingly accept such material at the time of Collection. The load inspection program shall include the following steps: Collection vehicle drivers shall receive regular training (at least four times annually) to identify Hazardous Wastes and methods for handling these materials once spotted. All Contractor facilities have waste exclusion programs in place to screen for and eliminate Hazardous Waste from the materials received. Random inspections of loads Collected and visual screening shall be periodically conducted. Records of load checks and copies of the employee training records shall be maintained at Contractor's facilities. When Hazardous Waste is found, it is returned to the Generator if possible. If the Hazardous Waste cannot be returned to the Generator, Contractor shall place Hazardous Waste in an authorized storage location and arrange for proper Disposal of such material at its cost.

Section 8. DIVERSION PLANS

1. The Contractor shall submit a Diversion Plan to the City on an annual basis, no later than July 1 of each year. The Diversion Plan shall include a detailed description of how the Contractor intends to comply with the Diversion requirements set forth in Section 9 hereof. The Diversion Plan must include a description of the methods the Contractor intends to use to satisfy its Diversion requirements. The City may establish guidelines, forms and other appropriate material to assist Contractor in preparing the Diversion Plan required by this section, or the City may require the Contractor to comply with guidelines established by the Sacramento Regional County Solid Waste Authority (SWA), and use SWA's forms or other appropriate materials.
2. Within ninety (90) days from the date of receipt of a Diversion Plan, the City shall determine whether the Diversion Plan complies with the requirements of this section and, based on that determination, shall approve or disapprove the Diversion Plan. If the City fails to approve or disapprove the Diversion Plan within such ninety (90) day period, the City shall be deemed to have approved the Diversion Plan.
3. If the City disapproves a Diversion Plan, the City shall issue a notice of deficiency to the Contractor which identifies the specific reasons for the deficiency and specific recommendations on how to correct the identified deficiencies. Within thirty (30) days of receipt of the notice of deficiency, the Contractor shall correct the deficiencies and submit a revised Diversion Plan.
4. If the City determines that the revised Diversion Plan still fails to meet the requirements of this section, the City shall schedule a public hearing before the City Council for the purpose of hearing testimony on the Diversion Plan and the deficiencies identified by the City. After conducting the public hearing, the City Council shall make a determination as to whether the Diversion Plan complies with the requirements of this section. If the City Council determines that the Diversion Plan fails to comply with the requirements of this section, it may either grant the Contractor an additional period of time to correct any remaining deficiencies the Franchise may be terminated pursuant to Section 32 hereof. If the City Council grants the Contractor an extension, it shall continue the public hearing at which time it shall make a determination as to whether the Contractor has brought its Diversion Plan into compliance with the requirements of this section. If the City Council determines that the Diversion Plan is still not in compliance at that time, the Franchise may be terminated pursuant to Section 32 hereof.
5. The failure to file a Diversion Plan shall constitute cause for termination or suspension of the Agreement pursuant to Section 32 hereof.
6. Section 13.10.610 of the City Code requires that Contractor to comply "with provisions relating to recycling services for businesses and residences in strict conformance with Solid Waste Authority Ordinance No. 2." As of the Effective Date of this Agreement Ordinance No. 2 had been replaced by Ordinance No. 8; therefore, the Contractor shall comply with appropriate provisions of Ordinance No. 8. The Diversion Plan requirements specified in this Section 8 reflect the Diversion Plan requirements in Section 23 of Solid Waste Ordinance No. 8 as of the Effective Date of this Agreement. In the event Solid Waste Ordinance No. 8 is amended or superseded at any time during the Term of this Agreement, the Contractor shall be required to comply with new provisions of the ordinance.

Section 9. DIVERSION AND RECYCLING REQUIREMENTS

Contractor shall Divert at a rate of thirty percent (30%) by weight of all Solid Waste Collected and removed by it within the District. For purposes of satisfying this Diversion requirement, the Contractor shall not be given credit for the Diversion of any source-separated or commingled Recyclables that is already being diverted by Commercial recyclers, brokers, and other Recycling generators or by another third Party including the City's Solid Waste Division. The Contractor shall likewise not be given credit for any increased Diversion of Recyclable Material Collected and removed by it unless such increased Diversion is reflected in a corresponding reduction in the amount of Solid Waste being Disposed of by the Contractor. The rate of Diversion required by Contractor shall be subject to annual review and adjustment to reflect changes in the total Diversion rate for the Solid Waste sector. Such an annual adjustment of the Diversion required by Contractor shall take into account the amount of Recyclable Materials diverted by Commercial recyclers, brokers, and other Recyclables generators instituted subsequent to the Effective Date of this Agreement. In such an annual adjustment, the weight of Recyclable Materials diverted by Parties other than Contractor shall be allocated to the Contractor. Any reduction in the rate of Diversion required by the Contractor below the rate of thirty percent (30%) shall require an amendment to this Agreement.

The Diversion and Recycling requirements specified in this Section 9 reflect the Diversion and Recycling requirements of Section 24 of Solid Waste Ordinance No. 8 as of the Effective Date of this Agreement. In the event Solid Waste Ordinance No. 8 is amended or superseded at any time during the Term of this Agreement, the Contractor shall be required to comply with new provisions of such ordinance.

Section 10. RECYCLING INCENTIVE FEE

1. If Contractor fails to divert thirty percent of its waste stream it shall pay a "Recycling Incentive Fee" of \$20.00 per Ton for the Tonnage shortfall that would be needed for the Contractor to be diverting waste in compliance with Section 9 of this Agreement. The Tonnage shortfall shall be based on quarterly reports and documented Diversion reported by the Contractor, as determined by City staff.
2. The following formula will be used to address the difference in cost of recovery from a Drop Box waste stream and front-loader waste stream:

$$\text{Incentive Fee} \times \frac{(\text{Total Fleet} + \text{Drop Box Fleet})}{\text{Total Fleet}} = \text{Fee/Ton}$$

This formula will be applied to the Contractor's truck fleet, and the Tonnage shortfall, to determine the Contractor's incentive fee.

3. The implementation of the Recycling Incentive Fee does not relieve Contractor from the obligation of complying with the Diversion requirements of Section 9. Contractor shall not be in compliance with this Agreement, and, as such, subject to termination or suspension of their Franchise, until such time as the Contractor makes up all Diversion Tonnage shortfalls. Failure to pay any Recycling Incentive Fee shall constitute grounds for the immediate suspension of the Franchise, without advance notice or hearing, pending compliance by the Contractor with the requirements hereof.
4. Contractor shall be responsible for reimbursement of audit costs for City staff, and any other City or Consultant services, to perform detailed follow-up audits where staff determines that documentation of Diversion, as reported by Contractor, is inadequate. Where necessary, City

staff will retain the services of an independent consultant to verify performance and conduct any necessary Diversion audits.

5. The Recycling Incentive Fee specified in this Section 10 reflects the Diversion and Recycling requirements of Section 24 of Solid Waste Ordinance No. 8 as of the Effective Date of this Agreement. In the event Solid Waste Ordinance No. 8 is amended or superseded at any time during the Term of this Agreement, the Contractor shall be required to comply with new provisions of such ordinance.

Section 11. CITY'S RIGHT TO CHANGE SERVICE

City reserves the right to change the number and/or location of service courts within the District at its sole discretion.

City reserves the right to increase or decrease the number of City-owned Compactors within the District and the businesses that shall be required to use City-owned Compactors. Contractor shall service City-owned compactors as frequently as requested by City or the customers.

City may direct Contractor to perform additional services (including new Diversion programs, additional public education activities, etc.) or modify the manner in which it performs existing services. Pilot programs and innovative services, which may entail new Collection methods, targeted routing, different kinds of services, different types of Collection vehicles, and/or new requirements for Generators are included among the kinds of changes which City may direct. Contractor shall be entitled to an adjustment in its Compensation in accordance with Section 18 for providing such additional or modified services but not for the preparation of its proposal.

Contractor shall present, within thirty (30) calendar days of a request to do so by City, a proposal to provide additional or expanded Diversion services. At a minimum, the proposal shall contain a complete description of the following:

1. Collection methodology to be employed (equipment, manpower, etc.).
2. Equipment to be utilized (vehicle number, types, capacity, age, etc.).
3. Labor requirements (number of employees by classification).
4. Type of Containers to be utilized.
5. Provision for program publicity/education/marketing.
6. Five (5) year projection of the financial results of the program's operations in a balance sheet and operating statement format including documentation of the key assumptions underlying the projections and the support for those assumptions, giving full effect to the savings or costs to existing services.

Contractor acknowledges and agrees that City may permit other Persons besides Contractor to provide additional Solid Waste and Diversion services not otherwise contemplated in this Agreement. If Contractor and City cannot agree on terms and conditions of such services in one hundred twenty (120) calendar days from the date when City first requests a proposal from Contractor to perform such services, Contractor acknowledges and agrees that City may permit Persons other than Contractor to provide such services.

Section 12. FRANCHISE FEES

1. During the Term of the Franchise, Contractor shall pay the City Franchise Fees for the privilege of engaging in the business of Collecting, Transporting, and Disposing of Solid Waste, Recyclables, and Organic Materials kept, accumulated, or generated in the District.
2. Franchise Fees shall be payable on all gross rate revenues received from Customers located within in the District. The Franchise Fee shall be calculated based on gross rate revenues prior to Contractor imposing the Franchise Fee on its Customers.
3. Such fees shall be in the amount established by the City as set forth in Resolution No. _____ adopted by the City Council on _____, or in such other amounts as are set forth in any subsequent resolution that may be adopted by the City Council. Franchise Fees may be modified in the amount and manner of payment at any time during the Term of this Agreement by a resolution of the City Council. However, the initial Franchise Fee shall be ten percent (10%) of such received gross rate revenues.
4. Franchise Fees shall be payable on a monthly basis, and shall be due and payable on the fifteenth day of each month. Each payment shall be calculated in accordance with the provisions of this Agreement.
5. The Franchise Fee shall be paid to Old Sacramento Management. Each payment shall be accompanied by a written statement, verified by the Person making the payment, or a duly authorized representative of the Person, showing the calculation of the Franchise Fee payable in such form and detail as Old Sacramento Management may require and such other information as Old Sacramento Management may determine is material to a determination of the amount due. Franchise Fees collected shall be used by Old Sacramento Management for maintenance or services directly related to solid waste services in the District.
6. No statement filed under this section shall be conclusive as to the matters set forth in such statement, nor shall the filing of such statement preclude the City from collecting, by appropriate action, the sum that is actually due and payable.
7. If Franchise Fees are not paid by the Contractor at the times or in the amounts required by this section, then in addition to the Franchise Fees, the Contractor shall pay a late payment charge in an amount equal to two percent (2%) of the Franchise Fee that is due, plus interest equal to one and one-half percent (1.5%) for each month in which the Franchise Fee was not paid in a timely manner or accurate amount.
8. If Contractor remits Franchise Fees by personal delivery to the City, such Franchise Fees shall be deemed timely only if delivered on or before the due date. If Contractor remits Franchise Fees by mail or other delivery service, such Franchise Fees shall be deemed timely only if (1) the envelope containing the Franchise Fee payment bears a postmark or receipt showing that the payment was mailed or sent on or before the due date, or (2) Contractor submits satisfactory proof to Old Sacramento Management that the Franchise Fee payment was, in fact, deposited in the mail or sent on or before said due date.
9. In the event Contractor believes that it has paid Franchise Fees in excess of the fees due to the City, Contractor may submit a request for refund to Old Sacramento Management on a form provided by Old Sacramento Management. If proof of overpayment is satisfactory to Old Sacramento Management, Old Sacramento Management shall refund to Contractor any

overpayment. Contractor shall not apply any overpayment as a credit against any Recycling Incentive Fees, Franchise Fees or other amounts payable to the City unless specifically so authorized by Old Sacramento Management in writing.

Section 13. OWNERSHIP OF SOLID WASTE

The City does not gain any ownership or right to possess Solid Waste Collected by Contractor pursuant to this Agreement. Subject to the provisions of this Agreement, Contractor shall have the right to retain any benefit resulting from its right to retain, Recycle, process, Dispose of, or use the Solid Waste, Recyclable Materials, or Organic Materials that it Collects.

Section 14. DISPOSAL OF SOLID WASTE

Contractor shall Dispose of Solid Waste Collected or Transported by Contractor only by taking such Solid Waste to an Approved Disposal Location, which is lawfully authorized to accept such Solid Waste. Contractor shall not Dispose of such Solid Waste by depositing it on any land, whether public or private, or in any river, stream or other waterway, or in any sanitary sewer or storm drainage system.

Section 15. PROCESSING OF RECYCLABLE MATERIALS AND ORGANIC MATERIALS

Contractor shall Transport all Recyclable Materials and Organic Materials it Collects in the District to the Approved Recyclable Materials Processing Site and Approved Composting Site. Contractor shall Process, or arrange for Processing of the Recyclable Materials and Organic Materials and marketing of the recovered materials. Residue from the Recyclable Materials and Organic Materials Processing activities shall be Disposed of by Contractor, or owner/operator of the Approved Recyclable Materials Processing Site or Approved Composting Site, at a Disposal Site selected by Contractor or the owner/operator of the Processing site(s). All costs associated with Transporting to and Processing of Recyclable Materials and Organic Materials at the Approved Recyclable Materials Processing Site and Approved Composting Site shall be paid by Contractor.

Section 16. BILLING

Company shall bill and collect from persons receiving Collection services at rates fixed by the District from time-to-time. Accounts shall be billed monthly in advance or arrears. Company may terminate Collection service to Solid Waste accounts that become more than sixty (60) days past due from the last day of the billing period, following thirty (30) days written notice. Company shall promptly restore service when the delinquent charges, including reinstatement charges, have been paid in full. The Company may require a deposit from customers who are habitually delinquent. Late fees may be assessed on delinquent accounts after 30 days from the last day of the billing period.

Compactors will be used by multiple Customers and, as such, will require separate billing for each user of each Compactor. Compactors shall be equipped with such hardware or software devices as are necessary to track each individual Customer's usage independent from that of other users. Company shall bill each individual user on a per-use basis for their relative share of the cost of servicing the Compactor and Disposing of its contents. Billing for these Customers shall be in substantially the same form and schedule as all other accounts.

Section 17. CONTRACTOR'S COMPENSATION

1. Full and Complete Compensation. Each Customer within the District shall pay the Contractor the Rates authorized by this Agreement. Collection of Rates shall be the exclusive responsibility of the Contractor. The City shall have no obligation to engage in any action with respect to such Rates, and the procedures and remedies for delinquent Rate Collection specified in Chapter 13.10 of the City Code shall not apply to the Contractor, unless the Contractor is the City Solid Waste Division. Contractor's Compensation provided for in this Section 18 shall be the full entire and complete compensation due to Contractor pursuant to this Agreement for all labor, equipment, materials and supplies, taxes, insurance, bonds, overhead, profit, and all other things necessary to perform all the services required by this Agreement in the manner and times prescribed.
2. CPI-U. For the purposes of this Section 18, "CPI-U" means the All Urban Consumers Index (CPI-U) compiled and published by the U.S. Department of Labor, Bureau of Labor Statistics or its successor agency, using the following parameters:
 - Area - San Francisco-Oakland-San Jose Metropolitan Area
 - Item - All Items
 - Base Period - Current 1982-84=100
 - Not seasonally adjusted
3. Rates for Rate Period One. The Contractor's Rates for the initial Rate Period of this Agreement (i.e., Rate Period One from January 1, 2007 to December 31, 2008) shall be the Rates provided in Exhibit A.
4. Subsequent Rates. By October 1, of each year, the Contractor shall submit a Request for Adjustment to Rates. The Request for Adjustment shall include documentation of the calculation of the Rate Adjustment Factor, a list of the then-current Rates, and a list of the Adjusted Rates to be effective on January 1 of the coming Rate Period. Each then-current Rate shall be multiplied by the Rate Adjustment Factor, which shall equal one plus 90% of the Annual CPI-U for the most-recently-completed calendar year minus the Annual CPI-U for previously-completed calendar year divided by the Annual CPI-U for the previously-completed calendar year. The Rate Adjustment Factor shall not exceed 1.05. The Rate Adjustment Factor shall be rounded to the nearest thousandth, and each Rate shall be rounded to the nearest hundredth.

For example, if the Contractor is preparing its Request for Adjustment to Rates for Rates to be effective for Rate Period Two (i.e., January 1, 2008 to December 31, 2008), the adjusted rate would be calculated in the following manner.

Assume for the purposes of this example:

Rate for Rate Period One = \$20.46

Most-recently-completed calendar year = 2006

Previously-completed calendar year = 2005

Annual CPI-U for the most-recently completed calendar year = 212.5 for 2006

Annual CPI-U for the previously-completed calendar year = 209.4 for 2005

The Rate Adjustment Factor would be calculated as follows:

$$1 + 0.90 \times \{(212.5 - 209.4)/209.4\} = 1.013$$

The Adjusted Rate effective January 1, 2008 would be calculated as follows:

$$\$20.46 \times 1.013 = \$20.73$$

5. Determination of Adjustment to Rates. The City, or their representative, will review and approve the Contractor's Request for Adjustment to Rates for compliance with this Agreement, accuracy, and reasonableness. The City shall use its best efforts to make the adjustment effective by the commencement of each Rate Period. However, the City shall not make any retroactive adjustments to compensate for any delay in calculating the adjustment to rates which results from the failure of the Contractor to submit its request by October 1, of each year and/or respond promptly and completely to requests of the City for information related to any of the calculations required by this Section or from appeals of the determination to the City which extends the process of determination.
6. Interim Rate Adjustment. In the event the City directs the Contractor to change its operations in accordance with Section 11 of this Agreement or in the event of an extraordinary or unanticipated event including a Change in Law, but not including an adjustment to the Landfill Tip Fee or any other fees associated with the Transportation, Processing, marketing, or Disposal of Solid Waste, Recyclable Material or Organic Material, and such adjustment materially affects the Contractor's cost of operations, then the Contractor or the City may submit a request for an interim Rate adjustment. In such case, the Contractor shall provide City with its calculations of the impact of the change in a format approved by the City. Any proposed change in the approved Rates shall be subject to City review and approval. Nothing in this Section shall be construed to require the City to accept the Company's calculations as correct.

Section 18. REPORTS

1. Contractor shall file with the City Manager a quarterly report of the quantities of Solid Waste, Recyclable Materials, and Organic Materials Collected, Transported, Diverted, and/or Disposed. Such report shall be in such form and detail as required by the City Manager. Specifically, the report shall contain, but not be limited to, the following information:
 - 1.1. The Solid Waste, Recyclable Materials, and Organic Materials Tonnage Collected and removed from within the District during the previous quarter;
 - 1.2. The Solid Waste, Recyclable Materials, and Organic Materials Tonnage Collected and removed during the previous quarter within the District that was Diverted and the location of the facility where such material was Diverted to;

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- 1.3. The Solid Waste, Recyclable Materials, and Organic Materials Tonnage Collected and removed within the District that was Disposed of during the previous quarter and the name of the Disposal facility where the Disposal of such Solid Waste occurred; and
 - 1.4. The Contractor's progress in implementing its Diversion Plan and achieving the Diversion performance requirements set forth in Sections 8 and 9 of this Agreement
 2. Contractor shall maintain quarterly records, on forms prescribed by the City Manager containing such information as may be required by the City Manager pertaining to the number and types of accounts served by the Contractor. This information shall be provided to the City Manager quarterly. If, upon review, the City Manager determines that Contractor has claimed credit for the Diversion of Solid Waste, Recyclable Materials, and Organic Materials that is already being Diverted by third Party for purposes of satisfying the Diversion requirements set forth in Sections 8 and 9 of this Agreement, such action by the Contractor shall constitute cause for termination or suspension of the Franchise pursuant to Section 32 of this Agreement.
 3. The City Manager shall establish guidelines, forms, and other appropriate material to assist Contractor in preparing the reports required by this section. Contractor's failure to file the reports required by this section shall constitute cause for termination or suspension of its Franchise pursuant to Section 32 of this Agreement.
 4. Each quarterly report shall be submitted to the City no later than 30 calendar days following the end of the reportable quarter.
 5. If the quarterly reports required under subsection 1 and 2 above are not filed by the due date, the reports shall be deemed delinquent, and the Contractor shall pay to the City a delinquent report charge in the amount of fifty dollars (\$50.00) daily. If the report remains delinquent for more than fifteen days, the Contractor shall pay to the City a delinquent report charge in the amount of one hundred dollars (\$100.00) daily.
 6. Contractor shall submit to the City monthly reports including: (1) a listing of each Container size in the District from which Contractor Collected Solid Waste, Recyclable Materials, or Organic Materials during the reportable month; (2) the number of Collections of each listed Container size during the reportable month; (3) the total volume of Solid Waste, Recyclable Materials, and Organic Materials Collected in the District during the reportable month; (4) the total weight (in Tons) of Solid Waste Disposed of by Contractor at landfills and transfer stations during the reportable month; (5) the total weight and the weight by material category (in Tons) of Solid Waste Processed at Recycling and materials recovery facilities during the reportable month; (6) the total weight and the weight by material category (in Tons) of Recyclable Materials delivered by Contractor to Recycling and materials recovery facilities during the reportable month; (7) the total weight and the weight by material category (in Tons) of Organic Materials delivered by Contractor to Recycling and materials recovery facilities during the reportable month; (8) the number of service locations by volume (cubic yards) of service provided; (9) Contractor's Gross Rate Revenues for Collection services provided in the District during the reportable month; (10) a listing of each Customer including the contact name, address, and telephone number for each; and, (11) such additional information as may be required by the City Manager. In the case of Compactors where multiple users are charged separately, this reporting shall be provided for each user of each Compactor, where applicable. Such monthly reports shall be prepared in a form as required by the City Manager.

Section 19. INSPECTION AUTHORITY

1. Contractor shall, at all times, maintain accurate and complete accounts of: (1) all revenues and income arising out of its operations under the Franchise granted pursuant to this Agreement; all Solid Waste, Recyclable Materials, and Organic Materials Collected, Transported and/or Disposed of; (2) the source of such Solid Waste, Recyclable Materials, and Organic Materials; and, (3) the final destination of such Solid Waste, Recyclable Materials, and Organic Materials. Contractor's books, accounts and records reasonably necessary for the enforcement of this Agreement shall be made available for inspection, examination and audit during normal business hours by authorized officers, employees and agents of the City. The City shall give Contractor written notice at least three (3) business days prior to any inspection, audit, or examination of these records.
2. Where the City Manager determines that an audit is necessary, Contractor shall be responsible for reimbursement of audit costs, including any City or consultant services, to perform audits of accounts of all Contractor revenues and income arising out of operations under the Franchise granted pursuant to this Agreement.
3. Contractor shall be responsible for reimbursement of audit costs for City staff, or consultant services, to perform detailed follow-up audits where staff determines that documentation of Diversion, as reported by Contractor, is inadequate. Where necessary, City staff will retain the services of an independent consultant to verify performance and conduct any necessary Diversion audits.

Section 20. INSURANCE REQUIREMENTS

Contractor shall obtain and maintain throughout the Term of this Agreement, at Contractor's sole cost and expense, insurance against claims for injuries to Persons or damages to property which may arise from or in connection with the performance of work pursuant to this Agreement by Contractor, its agents, representatives, employees or contractors.

1. Minimum Scope and Limits of Insurance. Contractor shall maintain at least the following minimum insurance coverage:
 - 1.1. Comprehensive General Liability: \$1,000,000 combined single limit per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this Agreement or the general aggregate limit shall be twice the required occurrence limit.
 - 1.2. Automobile Liability: \$2,000,000 combined single limit per accident for bodily injury and property damage. Coverage shall include hired autos and non-owned autos.
 - 1.3. Workers' Compensation and Employers Liability: Workers' Compensation limits as required by the California Labor Code and Employers Liability limits of \$1,000,000 per accident.
2. Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions must be approved by the City in writing, prior to the Effective Date of this Agreement. If Contractor desires to change its deductible or self-insured retention after the Effective Date of this Agreement, it shall first obtain approval of the City's Risk Manager for these increases. Contractor shall be responsible for payment of all deductibles or self-insured retentions.

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3. Other Insurance Provisions. The required insurance policies are to contain, or be endorsed to contain, the following provisions:
 - 3.1. General Liability and Automobile Liability Coverage.
 - 3.2. The City, its officers, employees, agents and contractors are to be covered as an additional insured as respects: liability arising out of activities performed by, or on behalf of Contractor; products and completed operations of Contractor; Premises owned, leased or used by Contractor; and automobiles owned, leased, hired or borrowed by Contractor. The coverage shall contain no special limitations on the scope of protection afforded to the City, its officers, employees, agents, and contractors.
 - 3.3. Contractor's insurance coverage shall be primary insurance as respects the City, its officers, employees, agents, and contractors. Any insurance or self-insurance maintained by the City, its officers, employees, agents, or contractors shall be in excess of Contractor's insurance and shall not contribute to it.
 - 3.4. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the City, its officers, employees, agents, or contractors.
 - 3.5. Coverage shall state that Contractor's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
 - 3.6. All Coverage. Each insurance policy required by this Agreement shall be endorsed to state that coverage shall not be suspended, voided, canceled, or reduced in limits except after thirty (30) days' prior written notice has been given to the City.
 4. Placement of Insurance. Insurance shall be placed with insurers acceptable to the City's Risk Manager. Contractor must place insurance with a current A.M. Best rating of no less than A:VII. The City Risk Manager may waive, or alter this requirement, or accept self-insurance in lieu of any required policy of insurance if, in the opinion of the Risk Manager, the interests of the City and the general public are adequately protected.
 5. Proof of Insurance. Contractor shall furnish the City with certificates of insurance and with original endorsements affecting coverage required by this Agreement. The certificates and endorsements for each insurance policy are to be signed by a Person authorized by that insurer to bind coverage on its behalf. Proof of insurance shall be mailed or personally delivered to the Town Manager of Old Sacramento Management Division.
 6. Modification of Insurance Requirements. The City shall retain the right at any time to review the coverage, form, and amount of the insurance required hereby. If, in the opinion of the City's Risk Manager, the insurance provisions in this Agreement do not provide adequate protection for the City and for members of the public, the City may require Contractor to obtain insurance sufficient in coverage, form, and amount to provide adequate protection. The City's requirements shall be reasonable but shall be imposed to assure protection from and against the kind and extent of risks that exist at the time a change in insurance is required. The City's Risk Manager may modify these insurance requirements only upon approval of the City Council.

Section 21. INDEMNITY

1. Contractor shall indemnify and save harmless, the City, its officers and employees, and each and every one of them, from and against all actions, damages, costs, liability, claims, demands,

losses, judgments, penalties, costs and expenses of every type and description, including, but not limited to, any fees and/or costs reasonable incurred by the City's staff attorneys or outside attorneys and any fees and expenses incurred in enforcing this provision (hereafter collectively referred to as "Liabilities"), to the extent such Liabilities are caused by or arise from any negligent act or omission, recklessness or willful misconduct of Contractor, its subcontractors or agents, and their respective officers and employees, in connection with the performance or nonperformance of this Agreement, whether or not (i) such Liabilities also are caused in part by the passive negligence of the City, its officers or employees, (ii) the City, its officers or employees reviewed, accepted or approved any service or work product performed or provided by the Contractor, or (iii) such Liabilities are litigated, settled or reduced to judgment.

2. Contractor shall, upon the City's request, defend at Contractor's sole cost any action, claim, suit, cause of action or portion thereof that asserts or alleges Liabilities caused by or arising from any negligent act or omission, recklessness or willful misconduct of Contractor, its subcontractors or agents, and their respective officers and employees, in connection with the performance or nonperformance of this Agreement, whether such action, claim, suit, cause of action or portion thereof is well founded or not.

Section 22. VEHICLE INSPECTION AND TAGS

1. All vehicles and other equipment used in the Collection and subsequent Transportation, and Disposal of Solid Waste, Recyclable Materials, or Organic Materials in the District shall be inspected as often as the City Manager deems necessary and at such times and places as shall be designated by the City Manager.
2. All vehicles and Containers used in the Collection, removal, Transportation or storage of Solid Waste, Recyclable Materials, or Organic Materials in the District shall be subject to inspection by the City for the purpose of determining whether or not the vehicles and Containers comply with California Code of Regulations, Title 14, section 17341 through 17345.

Section 23. VEHICLE REQUIREMENTS

1. The bodies of vehicles used in the Collection, removal or Transportation of Solid Waste, Recyclable Materials, or Organic Materials in the District shall be leak proof and have beds of metal or other impervious material which can be cleaned, and shall otherwise be of a type approved by the City adopted pursuant to the California Code of Regulations, Title 14, sections 17341.
2. The City shall be authorized to issue administrative regulations pertaining to specifications for vehicles and Containers, the cleansing and disinfection thereof, and other sanitary measures in connection therewith.

Section 24. ABANDONED CONTAINERS

1. If Contractor abandons any Container used to provide Collection services under the Agreement, the City may remove the Container and/or Dispose of the contents of the Container.
2. If the City removes a Container abandoned by Contractor and/or Disposes of the contents of any Container abandoned by Contractor, the City may charge Contractor for the City's costs incurred in such removal/Disposal and for the City's costs of storage of the Container.

Contractor shall reimburse the City for such costs within ten (10) days of the date of the City's invoice for such costs.

3. For the purposes of this section, "abandoned" includes:

- 3.1. Contractor's failure to remove the Container within the time period specified by the City Council upon termination of this Agreement pursuant to Section 33 of this Agreement;
- 3.2. Contractor's failure to remove the Container within a reasonable period after the expiration of this Agreement, except in the case where Contractor has been granted an extension of the Term of said Agreement or Contractor has been granted a subsequent Franchise authorizing Contractor to Collect and Transport the type or types of Solid Waste, Recyclable Materials, or Organic Materials for which the Container was used pursuant to this Agreement.
- 3.3. Contractor's failure to Dispose of the contents of the Container within five (5) days after the City Manager issues written notice to Contractor to Dispose of the contents.

Section 25. CONTRACTOR-PROVIDED CONTAINERS

1. General. Contractor shall provide a sufficient number of Containers of the appropriate size for the storage of Solid Waste, Recyclable Materials, and Organic Materials on the service court locations specified in Exhibit B. Containers used for storage of Solid Waste, Recyclable Materials, or Organic Materials shall be designed and constructed to be watertight and prevent the leakage of liquids. All Containers shall be painted and shall prominently display the name of the Contractor.
2. Cleaning, Painting, Maintenance. Contractor shall make reasonable efforts to replace, clean, or repaint all Containers as needed so as to present a clean appearance.
3. Container Location.
 - 3.1. Under no other circumstances shall Containers be located on any property other than designated service courts except from the Firehouse Restaurant, 1110 Second Street, which shall store their Garbage in their building and shall place their Containers in front of their facility on Second Street for Collection service.

Contractor shall place Containers only in locations approved by OSM, and shall obtain approval to relocate Containers from OSM. OSM reserves the right to direct Contractor to change Container locations.

- 3.2. Contractor shall provide Town Manager of the Old Sacramento Management with a Collection schedule of the Solid Waste, Recyclable Material, and Organic Material Containers in the District.
- 3.3. Each Container shall be: lockable; free of any dents and painting discolorations; in good condition; and newly painted in a color selected by the City after consultations with Old Sacramento Management. The Contractor's logo, the logo of Old Sacramento Management, and suitable informational lettering approved by Old Sacramento Management shall be the only markings on the Container.
- 3.4. On a quarterly basis, each Container shall be steam cleaned or cleaned by a pressure washing system, which is equivalent to steam cleaning, before being placed back in service. This cleaning will be conducted off-site by the Contractor.

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- 3.5. Contractor shall be responsible for any and all spillage in the Collection of the contents of the Containers and shall immediately (before the Collection vehicle leaves the area), pick up and otherwise remove all spillage. If the spillage contains any grease or grease-like waste, the Contractor shall be responsible for the pressure cleaning of the area of the spillage. If the Contractor's Collection vehicle leaves the area without cleaning of the spillage, the Contractor will, upon notification by the Old Sacramento Management, provide personnel to remove the spillage and clean the spillage area, within 24 hours of said notification.

Section 26. PERSONNEL

1. Driver Qualifications. Contractor agrees that all drivers shall be trained and qualified in the operation of Collection vehicles and must have in effect a valid license, of the appropriate class, issued by the California Department of Motor Vehicles.
2. Safety Training. Contractor shall provide suitable operational and safety training for all of its employees who utilize or operate vehicles or equipment for Collection of Solid Waste, Recyclable Materials, and Organic Materials, or who are otherwise directly involved in such Collection.

Section 27. COMPLIANCE WITH LAW

Contractor shall perform all Collection, Transportation, Processing, and Disposal operations in accordance with applicable Federal, State, and local law, including the City Ordinances, in accordance with all regulations promulgated under such laws, and in accordance with the terms and conditions of this Agreement.

Section 28. PERMITS AND LICENSES

Contractor shall obtain and maintain, at Contractor's sole cost and expense, all permits and licenses applicable to Contractor's operations under this Agreement, required by any governmental agency.

Contractor shall maintain, at Contractor's sole cost and expense, a non-exclusive franchise with the Sacramento Solid Waste Authority as required by City Code Chapter 13 Article 6.

Section 29. CITY'S RIGHT TO PERFORM SERVICE

1. General. In the event that the Contractor, for any reason whatsoever, fails, refuses or is unable to Collect, Transport or Dispose of any or all Solid Waste and/or Collect, Transport and Process Recyclable Materials or Organic Materials which it is required by this Agreement to Collect and Transport, at the time and in the manner provided in this Agreement, for a period of more than forty-eight (48) hours, and if, as a result thereof, Solid Waste, Recyclable Materials and/or Organic Materials should accumulate in the City to such an extent, in such a manner, or for such a time that City Manager should find that such accumulation endangers or menaces the public health, safety or welfare, then the City shall have the right, but not the obligation, upon twenty-four (24) hour prior written notice to Contractor during the period of such emergency as determined by City Manager, (1) to perform, or cause to be performed, such services itself with its own or other personnel without liability to Contractor; and/or (2) to take possession of any or all of Contractor's, equipment and other property used or useful in the Collection,

Transporting, Processing and Disposing of Solid Waste, Recyclable Materials or Organic Materials, and to use such property to Collect, Transport, Process, and Dispose of any Solid Waste, Recyclable Materials or Organic Materials generated within the City which Contractor would otherwise be obligated to Collect, Transport, Process, and Dispose of pursuant to this Agreement.

2. The City may enter into an agreement with the Historic Old Sacramento Foundation (HOSF) (formerly the Old Sacramento Management Board) for the purpose of providing administrative services relating to this Agreement and other matters, involving the business of the District. Said agreement may include provisions allowing for initiation of enforcement actions by HOSF.
3. Notice of the Contractor's failure, refusal or neglect to Collect, Transport, Process, and Disposal of Solid Waste, Recyclable Materials or Organic Materials may be given orally by telephone to the Contractor at its principal office and shall be effective immediately. Written confirmation of such oral notification shall be sent to Contractor within twenty-four (24) hours of the oral notification.

Contractor further agrees that in such event:

It will fully cooperate with City to affect the transfer of possession of property to the City for City's use.

- 3.1. It will, if City so requests, keep in good repair and condition all of such property, provide all motor vehicles with fuel, oil and other service, and provide such other service as may be necessary to maintain said property in operational condition.
- 3.2. Subject to provisions of any labor agreements then in effect, City may immediately engage all or any personnel necessary or useful for the Collection, Transportation, Processing, and Disposal of Solid Waste, Recyclable Materials or Organic Materials including, if City so desires, employees previously or then employed by Contractor. Contractor further agrees, if City so requests, to furnish the City with the services of any or all management or office personnel employed by Contractor whose services are necessary or useful for Solid Waste, Recyclable Materials or Organic Materials Collection, Transportation, Processing, and Disposal operations and for the billing and Collection of fees for these services.

The City agrees that it assumes complete responsibility for the proper and normal use of such equipment and facilities while in its possession.

If the interruption or discontinuance in service is caused by any of the reasons listed in Section 32.3. (Force Majeure), the City shall pay to Contractor the reasonable rental value of the equipment and facilities, possession of which is taken by the City, for the period of the City's possession, if any, which extends beyond the period of time for which Contractor has rendered bills in advance of service, for the class of service involved.

Except as otherwise expressly provided in the previous paragraph, the City's exercise of its rights under this Article: (1) does not constitute a taking of private property for which compensation must be paid; (2) will not create any liability on the part of City to Contractor; and (3) does not exempt Contractor from the indemnity provisions of Section 22, which are meant to extend to circumstances arising under this Section,

provided that Contractor is not required to indemnify City against claims and damages arising from the sole negligence of City officers, employees and agents in the operation of Collection vehicles during the time the City has taken possession of such vehicles.

4. Duration of City's Possession. City has no obligation to maintain possession of Contractor's property and/or continue its use in Collecting, Transporting, Processing, and Disposing Solid Waste, Recyclable Materials, or Organic Materials for any period of time and may, at any time, in its sole discretion, relinquish possession to the Contractor.

The City's right to retain temporary possession of Contractor's property, and to provide Solid Waste, Recyclable Materials, or Organic Materials Collection services, shall continue until Contractor can demonstrate to the City's satisfaction that it is ready, willing and able to resume such services or for one hundred eighty (180) calendar days, whichever occurs first.

Section 30. POSSESSION OF PROPERTY UPON TERMINATION

In the event of termination for default, the City shall have the right to take possession of any and all of Contractor's equipment and other property used or useful in the Collection, Transportation, Processing, and Disposal of Solid Waste, Recyclable Materials or Organic Materials and the billing and Collection of fees for these services and to use such property. The City shall have the right to retain the possession of such property until other suitable arrangements can be made for the provision of Solid Waste, Recyclable Materials or Organic Materials Collection services, which may include the award of an Agreement to another Person. If the City retains possession thereof after the period of time for which Contractor has already been paid, by means of bills issued in advance of providing service for the class of service involved, the Contractor shall be entitled to the reasonable rental value of such property (which shall be offset against any damages due the City for the Contractor's default).

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

Section 31. DEFAULT, TERMINATION

1. Breach. Except for the occurrence of Force Majeure, in the event of: (a) any material breach; (b) liquidated damages for collection quality or collection reliability as defined in Section 32 exceeding 2% of service opportunities annually; or, (c) refusal of Contractor to comply with any obligation or duty imposed on Contractor under this Agreement or the City Ordinances, the City Manager and Contractor shall meet and confer in good faith in an effort to agree on a resolution and cure of the breach. If the Parties are unable to agree on the informal resolution or cure of the breach within ten (10) business days, the City Council shall have the right to terminate this Agreement if:
 - 1.1. Following the ten (10) day period described above, the City Manager shall have given written notice to Contractor specifying that a particular default or defaults exists which will, unless corrected, constitute a material breach of this Agreement on the part of Contractor, and
 - 1.2. Contractor fails to correct such default or fails to take reasonable steps to commence to correct such default within thirty (30) calendar days from the date of the notice given by the City Manager

under Subsection 1.1 above and Contractor thereafter fails to diligently continue to take reasonable steps to correct such default.

2. Default. The following events shall also constitute a material breach and default under this Agreement:
 - 2.1. Misrepresentation. Any misrepresentation or disclosure made to the City by the Contractor in connection with or as an inducement to entering this Agreement or any future amendment to this Agreement, which proves to be false or misleading in any material respect as of the time the representation or disclosure is made, whether or not any such representation or disclosure appears as part of this Agreement.
 - 2.2. Fraud or Deceit. If the Contractor practices, or attempts to practice, any fraud or deceit upon the City.
 - 2.3. Failure to Maintain Coverage. If the Contractor fails to provide or maintain in full force and effect the Worker's Compensation, liability, or indemnification coverage as required by this Agreement.
 - 2.4. Violations of Regulation. If the Contractor violates any permits, orders or filing of any regulatory body having jurisdiction over the Contractor which violation or non-compliance materially affects the Contractor's ability to perform under this Agreement, provided that the Contractor may contest any such orders or filings by appropriate proceedings conducted in good faith, in which case no breach of the Agreement shall be deemed to have occurred during the pendency of the contestation or appeal, to the extent the Contractor is able to adequately perform during that period.
 - 2.5. Acts or Omissions. Any other act or omission by Contractor which materially violates the terms, conditions, or requirements of this Agreement, the City Ordinances, Act, 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 notices, 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.
 - 2.6. Termination of Service. In the case of a breach related to the above sections, and the breach continues for more than thirty (30) calendar days after written notice from the City Manager for the correction thereof, provided that where such breach cannot be cured within such thirty (30) day period, the Contractor shall not be in default of this Agreement if Contractor shall have commenced such action required to cure the particular breach within ten (10) calendar days after such notice, and it continues such performance diligently until completed.
3. Force Majeure. The performance of this Agreement may be discontinued or temporarily suspended in the event of Force Majeure. Contractor shall not be deemed to be in default and shall not be liable for failure to perform under this Agreement if Contractor's performance is prevented or delayed by Force Majeure. Force Majeure means acts of nature including landslides, lightening, forest fires, storms, floods, freezing, earthquakes, civil disturbances, strikes, lockouts, or other industrial disturbances, acts of the public enemy, wars, blockades, public riots, breakage, explosions, or government restraint. Notwithstanding anything to the contrary herein, the Parties agree that the settlement of strikes, lockouts or other industrial disturbances, and litigation, including appeals, shall be entirely within the discretion of the

Contractor and Contractor may make settlement thereof at such time and on any such terms and conditions as it may deem to be advisable, and no delay in making such settlement shall deprive Contractor of the benefit of this Section.

4. Discretionary Termination by City. The City may terminate this agreement without cause. In consideration of this termination, the City agrees to reimburse the Contractor for any undepreciated assets purchased for the explicit purpose of operating under this agreement.
5. Termination. The City Manager shall serve written notice, either personally or by registered or certified mail (postage prepaid) of the termination of this Agreement to the last place of business of the Contractor and the Contractor shall cease operation under this Agreement within ten (10) calendar days.

Section 32. CONDITIONS UPON TERMINATION

1. In the event the Agreement is terminated:
 - 1.1. Contractor shall have no right or authority to engage in Solid Waste, Recyclable Materials, or Organic Materials Collection, Transportation, or Disposal operations in the District.
 - 1.2. Contractor shall, however, remain liable to the City for any and all delinquent report charges assessed pursuant to Section 19 of this Agreement.
 - 1.3. Contractor shall have a continuing obligation to submit to the City all reports required by Section 19 of this Agreement that relate to Solid Waste or Recycling activities performed by Contractor up to and including the date of termination.
2. In the event the Agreement is terminated, within the time period specified by the City Council and if directed by the City Manager, Contractor shall remove all of Contractor's Containers and Containers from all of Contractor's service locations and shall properly Dispose or Process all Solid Waste, Recyclable Materials, or Organic Materials in such Containers.

Section 33. LIQUIDATED DAMAGES

1. General. In addition to the remedies specified in Title 1 of the Sacramento City Code, including but not limited to administrative penalties, which may be imposed pursuant to Section 1.28.010 of the Sacramento City Code, against any Person, firm, or entity who violates provisions of Article V1 of Chapter 13.10 of the Sacramento City Code, the City may level liquidated damages described herein. The City finds, and Contractor agrees, that as of the time of the execution of this Agreement, it is impractical, if not impossible, to reasonably ascertain the extent of damages which shall be incurred by City as a result of a breach by Contractor of its obligations under this Agreement. The factors relating to the impracticability of ascertaining damages include, but are not limited to, the fact that: (i) substantial damage results to members of the public who are denied services or denied quality or reliable service; (ii) such breaches cause inconvenience, anxiety, frustration, and deprivation of the benefits of the Agreement to individual members of the general public for whose benefit this Agreement exists, in subjective ways and in varying degrees of intensity which are incapable of measurement in precise monetary terms; (iii) that Collection services might be available at substantially lower costs than alternative services and the monetary loss resulting from denial of services or denial of quality or reliable services is impossible to calculate in precise monetary terms; and (iv) the termination of this Agreement for

such breaches, and other remedies are, at best, a means of future correction and not remedies which make the public whole for past breaches.

2. Service Performance Standards; Liquidated Damages for Failure to Meet Standards. The Parties further acknowledge that consistent, reliable Solid Waste, Recyclable Materials, and Organic Materials Collection is of utmost importance to City and that City has considered and relied on Contractor's representations as to its quality of service commitment in awarding the Agreement to it. The Parties further recognize that some quantified standards of performance are necessary and appropriate to ensure consistent and reliable service and performance. The Parties further recognize that if Contractor fails to achieve the performance standards, or fails to submit required documents in a timely manner, City and its residents will suffer damages and that it is and will be impractical and extremely difficult to ascertain and determine the exact amount of damages that City will suffer. Therefore, without prejudice to City's right to treat such non-performance as an event of default under Section 32, the Parties agree that the following liquidated damage amounts represent a reasonable estimate of the amount of such damages considering all of the circumstances existing on the Effective Date of this Agreement, including the relationship of the sums to the range of harm to City that reasonably could be anticipated and the anticipation that proof of actual damages would be costly or impractical. In placing their initials at the places provided, each Party specifically confirms the accuracy of the statements made above and the fact that each Party has had ample opportunity to consult with legal counsel and obtain an explanation of the liquidated damage provisions at the time that the Agreement was made.

Contractor

City

Initial Here _____

Initial Here _____

Contractor agrees to pay (as liquidated damages and not as a penalty) the amounts set forth below:

2.1. Collection Reliability.

2.1.1. For each failure to commence service to a new service recipient account within seven (7) days after order, which exceed six (6) such failures quarterly: \$150.00

2.1.2. For each failure to Collect Solid Waste, Recyclable Materials, or Organic Materials, which have been properly set out for Collection, from an established service recipient account on the scheduled Collection day and not Collected within the period described in this Agreement which exceeds six (6) such failures quarterly: \$150.00

2.1.3. For each failure to Collect Solid Waste, Recyclable Materials, or Organic Materials, which have been properly set out for Collection, from the same service recipient on two (2) consecutive scheduled pickup days: \$150.00

2.1.4. For each failure to perform and submit billing reviews: \$250.00

2.2. Collection Quality.

2.2.1. For each occurrence of damage to private property that exceeds six (6) such occurrences quarterly: \$250.00

For each occurrence of failure to properly return empty Containers to avoid pedestrian or vehicular traffic impediments or to place Containers upright with lids secured which exceeds six (6) such occurrences quarterly: \$150.00

2.2.2. For each occurrence of excessive noise or discourteous behavior: \$250.00

2.2.3. For each failure to clean up Solid Waste, Recyclable Materials, or Organic Materials spilled by Contractor from Solid Waste, Recyclable Materials, and Organic Materials Containers which exceeds six (6) such failures quarterly: \$150.00

2.2.4. For each occurrence of Collecting Solid Waste, Recyclable Materials and Organic Materials during unauthorized hours which exceeds six (6) such occurrences annually quarterly: \$250.00

2.3. Service Recipient Responsiveness.

2.3.1. For each failure to initially respond to a service recipient Complaint within one (1) business day: \$100.00

2.3.2. For each failure to process service recipient Complaints to City as required by Article 6: \$500.00

2.4. Timeliness of Submissions to City/State Agencies. Reports shall be considered late, until such time as a correct and complete report is received by City. For each calendar day a report is late, the daily liquidated damage amount shall be:

2.4.1. Quarterly Reports: per Section 19.4.

2.4.2. Annual reports to the City: \$500 per day

Liquidated damages will only be assessed after Contractor has been given the opportunity but failed to rectify, in a timely manner, the breach as described in this Agreement. City may determine the occurrence of events giving rise to liquidated damages through the observation of its own employees or representative or investigation of service recipient Complaints.

Prior to assessing liquidated damages, City shall give Contractor notice of its intention to do so. The notice will include a brief description of the incident(s)/non-performance. Contractor may review (and make copies at its own expense) all information in the possession of City relating to incident(s)/non-performance. Contractor may, within ten (10) days after receiving the notice, request a meeting with City. Contractor may present evidence in writing and through testimony of its employees and others relevant to the incident(s)/non-performance. City will provide Contractor with a written explanation of his or her determination on each incident(s)/non-performance prior to authorizing the assessment of liquidated damages. The decision of City shall be final.

3. Amount. City may assess liquidated damages for each calendar day or event, as appropriate, that Contractor is determined to be liable in accordance with this Agreement.
4. Timing of Payment. Contractor shall pay any liquidated damages assessed by City within ten (10) days after they are assessed. If they are not paid within the ten (10) day period, City may proceed against the performance bond required by the Agreement or order the termination of the Agreement granted by this Agreement, or both.

Section 34. NOTICES

Except as otherwise provided in this Agreement, all notices required by this Agreement shall be given by personal service or by deposit in the United States mail, postage pre-paid and return receipt requested, addressed to the Parties as follows:

To the City:

To Contractor:

Notice shall be deemed effective on the date personally served or, if mailed, three days after the date deposited in the mail.

Section 35. RELATIONSHIP OF PARTIES

The Parties intend that the Contractor shall perform the services required by this Agreement as an independent contractor and not as an officer or employee of the City nor as a partner of or joint venturer with the City. No employee or agent of the Contractor shall be deemed to be an employee or agent of the City and shall not obtain any rights to retirement benefits, worker's compensation benefits, or any other benefits which accrue to the employees of the City by virtue of their employment with said agency. Except as expressly provided herein, the Contractor shall have the exclusive control over the manner and means of conducting the Solid Waste, Recyclable Materials, and Organic Materials Collection services performed under this Agreement and all Persons performing such services. Contractor shall be solely responsible for the acts and omissions of its officers, employees, Subcontractors, and agents.

Contractor agrees that this Agreement is not made in the interest of, or on behalf of, any undisclosed Person, partnership, Contractor, association, organization, or corporation. Contractor has not directly or indirectly colluded, conspired, connived or agreed with any Person, partnership, Contractor, association, organization, or corporation to secure any advantage against the City.

Section 36. COMPLIANCE WITH LAW

In providing the services required under this Agreement, Contractor shall at all times, at its sole cost, comply with all Applicable Laws of the United States, the State of California, the City and other states, cities or counties which may have jurisdiction over any service provided in this Agreement and with all Applicable Laws promulgated by any Federal, State, regional or local administrative and regulatory agency, now in force and as they may be enacted, issued or amended during the Term of this Agreement.

Section 37. GOVERNING LAW

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

Section 38. JURISDICTION

Any lawsuits between the Parties arising out of this Agreement shall be brought and concluded in the courts of the State of California, which shall have exclusive jurisdiction over such lawsuits. With respect to venue, the Parties agree that this Agreement is made in and will be performed in the City. Federal courts may have jurisdiction over certain lawsuits arising from this Agreement and these should be brought and concluded within the Federal system.

Section 39. ASSIGNMENT

1. Contractor acknowledges that this Agreement involves rendering a vital service to the residents and businesses within the District and that the City has granted this Franchise to the Contractor to perform the services specified herein based on: (a) Contractor's experience, skill and reputation for conducting its Collection services in a safe, effective and responsible fashion, at all times in keeping with Applicable Laws, regulations, and good Solid Waste management practices; and, (b) Contractor's financial resources to maintain the required equipment and to support its indemnity obligations to the City under this Agreement. The City has relied on each of these factors, among others, in choosing the Contractor to perform the services to be rendered by the Contractor under this Agreement.
2. Any Franchise granted is a privilege to be held in trust by the original Contractor. A Franchise issued by the City shall not be transferred, sold, leased, assigned, or relinquished, or delegated to another Person, either in whole or in part, whether by forced sale, merger, consolidation, bankruptcy laws or otherwise, without the prior approval of the City Council. This restriction includes the transfer of ownership of the Franchise, or a majority of the ownership or control of the Contractor, or the conveyance of a majority of the Contractor's stock to a new controlling interest. Franchise shall become void upon the abandonment of same by the Contractor. The City Council shall not unreasonably withhold approval of a Franchise assignment, provided that such assignment does not unreasonably impact competition and the assignee is qualified to perform its obligations as required by this Agreement and any implementing the City ordinance.
3. Contractor shall promptly notify the City Manager in writing in advance of any proposed assignment, sale, or transfer. In the event the City Council approves of any assignment, sale, or transfer, said approval shall not relieve Contractor of any of its obligations or duties under this Agreement unless this Agreement is modified in writing to that effect.

Section 40. BINDING ON SUCCESSORS

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

Section 41. WAIVER

The waiver by either Party of any breach or violation of any provisions of this Agreement shall not be deemed to be a waiver of any breach or violation of any other provision nor of any subsequent breach or violation of the same or any other provision.

The subsequent acceptance by either Party of any monies, which become due hereunder, shall not be deemed a waiver of any preexisting or concurrent breach or violation by the other Party of any provision of this Agreement.

Section 42. CONTRACTOR'S INVESTIGATION

Contractor has made an independent investigation (satisfactory to it) of the conditions and circumstances surrounding the Agreement and the work to be performed by it.

Section 43. EQUAL EMPLOYMENT OPPORTUNITY

During the performance of this Agreement, Contractor for itself, its assignees and successors in interest, agrees as follows:

1. Compliance with Regulations: Contractor shall comply with the Executive Order 11246 entitled "Equal Opportunity in Federal Employment", as amended by Executive Order 11375 and 12086, and as supplemented in Department of Labor regulations (41 CFR Chapter 60), herein Collectively referred to as the "Regulations".
2. Nondiscrimination: Contractor, with regards to the work performed by it after award and prior to completion of the work pursuant to this Agreement, shall not discriminate on the ground of race, color, religion, sex, national origin, age, marital status, physical handicap, or sexual orientation in selection and retention of Subcontractors, including procurement of materials and leases of equipment. Contractor shall not participate either directly or indirectly in discrimination prohibited by the Regulations.
3. Solicitations for Subcontractors: Including Procurement of materials and equipment: In all solicitations either by competitive bidding or negotiations made by Contractor for work to be performed under any subcontract, including all procurement of materials or equipment, each potential Subcontractor or supplier shall be notified by Contractor of Contractor's obligation under this Agreement and the Regulations relative to nondiscrimination on the ground of race, color, religion, sex, national origin, age, marital status, physical handicap, or sexual orientation.
4. Information and Reports: Contractor shall provide all information and reports required by the Regulations, or by any orders or instructions issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information and its facilities as may be determined by the City to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of Contractor is in the exclusive possession of another who fails or refuses to furnish this information, Contractor shall so certify to the City, and shall set forth what efforts it has made to obtain the information.
5. Sanctions for Noncompliance: In the event of noncompliance by Contractor with the nondiscrimination provisions of this Agreement, the City shall impose such sanctions as it may determine to be appropriate including, but not limited to:

-
-
- 5.1. Withholding of payments to Contractor under this Agreement until Contractor complies; and,
 - 5.2. Cancellation, termination, or suspension of the Agreement, in whole or in part.
 6. Incorporation of Provisions: Contractor shall include the provisions of subsections 1 through 5 above, in every subcontract, including procurement of materials and leases of equipment, unless exempted by the Regulations, or by any order or instructions issued pursuant thereto. Contractor shall take such action with respect to any subcontract or procurement as the City may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that in the event Contractor becomes involved in, or is threatened with, litigation with a Subcontractor or supplier as a result of such direction, Contractor may request City to enter such litigation to protect the interests of City.

Section 44. ENTIRE AGREEMENT

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

Section 45. INTERPRETATION

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

Section 46. AMENDMENT

This Agreement may not be modified or amended in any respect except by a written agreement duly approved and signed by the Parties.

Section 47. SEVERABILITY

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

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the day and year first written above.

City of Sacramento:

By _____

City Manager

Approved as to Form:

By _____

City Attorney

Contractor:

By _____

**ATTACHMENT 2
PROPOSAL FORMS**

Form 1

General Proposal Information

Proposer Name: _____

A. Primary Contact Information	
1. Name	
2. Title	
3. Phone/Fax/E-mail	
G. Support Facilities	
1. Address of collection vehicle parking, maintenance, washing, and route staff parking facilities	
2. Address of administrative office	
3. Address of billing office	
4. Address of customer service office	
C. Vehicle Manufacturer and Specifications	
1. Solid Waste Collection Vehicles	
2. Recyclable Materials Collection Vehicles	
3. Organic Materials Collection Vehicles	
4. Drop Box Vehicles	
D. Container Manufacturer and Specifications	
1. Commercial and Multi-Family Carts	
2. Commercial and Multi-Family Bins	
3. Drop Boxes	

E. Solid Waste Disposal	
1. Name of disposal site	
2. Owner's name	
3. Operator's name	
4. Address of disposal location	
5. Hauling method (e.g. direct haul, transfer haul, pod haul)	
6. Name and address of transfer location (if applicable)	
7. Tip Fee (Inclusive of transfer and disposal costs)	
F. Recyclable Materials Processing and Handling	
1. Name of processing site	
2. Owner's name	
3. Operator's name	
4. Address of processing location	
5. Hauling method (e.g. direct haul, transfer haul, Pod haul)	
6. Name and address of transfer location (if applicable)	
7. Tip Fee (Inclusive of transfer and disposal costs)	
G. Organic Materials Processing and Handling	
1. Name of processing site	
2. Owner's name	
3. Operator's name	
4. Address of processing location	
5. Hauling method (e.g. direct haul, transfer haul, Pod haul)	
6. Name and address of transfer location (if applicable)	
7. Tip Fee (Inclusive of transfer and disposal costs)	

Form 2

Operating Statistics

(Based on Current Service Needs)

Proposer Name: _____

		TOTAL
		L
Labor Information		
1	Full time equivalent # of regular route personnel	—
2	Total labor hours/year (Line 1 * 8 hours * 260 days)	—
Route Information		
3	# of routes	—
4	# of collection vehicles (excluding spares)	—
5	# of persons/route	—
6	# of route hours/day/route	—
7	# of route hours/year (Line 4 * Line 7 * 260 days)	—
8	# of accounts/week	—
9	# of anticipated setouts/week	—
10	Setout rate (%) (Line 8 / Line9)	—
11	# of lifts/week	—
12	# of pulls/week	—
Tonnage Information (annual)		
13	Solid waste	—
14	Recyclable materials	—
15	Organic materials	—
16	Total (Line 13+ Line 14+ Line 15)	—

*Excluding operational data related to Infectious Waste Collection.

Form 3

Annual Operating Cost Estimate*

(Present costs in current dollars for current service level)

Proposer Name: _____

	TOTAL
Annual Cost of Operations	
Labor-Related Costs	_____
Vehicle-Related Costs	_____
Recyclables Processing Costs**	_____
Yard Debris Processing Costs **	_____
Disposal Costs**	_____
Depreciation Expense	_____
Interest Expense (external or intra-company)	_____
Direct Lease Costs	_____
Other Costs	_____
Profit	_____
Total Estimated Annual Cost of Operations	_____

*Including transfer station costs if applicable.

Form 4

Commercial and Multi-Family Rate Proposal

(Rates in Current Dollars)

Instructions to Proposer: Enter only rates for 32-gallon Cart service; 1 cubic yard Bin 1 pick-up per week service; and other services which are shaded below. All other commercial rates and the estimated annual rate revenues will be calculated based on those input rates. Rates shall be proposed for the first rate year of the Franchise starting January 1, 2008.

Proposer Name: _____

Type of Service	Receptacle	Service Frequency (Pick-Ups/Week)	Rate Factor	Operating Component	Tipping Fee Component		Total Rate	Estimated Number of Accounts	Estimated Annual Rate Revenues
					Disposal	Processing			
Regularly Scheduled Solid Waste Cart Services									
Solid Waste	One 32-gallon cart	1	1.00		\$0.00	\$0.00	\$0.00	0	\$0
Solid Waste	Two 32-gallon carts	1	2.00		\$0.00	\$0.00	\$0.00	0	\$0
Solid Waste	One 64-gallon cart	1	2.00		\$0.00	\$0.00	\$0.00	0	\$0
Solid Waste	Two 64-gallon carts	1	4.00		\$0.00	\$0.00	\$0.00	0	\$0
Solid Waste	One 96-gallon cart	1	3.00		\$0.00	\$0.00	\$0.00	0	\$0
Solid Waste	Two 96-gallon carts	1	6.00		\$0.00	\$0.00	\$0.00	0	\$0
Solid Waste	Additional 96-gallon cart	1	3.00		\$0.00	\$0.00	\$0.00	0	\$0

Regularly Scheduled Solid Waste Bin Services									
Solid Waste	1 cubic yard container	1	1.00		\$0.00	\$0.00	\$0.00	0	\$0
Solid Waste	1 cubic yard container	2	2.02		\$0.00	\$0.00	\$0.00	0	\$0
Solid Waste	1 cubic yard container	3	3.04		\$0.00	\$0.00	\$0.00	0	\$0
Solid Waste	1 cubic yard container	4	4.06		\$0.00	\$0.00	\$0.00	0	\$0
Solid Waste	1 cubic yard container	5	5.08		\$0.00	\$0.00	\$0.00	0	\$0
Solid Waste	1 cubic yard container	6	6.10		\$0.00	\$0.00	\$0.00	0	\$0

Solid Waste	2 cubic yard container	1	2.00	\$0.00	\$0.00	\$0.00	\$0.00	0	\$0
Solid Waste	2 cubic yard container	2	4.02	\$0.00	\$0.00	\$0.00	\$0.00	0	\$0
Solid Waste	2 cubic yard container	3	6.04	\$0.00	\$0.00	\$0.00	\$0.00	0	\$0
Solid Waste	2 cubic yard container	4	8.06	\$0.00	\$0.00	\$0.00	\$0.00	0	\$0
Solid Waste	2 cubic yard container	5	10.08	\$0.00	\$0.00	\$0.00	\$0.00	0	\$0
Solid Waste	2 cubic yard container	6	12.10	\$0.00	\$0.00	\$0.00	\$0.00	0	\$0
Solid Waste	3 cubic yard container	1	3.00	\$0.00	\$0.00	\$0.00	\$0.00	0	\$0
Solid Waste	3 cubic yard container	2	6.02	\$0.00	\$0.00	\$0.00	\$0.00	0	\$0
Solid Waste	3 cubic yard container	3	9.04	\$0.00	\$0.00	\$0.00	\$0.00	0	\$0
Solid Waste	3 cubic yard container	4	12.06	\$0.00	\$0.00	\$0.00	\$0.00	0	\$0
Solid Waste	3 cubic yard container	5	15.08	\$0.00	\$0.00	\$0.00	\$0.00	0	\$0
Solid Waste	3 cubic yard container	6	18.10	\$0.00	\$0.00	\$0.00	\$0.00	0	\$0
Solid Waste	4 cubic yard container	1	4.00	\$0.00	\$0.00	\$0.00	\$0.00	0	\$0
Solid Waste	4 cubic yard container	2	8.02	\$0.00	\$0.00	\$0.00	\$0.00	0	\$0
Solid Waste	4 cubic yard container	3	12.04	\$0.00	\$0.00	\$0.00	\$0.00	0	\$0
Solid Waste	4 cubic yard container	4	16.06	\$0.00	\$0.00	\$0.00	\$0.00	0	\$0
Solid Waste	4 cubic yard container	5	20.08	\$0.00	\$0.00	\$0.00	\$0.00	0	\$0
Solid Waste	4 cubic yard container	6	24.10	\$0.00	\$0.00	\$0.00	\$0.00	0	\$0
Solid Waste	6 cubic yard container	1	6.00	\$0.00	\$0.00	\$0.00	\$0.00	0	\$0
Solid Waste	6 cubic yard container	2	12.02	\$0.00	\$0.00	\$0.00	\$0.00	0	\$0
Solid Waste	6 cubic yard container	3	18.04	\$0.00	\$0.00	\$0.00	\$0.00	0	\$0
Solid Waste	6 cubic yard container	4	24.06	\$0.00	\$0.00	\$0.00	\$0.00	0	\$0
Solid Waste	6 cubic yard container	5	30.08	\$0.00	\$0.00	\$0.00	\$0.00	0	\$0
Solid Waste	6 cubic yard container	6	36.10	\$0.00	\$0.00	\$0.00	\$0.00	0	\$0
Solid Waste	8 cubic yard container	1	8.00	\$0.00	\$0.00	\$0.00	\$0.00	0	\$0
Solid Waste	8 cubic yard container	2	16.02	\$0.00	\$0.00	\$0.00	\$0.00	0	\$0
Solid Waste	8 cubic yard container	3	24.04	\$0.00	\$0.00	\$0.00	\$0.00	0	\$0
Solid Waste	8 cubic yard container	4	32.06	\$0.00	\$0.00	\$0.00	\$0.00	0	\$0
Solid Waste	8 cubic yard container	5	40.08	\$0.00	\$0.00	\$0.00	\$0.00	0	\$0
Solid Waste	8 cubic yard container	6	48.10	\$0.00	\$0.00	\$0.00	\$0.00	0	\$0

Other Services

Extra can or bag of Solid Waste collected on customer's regularly scheduled collection day	32-gal can or bag	Per occurrence	N.A.	\$0.00	\$0.00	N.A.	\$0.00	N.A.	N.A.
Extra can or bag of Solid Waste collected on a day other than the customer's regularly scheduled collection day	32-gal can or bag	Per occurrence	N.A.	\$0.00	\$0.00	N.A.	\$0.00	N.A.	N.A.
Extra pick-up for on-call service or overage pick-up service for regular container customers	1 to 8 cubic yard container	Per cubic yard per occurrence	N.A.	\$0.00	\$0.00	N.A.	\$0.00	N.A.	N.A.
Push/pull	N.A.	Per Month	N.A.	No Charge	N.A.	N.A.	N.A.	N.A.	N.A.
Lock/unlock	N.A.	Per Month	N.A.	\$0.00	N.A.	N.A.	\$0.00	N.A.	N.A.
Steam cleaning	N.A.	Per occurrence	N.A.	\$0.00	N.A.	N.A.	\$0.00	N.A.	N.A.

Recyclable Materials and Organic Materials Collection Rates

Contractor shall determine Rates for Recyclable Materials and Organic Materials collection provided; however, the Rates for Recyclable Materials collection shall not exceed 50% of Solid Waste Rates and Organic Materials Rates shall not exceed 75% of Solid Waste Rates for equivalent container size and collection frequency.

Other Charges

Does proposer wish to include any other Rates? (circle one: YES / NO)

If the answer to the above question is YES, provide a list of any and all other charges the proposer wishes to include in its proposal on a separate sheet along with the proposed Rates.

Estimated Annual Revenue

\$0

Form 5

Drop Box Rate Proposal

(Rates in Current Dollars)

Instructions to Proposer: Enter Operating Component for 10 cubic yard drop box and 3 cubic yard compactor regularly scheduled service and on-call service, daily rental, and delivery service which are shaded below. All other rates will be calculated based on the input rates. Rates shall be proposed for the first rate year of the Franchise starting January 1, 2008.

Proposer Name: _____

Type of Service	Receptacle	Service Frequency	Operating Component	Tipping Fee Component	Total Rate	Estimated Number of Accounts	Estimated Annual Rate Revenues
Regularly Scheduled Collection Service (Monthly Rate not including rental & delivery fees which are charged separately)							
All Material Types	10 cubic yard drop box	1 pickup/week	\$0.00	Company to bill customer actual tipping cost	\$0.00	N.A.	N.A.
All Material Types	20 cubic yard drop box	1 pickup/week	\$0.00		\$0.00	N.A.	N.A.
All Material Types	30 cubic yard drop box	1 pickup/week	\$0.00		\$0.00	N.A.	N.A.
All Material Types	40 cubic yard drop box	1 pickup/week	\$0.00		\$0.00	N.A.	N.A.
All Material Types	3 cubic yard compactor	1 pickup/week	\$0.00	Company to bill customer actual tipping cost	\$0.00	N.A.	N.A.
All Material Types	6 cubic yard compactor	1 pickup/week	\$0.00		\$0.00	N.A.	N.A.
All Material Types	10 cubic yard compactor	1 pickup/week	\$0.00		\$0.00	N.A.	N.A.
All Material Types	19 cubic yard compactor	1 pickup/week	\$0.00		\$0.00	N.A.	N.A.
On-Call Collection Service (Per Pick-Up Rate not including rental and delivery fees which are charged separately)							
All Material Types	10 cubic yard drop box	On-call pickup	\$0.00	Company to bill customer actual tipping cost	\$0.00	N.A.	N.A.
All Material Types	20 cubic yard drop box	On-call pickup	\$0.00		\$0.00	N.A.	N.A.
All Material Types	30 cubic yard drop box	On-call pickup	\$0.00		\$0.00	N.A.	N.A.
All Material Types	40 cubic yard drop box	On-call pickup	\$0.00		\$0.00	N.A.	N.A.
All Material Types	3 cubic yard compactor	On-call pickup	\$0.00	Company to bill customer actual tipping cost	\$0.00	N.A.	N.A.
All Material Types	6 cubic yard compactor	On-call pickup	\$0.00		\$0.00	N.A.	N.A.
All Material Types	10 cubic yard compactor	On-call pickup	\$0.00		\$0.00	N.A.	N.A.
All Material Types	19 cubic yard compactor	On-call pickup	\$0.00		\$0.00	N.A.	N.A.
Rental Service							
Rental	All drop box/ compactor sizes	Per day**	\$0.00	N.A.	\$0.00	N.A.	N.A.

Rental	All drop box/ compactor sizes	Per month**	\$0.00	N.A.	\$0.00	N.A.	N.A.
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** Customer receives two days of drop box use at no cost; rental fee charged per day for each day in excess of the first two days of use.
 Total charge shall be based on the per-day rate or per-month rate whichever is less.

Delivery Service

Delivery	All drop box/ compactor sizes	Initial delivery to collection site	\$0.00	N.A.	\$0.00	N.A.	N.A.
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Other Charges

Does proposer wish to include any other charges? (circle one: YES / NO)
 If the answer to the above question is YES, provide a list of any and all other charges the proposer wishes to include in its proposal on a separate sheet along with the proposed charges.

Estimated Annual Revenue N.A.

ATTACHMENT 3

ANTI-COLLUSION AFFIDAVIT

The following affidavit is submitted by Proposer as a part of this proposal:

The undersigned deponent, of lawful age, being duly sworn, upon his oath deposes and says: that he has lawful authority to execute the within and foregoing proposal; that he has executed the same by subscribing his name hereto under oath for and on behalf of said proposer; that proposer has not directly or indirectly entered into any agreement, express or implied, with any proposer or proposers, having for its object the controlling of the price or amount of such proposal or proposals, the limiting of the proposals or proposers, the parceling or farming out to any proposer or proposers or other persons of any part of the agreement or any part of the subject matter of the proposal or proposals or of the profits thereof, and that he has not and will not divulge the sealed proposal to any person whomsoever, except those having a partnership or other financial interest with him in said proposal or proposals, until after the said sealed proposal or proposals are opened.

Deponent further states that the proposer has not been a party to any collusion among proposers in restraint of freedom of competition; by agreement to make a proposal at a fixed price or to refrain from submitting a proposal; or with any state official or employee as to quantity, quality, or price in the prospective agreement; or in any discussions between proposers and any City official concerning exchange of money or other things of value for special consideration in the letting of an agreement; that the proposer/Company has not paid, given or donated or agreed to pay, give or donate to any official, officer or employee of the City directly or indirectly, in the procuring of the award of agreement pursuant to this proposal.

Executed under penalty of perjury on this _____ day of _____, 2006 at _____.

SIGNED _____

BY _____

TITLE _____

Subscribed and sworn to before me this _____ day of _____, 2006 at _____.

Notary Public

My Commission expires: _____

ATTACHMENT 4

SECRETARY'S CERTIFICATION

The undersigned, being the Secretary of _____, a
Company Name

California corporation ("the Company"), do hereby certify that the following resolution was adopted by the Board of Directors of the Company and that such resolution has not been amended, modified or rescinded and is in full force and effect as of the date hereof:

RESOLVED, that _____ be, and hereby is, authorized to
Name of Designated Representative
sign the Company's proposal and execute by and on behalf of the Company any and all agreements, instruments, documents or papers, as he/she may deem appropriate or necessary, pertaining to or relating to the City of Sacramento Old Sacramento Management Division's *Request for Proposals for Solid Waste Collection and Diversion Programs* issued by the City of Sacramento, California on _____, 2007, and that any such action taken to date is hereby ratified and approved.

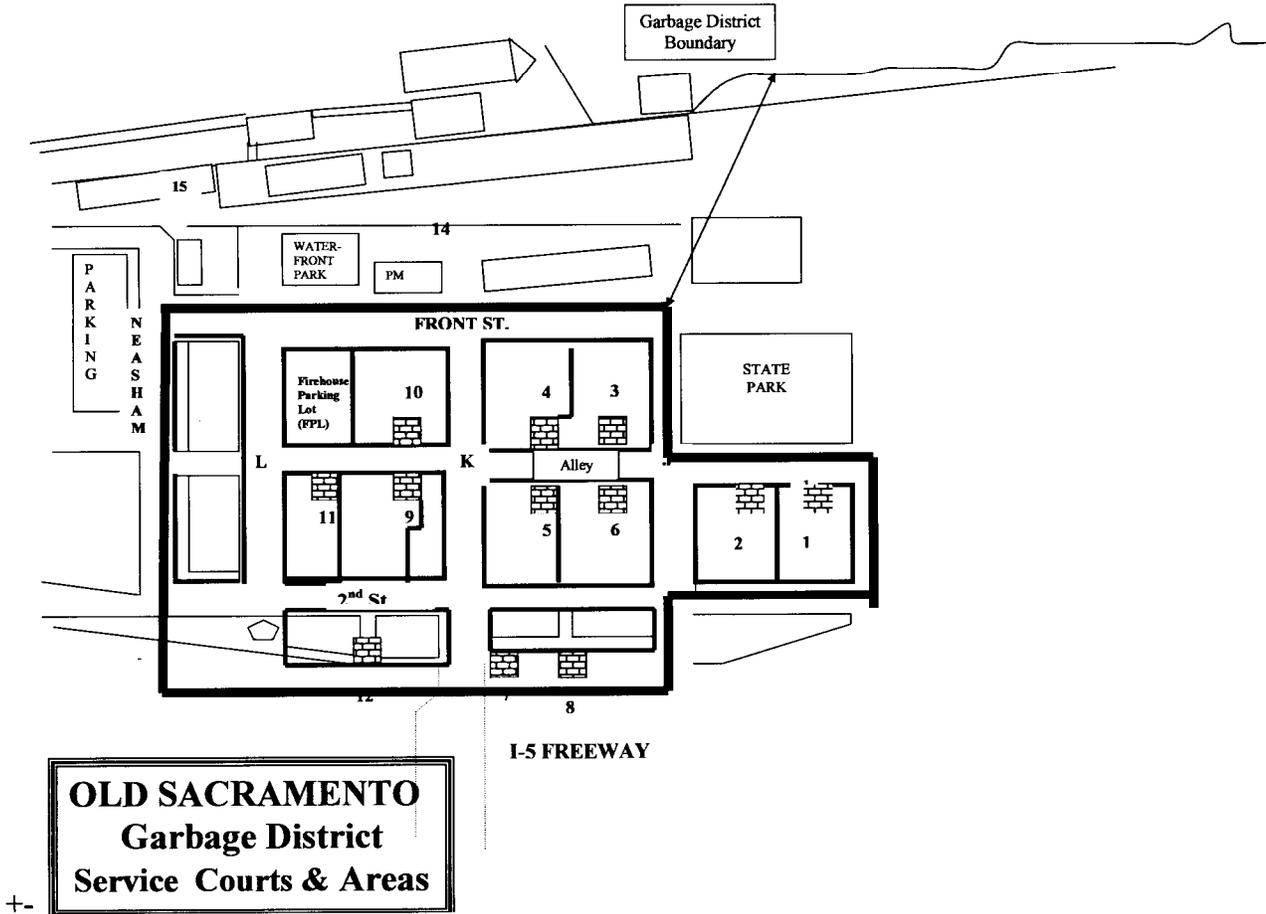
Dated: _____

Signature

Title

ATTACHMENT 5

DISTRICT MAP & SERVICE COURT LOCATIONS



**ATTACHMENT 5 (con't)
ACCOUNTS LIST**

Service Court APN #	APN/OWNERS TO BE SERVED By Service Court	Building Size/Uses				Total sf.	Business
		Street Retail	Rest. Retail	Non- Retail	Retail Vacancy		
1	006-0012-021-Markley et al	4,703	2,440			7,143	Calif Gifts Vacant-nightclub Sam's Café
006-0012-020	006-0012-022-Johnson et al	9,000	9,000	9,000	27,000	27,000	Non-inhabitable
(COOK)	006-0012-032-Soloman	3,618	2,968	6,587		13,173	Landlord 3 office tenants Vacant-nightclub
	006-0012-036-Cook	5,100		1,600		6,700	Candy-Land Royal Hair Palace 1 Office
	006-0012-037-Cook	2,400	4,743		800	7,143	Fultons Spud-Shack Broken-Remove (' No Address
	TOTAL	24,821	19,151	17,187		61,159	
2	006-0012-023-Finger et al	6,608		3,304	3,304	9,912	Vacant retail 2 offices
006-0012-025	006-0012-024-Wong	3,990		7,649		11,639	Mandi's Gallery Crystal Moon Gall
(BOLLINGER)	006-0012-028-Hildebrand	6,793		10,952		17,745	Tunel-21
	006-0012-029-RACS	2,400		4,800		7,200	Vacant Site
	006-0012-030-Bollinger	300	8,214	6,890		15,404	Café New Orleans 4 offices
	006-0012-031-Bollinger			Part of 030			Palm Reader
	TOTAL	20,091	8,214	33,595		61,900	
3	006-071-033-Stivers	3,293	3,293	6,587		13,173	Hogshead (?) Discover California 4 offices
006-0012-021	006-071-034-Mendoza		11,257			11,257	Los Napoles

006-0012-039 (FATS)	006-071-035-Fats 006-071-041-Soloman TOTAL	19,123 7,920 11,213	3,640 33,673	19,123 11,560 10,227	2 Fats Rest.	
4 006-0012-024	006-071-013-Chausse' 006-071-014-Chausse'	21,502 "		21,502 "	Evangelines "	
006-0012-051	006-071-025-Angello et al	3,393	3,320	3,480	10,193	Steamers Sacramento Cotto Sacramento Swee Quail's Nest
(CHAUSSE')	006-071-040-Wahba 006-071-050-Wahba TOTAL	8,600 " 33,495	7,300 " 10,620	6,500 " 9,980	2,000 " 54,095	Ramona's Sidelines Sports Cl Vacant Retail 1 Office/1 resident
5 006-0071-052 (ORLEANS)	006-071-038-Burson et al 006-071-053-RACS 006-071-055-Fu TOTAL	5,328 10,378 15,405 31,111	5,328 19,210 6,265 30,803	26,045 6,978 33,023	(17 DU's) 94,937	Gallery of Am. We Round Table Piz Vacant Site Capital Noodle Sports Corner Cal Hero Chines Art Leathers by M. Ter Tatoos Exquisite Aqua Mass Lo Era Body Wraj River City Tattoc 4 offices
6 006-0071-048 (Across from Fats)	006-071-022-State of Calif. 006-071-027-Yu 006-071-043-Leong 006-071-045-Risch 006-071-049-RACS TOTAL	1,895 8,400 2,500 2,340 15,135	1,895 7,400 4,680 vacant-mini park 0	3,790 8,400 9,900 7,020 13,975	29,110	Wells Fargo Museu Visitor Center by SC HOSF/OSBA Elder Craftsman Visions of Eden/Ta Candy Barrel 4 offices Muchies 1 DU
7 Concourse	006-073-045-Sterling		4,680		4,680	Fanny Ann

Next to I-5 Parking	006-073-046-LaTerraza Fam.	3,180	3,180	3,180		9,540	La Terazza Rocky Mtn Choc Jewels Unique Candle Land
	006-073-047-Johnnson Comm (?)	4,058		8,115		12,173	Turtles
(MORSE)	TOTAL	7,238	7,860	11,295		26,393	
8 Concourse next to I-5 Parking	006-073-039-Field	6,624	6,000	7,248	1,800	19,872	1 office Bella Gifts
(HEYWOOD)	006-073-040-Field		Incl. In 039				Vacant retail Shirtique
	006-073-041-McCabe et al	2,400		1,200		3,600	Orange
	TOTAL	9,024	6,000	8,448		23,472	
9	006-072-030-Randelett			3,590		3,590	1 office
006-072-030	006-072-032-Wardney	3,053				3,053	Garden of Enchant
(EBNER)	006-072-033-Cook	10,250		4,250		14,500	Underground Baza
	006-072-034-Cook		Inc. in 033				Russian Connectic Fun & Games
	006-072-028-RACS				Vacant site		What Cheer
	006-072-029-RACS				Vacant site		BackDoor Lounge
	TOTAL	13,303	0	7,840		21,143	
10 006-0072-040 (WHAT CHEER)	006-072-024-Xepoleas	9,000	9,000	9,000		27,000	Vacant nightclub Scott N Scott's Bea
	006-072-039-What Cheer et al	19,110	10,501	16,171		45,782	Tony's Collectible OS Trading Post Better Image Phot Giftland Jon's Tabacconis Back Door Loung
	006-072-046-What Cheer et al		Incl. In 039				Pretty Women McGee's Old Tim Photo
	006-072-047-What Cheer et al		Incl. In 039				Closet Antiques Krystal Garden Peruvian Crafts Maxine's

						Stage Nine Ent. St Buffalo Bob's Sparkles Solar Syndicate 6 offices LOMO's Rest (nev Brooks Novelty
	TOTAL	28,110	19,501	25,171	72,782	
11	006-072-043-Fisher			31,310	31,310	40 DU 3 offices
006-072-044 (CLARENDON)	006-072-045-Silberstein (?)	8,787		7,132	15,919	(?) Tatoo
	TOTAL	8,787	0	38,442	47,229	
12	006-074-032-Davis et al	1,570		10,305	11,875	Subway CA Military Mu.
Stub Alley	006-074-035-Qaqundah		5,600	15,602	21,202	2 Grand (Entertainm Living History Ct (City) 4 offices
2nd St/1-5 (OSM)	006-074-037-Takegoshi		7,182	3,591	10,773	O-Malloys Williamson CPA OSM, (City) ?
	TOTAL	1,570	12,782	29,498	43,850	
13	006-136-002-Boreen	8,380	3,000	6,381	17,761	Candy Heaven Calif. T's Channel Star Boa 4 offices
(Alley)	006-136-003-Thompson		6,342	6,342	12,684	Laughs 4 offices
(SO OF L ST.)	006-136-008-AKT			20,000	20,000	EIP Associates
	006-136-009-AKT		Incl. In 008			2 offices
	TOTAL	8,380	9,342	32,723	50,445	
TOTALS		212,278	157,946	271,404	34,904 (In total s.f.)	641,628

Attachment 6

**** ITEMS REQUIRING PROPOSER RESPONSE ****

NOTE: Proposers must provide responses to the following items. Failure to provide a response to each of the items in this section may be grounds for rejection of the proposal.

I. ESBD PROGRAM REQUIREMENTS

On February 9, 1999, the Sacramento City Council adopted an Emerging and Small Business Development (ESBD) program to provide enhanced opportunities for the participation of small business enterprises (SBEs) and emerging business enterprises (EBEs) in the City's contracting and procurement activities. The ESBD program establishes an annual emerging and small business enterprise (ESBE) participation goal for the City's contracts and agreements, and authorizes City departments to require minimum ESBE participation levels in individual contracts and agreements so that the annual ESBE participation goal can be met.

Under City Code section 58.08.802, when the request for proposals for a professional services agreement establishes a minimum participation level for ESBEs, **no proposer on the agreement shall be considered a responsive proposer unless its proposal meets the minimum ESBE participation level required by the request for proposals.**

The City has established a minimum 20 % participation level for ESBEs on this agreement. Pursuant to City Code Section 58.08.802, no proposer on this agreement shall be considered a responsive proposer unless its proposal meets or exceeds this minimum participation level.

Proposers shall include copies of their certification as a SBE or EBE and the SBE or EBE certifications for each subconsultant listed on the attached "Subconsultant Utilization Form" with their proposal. Failure to submit the required ESBE information will be grounds for finding the proposal nonresponsive.

II. ESBE CERTIFICATION

- A. A SBE utilized to meet the ESBE participation requirement must be certified as such by the State of California or by the City, as defined herein, prior to the time proposals are received.
- B. An EBE utilized to meet the ESBE participation requirement must be certified as such by the City, as defined herein, prior to the time proposals are received.

III. DETERMINATION OF ESBE PARTICIPATION LEVEL

The percent of ESBE participation shall be determined based on the dollar amount of the work or services to be performed (1) by the proposer, if it is a certified ESBE, and/or (2) by certified ESBE subconsultants designated in the proposal, relative to the total dollar amount of the proposal.

To receive credit for participation, a ESBE must perform a commercially useful function; i.e., must be responsible for the execution of a distinct element of the work or services and must carry out its responsibility by actually performing, managing, or supervising the work or services.

IV. ESBE REQUIREMENTS OF SUCCESSFUL PROPOSAL

- A. **ESBE RECORDS** - The Consultant shall maintain records of all agreements with certified ESBE subconsultants for one (1) year after receiving final payment from the City. Such records shall show the name and business address of each ESBE subconsultant and the total dollar amount actually paid each ESBE subconsultant. Upon completion of the agreement, a summary of these records shall be prepared, certified correct by the Consultant's authorized representative and furnished to the City. The Consultant shall provide such other information, records, reports, certifications or other documents as may be required by City, to determine compliance with any provision of the ESBD program or these requirements.
- B. **REPORTING REQUIREMENTS AND SANCTIONS** - Failure to provide specific information, records, reports, certifications, or any other documents required for compliance with these requirements shall be considered noncompliance with the agreement. If the Consultant fails to correct a deficiency within fifteen (15) days after notification, a deduction may be made from the agreement amount. The deduction shall be ten (10) percent of the estimated value of the services performed during the month, not to be less than \$1,000 nor exceed \$10,000.
- C. **PERFORMANCE OF ESBE SUBCONSULTANTS** - The ESBEs listed as subconsultants by the Consultant shall perform the work or services for which they are listed unless the Consultant has received prior written authorization from the City to perform the work or services in another manner. If the City approves the substitution of an ESBE listed as a subconsultant by the Consultant, the Consultant will be required to make good faith efforts to replace the original ESBE subconsultant with another certified ESBE subconsultant.

V. DEFINITIONS

A. Emerging Business Enterprise (EBE)

The City shall certify EBEs utilizing the small business certification criteria and standards of the State of California, General Services Department, Office of Small Business Certification and Resources, that were in effect on December 1, 1998, provided that the size standard, industry by industry, shall be set at 50% of the State small business certification criteria and standards that were in effect on December 1, 1998.

B. Small Business Enterprise (SBE)

The City shall certify SBEs utilizing the small business certification criteria and standards of the State of California, General Services Department, Office of Small Business Certification and Resources. The City will also accept State certified SBEs.

C. Consultant

The successful proposer who is awarded the professional services agreement by the City.

D. Subconsultant

The individual, partnership, corporation, firm or other entity entering into a contract or agreement with the Consultant to perform a portion of the work or services under the Consultant agreement.

**** ITEMS REQUIRING PROPOSER RESPONSE ****

NOTE: Proposers must provide responses to the following items. Failure to provide a response to each of the items in this section may be grounds for rejection of the proposal.

1. SMALL BUSINESS ENTERPRISE (SBE) CERTIFICATION

Is the firm submitting the proposal certified by the State of California or the City of Sacramento as a small business enterprise? Check the appropriate block below:

YES - the firm submitting the proposal is certified by the State of California and/or the City of Sacramento as a small business enterprise.

NO - the firm submitting the proposal is not certified by the State of California or the City of Sacramento as a small business enterprise.

If the response to the above is YES, provide the State of California and/or City of Sacramento Certification Number:

2. EMERGING BUSINESS ENTERPRISE (EBE) CERTIFICATION

Is the firm submitting the proposal certified by the City of Sacramento as an *emerging* business enterprise? Check the appropriate block below:

YES - the firm submitting the proposal is certified by the City of Sacramento as an emerging business enterprise.

NO - the firm submitting the proposal is not certified by the City of Sacramento as an emerging business enterprise.

If the response to the above is YES, provide the City of Sacramento Certification Number:

NOTE: SBE/EBE FIVE PERCENT (5%) PROPOSAL EVALUATION PREFERENCE

On February 9, 1999, the Sacramento City Council adopted an Emerging and Small Business Development program to provide enhanced opportunities for the participation of small business enterprises (SBEs) and emerging business enterprises (EBEs) in the City's contracting and procurement activities. Any proposal submitted by a firm that is certified as a SBE by either the State of California or the City of Sacramento, or that is certified as an EBE by the City of Sacramento, will receive a five percent (5%) proposal evaluation preference for the purpose of determining the highest ranking proposal. To receive this proposal evaluation preference, a firm must be certified as a SBE or EBE at the time of proposal opening. Questions regarding eligibility for SBE/EBE certification should be addressed to the City of Sacramento Office of Small Business Development at (916) 264-6747.