



City Council

Redevelopment Agency

AGENDA

Wednesday

Regular

**Closed Session 5:30 p.m.
Regular Session 6:00 p.m.**

September 7, 2011

**City Hall
100 West California Avenue
Ridgecrest CA 93555**

(760) 499-5000

**Ronald H. Carter, Mayor
Marshall G. Holloway, Mayor Pro Tempore
Jerry D. Taylor, Vice Mayor
Steven P. Morgan, Council Member
Jason Patin, Council Member**



**LAST ORDINANCE NO. 11-03
LAST RESOLUTION CITY COUNCIL NO. 11-68
LAST RESOLUTION REDEVELOPMENT AGENCY NO. 11-xx
LAST RESOLUTION FINANCING AUTHORITY NO. 11-xx**

CITY OF RIDGECREST

**CITY COUNCIL
RIDGECREST REDEVELOPMENT AGENCY
FINANCING AUTHORITY**

AGENDA

Regular Council/Agency Meeting
Wednesday September 7, 2011

CITY COUNCIL CHAMBERS CITY HALL
100 West California Avenue
Ridgecrest, CA 93555

**Closed Session – 5:30 p.m.
Regular Session – 6:00 p.m.**

This meeting room is wheelchair accessible. Accommodations and access to City meetings for people with other handicaps may be requested of the City Clerk (499-5002) five working days in advance of the meeting.

In compliance with SB 343. City Council/Ridgecrest Redevelopment Agency Agenda and corresponding writings of open session items are available for public inspection at the following locations:

1. City of Ridgecrest City Hall, 100 W. California Ave., Ridgecrest, CA 93555
2. Kern County Library – Ridgecrest Branch, 131 E. Las Flores Avenue, Ridgecrest, CA 93555
3. City of Ridgecrest official website at <http://ci.ridgecrest.ca.us>

CALL TO ORDER

ROLL CALL

APPROVAL OF AGENDA

PUBLIC COMMENT – CLOSED SESSION

AGENDA - CITY COUNCIL / REDEVELOPMENT AGENCY - REGULAR

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CLOSED SESSION – 5:30 p.m.

- GC54956.9 (A) Conference With Legal Counsel; Existing Litigation; City Of Ridgecrest v. Benz Sanitation, Inc.
- GC54956.9 (A) Conference With Legal Counsel; Existing Litigation, Benz Sanitation, Inc. v. City Of Ridgecrest
- GC54957.6 Labor Negotiations – United Food and Commercial Workers Local 8 (UFCW); Police Employee Association of Ridgecrest (PEAR); Mid-Management Group of Employees (MM); Confidential Group of Employees (CO); Management Group of Employees (MG) – Agency Negotiator City Manager Kurt Wilson

REGULAR SESSION – 6:00 p.m.

- Pledge Of Allegiance
- Invocation

CITY ATTORNEY REPORTS

- Closed Session
- Other

PRESENTATIONS

1. Proclamation And A Time For Public Remembrance For Former City Manager Harvey M. Rose Council
2. Recognition Of The Citizen Evaluation Panel For Their Assistance Evaluating The Solid Waste Request For Proposals Wilson
3. Presentation And Update To Council Of The City Solar Voltaic Field Bradley

PUBLIC COMMENT

CONSENT CALENDAR

4. Adopt A Resolution Of The City Council Of The City Of Ridgecrest Approving The Final Balancing Change Order For Contract Price In The Amount Of \$312,354.94; And Authorizing The City Manager To Sign The Notice Of Completion; The City Clerk To File The Notice Of Completion; And City Staff To Release Retained Funds For The Upjohn Ave. And Bowman Rd. Bike / Pedestrian Improvements Speer

AGENDA - CITY COUNCIL / REDEVELOPMENT AGENCY - REGULAR

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5. Adopt A Resolution Of The City Council To Enter Into Contract With HLA Consultant Group For Pinney Pool And Authorizing City Manager To Sign The Contract Ponck
6. Adopt A Resolution Adopting A New Memorandum Of Understanding Between The City Of Ridgecrest And The Police Employee Association Of Ridgecrest (PEAR) Wilson
7. Adopt A Resolution Adopting A New Memorandum Of Understanding Between The City Of Ridgecrest And The United Food And Commercial Workers Golden State 8 (UFCW) Wilson
8. Adopt A Resolution Of The Ridgecrest City Council Approving A Loan Between The Waste Water Fund And The City General Fund Staheli

ORDINANCES AND PUBLIC HEARINGS

9. A Public Hearing For Council To Receive Comments Pertaining To An Appeal Of Approval By The Planning Commission By Resolution 11-09. SPR 11-03 Is An Application To Construct A New Office Building At The SW Corner Of N. China Lake Blvd. And Felspar Ave., APN 067-040-06 McRea
10. Introduction And First Reading Of An Urgency Ordinance Amending The Municipal Code With Regard To Solid Waste Curbside Pickup Lemieux
11. Public Hearing Regarding Proposal Of Waste Management Of California To Provide Solid Waste Hauling Services Pursuant To A Franchise Wilson
12. Introduction And First Reading Of An Ordinance Authorizing The City Manager To Execute An Agreement To Grant A Franchise For Solid Waste Hauling Services To Waste Management Of California, Inc Lemieux

DISCUSSION AND OTHER ACTION ITEMS

13. Adopt A Resolution Of The City Council Of The City Of Ridgecrest Approving The Proposition 1b Funds To Purchase A Bus Speer
14. Adopt A Resolution Of The Ridgecrest City Council Approving Expenditure Of Proposition 1b Funds In The Amount Of \$98,000 For The Purchase Of A New Transit Bus Speer

AGENDA - CITY COUNCIL / REDEVELOPMENT AGENCY - REGULAR

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PUBLIC COMMENT

DEPARTMENT AND COMMITTEE REPORTS

Infrastructure Committee

Members: Steve Morgan, Jerry Taylor, Craig Porter, James Sanders
Meeting: 2nd Wednesday of the month at 5:00 p.m., Council Conference Room
Next Meeting: September 14, 2011

Quality of Life

Members: Chip Holloway, Jason Patin, Craig Porter, Carter Pope
Meetings: 1st Thursday of every even month at 12:00 p.m.; Kerr-McGee Center
Next Meeting: October 6, 2011

City Organization

Members: Ron Carter, Jerry Taylor, Lois Beres, Christopher LeCornu
Meeting: 3rd Tuesday of the month at 5:00 p.m.; Council Conference Room
Next meeting: September 20, 2011

Community Development Committee

Members: Steve Morgan, Jason Patin, Christopher LeCornu, James Sanders
Meetings: 1st Thursday of the month at 5:00 p.m.; Council Conference Room
Next Meeting: September 8, 2011

Activate Community Talents and Interventions For Optimal Neighborhoods Task Force (ACTION)

Members: Ron Carter, Chip Holloway, Ron Strand
Meetings: 2nd Monday of odd numbered months at 6:00 p.m., Kerr-McGee Center
Next Meeting: September 12, 2011

Ridgecrest Area Convention and Visitors Bureau (RACVB)

Members: Chip Holloway, Jason Patin
Meetings: 1st Wednesday of the month, 8:00 a.m.
Next meeting: October 6, 2011 and location to be announced

OTHER COMMITTEES, BOARDS, OR COMMISSIONS

CITY MANAGER/EXECUTIVE DIRECTOR REPORTS

MAYOR AND COUNCIL COMMENTS

ADJOURNMENT

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CITY COUNCIL/REDEVELOPMENT AGENCY AGENDA ITEM

SUBJECT: Approve the final balancing contract change order, authorize the City Manger to sign Notice of Completion, authorize the City Clerk to file the Notice of Completion and authorize the release the retained funds for the Upjohn Ave. and Bowman Rd. Bike / Pedestrian Improvements.
PRESENTED BY: Dennis Speer, Director of Public Works
SUMMARY: The project consisted of widening of an existing asphalt concrete roadway, minor concrete construction and bike path. Council awarded a contract to Granite Construction on February 2, 2011 in the amount of \$321,948.00. Work has been completed and, with the exception of retention in the amount of \$30,880.60 (10%), the contractor, Granite Construction, has been paid in full. During the course of construction some deletions and additions were necessary. The final contract amount including all change orders is \$321,351.94. The resulting balancing change order is for a final contract cost reduction of \$596.06. The change orders for the project represent a 0.1% decrease in the original contract amount. See Attachment "A" Final Balancing Contract Change Order.
FISCAL IMPACT: None Reviewed by Finance Director
ACTIONS REQUESTED: 1.) Approve the balancing change order cost reduction in the amount of \$596.06 for a revised final contract amount of \$321,351.94. 2.) Authorize the City Manager to sign the Notice of Completion. 3.) Authorize the City Clerk to file the Notice of Completion. 4.) Authorize release the of retained funds in the amount of \$30,880.60 (30) days after recordation of the Notice of Completion.
CITY MANAGER / EXECUTIVE DIRECTOR RECOMMENDATION: Action as requested:

Submitted by: Dennis Speer

Action Date: September 7, 2011

(Rev. 6/12/09)

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RESOLUTION NO. 11-

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF RIDGECREST APPROVING THE FINAL BALANCING CHANGE ORDER FOR CONTRACT PRICE IN THE AMOUNT OF \$312,354.94; AND AUTHORIZING THE CITY MANAGER TO SIGN THE NOTICE OF COMPLETION; THE CITY CLERK TO FILE THE NOTICE OF COMPLETION; AND CITY STAFF TO RELEASE RETAINED FUNDS FOR THE UPJOHN AVE. AND BOWMAN RD. BIKE / PEDESTRIAN IMPROVEMENTS

WHEREAS, Granite Construction, has completed widening of an existing asphalt concrete roadway, minor concrete construction (sidewalks, accessible ramps), and bicycle path improvements, and;

WHEREAS, during the course of construction deletions and additions to the scope of the project were made necessary due to discovery of changed conditions, materials changes, additional work, and;

WHEREAS, the original bid contract amount was \$321,948.00 and the actual final contract amount, including all change orders, was \$321,351.94, resulting in a net change in construction cost of negative \$596.00, and;

WHEREAS, authorization for the City Manger to sign the Notice of Completion and the City Clerk to file the notice of completion is hereby requested, and;

WHEREAS, Staff is requesting authorization to release the retained funds in the amount of \$30,880.60 thirty (30) days after the recordation of the notice of completion providing that no claims have been filed against the funds.

NOW THEREFORE, be it resolved, that the City Council of the City of Ridgecrest hereby:

- 1) Approves the balancing change order in the contract amount of \$321,351.94.
- 2) Authorizes the City Manger to sign the Notice of Completion.
- 3) Authorizes the City Clerk to file the notice of completion for recordation for the project.
- 4) Authorizes City Staff to release the retained funds in the amount of \$30,880.60 thirty (30) days after recordation of the notice of completion providing no claims have been filed against the retained funds for Upjohn Ave. and Bowman Rd. Bike / Pedestrian Improvements

APPROVED AND ADOPTED this 7th day of September by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Ronald H. Carter, Mayor

ATTEST _____
Rachel Ford, City Clerk

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Recording Requested By: CITY OF RIDGECREST When Recorded Mail to: City of Ridgecrest 100 W. California Ave. Ridgecrest, CA 93555	
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NOTICE OF COMPLETION

NOTICE IS HEREBY GIVEN THAT:

1. The undersigned is **OWNER** or Agent of the **OWNER** of the interest or estate stated below in the property hereinafter described.
2. The **FULL NAME** of the **OWNER** is City of Ridgecrest
3. The **FULL ADDRESS** of the **OWNER** is 100 W. California Ave. Ridgecrest, CA 93555
4. The **NATURE OF THE INTEREST** or **ESTATE** of the undersigned is: In Fee.

(if other than fee, Strike "In Fee" and insert, for example, "Purchaser under contract of purchase," or "Lessee.")

5. The **FULL NAMES** and **FULL ADDRESSES** of **ALL PERSONS**, if any, **WHO HOLD SUCH INTEREST** or **ESTATE** with the undersigned as **JOINT TENANTS IN COMMON** are:

Names	Addresses
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6. The full names and full addresses of the predecessors in interest of the undersigned if the property was transferred subsequent to the commencement of the work of improvement herein referred to:

Names	Addresses
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7. A work of improvement on the property hereinafter described was **COMPLETED** May 31, 2011

8. The work of improvement completed is described as follows: Upjohn Ave. and Bowman Rd. Bike / Pedestrian Imprvm.

9. The **NAME OF THE ORIGINAL CONTRACTOR**, if any, for such work of improvement is: Granite Construction

10. The street address of said property is: Bowman Bike Path – Gateway Rd. to Richmond Rd. & Upjohn Ave. from Downs St. to Helena St.

11. The property on which said work of improvement was completed is in the City of Ridgecrest, County of Kern, State of California, and is described as follows:

Construct new bike path on Bowman Rd. and construct new curb, gutter, sidewalk, and bike lanes on Upjohn Ave.

_____ Date	_____ Kurt O. Wilson, City Manger
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Verification for **INDIVIDUAL** owner

I, the undersigned, declare under penalty of perjury under the laws of the State of California that I am the owner of the aforesaid interest or estate in the property described in the above notice; that I have said notice, that I know and understand the contents thereof, and that the facts stated therein are true and correct.

_____ Date and Place	_____ Signature of Owner named in paragraph 2
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Verification for **NON-INDIVIDUAL** owner: I, the undersigned, declare under penalty of perjury under the laws of the State of California that I am the **City Manager** of the aforesaid interest or estate in the property described in the above notice; that I have read the said notice, that I know and understand the contents thereof, and that the facts stated therein are true and correct.

- City of Ridgecrest

_____ Date and Place	_____ Kurt O. Wilson, City Manger
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SUBSCRIBED AND SWORN TO before me on _____

Rachel Ford , City Clerk
City of Ridgecrest

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CITY OF RIDGECREST

Telephone 760 499-5000

FAX 499-1500

100 West California Avenue, Ridgecrest, California 93555-4054

FINAL BALANCING CONTRACT CHANGE ORDER

Owner: City of Ridgecrest **Date:** June 22, 2011

Project: Upjohn Ave. and Bowman Rd. Bike / Pedestrian Improvements

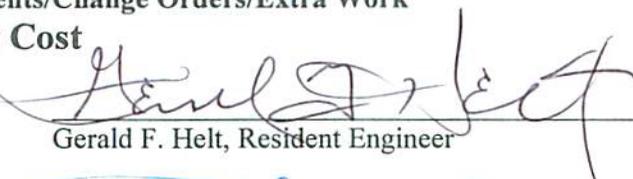
Contractor: Granite Construction **Engineer:** Helt Engineering Inc.

You are directed to make the following changes in the contract documents:

Description / Bid Items		Amount
<u>Bowman Bike Path</u>		
3. Class II Aggregate Base	+17.55 Tons @ \$28.00 per Ton	= + \$491.40
4. Type "B" Asphalt Concrete	-14.00 Tons @ \$114.00 per Ton	= - \$1,596.00
Soils Compaction Retesting	4 Hours @ \$82.00 per hour	= - \$328.00
	Subtotal	= - \$1,432.60

<u>Upjohn Ave.</u>		
3. Type "B" Asphalt Concrete	+19.31 Tons @ \$114.00 per Ton	= + \$2,201.34
4. Class II Aggregate Base	-45.85 Tons @ \$27.00 per Ton	= - \$1,237.95
6. 4" Thick Sidewalk	+79 Square Feet @ \$3.85 per Square Foot	= + \$304.15
10. Adjust Water Valve to Grade	+1 Each @ \$950.00 per Each	= + 950.00
11. Adjust Water Meter / Electrical Box to Grade	-3 Each @ \$105.00 per Each	= - 315.00
Soils Compaction Retesting	13 Hours @ \$82.00 per hour	= - \$1,066.00
	Subtotal	= + \$836.41
	Net Balance	= - \$596.06

Original Contract Amount	\$321,948.00
Quantity Adjustments/Change Orders/Extra Work	- \$596.06
Final Contract Cost	\$321,351.94

Recommended by:  7-11-11
 Gerald F. Helt, Resident Engineer Date

Accepted by:  7/1/11
 Darryl R. Ebel, Granite Construction, Contractor Date

Approved by:  8/1/11
 Loren Culp, City Engineer Date

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CITY COUNCIL/REDEVELOPMENT AGENCY AGENDA ITEM

SUBJECT:

A Resolution to Approve a Professional Services Agreement with, The HLA Group for the preparation of the Pinney Pool and Aquatics Complex Feasibility Design Report and to authorize the City Manager to execute this agreement.

PRESENTED BY:

Jim Ponek, Director of Parks and Recreation

SUMMARY:

The Parks, Recreation and Quality of Life Committee at their August 31, 2011 meeting unanimously approved to recommend to City Council to enter into a Professional Services Agreement with the HLA Group for the preparation of the Pinney Pool and Aquatics Complex Feasibility Report.

The Committee listened to many citizens explaining that the current Pinney Pool facility is not meeting the needs of the community. Members explained that the facility has many physical conditions due to age and is not large enough to meet all of the needs of different user groups. It also was reported by members of the local IWV Swim Club that the Base is making it even more difficult to use their swimming pools, making the immediate need to rehab Pinney Pool or develop another aquatics complex a necessity for the City of Ridgecrest. It was also recommended to staff to also look into USA Swimming as a possible resource to assisting the City in the design and future development of Pinney Pool or a new aquatics complex. Staff has talked to USA Swimming and there are grant type of opportunities the City can apply for that may assist our community fund a new aquatics complex. USA Swimming also has plans available from other facilities that they can share with us in our planning stages. As with most grants and funding resources, there are conditions that the City would have to agree with USA swimming if we were to accept any funding or resources from their association. Conditions would be as follows: USA Insurance would have to be purchased for all participants swimming in our pool, annual program fees and the City would have to agree to providing USA types of programs at the Pool. Staff will continue to research USA Swimming and other groups for future funding for the development of a new aquatics complex.

Presently, along with the recommendation from the Parks, Recreation and Quality of Life Committee, it is staff's opinion that the City Council needs to approve entering into a professional services agreement with HLA. HLA has proven to staff and to the Quality of Life Committee that their group can meet our expectations as they are presently involved with preparing plans and feasibility reports for Pearson Park, Upjohn Park, Kerr McGee Youth Sports Complex and Jackson Sports Complex.

After discussions with over 40 people in attendance and a two day, five and half hour meeting, the Parks, Recreation Quality of Life Committee believes it is essential to learn all of the costs associated with Pinney Pool rehab or new development before any other park facility improvements are brought forth to City Council. The City has solicited proposals from qualified consulting firms to perform the subject professional services. A selection committee reviewed the qualifications, interviewed the top firms, and ranked them. The HLA Group was the top ranked firm. The proposed time and materials fee to complete the scope of work is \$27,000. (Please see Attachment A)

FISCAL IMPACT: \$27,000. The fee for this service is allocated from the Tax Allocation Bond funds.

ACTION REQUESTED:

Adopt the resolution that Approves a Professional Services Agreement with The HLA Group and Authorize the City Manager to execute this agreement.

CITY MANAGER / EXECUTIVE DIRECTOR RECOMMENDATION:

Action as requested:

Submitted by: Jim Ponek, Director of Parks & Recreation

Action Date: September 7, 2011

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RESOLUTION NO. 11-

A RESOLUTION TO APPROVE A PROFESSIONAL SERVICES AGREEMENT WITH, THE HLA GROUP FOR THE PREPARATION OF THE PINNEY POOL AND AQUATICS COMPLEX FEASIBILITY DESIGN REPORT AND TO AUTHORIZE THE CITY MANAGER TO EXECUTE THIS AGREEMENT

WHEREAS, The City of Ridgecrest Parks, Recreation and Quality of Life Committee has held meetings for the public; and

WHEREAS, the City of Ridgecrest Parks, Recreation and Quality of Life Committee desires to have a Pinney Pool and Aquatic Complex Feasibility Study completed to meet the needs of the Ridgecrest Community; and

WHEREAS, The City has solicited proposals from qualified consulting firms to perform the subject professional services, A selection committee reviewed the qualifications, interviewed the top firms, and ranked them. The HLA Group was the top ranked firm; and

WHEREAS, staff recommends The HLA Group, as the consultant best qualified to provide this service; and

WHEREAS, the proposed time and materials fee of \$27,000 is being expended from Tax Allocation Bond funds.

NOW, THEREFORE, BE IT RESOLVED that the City Council of Ridgecrest Approves A Resolution to Approve a Professional Services Agreement with The HLA Group for the preparation of the Pinney Pool and Aquatics Complex Feasibility Design Report and to authorize the City Manager to execute this agreement.

APPROVED AND ADOPTED THIS 6th DAY OF April, 2011 by the following vote.

AYES:

NOES:

ABSENT:

ABSTAIN:

Ron Carter, Mayor

ATTEST:

Rachel Ford, City Clerk

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Scope of Services

Sergeant John Pinney Memorial Pool and Aquatics Complex Feasibility Design Report August 30, 2011

The following is the proposed Scope of Services for the preparation of the Pinney Pool and Aquatics Complex Feasibility Design Report. It represents our approach for providing the requested services for improvements to the project based on discussions and directives with the City Parks Department and preliminary program elements included in their preliminary parks and facility report.

Development of the Pinney Pool and Aquatics Complex Feasibility Design Report is envisioned to study and provide a needs assessment and development recommendations for three basic levels of improvements as follows.

Rehabilitation of Existing Aquatic Complex Facility: Replacement of existing pool decking, resurfacing and replacement of tile at the existing pool, renovation of existing locker rooms and restrooms, renovation of existing pool mechanical and electrical equipment, renovation of existing parking lot surfacing including ADA compliance measures, addition of new shade shelters and seating around pool area, addition of new water slides at existing pool, replacement of existing diving boards, removal of existing kiddie pool and replace with new splash pad area and installation of wind break wall around pool facility. Preliminary budget for this scenario is estimated at approximately \$800,000.

Renovation and New Aquatic Complex Facility: Replace existing pool and replace with new 6 lane competition pool with two separate pool areas in the same location as the existing pool, addition of new kiddie pool and fun area with water features and shallow water area, addition of a third pool area with a three lane 25 yard 10 foot deep pool which would include 4 or 5 water slides, new locker room/concession building, new pool mechanical equipment and storage area and new parking lot(s). Preliminary budget for this scenario is estimated at approximately \$2.4 million.

New Aquatics Complex Facility: A completely new facility which would include a 6 lane, five foot deep competition pool, a deep water diving pool with slides accommodating competition swimming and water polo, a therapy pool, lazy river and kiddie area with water slides, splash pad area, new concessions and locker room building and new mechanical equipment and storage area. This new facility is preliminarily envisioned to be located at the same location as the existing facility and could also utilize some of the park area across the street at Freedom Park. Preliminary budget for this scenario is estimated at approximately \$5.8 million.

Work included will evaluate, confirm and possibly revise specific program elements, which will provide the City with a clearer roadmap for future site development. Further, the completion of the Pinney Pool and Aquatics Complex Feasibility Design Report will allow the City to better budget and schedule for planned improvements.

Scope of Services

The following is the proposed Scope of Services for the preparation of the Pinney Pool and Aquatics Complex Feasibility Design Report as described above. It represents our approach for providing the requested services for improvements to the project based on direction provided by the City.

Task 1.0 - Project Initiation and Coordination / Research & Data Collection

- 1.1 Immediately upon contract authorization, The HLA Group and consultant team will meet with City representatives at a project kick-off meeting to discuss and develop the following:
 - A. Develop project goals and expectations. Review and finalize work plan and project schedule.
 - B. Develop project management procedures and identify the City's Project Manager assigned to the project.
 - C. Discuss project construction funding and budget parameters.
 - D. Discuss the project background history and development status of the site and adjacent parcels.
 - E. Establish a Project Development Team consisting of City staff from the various departments of the City associated with the project. The role of the Project Development Team is to provide information and review to the consultant team throughout the duration of the project.
- 1.2 Obtain and review all existing as-built drawings related to the site.
- 1.3 Research and make preliminary contacts with applicable utility companies for their requirements for the incorporation of new or continuation of existing utilities to the site.
- 1.4 Review with city personnel existing utility elements located on the site to assist in determining sizing and capacity of future services if required.
- 1.5 Review City of Ridgecrest Public Works Improvement Standards and incorporate into the project.
- 1.6 Review existing City park maintenance practices, equipment, manpower and budget allocated to the operations and maintenance for the project.
- 1.7 Review any available existing site topographic survey provided by the City. It is anticipated that work necessary for this study can be completed utilizing existing site data available from the City and/or aerial imagery available through Google Earth. No site topographic survey is included in this proposal, however, if found to be necessary, a survey can be completed as an additional service task order.
- 1.8 Conduct a site visit with City staff to discuss and inventory existing site conditions, review opportunities and constraints and determine facility program needs. Evaluate the existing pool and decking conditions, existing building conditions including building code violations and maintenance issues. Based upon the evaluation provide findings and recommendations. Note key existing conditions

and obtain digital photos of the site's features for preparation of an Existing Conditions and Site Analysis Plan to be prepared and included in the Feasibility Design Report

- 1.9 Prepare an Existing Conditions & Site Analysis Map with opportunities and constraints, based on the available site data, the site survey and our site visit, including site photos and written findings and recommendations.
- 1.10 The HLA Group and City shall continue to hold scheduled coordination meetings to facilitate exchange of data and concepts relevant to the project, review work products, receive input and feedback, and to insure that the project schedule is met (two (2) coordination meetings total).

Work Products:

1. Project meeting agenda and minutes of meetings with City staff and/or Project Development Team.
2. Project schedule (Microsoft Projects format)
3. Existing Conditions and Site Analysis Plan with digital photos of the site.
4. Comprehensive notes of all relevant project information will be included in the Feasibility Design Report noted later in this scope.

Task 2.0 – Needs Assessment and Feasibility Design Report

- 2.1 Meet with City staff and previously identified site development team representatives in one (1) joint meeting to discuss and further develop site specific programming and general space requirements for the pool, aquatic facility and other site program elements. Collaborate with representatives in the development of potential design options for the project. Prepare written summation of discussion items and the program elements.
- 2.2 Prepare a draft Preliminary Site Design Plan option for each of the three (3) project renovation and/or new aquatics complex scenarios that illustrates how the design program as discussed above can be developed on the site. Prepare one (1) color rendered site plan showing the proposed complex design and one (1) perspective sketch of the aquatics portion of the plan based on each scenario.
- 2.3 Prepare a preliminary cost estimate for each plan following the draft Preliminary Site Design Plan options.
- 2.4 Based on initial programming comments received from the City and in conjunction with the overall draft Preliminary Site Design Plan, a conceptual building floor plan shall be prepared for the new and/or renovated locker room/concession building planned for the complex. Prepare statement of probable construction cost based on the conceptual building plan(s).
- 2.5 Attend (1) meeting to present the draft Preliminary Site Design Plans and conceptual building floor plan to City staff for review and comment. Note any comments for possible refinement.

- 2.6 Prepare and conduct a community based meeting to present the overall project, data base collection, site analysis with opportunities and constraints, preliminary design programs and the draft Preliminary Site Design Plans for review and comment. We recommend the meeting be held as part of a joint session of the Parks and Quality of Life Committee. It is recommended the project be the only agenda item for the joint session, allowing ample time for public review and comment. The City shall coordinate the time and location for the meeting as well as provide refreshments for participants.
- 2.7 Attend and meet with City staff to present findings and recommendation of the joint session public meeting for review and comment. Discuss key issues influencing immediate and long range development of the program requirements for the project. This meeting is envisioned to occur the following day after the community meeting.
- 2.8 Based on input received and discussed with all reviewing parties to date, we will prepare a Feasibility Design Report that will include recommendations for each of the proposed renovation or new construction alternatives for the aquatics complex. The Feasibility Design Report will be a comprehensive analysis that will include inventory of existing conditions, site and building programming, site plan recommendations, conceptual building layouts and preliminary cost estimates for development. All drawings, graphic renderings and other exhibits will be included in the Feasibility Design Report for presentation to the Infrastructure Committee, Parks Committee and City Council.
- 2.9 Attend and present findings and recommendations of the Feasibility Design Report to the Infrastructure Committee, Parks Committee and City Council for review and comment. This meeting will be conducted in a joint session with both committees and the City Council.

Work Products:

1. Project agenda and meeting minutes.
2. Written summation of site program requirements.
3. Draft Site Design Plans
4. Conceptual building floor plan.
5. Preliminary cost estimates based on site design plans
6. Public meeting agenda and presentation materials.
7. Feasibility Design Report – 5 bound copies

Exclusions to Scope of Services

- A. The City shall provide the following information or services as required for performance of the work. The HLA Group and its consultants assume no responsibility for the accuracy of such information or services and shall not be

liable for error or omissions therein. Should The HLA Group and its consultants be required to provide services in obtaining or coordinating compilation of this information, such services shall be requested as Additional Services.

1. As-built improvement plans for existing site and off-site roadway improvements.
2. Discovery or removal procedures for hazardous waste, wells, underground tanks and archaeological artifacts.
3. Permit, plan checking, inspection and other agencies fees, including utility services/connection and application fees.
4. On and off-site design and improvement plans.
5. Environmental, geotechnical, civil, electrical and structural engineering.
6. Title reports for both sites.
7. Site topographic survey, boundary survey and record map

Attachments:

Exhibit 'E' – Proposed Work and Survey Limits for Pinney Pool

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Fee Proposal

City of Ridgecrest
Pinney Pool & Aquatics Complex Feasibility Design Report
August 30, 2011

Part A – Needs Assessment & Feasibility Design Report:

Task 1.0	Project Initiation, Coordination / Research & Data Collection	\$ 3,940.00
Task 2.0	Needs Assessment & Feasibility Design Report	
	Landscape Architect	\$ 11,760.00
	Aquatics Consultant	\$ 9,000.00
	Reimbursible Fees	\$ 2,300.00
	<u>Total Time & Materials Fee for Part A:</u>	<u>\$27,000.00</u>

- A. Additional services, if requested and authorized in writing by the City, will be billed on a "time and materials" basis at the hourly rates as shown on the attached rate schedules.
- B. Reimbursable expenses are estimated and included in the above proposed fee schedule. Such expenses include, but are not limited to, outside computer time charges, telecommunication charges, lodging, mileage, and travel out of town, blueprinting and reprographics, postage, rental of equipment and vehicles, messenger and/or delivery charges, photographic supplies, and soil fertility processing. Charges for reimbursable expenses are computed at 1.15 times actual cost.

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CITY COUNCIL/REDEVELOPMENT AGENCY AGENDA ITEM

SUBJECT:

Resolution adopting amendment to the Memorandum of Understanding between City of Ridgecrest and Police Employee Association of Ridgecrest (P.E.A.R.)

PRESENTED BY:

Kurt Wilson – City Manager

SUMMARY:

This Resolution amends the Memorandum of Understanding Police Employee Association of Ridgecrest (P.E.A.R.).

This memorandum of understanding is a result of negotiations final year of the existing contracts and agreements (July '10-June '11) and take into account the current economic condition of the City.

FISCAL IMPACT:

Funds Are Appropriated In The Approved FY12 Budget

Reviewed by Administrative Services Director

ACTION REQUESTED:

Approve Resolution Adopting A Memorandum Of Understanding Between The City Of Ridgecrest And The Police Employee Association Of Ridgecrest (PEAR)

CITY MANAGER / EXECUTIVE DIRECTOR RECOMMENDATION:

Action as requested:

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RESOLUTION NO. 11-xx

**A RESOLUTION OF THE RIDGECREST CITY COUNCIL
APPROVING BY REFERENCE AND AUTHORIZING
EXECUTION OF A MEMORANDUM OF
UNDERSTANDING WITH THE POLICE EMPLOYEE
ASSOCIATION OF RIDGECREST**

The City Council of the City of Ridgecrest, California, hereby approves by reference and authorizes the City Manager to execute the Memorandums of Understanding and Agreements between the City of Ridgecrest and the Police Employee Association Of Ridgecrest (PEAR) for the term July 1, 2011 through June 30, 2012 and will become effective July 1, 2011.

APPROVED AND ADOPTED this 7th day of September 2011, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Ronald H. Carter, Mayor

ATTEST:

Rachel J. Ford, CMC
City Clerk

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CITY COUNCIL/REDEVELOPMENT AGENCY AGENDA ITEM

SUBJECT:

Resolution adopting the Memorandums of Understanding between City of Ridgecrest and United Food and Commercial Workers Local 8 (UFCW)

PRESENTED BY:

Kurt Wilson – City Manager

SUMMARY:

This Resolution approves by reference the Memorandum of Understanding and Agreements between the City of Ridgecrest and United Food and Commercial Workers Local 8 (UFCW).

The final agreement is a result of negotiations for contracts and agreements ending June 30, 2011 and take into consideration the current economical situation of the City of Ridgecrest.

FISCAL IMPACT:

Reviewed by Administrative Services Director

ACTION REQUESTED:

Approve Resolution adopting the Memorandum of Understanding between the City of Ridgecrest and United Food and Commercial Workers Union Local 8

CITY MANAGER / EXECUTIVE DIRECTOR RECOMMENDATION:

Action as requested:

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RESOLUTION NO. 11-xx

**A RESOLUTION OF THE RIDGECREST CITY COUNCIL
APPROVING BY REFERENCE AND AUTHORIZING
EXECUTION OF A MEMORANDUM OF
UNDERSTANDING WITH THE UNITED FOOD AND
COMMERCIAL WORKERS (UFCW LOCAL 8)**

The City Council of the City of Ridgecrest, California, hereby approves by reference and authorizes the City Manager to execute the Memorandums of Understanding and Agreements between the City of Ridgecrest and the United Food and Commercial Workers Local 8 (UFCW) for the term July 1, 2011 through June 30, 2012 and will become effective July 1, 2011.

APPROVED AND ADOPTED this 7th day of September 2011, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Ronald H. Carter, Mayor

ATTEST:

Rachel J. Ford, CMC
City Clerk

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CITY COUNCIL/REDEVELOPMENT AGENCY/FINANCING AUTHORITY AGENDA ITEM

SUBJECT:

A Resolution of the Ridgecrest City Council approving a loan between the Waste Water fund and the City General Fund.

PRESENTED BY:

Tyrell Staheli – Director of Finance

SUMMARY:

Over the last six budgets the City has borrowed funds from the Waster Water Enterprise fund for operations. The City recognizes the future need of replacement of the current waste water facility and would like to formalize the loan with a resolution for repayment terms.

The Resolution authorizes the following:

1. Authorization of a loan from the Waste Water Fund for \$4.25 million
2. The loan shall be repaid over 30 years at an interest rate of .5% (Rounding of Current LAIF rate);
3. The Finance Director/City Treasurer is hereby authorized to amend the current fiscal year's budget to reflect the loan.

FISCAL IMPACT:

Repayment of \$4.25 million loan from Waste Water to General Fund

Reviewed by Finance Director

ACTION REQUESTED:

Approve the attached

CITY MANAGER / EXECUTIVE DIRECTOR RECOMMENDATION:

Action as requested:

Submitted by: Tyrell Staheli
(Rev. 6/12/09)

Action Date: September 7, 2011

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RESOLUTION NO. 11-

**A RESOLUTION OF THE RIDGECREST CITY COUNCIL APPROVING
A LOAN BETWEEN THE WASTE WATER FUND AND THE CITY
GENERAL FUND**

WHEREAS, The City Council of the City of Ridgecrest has borrowed funds from the Waste Water Enterprise fund for the last six budgets;

WHEREAS, the City Council recognizes the future need of a waste water treatment plant;

WHEREAS, the City Council deems it appropriate to formalize the loan with repayment terms;

NOW, THEREFORE, BE IT RESOLVED that:

1. The City Council of the City of Ridgecrest does hereby authorize a loan from the Waste Water Fund for \$4.25 million
2. The loan shall be repaid over 30 years at .5% interest;
3. The Finance Director/City Treasurer is hereby authorized to amend the current fiscal year's budget to reflect the loan.

APPROVED AND ADOPTED this 7th day of September, 2011, by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

Ronald H Carter, Mayor

ATTEST:

Rachel J. Ford, CMC
City Clerk

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CITY COUNCIL/REDEVELOPMENT AGENCY/FINANCING AUTHORITY AGENDA ITEM

SUBJECT:

Public Hearing; Appeal of Site Plan Review (SPR 11-03 approval by the Planning Commission by Resolution 11-09 as conditioned). SPR 11-03 is an application to construct a New Office Building at the SW corner of N. China Lake Blvd. and Felspar Ave., APN 067-040-06. Applicant: Mr. Chuck Cordell

PRESENTED BY:

James E. McRea

SUMMARY:

The Planning Commission, at the conclusion of a duly noticed Public Hearing, adopted Resolution 11-09 approving SPR 11-03, as conditioned, on July 12, 2011. The action, as conditioned, was appealed by the applicant and is attached as Attachment 1. A copy of the Planning Commission report is provided as Attachment 2. The City Council at their regular meeting of August 18 accepted the appeal and set a duly noticed Public Hearing for this evening.

The appeal letter of July 19, 2011 is requesting an appeal and removal of conditions #1(a) (iv) and #2 of Resolution 11-09.

1. The following public improvements shall be designed and constructed, in accordance with City of Ridgecrest, Engineering Design Standards and/or Caltrans Standards and plans approved by the City Engineer and/or Caltrans, including the following:
 - a. Street Improvements
 - iv. The City of Ridgecrest Pavement Management System rates Felspar with a Pavement Condition Index of 11. The PMS calls for a 2.5-inch asphalt overlay.
 1. Prior to issuance of the occupancy permit the developer shall mill the existing street surface along the lip of gutter and resurface 2.5" of asphalt to the street centerline along the project frontage. The 2.5" asphalt overlay at centerline shall begin its taper in thickness and feather into the existing pavement 10' beyond street centerline.
 - a. Additional milling or header cuts will be necessary to tie the 2.5" overlay into the existing pavement on either end of the project. Ten foot paving transitions are minimum length requirements.
2. The following onsite improvements shall be designed and constructed, in accordance with City of Ridgecrest, Engineering Design Standards and/or Drainage Design Manual and/or General Plan and/or Municipal Code and plans approved by the City Engineer prior to issuance of a building permit, including the following:
 - a. Drainage Improvements, (The project is within flood zone C of the Flood Insurance Rate Maps, area of minimal flooding.)
 - i. All storm water runoff up to the ten year event shall be detained onsite.
 1. Prior to issuance of the building permit, a drainage plan with supporting calculations shall be submitted for the City Engineer's approval.
 2. The drainage plan and calculations along with improvements shall be prepared and constructed in accordance with City of Ridgecrest, "Master Drainage Plan", dated May 1989 and the "Drainage Design Manual", dated July 1989.

It would be appropriate to receive any presentation of the applicant and make the appropriate findings. The City Engineer within condition #1(a) (iv) is implementing the recommendations of the PMS. The applicant will be paying a Traffic Impact Development Fee as well. Similarly, condition #2 is a reasonable requirement except that a Drainage Impact Development Impact Fee is required and the site was previously completely developed with a blighted building and paved parking area.

The Redevelopment Agency has at its regular meeting of December 15, 2010 approved the concept of an Owner Participation Agreement (OPA) for the project. The Agency and the Owner desired by this Agreement to provide for the Agency assistance to the Owner with a Grant Amount relating to the permits and development expenses in an amount of \$17,000 to \$20,000. The OPA has not be developed or approved by the Agency as of this date. In lieu Development Impact Fees could be utilized to offset some of the expense in the implementation of the PMS recommendations. The Drainage Retention on site is easily achieved. It might be appropriate to deny the appeal and augment the pending OPA to offset addition expenses.

FISCAL IMPACT:

Reviewed by Finance Director
Unknown pending OPA development

ACTION REQUESTED:

Motion to deny the appeal and instruct the Agency to increase the OPA accordingly.

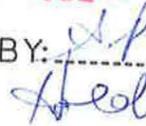
CITY MANAGER / EXECUTIVE DIRECTOR RECOMMENDATION:

Action as requested:

Submitted by: James McRea
(Rev. 6-12-09)

Action Date: 09-07-11

CORDELL CONSTRUCTION
1501 ½ N. China Lake Blvd
Ridgecrest, Ca 93555
(760) 375-3118
(760) 375-3166 Fax
License#566544

CC: Council
RECEIVED
JUL 27 2011
BY: 

July 19, 2011

Ridgecrest City Council
100 W California Avenue
Ridgecrest, Ca 93555

Attn: Rachael Ford
City Clerk

Dear City Council Members,

My name is Chuck Cordell and I am trying to build a new office building at 643 N China Lake Blvd.

Going through the permitting process I find that I have many conditions placed on this project. I have agreed to all of these conditions except for two that I deem unreasonable. These are #1, paving on Felspar St. Felspar St. is a typical city street, in typical condition. It is in better condition in that area than the rest of Felspar St. up to Sanders St., and #2 is doing a flood and drainage study on the property. We are not changing any grade or contours on property. This lot has been completely covered with asphalt and building since 1958. These two items would cause me to have an economic hardship and may cause the project to be terminated.

I originally bought this property in order to build a nice building and to remove a building that was about to fall down. The first step was removing all hazardous waste, then demo and haul-off old building.

I have lived here my entire life of 56 years. I am extremely community oriented, I work with Habitat for Humanity, Relay for Life, The Boosters, USO, Friends of the Fair, Veterans Memorial Fund, Ridgecrest Community Dinner, and I continually try to re-invest in our city. I am asking the City Council to approve this project with the exception of those two items.

The planning commission also agrees that they are unreasonable conditions.

I appreciate your consideration in this matter.

Thank you very much,



Chuck Cordell

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PLANNING COMMISSION RESOLUTION 11-09

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF RIDGECREST APPROVING RESOLUTION 11-09 APPROVING SITE PLAN REVIEW SPR 11-03, A REQUEST TO BUILD A NEW 5,350 SQUARE FOOT OFFICE BUILDING, LOCATED ON 15,036 SQUARE FOOT LOT IN A CG (COMMERCIAL GENERAL) ZONE DISTRICT LOCATED AT 643 CHINA LAKE BLVD., SW COR OF CHINA LAKE BLVD. AND FELSPAR AVE., (APN 067-040-06)

THE PLANNING COMMISSION OF THE CITY OF RIDGECREST RESOLVES as follows:

SECTION 1. FINDINGS

On July 12, 2011, the Planning Commission held a public hearing and duly and regularly considered Site Plan Review 11-03, a request to build a request to build a new 5,350 square foot office building, located on 15,036 square foot lot in a CG (Commercial General) Zone District located at 643 China Lake Blvd., (APN 067-040-06) Applicant: Chuck Cordell

The Planning Commission considered the evidence and approved this application as set forth herein:

- (a) The proposed location of the use and the conditions under which it would be operated or maintained will not be detrimental to the public health, safety or welfare, or materially injurious to or inharmonious with properties or improvements in the vicinity.
- (b) There are circumstances or conditions applicable to the land, and use which makes the granting of a site plan review approval necessary for the preservation and enjoyment of a substantial property right.
- (c) The proposed location of the project is in accordance with the objectives of the zoning chapter and the purposes of the CG (General Commercial) Zoning District in which the site is located.
- (d) The proposal conforms to the requirements of Chapters 19 and 20 of the Ridgecrest Municipal Code.

SECTION 2. DESCRIPTION

The proposed project which is the subject of these proceedings consists of Site Plan Review 11-03, located at 643 N. China Lake Blvd., (APN 067-040-06)

SECTION 3. CONDITIONAL APPROVAL

The proposed site plan is hereby approved subject to the following conditions:

NOTE: These conditions must be met within 18 months (by January 12, 2013), or as stipulated in the conditions, unless a written request for an extension of time is received and approved before the expiration date.

PUBLIC WORKS

1. The following public improvements shall be designed and constructed, in accordance with City of Ridgecrest, Engineering Design Standards and/or Caltrans Standards and plans approved by the City Engineer and/or Caltrans, including the following:
 - a. Street Improvements
 - i. The proposed site plan indicates an existing access off of China Lake Blvd. The access off of China Lake Blvd. does not meet General Plan requirements for spacing of access along a major arterial corridor. The General Plan Circulation Element calls for a 300 foot minimum separation of a driveway along major arterial corridors.
 1. Prior to issuance of the occupancy permit, the developer shall remove the existing driveway approach and replace with Caltrans standard curb, gutter and sidewalk.
 - ii. The existing sidewalk and existing driveway approach do not meet current City Engineering Design Standards. The existing sidewalk measures 4 feet from back of curb and the existing driveway approach does not meet current ADA standards.
 1. Prior to issuance of the occupancy permit the developer shall remove the existing side walk and driveway approach and replace with City of Ridgecrest standard 5.5' sidewalk and ADA compliant driveway approach.
 - iii. The existing ADA access ramp at the curb return of China Lake Blvd. and Felspar does not meet current ADA standards and the adjoining concrete sidewalk transition is buckled and in disrepair.
 1. Prior to issuance of the occupancy permit the developer shall remove the existing side walk and ADA access ramp and replace with Caltrans standard sidewalk and ADA compliant access ramp.
 - iv. The City of Ridgecrest Pavement Management System rates Felspar with a Pavement Condition Index of 11. The PMS calls for a 2.5-inch asphalt overlay.
 1. Prior to issuance of the occupancy permit the developer shall mill the existing street surface along the lip of gutter and resurface 2.5" of asphalt to the street centerline along the project frontage. The 2.5" asphalt overlay at centerline shall begin its taper in thickness and feather into the existing pavement 10' beyond street centerline.
 - a. Additional milling or header cuts will be necessary to tie the 2.5" overlay into the existing pavement on either end of the project. Ten foot paving transitions are minimum length requirements.
 - v. Prior to issuance of building permit, dedicate additional Right of Way for corner cut off at curb return at China Lake Blvd. and Felspar Ave. to accommodate ADA compliant access ramp and sidewalk.
 - vi. Access to the site shall be taken from Felspar Ave. at the westerly most end of the property. This conflicts with the proposed building orientation and a site plan revision will be necessary.
 - vii. A Caltrans encroachment permit will be required for all work within the Caltrans right of way.

- b. Sewer Improvements
 - i. Construct 6-inch sewer lateral with property line cleanout for the commercial structure.
 - ii. The plumbing plans for the structure shall be reviewed by the City Engineer to determine if sample boxes or wastewater pretreatment may be required.
 - 1. Any floor drains, mop sinks, utility room drains, require separate wastewater plumbing to a minimum of a sample box before entering the public sewer system.
- 2. The following onsite improvements shall be designed and constructed, in accordance with City of Ridgecrest, Engineering Design Standards and/or Drainage Design Manual and/or General Plan and/or Municipal Code and plans approved by the City Engineer prior to issuance of a building permit, including the following:
 - a. Drainage Improvements, (The project is within flood zone C of the Flood Insurance Rate Maps, area of minimal flooding.)
 - i. All storm water runoff up to the ten year event shall be detained onsite.
 - 1. Prior to issuance of the building permit, a drainage plan with supporting calculations shall be submitted for the City Engineer's approval.
 - 2. The drainage plan and calculations along with improvements shall be prepared and constructed in accordance with City of Ridgecrest, "Master Drainage Plan", dated May 1989 and the "Drainage Design Manual", dated July 1989.
 - b. Grading Improvements
 - i. Prior to issuance of a building permit, a topographic grading plan shall be submitted for approval by the City Engineer and Planning Department. The grading requirements shall conform to Ridgecrest Municipal Code Chapter 16 and the grading plan prepared in compliance to City of Ridgecrest, Engineering Design Standards, and Section 2.02 C. 4.
 - 1. The topographic grading plan and drainage plan shall also show adjacent grading, drainage and features as required in the City of Ridgecrest, Engineering Design Standards, Section 2.02 C. 4.
 - 2. The topographic grading plan shall also show property boundary record data, survey property corners, easements, utilities, with dimensioning, etc.
 - c. Survey
 - i. Survey monument property corners shall be set, made visible and protected in place during construction. Monuments shall be set to surface and made visible prior to occupancy permit. Work must be performed by a Licensed Land Surveyor.
 - ii. Prior to occupancy permit, reset the existing Caltrans brass survey monument in the current ADA ramp. The monument must be tied out and reset by a Licensed Land Surveyor.
- 3. Miscellaneous Requirements & Conditions
 - a. Seismic Hazard Zone
 - i. The project is located approximately 800 feet east of the Little Lake Fault Seismic Hazard Zone.
 - 1. The developer shall have his architect design the structure to meet seismic requirements for this zone.
 - b. Pay all Development Impact Fees.

- c. Coordinate with IWWWD and if necessary design and construct water facilities per IWWWD requirements.
- d. Prior to occupancy permit, survey monuments shall be visible, adjusted to grade, or restored.
- e. Coordinate with Kern Co. Fire Dept. and if necessary, design and construct fire protection hydrants and or facilities per Kern Co. Fire Department requirements.
- f. Design and construct miscellaneous support utility improvements necessary for development of the project.
- g. The project plan shall be reviewed by police, fire and emergency services for access and circulation to the structure and parking lot.
- h. All work in the public right of way shall be to City of Ridgecrest and industry standards.
- i. Applicant shall acquire all necessary permits from the City and Caltrans or any other regulatory agency.

COMMUNITY DEVELOPMENT

4. The Applicant shall comply with all applicable federal, state, county, and local regulations.
5. That there shall be no vehicular access to China Lake Blvd.
6. Any additional signs provided on the site shall be installed in accordance with applicable sections of Chapter 20.
7. A minimum of 17 on-site parking spaces shall be maintained to City standards which consist of 9' wide by 20' deep, double striped parking stalls, including handicapped parking.
8. Dust mitigation measures positive trash control shall be utilized during construction.
9. All outdoor lights shall be directed downward and shielded to reduce impacts to adjoining sites. No light poles shall be higher than twenty (20) feet.
10. The Applicant shall maintain a screened trash enclosure in a location approved by Staff.
11. The Applicant shall work with the staff to provide some form of articulation to the building's back wall.
12. Developer agrees to pay to the City of Ridgecrest Developer Impact Fees in accordance with the requirements of a 5,350 sq. ft. building prior to the issuance of Building Permits.

CALIFORNIA DEPARTMENT OF TRANSPORTATION

13. To improve safety for customers and through-travelers, the existing Felspar Ave. driveway location would be the optimal sole access; the building plan could be suitably altered. The City would condition Felspar Ave. frontage improvements accordingly.

14. The existing N. China Lake Blvd. driveway needs to be removed and replaced with Caltrans/Americans with Disability Act (ADA) standard curb/gutter/sidewalk. The curb ramp at Felspar Ave. must also be brought up to current ADA standards. The Caltrans' survey reference point at the ramp should be perpetuated.
15. Any work in State right-of-way must be performed under encroachment permit. For permit and standard information, (please see July 7, 2011 letter to City of Ridgecrest).
16. A Caltrans project to construct a raised center median for N. China Lake Blvd. is proposed for this area. Break-points would be located at public road intersections. Since a Felspar Ave. access would already be utilized, Plan Store access/circulation would not be further impacted.
17. Ensure landscaping does not inhibit safe sight distance and is maintained.
18. Other items (e.g. electrollier, utilities etc.) may need special consideration.

KERN COUNTY FIRE DEPARTMENT

19. Building Plans must be submitted to the Kern County Fire Department at 5642 Victor street, Bakersfield, CA 93308, (661) 399-2915 with appropriate plan check fee.

RIDGECREST PLANNING COMMISSION

20. In the opinion of the Planning Commission, this proposed project is one in which the Applicant has torn down a blighted building with the desirable intention of revitalizing the area. The requirement to reconstruct a half street for the distance of only 150' seems unreasonable, (and of no practical benefit to the City) to the Planning Commission. The Planning Commission was told by the City Engineer that they could not modify or strikeout any portion of Public Works Condition #1 because these requirements are set per the Municipal Code. Therefore, it is the recommendation of the Planning Commission that the applicant appeal the paving and drainage conditions to the City Council for relief.

APPROVED AND ADOPTED this 12th day of July 2011 by the following vote:

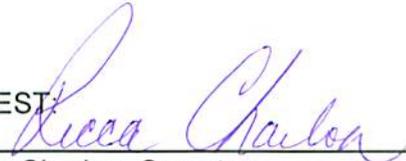
AYES: Beres, LeCornu, Pope, Porter and Sanders

NOES: None

ABSENT: None

ABSTAIN: None

ATTEST:



Ricca Charlon, Secretary



Craig Porter, Planning Commission Chairman

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Planning Commission

**PLANNING COMMISSION
Agenda Item #7**

**Public Hearing: July 12, 2011
STAFF REPORT**

Site Plan Review, SPR 11-03, a request to build a new 5,350 square foot office building, located on 15,036 square foot lot in a CG (Commercial General) Zone District located at 643 China Lake Blvd., (APN 067-040-06)

Owner/Applicant: Chuck Cordell (760)375-3118
Cordell Construction
720 N. China Lake Blvd
Ridgecrest, CA 93555

Consultant: (661) 322-2061
The Plan Store
1610 20th Street
Bakersfield, CA 93308

Recommended Motion

MOTION TO APPROVE RESOLUTION 11-09 APPROVING SITE PLAN REVIEW SPR-11-03, A REQUEST TO CONSTRUCT A 5,350 SQ.FT OFFICE BUILDING AT 643 N. CHINA LAKE BLVD., IN A CG (GENERAL COMMERCIAL) ZONE DISTRICT ON A 15,036 SQ. FT. LOT. APN: 067-040-06, APPLICANT: CHUCK CORDELL

PROJECT INFORMATION			
Project Site	Existing Land Use	Vacant, (former A&W demolished)	
	Existing Zoning	CG (General Commercial)	
	General Plan Designation	(C) Commercial	
	Access	Felspar Street	
	Site Area	15,036 sq. ft.	
	Environmental	Categorical Exempt 15532 – In fill development	
Off Site	Land Use	Zoning	
North	Toboco Traders Retail	CG	General Commercial
South	Vacant	CG	General Commercial
East	LeRoy Jackson Park, undeveloped	RSP	Recreation, School, Public Use
West	SSUSD Administrative Offices	CG	General Commercial

BACKGROUND:

On June 29, 2011 Chuck Cordell submitted an application for a new office building on property he owns located at 643 N. China Lake Blvd. proposing a 5,350 sf facility. It is intended that Chuck Cordell Construction Company occupy a portion of office space and that the remaining space be rented to two tenants.

The project site is the location of the former A&W Root Beer Stand and is vacant land, (because the blighted fast food facility was torn down by Mr. Cordell.) Renovating this eyesore is considered a plus on behalf of rejuvenating the City. The property is zoned commercial, with frontage along China Lake Blvd, (SR 178) and Felspar Street. The Site topography slopes toward the south. No structures exist on the site except two signs. The site contains some mature trees.

Property to the North is developed as retail commercial, (Toboco Traders), and an auto dealer, (Ken Charlon Auto Sales). Property abutting to the west boundary of the project is developed as the School District offices. To the south of the project is vacant, with the Home Depot lying beyond this vacant property.

The Proposed Site Plan calls for 18 parking spaces, (or a little more than one parking space per 300 sq. ft. of building area as required by code).

On June 30, 2011, the project proposal was circulated to Public Agencies for comments. Public Hearing Notices were sent to all property owners located within 300' of the project site and a Public Hearing Notice appeared in the *Daily Independent* on July 2, 2011.

Responses from Public Works/Engineering has been received and incorporated into the Conditions of Approval identified within the Planning Commission Resolution to Approve the Site Plan. CalTrans has also submitted comments and conditions of approval for this project. The Ridgecrest Police Department has also provided input to this site plan proposal.

A major concern generated by this project proposal is the proposed driveway access onto China Lake Blvd. The City Engineer, Police Department, Planning Department and CalTrans all share the sentiment that public safety will not be served if a driveway is permitted from this site to China Lake Blvd.

DISCUSSION:

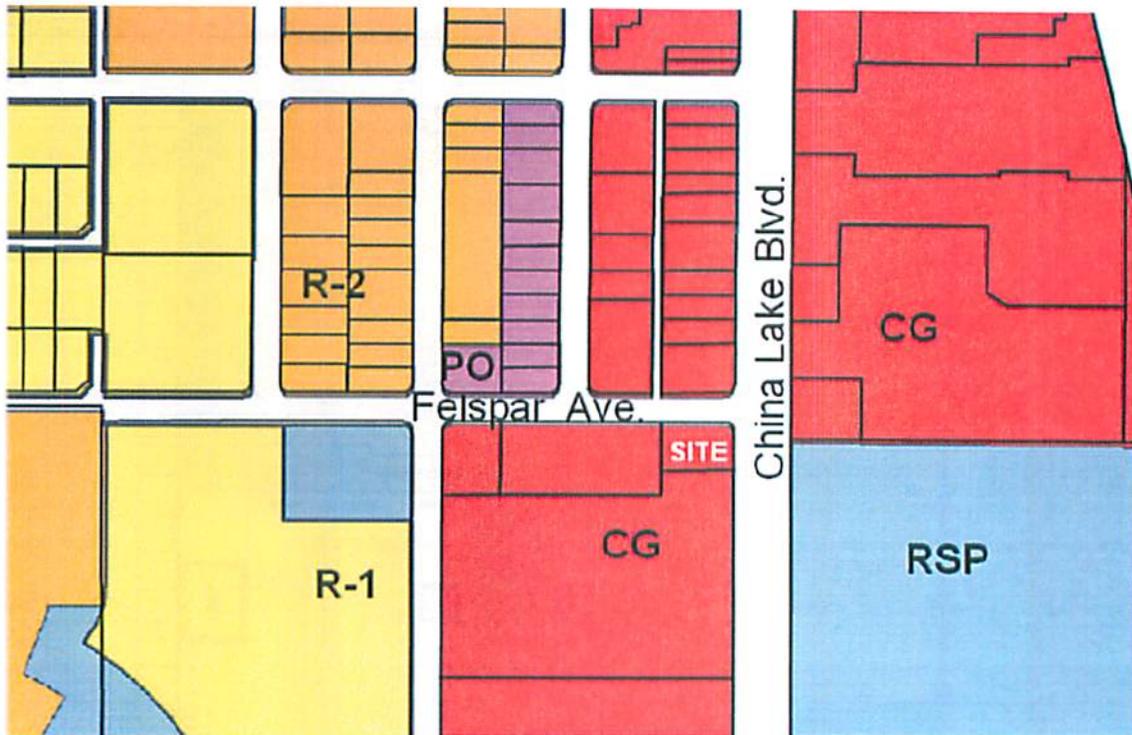
A great deal has changed since the 1960's. the city must regulate the number of curb cuts accessing China Lake Blvd. in order to minimize traffic accidents that are occurring along the City's primary arterial roadway.

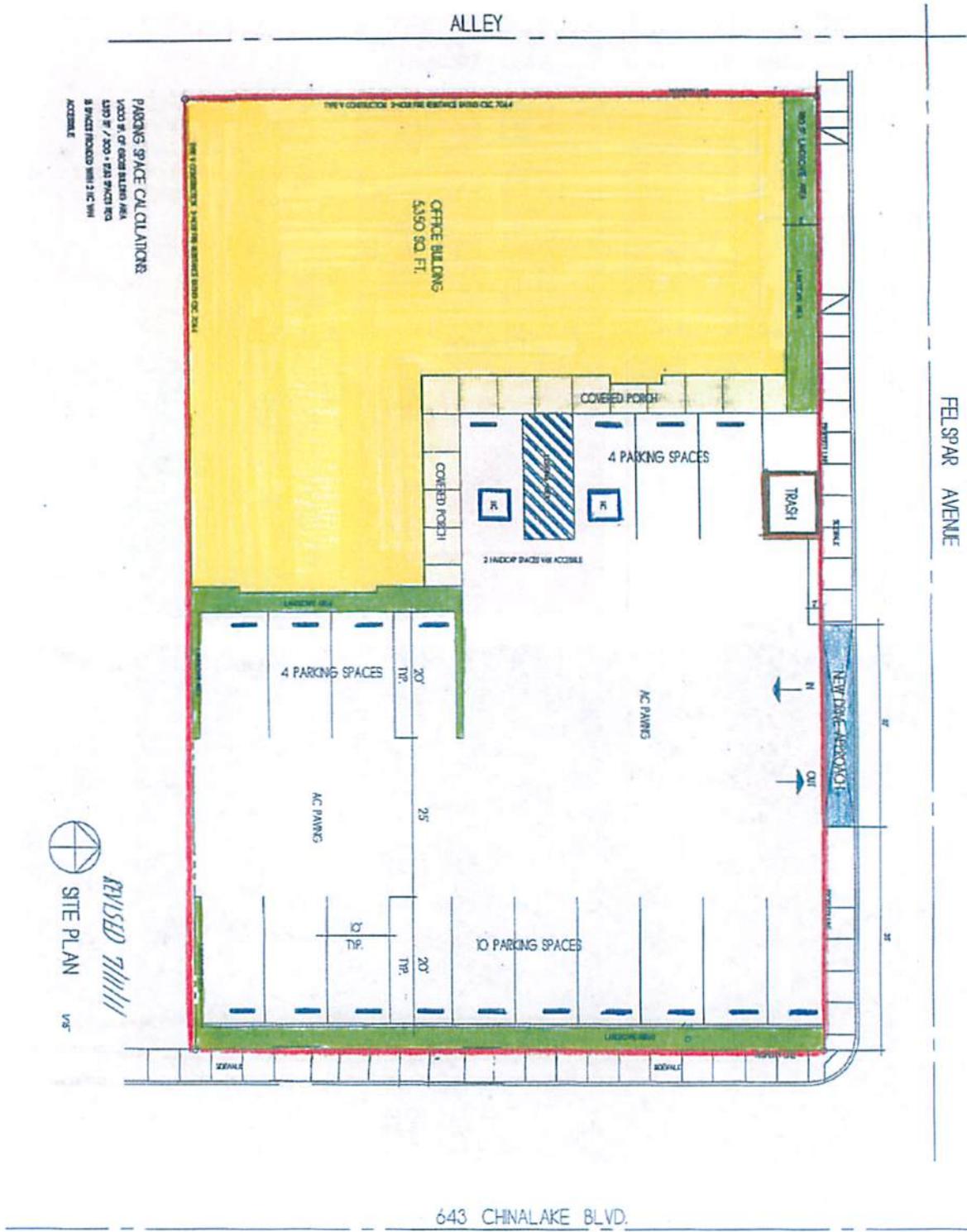
Therefore, Mr. Cordell has provided the Planning Commission with a revised site plan that closes vehicular access from China Lake Blvd. by flipping the building plan, (which is still proposed to be built on the rear yard property line). The staff believes that this is a reasonable compromise which will benefit future office building tenants and clients. This proposed site plan is dated 7-11-11 and is recommended for approval by the Planning Commission.

RECOMMENDATION

Staff recommends approval with conditions as presented in the attached Resolution.

THE APPLICANT SHALL NOTE THAT THERE IS A FIFTEEN (15) DAY APPEAL PERIOD FOR THE PLANNING COMMISSION DECISION. ALL APPEALS ARE DIRECTED TO THE CITY COUNCIL UPON SUBMITTAL OF APPEAL FEE AND LETTER STATING REASONS FOR THE APPEAL.





PARKING SPACE CALCULATION
 1,000 SF OF COVERED AREA
 1,500 SF / 7,000 = 0.2143 SPACES PER
 8 SPACES PROVIDED WITH 21% MIN
 ACCESSIBLE

REVISED 7/11/11
 SITE PLAN
 V/S

DRAFT
PLANNING COMMISSION RESOLUTION 11-09

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF RIDGECREST APPROVING RESOLUTION 11-09 APPROVING SITE PLAN REVIEW SPR 11-03, A REQUEST TO BUILD A NEW 5,350 SQUARE FOOT OFFICE BUILDING, LOCATED ON 15,036 SQUARE FOOT LOT IN A CG (COMMERCIAL GENERAL) ZONE DISTRICT LOCATED AT 643 CHINA LAKE BLVD., SW COR OF CHINA LAKE BLVD. AND FELSPAR AVE., (APN 067-040-06)

THE PLANNING COMMISSION OF THE CITY OF RIDGECREST RESOLVES as follows:

SECTION 1. FINDINGS

On July 12, 2011, the Planning Commission held a public hearing and duly and regularly considered Site Plan Review 11-03 a request to build a request to build a new 5,350 square foot office building, located on 15,036 square foot lot in a CG (Commercial General) Zone District located at 643 China Lake Blvd., (APN 067-040-06) Applicant: Chuck Cordell

The Planning Commission considered the evidence and approved this application as set forth herein:

- (a) The proposed location of the use and the conditions under which it would be operated or maintained will not be detrimental to the public health, safety or welfare, or materially injurious to or inharmonious with properties or improvements in the vicinity.
- (b) There are circumstances or conditions applicable to the land, and use which makes the granting of a site plan review approval necessary for the preservation and enjoyment of a substantial property right.
- (c) The proposed location of the project is in accordance with the objectives of the zoning chapter and the purposes of the CG (General Commercial) Zoning District in which the site is located.
- (d) The proposal conforms to the requirements of Chapters 19 and 20 of the Ridgecrest Municipal Code.

SECTION 2. DESCRIPTION

The proposed project which is the subject of these proceedings consists of Site Plan Review 11-03, located at 643 N. China Lake Blvd., (APN 067-040-06)

SECTION 3. CONDITIONAL APPROVAL

The proposed site plan is hereby approved subject to the following conditions:

NOTE: These conditions must be met within 18 months (by January 12, 2013), or as stipulated in the conditions, unless a written request for an extension of time is received and approved before the expiration date.

PUBLIC WORKS

1. The following public improvements shall be designed and constructed, in accordance with City of Ridgecrest, Engineering Design Standards and/or Caltrans Standards and plans approved by the City Engineer and/or Caltrans, including the following:
 - a. Street Improvements
 - i. The proposed site plan indicates an existing access off of China Lake Blvd. The access off of China Lake Blvd. does not meet General Plan requirements for spacing of access along a major arterial corridor. The General Plan Circulation Element calls for a 300 foot minimum separation of a driveway along major arterial corridors.
 1. Prior to issuance of the occupancy permit, the developer shall remove the existing driveway approach and replace with Caltrans standard curb, gutter and sidewalk.
 - ii. The existing sidewalk and existing driveway approach do not meet current City Engineering Design Standards. The existing sidewalk measures 4 feet from back of curb and the existing driveway approach does not meet current ADA standards.
 1. Prior to issuance of the occupancy permit the developer shall remove the existing side walk and driveway approach and replace with City of Ridgecrest standard 5.5' sidewalk and ADA compliant driveway approach.
 - iii. The existing ADA access ramp at the curb return of China Lake Blvd. and Feldspar does not meet current ADA standards and the adjoining concrete sidewalk transition is buckled and in disrepair.
 1. Prior to issuance of the occupancy permit the developer shall remove the existing side walk and ADA access ramp and replace with Caltrans standard sidewalk and ADA compliant access ramp.
 - iv. The City of Ridgecrest Pavement Management System rates Feldspar with a Pavement Condition Index of 11. The PMS calls for a 2.5-inch asphalt overlay.
 1. Prior to issuance of the occupancy permit the developer shall mill the existing street surface along the lip of gutter and resurface 2.5" of asphalt to the street centerline along the project frontage. The 2.5" asphalt overlay at centerline shall begin its taper in thickness and feather into the existing pavement 10' beyond street centerline.
 - a. Additional milling or header cuts will be necessary to tie the 2.5" overlay into the existing pavement on either end of the project. Ten foot paving transitions are minimum length requirements.
 - v. Prior to issuance of building permit, dedicate additional Right of Way for corner cut off at curb return at China Lake Blvd. and Feldspar Ave. to accommodate ADA compliant access ramp and sidewalk.
 - vi. Access to the site shall be taken from Feldspar Ave. at the westerly most end of the property. This conflicts with the proposed building orientation and a site plan revision will be necessary.

- vii. A Caltrans encroachment permit will be required for all work within the Caltrans right of way.
- b. Sewer Improvements
 - i. Construct 6-inch sewer lateral with property line cleanout for the commercial structure.
 - ii. The plumbing plans for the structure shall be reviewed by the City Engineer to determine if sample boxes or wastewater pretreatment may be required.
 - 1. Any floor drains, mop sinks, utility room drains, require separate wastewater plumbing to a minimum of a sample box before entering the public sewer system.
- 2. The following onsite improvements shall be designed and constructed, in accordance with City of Ridgecrest, Engineering Design Standards and/or Drainage Design Manual and/or General Plan and/or Municipal Code and plans approved by the City Engineer prior to issuance of a building permit, including the following:
 - a. Drainage Improvements, (The project is within flood zone C of the Flood Insurance Rate Maps, area of minimal flooding.)
 - i. All storm water runoff up to the ten year event shall be detained onsite.
 - 1. Prior to issuance of the building permit, a drainage plan with supporting calculations shall be submitted for the City Engineer's approval .
 - 2. The drainage plan and calculations along with improvements shall be prepared and constructed in accordance with City of Ridgecrest, "Master Drainage Plan", dated May 1989 and the "Drainage Design Manual", dated July 1989.
 - b. Grading Improvements
 - i. Prior to issuance of a building permit, a topographic grading plan shall be submitted for approval by the City Engineer and Planning Department. The grading requirements shall conform to Ridgecrest Municipal Code Chapter 16 and the grading plan prepared in compliance to City of Ridgecrest, Engineering Design Standards, Section 2.02 C. 4.
 - 1. The topographic grading plan and drainage plan shall also show adjacent grading, drainage and features as required in the City of Ridgecrest, Engineering Design Standards, Section 2.02 C. 4.
 - 2. The topographic grading plan shall also show property boundary record data, survey property corners, easements, utilities, with dimensioning, etc.
 - c. Survey
 - i. Survey monument property corners shall be set, made visible and protected in place during construction. Monuments shall be set to surface and made visible prior to occupancy permit. Work must be performed by a Licensed Land Surveyor.
 - ii. Prior to occupancy permit, reset the existing Caltrans brass survey monument in the current ADA ramp. The monument must be tied out and reset by a Licensed Land Surveyor.
- 3. Miscellaneous Requirements & Conditions
 - a. Seismic Hazard Zone
 - i. The project is located approximately 800 feet east of the Little Lake Fault Seismic Hazard Zone.
 - 1. The developer shall have his architect design the structure to meet seismic requirements for this zone.
 - b. Pay all Development Impact Fees.

- c. Coordinate with IWWWD and if necessary design and construct water facilities per IWWWD requirements.
- d. Prior to occupancy permit, survey monuments shall be visible, adjusted to grade, or restored.
- e. Coordinate with Kern Co. Fire Dept. and if necessary, design and construct fire protection hydrants and or facilities per Kern Co. Fire Department requirements.
- f. Design and construct miscellaneous support utility improvements necessary for development of the project.
- g. The project plan shall be reviewed by police, fire and emergency services for access and circulation to the structure and parking lot.
- h. All work in the public right of way shall be to City of Ridgecrest and industry standards.
- i. Applicant shall acquire all necessary permits from the City and Caltrans or any other regulatory agency.

COMMUNITY DEVELOPMENT

- 4. The Applicant shall comply with all applicable federal, state, county, and local regulations.
- 5. That there shall be no vehicular access to China Lake Blvd.
- 6. Any additional signs provided on the site shall be installed in accordance with applicable sections of Chapter 20.
- 7. A minimum of 17 on-site parking spaces shall be maintained to City standards which consist of 9' wide by 20' deep, double striped parking stalls, including handicapped parking.
- 8. Dust mitigation measures positive trash control shall be utilized during construction.
- 9. All outdoor lights shall be directed downward and shielded to reduce impacts to adjoining sites. No light poles shall be higher than twenty (20) feet.
- 10. The Applicant shall maintain a screened trash enclosure in a location approved by Staff.
- 11. Developer agrees to pay to the City of Ridgecrest Developer Impact Fees in accordance with the requirements of a 5,350 sq. ft. building prior to the issuance of Building Permits.

CALIFORNIA DEPARTMENT OF TRANSPORTATION

- 12. To improve safety for customers and through-travelers, the existing Felspar Ave. driveway location would be the optimal sole access; the building plan could be suitably altered. The City would condition Felspar Ave. frontage improvements accordingly.
- 13. The existing N. China Lake Blvd. driveway needs to be removed and replaced with Caltrans/Americans with Disability Act (ADA) standard curb/gutter/sidewalk. The curb ramp at Felspar Ave. must also be brought up to current ADA standards. The Caltrans' survey reference point at the ramp should be perpetuated.
- 14. Any work in State right-of-way must be performed under encroachment permit. For permit and standard information, (please see July 7, 2011 letter to City of Ridgecrest).

15. A Caltrans project to construct a raised center median for N. China Lake Blvd. is proposed for this area. Break-points would be located at public road intersections. Since a Felspar Ave. access would already be utilized, Plan Store access/circulation would not be further impacted.
16. Ensure landscaping does not inhibit safe sight distance and is maintained.
17. Other items (e.g. electrollier, utilities etc.) may need special consideration.

KERN COUNTY FIRE DEPARTMENT

18. Building Plans must be submitted to the Kern County Fire Department at 5642 Victor street, Bakersfield, CA 93308, (661) 399-2915 with appropriate plan check fee.

APPROVED AND ADOPTED this 12th day of July 2011 by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

Craig Porter, Planning Commission Chairman

ATTEST:

Ricca Charlon, Secretary

NOTICE OF EXEMPTION

TO: County Clerk
County of Kern
1115 Truxtun Avenue
Bakersfield, CA 93301

FROM: City of Ridgecrest - Planning
100 W. California Ave.
Ridgecrest, CA 93555

APPLICANT/ADDRESS:

Cordell Construction
720 N. China Lake Blvd
Ridgecrest, CA 93555

PROJECT TITLE:

Site Plan Review SPR-11-03, Chuck Cordell Office Building

PROJECT LOCATION (SPECIFIC):

643 N. China Lake Blvd., Ridgecrest, CA 93555

PROJECT LOCATION (CITY):

Ridgecrest,

PROJECT LOCATION (COUNTY):

Kern

DESCRIPTION OF NATURE, PURPOSE, AND BENEFICIARIES OF PROJECT:

a request to build a new 5,350 square foot office building, located on 15,036 square foot lot in a CG (Commercial General) Zone District located at the Southwest Corner of China Lake Blvd. and Felspar Ave., (APN 067-040-06)

NAME OF PUBLIC AGENCY APPROVING PROJECT:

City of Ridgecrest

NAME & ADDRESS OF PERSON OR AGENCY CARRYING OUT PROJECT:

City of Ridgecrest, Planning Department 100 W. California Ave., Ridgecrest, CA 93555

EXEMPT STATUS: (Check One)

- Ministerial Project (Sec 21080(b)(1); 15268;
- Declared Emergency (Sec. 21080(b)(3); 15269(a)
- Emergency Project ((Sec. 21080(b)(c); 15269(b)(c)
- Categorical Exempt (Sec 15315 Class 15 Minor Land Divisions
- Statuary Exemption (Sec. 15532)

REASONS WHY PROJECT IS EXEMPT: This project constitutes an in-fill development.

CONTACT PERSON:

Matthew Alexander AICP, Planning

AREA CODE/TELEPHONE/EXTENSION:

(760) 499-5063

If filed by applicant:

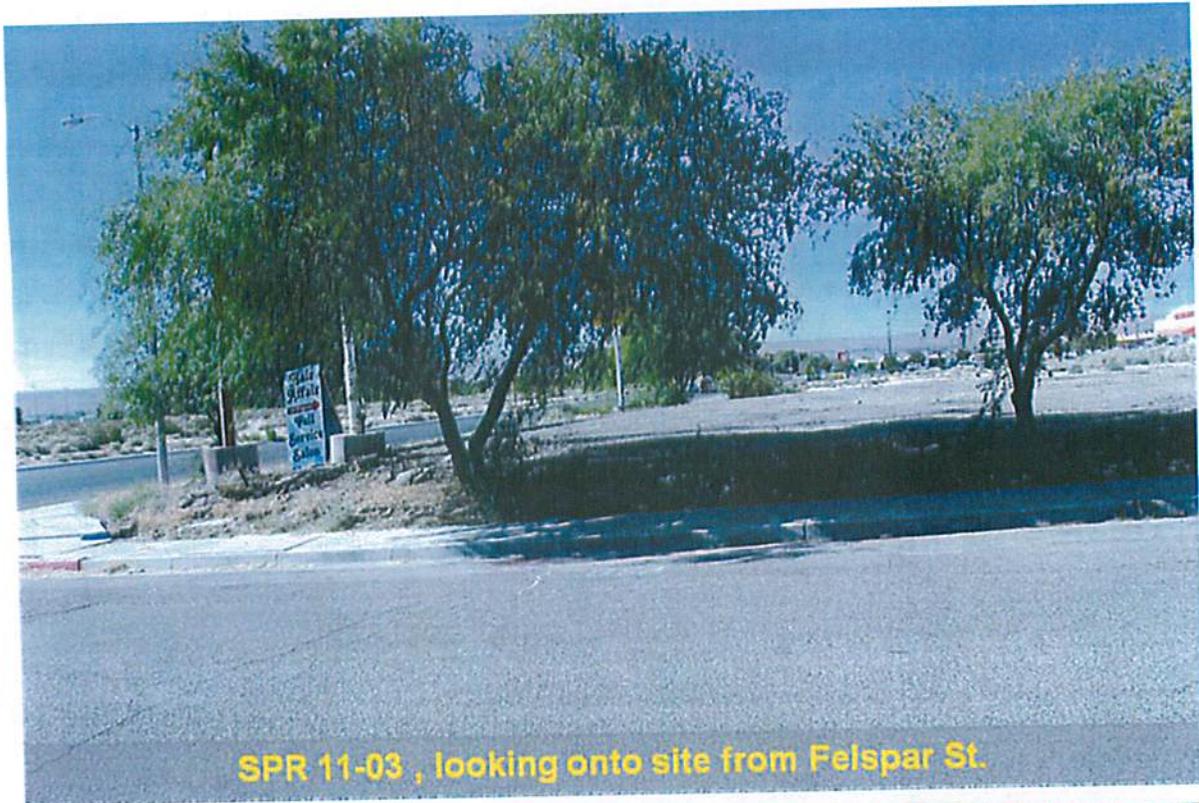
1. Attach certified document of exemption finding.
2. Has a notice of exemption been filed by the public agency approving the project? Yes X__
No __

Date Received for Filing:

Matthew Alexander

Signature

Title: City Planner



SPR 11-03 , looking onto site from Felspar St.



SPR 11-03 , looking from site toward China Lake Blvd.



LEGEND

8,000 - 2008 Average Daily Traffic (ADT) Volume;
 8,000* - 2007 ADT Volume from CalTrans

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CITY COUNCIL/REDEVELOPMENT AGENCY AGENDA ITEM

SUBJECT:

Redevelopment Agency Owner Participation Agreement (OPA) discussion and approval
643 N. China Lake Blvd. APN 67-040-06. Property Owner, C. Cordell

PRESENTED BY:

James E. McRea

SUMMARY:

The Redevelopment Agency staff is requesting discussion and authorization to negotiate an Owner Participation Agreement (OPA) for the development of an Office facility and Commercial Leased Offices at 643 N. China Lake Blvd. The location is blighted and will provide increased commercial offices and the creation of new jobs, and may assist in the future development of the adjoining five (5) acre site on N. China Lake between Felspar and Las Flores Avenues.

The Owner Participation Agreement (OPA) would be entered into as of _____, 2011 by and between the RIDGECREST REDEVELOPMENT AGENCY, a public body (the "Agency"), and Chuck Cordell (the "Owner"). The following recitals would be a substantive part of this Agreement:

A. In furtherance of the objectives of the California Community Redevelopment Law, the Agency desires to assist Owner in the demolition of an existing facility and the improvement of the site and the potential creation of new job opportunities in the community on the property located within the Ridgecrest Redevelopment Project

B. The Agency and the Owner desire by this Agreement to provide for the Agency to the Owner the Grant Amount, relating the permits and development expenses, in an amount of \$17,000 to \$20,000.

C. The obligations of the Owner and the Agency, as provided, are in the vital and best interest of the City and the health, safety, morals and welfare of its residents, and in accord with the public purposes and provisions of applicable state and local laws and requirements under which the Community Development Project has been undertaken with respect to blight elimination.

D. Agency Grant. Subject to all of the terms, covenants and conditions which are set forth, the Agency hereby agrees to grant the Owner the sum of _____, (\$) (the "Agency Grant"). The Agency grant shall be disbursed to the Owner promptly after the satisfaction of all Conditions Precedent to the disbursement of the Agency Grant.

E. Employment Covenant. Owner hereby covenants and agrees to complete the development of the Owner Improvements with the proceeds of the Agency Grant (to be used only for the payment of city development and permit fees and for no other use) and such other funds as Owner deems necessary. The Owner Improvements shall be completed in accordance with plans submitted to and approved by the City; upon completion of the Owner Improvement and Owner covenants.

The property owner and staff are available to answer any questions with respect to the proposed project.

FISCAL IMPACT:

Utilization of RRA funding to encourage blight elimination, development, and job creation.

ACTION REQUESTED:

Appropriate discussion and direction to Agency staff.

CITY MANAGER / EXECUTIVE DIRECTOR RECOMMENDATION:

Review and Comment :

Submitted by: James McRea
(Rev 6-12-09)

Action Date: 12-15-10

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CITY COUNCIL/REDEVELOPMENT AGENCY/FINANCING AUTHORITY AGENDA ITEM

SUBJECT:

Introduction And First Reading, An Urgency Ordinance Of The City Council Of The City Of Ridgecrest Amending The Ridgecrest Municipal Code As It Relates To Curbside Service

PRESENTED BY:

Keith Lemieux – City Attorney

SUMMARY:

The City of Ridgecrest currently has in place a trash program that requires mandatory service for all residential and commercial property owners within the City. This ordinance would revise this program to only require commercial property and certain multi-family residential properties to receive mandatory trash service. Residential trash service would be made voluntary

In addition, this ordinance revises various parts of the Municipal Code to provide consistency on the subject of exclusive trash franchises. Currently the Municipal Code allows for exclusive trash franchises. We have revised the code so that this intent is more clearly expressed in other portions of the code. These changes also streamline or eliminate parts of the code that related to the mandatory residential system such as delinquency collections

Concurrently with the consideration and adoption of this ordinance, the City is considering and adopting an ordinance granting a franchise for solid waste hauling services. The City Council finds and declares that the granting of a solid waste handling franchise under the circumstances currently before the City Council is necessary to preserve the public health, safety and welfare of the City in that it is needed to continue uninterrupted trash hauling services. It is necessary for this ordinance to be adopted and to take effect before the effective date of the ordinance adopting the trash hauling franchise so that certain provisions of this ordinance become effective as to that franchise. Therefore, the City Council finds and declares that it is necessary for this ordinance to take immediate effect in order to preserve the health and welfare of the citizens of Ridgecrest

This ordinance will be adopted by no less than a four-fifths vote of the City Council and shall be effective immediately upon its passage

FISCAL IMPACT:

No Fiscal Impact

Reviewed by Finance Director

ACTION REQUESTED:

Introduction and First Reading of the proposed ordinance as an urgency ordinance of the Council

CITY MANAGER / EXECUTIVE DIRECTOR RECOMMENDATION:

Action as requested: Approve the following motions:

1. *Motion To Waive Reading In Full Of An Ordinance Of The City Council Of The City Of Ridgecrest Amending The Ridgecrest Municipal Code As It Relates To Curbside Service*

Requires A Second

2. *Motion To Introduce, By Title Only, An Ordinance Of The City Council Of The City Of Ridgecrest Amending The Ridgecrest Municipal Code As It Relates To Curbside Service*

Requires A Second

Submitted by: Keith Lemieux

Action Date: September 7, 2011

(Rev. 6/12/09)

ORDINANCE NO. _____

**AN URGENCY ORDINANCE OF THE CITY COUNCIL OF THE
CITY OF RIDGECREST
AMENDING THE RIDGECREST MUNICIPAL CODE
AS IT RELATES TO CURBSIDE SERVICE**

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF RIDGECREST as follows:

Section 1. Purpose.

The City of Ridgecrest currently has in place a trash program that requires mandatory service for all residential and commercial property owners within the City. The following ordinance would revise this program to only require commercial property and certain multi-family residential properties to receive mandatory trash service. Residential trash service would be made voluntary.

Section 2. Amendment.

Section 3-5.109 of the Ridgecrest Municipal Code is amended and reenacted to read as follows:

"3-5.109 Limitations.

- (a) Except as provided in Section 3-5.703, any franchise granted pursuant to the provisions of this Article shall be nonexclusive.
- (b) No privilege or exemption shall be granted or conferred by any franchise except as specifically prescribed in this Article.
- (c) Any privilege claimed under any franchise by the grantee in any street or public property shall be subordinate to any prior lawful occupancy of the streets or public property.
- (d) Time shall be of the essence of any franchise. The grantee shall not be relieved of his obligation to comply promptly with any of the provisions of this Article or by any failure of the City to enforce prompt compliance.
- (e) Any right or power in, or duty impressed upon, any officer, employee, department, or board of the City shall be subject to transfer by the City to any other officer, employee, department, or board of the City.
- (f) The grantee shall have no recourse whatsoever against the City for any loss, cost, expense, or damage arising out of any provision or requirement of this Article or of any franchise or because of the enforcement of the provisions of this chapter.
- (g) The grantee shall be subject to all City laws, rules, regulations, and specifications heretofore or hereafter enacted or established.

(h) No person, firm, or corporation in the existing service area of the grantee shall be arbitrarily refused service; provided, however, the grantee shall not be required to provide service to any customer who does not pay the applicable fee or monthly service charge.

(i) The Council shall impose additional terms and conditions for the granting of a franchise as are necessary to implement the provisions of this Article including but not limited to provisions concerning the facilities of the grantee and operational standards. These additional terms and conditions shall be set forth in the ordinance granting the franchise operations of any grantee or from any provision of this Article."

Section 3. Amendment.

Section 3-5.110 of the Ridgecrest Municipal Code is amended and reenacted to read as follows:

"3-5.110 Reserved Rights.

(a) Nothing contained in this Article shall be deemed or construed to impair and affect in any way, to any extent, the right of the City to acquire the property of the grantee, either by purchase or through the exercise of the right of eminent domain. The measure of damages if the grantor exercises the power of eminent domain shall be in accordance with laws as determined by a court of competent jurisdiction. Nothing contained in this Article shall in any way modify or abridge the City's right of eminent domain.

(b) there is hereby reserved to the City every right and power which is required to be reserved or provided by the provisions of this Article or by any law of the City, and the grantee, by its acceptance of any franchise, agrees to be bound thereby and to comply with any action or requirements of the City in its exercise of such rights or power heretofore or hereafter enacted or established.

(c) Except as provided in Section 3-5.703, neither the granting of any franchise nor any of the provisions contained in this Article shall be construed to prevent the City from granting any identical or similar franchise to any other person, firm, or corporation within all or any portion of the City.

(d) Neither the granting of any franchise nor any provision of this Article shall constitute a waiver or bar to the exercise of any governmental right or power of the City.

(e) The Council may do all things which are necessary and convenient in the exercise of its jurisdiction under the provisions of this Article and may determine any question of fact which may arise during the existence of any franchise. The City Manager is hereby authorized and empowered to adjust, settle, or compromise any controversy or charge arising from the operations of any grantee under the provisions of this Article, either on behalf of the City, the grantee, or any subscriber, on the best interests of the public. Either the grantee or any member of the public who may be dissatisfied with the decision of the City Manager may appeal the matter to the Council for hearing and determination. The Council may accept, reject, or

modify the decision of the City Manager and the Council may adjust, settle, or compromise any controversy or cancel any charge arising from the franchise.

(f) No provision of this Article shall be deemed or construed so as to require the granting of a franchise when, in the opinion of the Council, it is in the public interest to restrict the number of grantees to one (1) or more.

Section 4. Amendment.

Section 3-5.703 of the Ridgecrest Municipal Code is hereby amended and reenacted to read as follows:

"3-5.703 Trash Collection Franchise.

(a) Pursuant to Section 3.5.103, *et seq.*, the City may grant an exclusive Trash Collection Franchise for trash collection service within all or any portion of the City. The City may grant an exclusive franchise for solid waste handling upon a determination that the public health, safety and well-being are thereby served. The franchise shall be granted by ordinance pursuant to the process set forth in this division.

(b) When an exclusive franchise agreement for the collection of waste is in effect, no person, other than employees of the franchisee may collect, haul or transport solid waste within the City, except as set forth below.

(c) The City may regulate, by ordinance or resolution, all aspects of the refuse service, including, but not limited to, frequency of collection, means of collection and transportation, level of services, charges, fees, and nature, location, and extent of providing such services.

(d) The exclusive right of any Franchisee to collect refuse and recyclable waste material is subject to the following exclusions:

1. Gardeners and Landscapers. The collection, transportation and disposal by a gardener or landscaper of yard wastes which are generated as an incidental part of providing gardening, landscape maintenance services, provided that the gardener or landscaper is not a hauling service or solid waste enterprise, does not separately or additionally charge for the incidental service of removing, transporting or disposing of the yard waste, and utilizes only his or her own employees and equipment to collect, transport and dispose of same.

2. Contractors and Remodelers. The collection, transportation and disposal by a construction contractor, holding a contractor's license issued by the state of California, of inert materials or demolition waste from remodeling or construction jobs which are generated as an incidental part of providing such remodeling or construction services, provided that the construction contractor is not a hauling service or solid waste enterprise, does not separately or additionally charge for the incidental service of removing, transporting or disposing of the inert materials or demolition waste, and utilizes only his or her own employees and equipment to collect, transport and dispose of same.

3. Limitations and Exclusions. Any additional limitations and exclusions as set forth in the written Franchise Agreement.

(e) This section shall not limit the collection or hauling of waste to a landfill, transfer facility or recycle facility by a private party who is the business owner, home owner, residential property owner or residential tenant.

(f) No person shall interfere with the collection or disposal of solid waste, by a person authorized by license, franchise or contract to collect and dispose of same.

(g) No person other than the franchisee, or an agent or employee thereof, shall tamper or meddle with, or remove items from, a container or receptacle placed for collection of solid waste by the city or the Franchisee.

(h) It shall be unlawful for any person to solicit, accept, engage or otherwise utilize solid waste handling service for paid consideration by a person not authorized to provide such service.

(i) No person other than the Franchisee shall offer to handle solid waste or handle solid waste on behalf of another in exchange for compensation in any form or amount.

Section 5. Amendment.

Section 3-5.704 of the Ridgecrest Municipal Code is hereby amended and reenacted to read as follows:

"3-5.704 Fees.

Any grantee of a Trash Collection Franchise shall pay to the City a Franchise Fee as set by the City.

Section 6. Amendment.

Chapter XIII of the Ridgecrest Municipal Code is amended and reenacted to read as follows:

"CHAPTER XIII. SANITATION SOLID WASTE, YARD WASTE AND HOUSEHOLD HAZARDOUS WASTE MANAGEMENT

13-1 Purpose.

This chapter is adopted to protect the welfare of the public with respect to sanitation.

13-1.2 Definitions.

For the purposes of this chapter, the following words and phrases are defined as follows:

"Recyclable material" means materials that are segregated at the source from other refuse for the purpose of recycling and includes, but is not limited to, paper, glass, metals, wood, plastics, wastes, bulky goods, waste oil, and construction and demolition materials. Recyclable

material which is commingled or mixed with refuse shall be considered to have been discarded and shall be deemed refuse for purposes of this ordinance.

"Refuse" means all wastes, including garbage, trash, refuse, paper, rubbish, ashes, industrial wastes, demolition and construction wastes, discarded home and industrial appliances, manure, vegetable or animal wastes, and other discarded wastes, but excluding hazardous waste or substances, radioactive waste, untreated medical waste, and liquid waste. Recyclable waste material is considered refuse for purposes of this chapter. The term "refuse" shall be synonymous with the term "solid waste" as used in the Integrated Waste Management Act, Public Resources Code Section 40000, *et seq.*

"Rubbish" means treated wood, treated wood products, printed matter, paper, pasteboard, rags, straw, used and discarded clothing, used and discarded shoes and boots, combustible waste pulp, and other products such as are used for packaging or wrapping crockery, ashes, cinders, floor sweepings, mineral or metallic substances, earth, rock, used, demolished or discarded building materials, and other waste material other than hazardous waste or yard waste.

"Solid waste" or "Waste" means garbage, refuse, rubbish, and other materials and substances discarded or rejected as being spent, useless, worthless, or in excess to the generator thereof at the time of such discard or rejection and which are normally discarded by or collected from residential premises, non-residential premises and institutional establishments, which are acceptable at Class III landfills under applicable law, and which are originally discarded by the first generator thereof and have not been previously Processed. Solid Waste includes any discarded materials, other than (1) abandoned vehicles or parts thereof, (2) household hazardous waste, hazardous waste or low-level radio-active waste regulated under Chapter 8 (commencing with Section 114960 of Part 9) of Division 104 of the Health and Safety Code, (3) medical waste regulated pursuant to the Medical Waste Management Act (Part 14 (commencing with Section 117600) of Division 104 of the Health and Safety Code), (4) dewatered, treated or chemically fixed sludge or biosolids, or (5) yard waste. Notwithstanding any provision to the contrary, Solid waste or Waste includes recyclable materials and yard waste whenever a fee, charge, or other consideration, in any form or amount, is indirectly or directly paid by generator to any person in exchange for any form of storage, collection, transfer, removable, processing, consulting, brokering, disposal or equipment rental service ("fee for service").

"Yard waste" means organic material or garden trimmings.

13-1.3 Deposit in Public Place and Accumulation Prohibited.

(a) No person shall cause waste (except yard waste that is being actively composted) to be accumulated upon public or private property. Solid waste originating from premises shall be removed at least once per week. It is unlawful for the person having control of the premises to fail or neglect to provide for the removal of waste.

(b) Persons placing waste in public or private receptacles shall prevent the waste from being carried or deposited by the elements upon a public place. No person shall place solid waste into private receptacles owned by another person unless the owner of the receptacle has given prior permission.

(c) The deposit or accumulation of waste is a public nuisance, and the person owning, leasing, occupying or having charge or possession of a premises violating this section shall be subject to the provisions of Chapter IV, Article 15.

(d) Only recyclable materials shall be deposited in marked recycling containers. Recyclable materials shall not be deposited in receptacles marked to receive solid waste.

13-2 Solid Waste Collection for Commercial Premises and Certain Multi-Family Residential Structures.

(a) Every person in possession, charge or control of a multi-family residential establishment, church, business, commercial, or industrial establishment shall subscribe for and pay the franchisee for solid waste collection and disposal at such rates as may be set by franchisee and approved by resolution of the City Council. "Franchisee" means the entity with whom the City has contracted under a franchise agreement to handle waste pursuant to Section 3-5.703 of the Municipal Code. "Multi-family residential structure" means residential structures that contain five or more separate dwelling units.

(b) Franchisee shall collect solid waste from commercial premises on such days and at such frequencies as the generator or owner (or the Owner's designee) and franchisee shall mutually determine, but collection shall be performed at least once each seven (7) days.

(c) Upon reasonable notice from franchisee and approval of the City Council, owners of commercial premises shall comply with mandatory waste separation requirements, such as the separation of solid waste, yard waste and recyclable materials.

(d) On the specified collection days, the receptacles for each person who receives solid waste collection services, shall be readily accessible for removal and emptying of the material contained therein as specified by the franchisee and in compliance this Municipal Code. Such containers shall be filled no more than level full and shall have the lids of such portable receptacles kept closed or shall be kept covered if a lid is not available, except when depositing waste, to prevent the loss of any waste material. "Level full" means that the amount of refuse deposited in a commercial container does not exceed the lowest top edge thereof, such that the lid can be completely closed. Receptacles shall be readily accessible for collection.

(e) The Franchisee shall remove from the premises all Solid waste which has been properly placed for collection. Any removal of Solid waste by the Franchisee shall be performed in a neat, orderly and quiet fashion, and the premises shall be left in a clean and orderly condition.

13-3 Accumulation, Disposal and Destruction of Waste.

(a) No person shall burn waste.

(b) No person shall bury waste (except yard waste being actively composted).

(c) No person shall keep, accumulate or permit to be accumulated waste (except yard waste being actively composted), on any public or private place unless in a receptacle. Such receptacles

must include close-fitting lids or covers which shall be kept closed at all times, except when necessarily opened to permit waste to be taken there from or deposited therein.

13-4 Household Hazardous Waste.

13-4.1 Owner Obligations for Household Hazardous Waste.

(a) Household hazardous waste may only be disposed at a licensed and permitted household hazardous waste collection facility. "Household hazardous waste" means waste material that is purchased by the general public for household use which is toxic, corrosive, flammable, ignitable or reactive and may pose a substantial hazard to human health or the environment when improperly managed.

(b) No household hazardous waste shall be included in or combined with solid waste that is submitted for collection by the City's franchise trash hauler.

13-5 Transportation of Waste.

13-5.1 Transportation. Waste shall be carried on city streets by all persons in a manner that prevents dust, debris or other materials from falling upon the streets and adjacent lands.

13-5.2 Vehicle Maintenance. Every truck, vehicle or trailer used for collection of solid waste, recyclable materials and/or yard waste shall be kept well painted and clean inside and out.

13-5.3 Emergency Removal. Nothing in this chapter shall be deemed to interfere with the removal and hauling of materials determined by the City to require immediate removal so as to preserve public health.

Section 7. Urgency Ordinance.

Concurrently with the consideration and adoption of this ordinance, the City is considering and adopting an ordinance granting a franchise for solid waste hauling services. The City Council finds and declares that the granting of a solid waste handling franchise under the circumstances currently before the City Council is necessary to preserve the public health, safety and welfare of the City in that it is needed to continue uninterrupted trash hauling services. It is necessary for this ordinance to be adopted and to take effect before the effective date of the ordinance adopting the trash hauling franchise so that certain provisions of this ordinance become effective as to that franchise. Therefore, the City Council finds and declares that it is necessary for this ordinance to take immediate effect in order to preserve the health and welfare of the citizens of Ridgecrest.

This ordinance will be adopted by no less than a four-fifths vote of the City Council and shall be effective immediately upon its passage.

Section 8. Other.

Except as otherwise provided, the Ridgecrest Municipal Code is reaffirmed and readopted.

Introduced and first read at a meeting of the City Council of the City of Ridgecrest held the _____ day of _____, 20____.

PASSED AND ADOPTED at a regular meeting of said City Council held on _____, 2011, by the following roll call vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

Steven P. Morgan, Mayor

ATTEST:

Rachel J. Ford, City Clerk

(Seal)

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CITY COUNCIL/REDEVELOPMENT AGENCY/FINANCING AUTHORITY AGENDA ITEM

SUBJECT:

Public Hearing Regarding Proposal Of Waste Management Of California To Provide Solid Waste Hauling Services Pursuant To A Franchise

PRESENTED BY:

Kurt Wilson – City Manager

SUMMARY:

Pursuant to recent court rulings, the current Solid Waste Franchise expired on September 2, 2011. City of Ridgecrest adopted urgency ordinance no. 11-01 on August 3, 2011 which outlines a procedure for authorizing an interim franchise to provide an alternative procedure to issue interim franchises where necessary to preserve public health and safety. Additionally, City of Ridgecrest released a Request for Proposals (RFP) for companies interested in assuming a Solid Waste Franchise in the City of Ridgecrest. Results of the RFP were heard at the regular Council meeting of August 17, 2011 and Resolution No. 11-67 was approved authorizing an interim franchise to Waste Management of California, Inc.

On August 27, 2011 a public notice was published by the City Clerk for this Public Hearing for Council to discuss and receive comments pertaining to Introduction and First Reading of an ordinance authorizing a franchise agreement between the City of Ridgecrest and Waste Management of California, Inc.

Staff recommends that the City Council issue a solid waste franchise agreement to Waste Management of California, Inc. (“WM”) for a period of either seven or ten years. WM has proposed significant improvements in customer rates (summarized in the table below and detailed in the Attachment to this staff report) and services, as compared with the rates and services offered under the City’s previous franchise agreement with Benz Sanitation. Staff has worked with WM management to successfully negotiate the business terms of this franchise agreement. The proposed franchise agreement reflects the “state of the industry” and provides the City and its residents and businesses with a clear definition of the services to be provided and the responsibilities of the contractor, city, and customers

FISCAL IMPACT:

No Fiscal Impact; Public Hearing Only

Reviewed by Finance Director

ACTION REQUESTED:

Council receive public comment and hold discussion pertaining to a Solid Waste Franchise

CITY MANAGER / EXECUTIVE DIRECTOR RECOMMENDATION:

Action as requested: Receive Public Comment

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Executive Summary

Staff recommends that the City Council issue a solid waste franchise agreement to Waste Management of California, Inc. (“WM”) for a period of either seven or ten years. WM has proposed significant improvements in customer rates (summarized in the table below and detailed in the Attachment to this staff report) and services, as compared with the rates and services offered under the City’s previous franchise agreement with Benz Sanitation. Staff has worked with WM management to successfully negotiate the business terms of this franchise agreement. The proposed franchise agreement reflects the “state of the industry” and provides the City and its residents and businesses with a clear definition of the services to be provided and the responsibilities of the contractor, city, and customers.

Table 1 – Summary of Proposed Customer Rates

Rate	Benz Sanitation Current	Waste Management Proposed
Residential Garbage Collection Service		
32-Gal.	N/A	\$11.96
64-Gal.	N/A	\$13.46
96-Gal.	\$18.11	\$14.95
Residential Recycling Collection Service		
Bi-Weekly	N/A	Included
Weekly	\$12.41	N/A
Add. Cart	N/A	No Charge
Combined Residential Bill (96-Gal Garbage + Bi-Weekly Recycling)		
Total	\$30.52	\$14.95
% change vs. current		-51%
Commercial Garbage Collection Service		
96-Gal	N/A	\$36.00
3CY 1/wk.	\$176.17	\$158.55
3CY 2/wk.	\$282.88	\$254.59
3CY 3/wk.	\$389.75	\$350.78
3CY 4/wk.	\$496.31	\$444.68
3CY 5/wk.	\$603.21	\$542.89
Commercial Recycling Collection Service		
96-Gal	Included	Included
3CY 1/wk.	Included	Included
Combined Commercial Bill (Weekly 3 CY Garbage & Recycling)		
Total	\$176.17	\$158.55
% change vs. current		-10%

Background

On July 1, 2011 the City issued a Request for Proposals (RFP) for "Solid Waste and Recyclable Materials Collection and Diversion Programs". This RFP was structured to include a number of specific services that were required by the City as well as to solicit the expertise of the industry with respect to service enhancements that could be provided to the City's residents and businesses.

On August 1, 2011 the City received proposals from the following five companies offering to provide services:

1. Benz Sanitation
2. Sunset Waste Systems
3. Thomas Refuse Service
4. Waste Connections
5. Waste Management

The City, its consultant (HF&H Consultants), and the Citizen Evaluation Panel thoroughly reviewed all of the proposals received and, as needed, requested clarifications from proposers. The Citizen Evaluation Panel met on August 15, 2011 and established a unanimous recommendation to enter into negotiations with Sunset Waste Systems ("Sunset") and WM based on the strength of their pricing and technical proposals.

On August 17, 2011 the City Council entered into an interim franchise agreement with WM to provide services from September 5, 2011 through December 31, 2011 (or such earlier date that the parties reached agreement on the terms of a permanent franchise agreement). The City Council further directed staff to negotiate with Sunset and WM and to report back to the City Council with those agreements at its September 7, 2011 Council Meeting.

On August 29, 2011 the City's consultant spoke with Sunset's management and was informed that Sunset would not be continuing in the negotiations process unless the City was unable to come to terms with WM or the City Council was not satisfied with WM's implementation under the interim franchise.

On September 1, 2011 the City reached agreement with WM on the business terms, services, and customer rates for the long-term franchise agreement. A summary of the key business terms and services are provided below.

Summary of Services and Key Business Terms

The services proposed to be provided by WM are described in detail in the franchise agreement and summarized below:

- Residential Solid Waste Collection
 - Weekly
 - 35-, 65-, and 95-Gallon Carts
 - Variable Rates Based on Container Size

- Residential Recycling Collection
 - Bi-Weekly
 - Up to 2 Carts at No Charge
- Residential Bulky Waste Collection Program
 - 3 Times per Year
 - Up to 3 Cubic Yards per Event
 - Additional Bulky Collections for a Fee
- Commercial Solid Waste Collection
 - 1-5 Times per Week
 - 95-Gallon Carts; 1.5-, 3-, 4-, and 6-Cubic Yard Bins; Various Roll-off Boxes and Compactors
- Commercial Recycling Collection
 - Bi-weekly at No Charge; 1-5 Times per Week for Fee
 - 95-Gallon Carts; 1.5-, 3-, 4-, and 6-Cubic Yard Bins; Various Roll-off Boxes and Compactors
- Contract Term
 - 7 Years (or 10 Years, at Council Direction) Initial Term
 - Total Term Up to 12 Years
- Rate Adjustments
 - Annually
 - Employment Cost Index to Adjust Labor Costs; Fuel Index to Adjust Fuel Cost; Consumer Price Index to Adjust Other Costs
 - Pass-through of County Disposal Charges
 - Process for Evaluating Changes for: Change in Law or City-Directed Change in Service
- Service Enhancements Offered by WM
 - Median weed abatement
 - Sharps drop off for residents and free mail back program.
 - Container exchange program once per year upon request.
 - Recycling rewards program for residents and businesses.
 - Recycling and green waste drop off facility at City's corp. yard.
 - Household battery recycling at select drop off locations.
 - Multi-family recycling toolkit.
 - "Greening" of City Hall per compliance plan.
 - On-site newspaper collection at largest generator in the City.
 - Green business certification.
 - Seasonal recycling offered for first two weeks of each year. Up to 5 bags of recyclables set out curbside at no additional charge.
 - Builder's direct desk to help contractor's determine the best containers or services for a construction/demolition project.
 - Commercial wet/dry selection pilot program.
 - Green Works, a workplace recycling incentive program.
 - Free unlimited community reuse drop off event.
 - CRV fundraising challenge in all schools.

Attachment A – Initial Customer Rates for Services

Type of Service	Receptacle	Service Frequency (Pick-Ups/Week)	Rate Factor	Total Rate
Regularly Scheduled Solid Waste Cart Services				
Solid Waste	One 35-gallon cart (Residential)	1	0.80	\$11.96
Solid Waste	One 65-gallon cart (Residential)	1	0.90	\$13.46
Solid Waste	One 95-gallon cart (Residential)	1	1.00	\$14.95
Solid Waste	Additional 95-gallon cart (Residential)	1	0.47	\$7.00
Solid Waste	Commercial 95-gallon cart	1	2.41	\$36.00
Regularly Scheduled Commercial Solid Waste Bin Services				
Solid Waste	1.5 cubic yard container	1	1.00	\$109.40
Solid Waste	1.5 cubic yard container	2	1.61	\$175.67
Solid Waste	1.5 cubic yard container	3	2.21	\$242.03
Solid Waste	1.5 cubic yard container	4	2.82	\$308.21
Solid Waste	1.5 cubic yard container	5	3.42	\$374.59
Solid Waste	3 cubic yard container	1	1.45	\$158.55
Solid Waste	3 cubic yard container	2	2.33	\$254.59
Solid Waste	3 cubic yard container	3	3.21	\$350.78
Solid Waste	3 cubic yard container	4	4.06	\$444.68
Solid Waste	3 cubic yard container	5	4.96	\$542.89
Solid Waste	4 cubic yard container	1	1.67	\$182.34
Solid Waste	4 cubic yard container	2	2.68	\$292.78
Solid Waste	4 cubic yard container	3	3.69	\$403.39
Solid Waste	4 cubic yard container	4	4.70	\$513.68
Solid Waste	4 cubic yard container	5	5.71	\$624.32
Solid Waste	6 cubic yard container	1	2.32	\$253.68
Solid Waste	6 cubic yard container	2	3.72	\$407.35
Solid Waste	6 cubic yard container	3	5.13	\$561.24
Solid Waste	6 cubic yard container	4	6.53	\$714.69
Solid Waste	6 cubic yard container	5	7.94	\$868.62
Note: Customers requesting split bin (a 3 cubic yard bin equally divided for recycling and garbage service in the same container) service will be charged at the 1.5 cubic yard Solid Waste container rate.				

Attachment A – Initial Customer Rates for Services

Regularly Scheduled Multi-Family Solid Waste Bin Services				
Solid Waste	1.5 cubic yard container	1	0.96	\$104.62
Solid Waste	1.5 cubic yard container	2	1.48	\$161.80
Solid Waste	1.5 cubic yard container	3	2.00	\$219.08
Solid Waste	1.5 cubic yard container	4	2.52	\$276.16
Solid Waste	1.5 cubic yard container	5	3.05	\$333.46
Solid Waste	3 cubic yard container	1	1.31	\$142.97
Solid Waste	3 cubic yard container	2	1.99	\$217.18
Solid Waste	3 cubic yard container	3	2.66	\$291.55
Solid Waste	3 cubic yard container	4	3.32	\$363.40
Solid Waste	3 cubic yard container	5	4.02	\$440.00
Solid Waste	4 cubic yard container	1	1.45	\$158.66
Solid Waste	4 cubic yard container	2	2.18	\$238.23
Solid Waste	4 cubic yard container	3	2.91	\$317.99
Solid Waste	4 cubic yard container	4	3.63	\$397.39
Solid Waste	4 cubic yard container	5	4.36	\$477.18
Solid Waste	6 cubic yard container	1	1.98	\$216.18
Solid Waste	6 cubic yard container	2	2.95	\$322.34
Solid Waste	6 cubic yard container	3	3.92	\$428.75
Solid Waste	6 cubic yard container	4	4.89	\$534.67
Solid Waste	6 cubic yard container	5	5.86	\$641.12
Note: Customers requesting split bin (a 3 cubic yard bin equally divided for recycling and garbage service in the same container) service will be charged at the 1.5 cubic yard Solid Waste container rate.				

Attachment A – Initial Customer Rates for Services

Regularly Scheduled Recyclable Materials Cart Services Available with Solid Waste Service				
Recyclable Materials	One 95-gallon cart (Residential)	Every Other Week	0.00	\$0.00
Recyclable Materials	Additional 95-gallon cart (Residential)	Every Other Week	0.00	\$0.00
Recyclable Materials	Commercial 95-gallon cart	Every Other Week	0.00	\$0.00
Recyclable Materials	Commercial 95-gallon cart	1	0.00	\$0.00
Regularly Scheduled Recyclable Materials Bin Services Available with Solid Waste Service				
Recyclable Materials	1.5 cubic yard container	Every Other Week	0.00	\$0.00
Recyclable Materials	1.5 cubic yard container	1	0.79	\$86.93
Recyclable Materials	1.5 cubic yard container	2	1.19	\$130.72
Recyclable Materials	1.5 cubic yard container	3	1.60	\$174.61
Recyclable Materials	1.5 cubic yard container	4	2.00	\$218.32
Recyclable Materials	1.5 cubic yard container	5	2.40	\$262.23
Recyclable Materials	3 cubic yard container	Every Other Week	0.00	\$0.00
Recyclable Materials	3 cubic yard container	1	1.04	\$113.60
Recyclable Materials	3 cubic yard container	2	1.51	\$164.70
Recyclable Materials	3 cubic yard container	3	1.97	\$215.94
Recyclable Materials	3 cubic yard container	4	2.42	\$264.90
Recyclable Materials	3 cubic yard container	5	2.91	\$318.16
Recyclable Materials	4 cubic yard container	Every Other Week	0.00	\$0.00
Recyclable Materials	4 cubic yard container	1	1.12	\$122.41
Recyclable Materials	4 cubic yard container	2	1.58	\$172.93
Recyclable Materials	4 cubic yard container	3	2.04	\$223.61
Recyclable Materials	4 cubic yard container	4	2.50	\$273.97
Recyclable Materials	4 cubic yard container	5	2.97	\$324.68
Recyclable Materials	6 cubic yard container	Every Other Week	0.00	\$0.00
Recyclable Materials	6 cubic yard container	1	1.50	\$163.79
Recyclable Materials	6 cubic yard container	2	2.08	\$227.57
Recyclable Materials	6 cubic yard container	3	2.67	\$291.57
Recyclable Materials	6 cubic yard container	4	3.25	\$355.13
Recyclable Materials	6 cubic yard container	5	3.83	\$419.17

Attachment A – Initial Customer Rates for Services

Type of Service	Receptacle	Service Frequency	Cost/Pull	Cost/Ton	Total Rate
Regularly Scheduled Collection Service (Monthly Rate not including rental & delivery fees which are charged separately)					
Solid Waste	3 cubic yard compactor	1 pickup/week	\$131.14	\$40.50	\$171.64
Solid Waste	6 cubic yard compactor	1 pickup/week	\$146.02	\$40.50	\$186.52
Solid Waste	10 cubic yard compactor	1 pickup/week	\$190.00	\$40.50	\$230.50
Solid Waste	20 cubic yard compactor	1 pickup/week	\$190.00	\$40.50	\$230.50
Recyclable Material	3 cubic yard compactor	1 pickup/week	\$131.14	\$0.00	\$131.14
Recyclable Material	6 cubic yard compactor	1 pickup/week	\$146.02	\$0.00	\$146.02
Recyclable Material	10 cubic yard compactor	1 pickup/week	\$136.00	\$0.00	\$136.00
Recyclable Material	20 cubic yard compactor	1 pickup/week	\$136.00	\$0.00	\$136.00
On-Call Collection Service (Per Pick-Up Rate not including rental and delivery fees which are charged separately)					
Solid Waste	10 cubic yard drop box	On-call pickup	\$190.00	\$40.50	\$230.50
Solid Waste	20 cubic yard drop box	On-call pickup	\$190.00	\$40.50	\$230.50
Solid Waste	30 cubic yard drop box	On-call pickup	\$190.00	\$40.50	\$230.50
Solid Waste	40 cubic yard drop box	On-call pickup	\$190.00	\$40.50	\$230.50
Solid Waste	3 cubic yard compactor	On-call pickup	\$131.14	\$40.50	\$171.64
Solid Waste	6 cubic yard compactor	On-call pickup	\$146.02	\$40.50	\$186.52
Solid Waste	10 cubic yard compactor	On-call pickup	\$190.00	\$40.50	\$230.50
Solid Waste	20 cubic yard compactor	On-call pickup	\$190.00	\$40.50	\$230.50
Recyclable Material	10 cubic yard drop box	On-call pickup	\$136.00	\$0.00	\$136.00
Recyclable Material	20 cubic yard drop box	On-call pickup	\$136.00	\$0.00	\$136.00
Recyclable Material	30 cubic yard drop box	On-call pickup	\$136.00	\$0.00	\$136.00
Recyclable Material	40 cubic yard drop box	On-call pickup	\$136.00	\$0.00	\$136.00
Recyclable Material	3 cubic yard compactor	On-call pickup	\$131.14	\$0.00	\$131.14
Recyclable Material	6 cubic yard compactor	On-call pickup	\$146.02	\$0.00	\$146.02
Recyclable Material	10 cubic yard compactor	On-call pickup	\$136.00	\$0.00	\$136.00
Recyclable Material	20 cubic yard compactor	On-call pickup	\$136.00	\$0.00	\$136.00

Attachment A – Initial Customer Rates for Services

Other Services				
Extra bulky waste collection frequency (beyond 3 per year)	N.A.	Per occurrence	N.A.	\$16.70
Extra Appliance or Bulky Waste Item Collection (beyond 1 per event)	N.A.	Per item	N.A.	\$2.85
Extra bulky waste collection volume (beyond 3 cubic yards per event)	N.A.	Per cubic yard per occurrence	N.A.	\$5.50
On-Property Service (Except Senior & Disabled Customers)	N.A.	Per Month	N.A.	\$27.75
Extra can or bag of Solid Waste collected on customer's regularly scheduled collection day	32-gal can or bag	Per occurrence	N.A.	\$2.85
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.	\$5.50
Extra pick-up for on-call service or overage pick-up service for regular container customers	1.5 to 6 cubic yard container	Per cubic yard per occurrence	N.A.	\$19.23
Lock/unlock	N.A.	Per Month	N.A.	\$28.25
Steam cleaning	N.A.	Per occurrence	N.A.	\$75.00
Customers requesting recycling service only will be billed at the same rate as regularly scheduled solid waste service.				

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CITY COUNCIL/REDEVELOPMENT AGENCY/FINANCING AUTHORITY AGENDA ITEM

SUBJECT:

Introduction and First Reading, An Ordinance Of The City Council Of The City Of Ridgecrest Approving The Granting Of A Franchise For Solid Waste Collection Services To Waste Management Of California, Inc.

PRESENTED BY:

Keith Lemieux – City Attorney

SUMMARY:

The Legislature of the State of California, by enactment of the California Integrated Waste Management Act of 1989 ("AB 939") and subsequent modifications thereto, established a Solid Waste management process which requires cities and other local jurisdictions to implement source reduction, reuse and Recycling as integrated waste management practices. The City is obligated not only to abide by the provisions of Assembly Bill 939 (AB 939) but to protect the public health and safety of the residents of the City.

Pursuant to recent court rulings, the current Solid Waste Franchise expired on September 2, 2011. City of Ridgecrest adopted urgency ordinance no. 11-01 on August 3, 2011 which outlines a procedure for authorizing an interim franchise to provide an alternative procedure to issue interim franchises where necessary to preserve public health and safety. Additionally, City of Ridgecrest released a Request for Proposals (RFP) for companies interested in assuming a Solid Waste Franchise in the City of Ridgecrest. Results of the RFP were heard at the regular Council meeting of August 17, 2011 and Resolution No. 11-67 was approved authorizing an interim franchise to Waste Management of California, Inc.

The City Council has selected Contractor through a competitive procurement process and this ordinance will approve the granting of a franchise for solid waste collection service to Waste Management of California, Inc. (Exhibit A)

This ordinance is brought before Council for Introduction and First Reading and requires two motions as listed below.

1. Motion To Waive Reading In Full Of An Ordinance Of The City Council Of The City Of Ridgecrest Approving The Granting Of A Franchise For Solid Waste Collection Services To Waste Management Of California, Inc.

Requires A Second

2. Motion To Introduce, By Title Only, An Ordinance Of The City Council Of The City Of Ridgecrest Approving The Granting Of A Franchise For Solid Waste Collection Services To Waste Management Of California, Inc.

Requires A Second

FISCAL IMPACT:

Revenue to the City of 10% of Gross Receipts

Reviewed by Finance Director

ACTION REQUESTED:

Approve the following two motions:

3. Motion To Waive Reading In Full Of An Ordinance Of The City Council Of The City Of Ridgecrest Approving The Granting Of A Franchise For Solid Waste Collection Services To Waste Management Of California, Inc.

Requires A Second

4. Motion To Introduce, By Title Only, An Ordinance Of The City Council Of The City Of Ridgecrest Approving The Granting Of A Franchise For Solid Waste Collection Services To Waste Management Of California, Inc.

Requires A Second

CITY MANAGER / EXECUTIVE DIRECTOR RECOMMENDATION:

Action as requested: Approve the aforementioned motions

Submitted by: Keith Lemieux
(Rev. 6/12/09)

Action Date: September 7, 2011

ORDINANCE NO. _____

**AN ORDINANCE OF THE CITY COUNCIL OF THE
CITY OF RIDGECREST
APPROVING THE GRANTING OF A FRANCHISE
FOR SOLID WASTE COLLECTION SERVICES TO
WASTE MANAGEMENT OF CALIFORNIA, INC.**

WHEREAS, the Legislature of the State of California, by enactment of the California Integrated Waste Management Act of 1989 ("AB 939") and subsequent modifications thereto, established a Solid Waste management process which requires cities and other local jurisdictions to implement source reduction, reuse and Recycling as integrated waste management practices; and

WHEREAS, AB 939 authorizes and requires local agencies to make adequate provisions for Solid Waste handling within their jurisdictions; and

WHEREAS, Section 40059 of the State Public Resources Code provides that the City may determine aspects of Solid Waste handling which are of local concern, including, but not limited to, frequency of Collection, means of Collection and Transportation, level of services, charges and fees and nature, location, and extent of providing Solid Waste handling services and whether the services are to be provided by means of partially exclusive or wholly exclusive Agreements, contracts, licenses, permits or otherwise; and

WHEREAS, the City is obligated to protect the public health and safety of the residents of the City and arrangements by waste haulers for the Collection of Solid Waste should be made in a manner consistent with the protection of public health and safety; and

WHEREAS, the City has entered into a compliance plan with CalRecycle in order to come into full compliance with AB939 and the implementation of and continued compliance with that plan and the City's Source Reduction and Recycling Element (SRRE) will become the primary responsibility of the City's franchise trash hauler; and

WHEREAS, the City Council determines and finds that the public interest, health, safety and well being would be served if the franchise trash hauler performs these services for Residential and Commercial Customers; and

WHEREAS, in accordance with Section 40059 of the State Public Resources Code, the City Council is empowered to enter into agreements with any Person or corporation and to prescribe the terms and conditions of such agreements; and

WHEREAS, the City Council has selected Contractor through a competitive procurement process; and

WHEREAS, Ridgecrest Municipal Code Section 3-5.105 requires that any franchise granted by the City be granted pursuant to an ordinance following a public hearing; and

WHEREAS, the City has conducted a duly-noticed public hearing and received comments from the public;

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF RIDGECREST as follows:

Pursuant to Ridgecrest Municipal Code Section 3-5.105, the City Council of the City of Ridgecrest does hereby approve and adopt the Franchise Agreement that is attached as Exhibit "A" to this ordinance with Waste Management of California, Inc., and authorizes the Mayor to sign this agreement. Pursuant to Ridgecrest Municipal Code Section 3-5.105(c), this franchise will be accepted in writing after first reading of the ordinance and before adoption of the ordinance.

PASSED, APPROVED, AND ADOPTED at a regular meeting of said City Council held on _____, 2011, by the following roll call vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

Ronald H. Carter, Mayor

ATTEST:

Rachel J. Ford, City Clerk

(Seal)

SOLID WASTE FRANCHISE AGREEMENT
BETWEEN
THE CITY OF RIDGECREST, CALIFORNIA
AND
WASTE MANAGEMENT OF CALIFORNIA, INC.,
A WASTE MANAGEMENT COMPANY

September 7, 2011

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- B. Rate Adjustment Methodology**
- C. Contractor's Proposal**
 - C1. Technical Proposal**
 - C2. Cost Basis for Proposal**
 - C3. Initial Rates for Collection Services**
 - C4. Implementation Plan and Schedule**
 - C5. Public Education and Outreach Plan**
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 - C7. Approved Subcontractors**
- D. Reporting Requirements**
- E. Form of Performance Bond**
- F. City's Source Reduction and Recycling Element**
- G. CalRecycle/City of Ridgecrest Compliance Order**
- H. City Service Locations**

SOLID WASTE FRANCHISE AGREEMENT

This Solid Waste Franchise Agreement (the "Agreement") is entered into on the seventh day of September, 2011, by and between the City of Ridgecrest (hereinafter, the "City"), and Waste Management of California, Inc., a California corporation, a Waste Management company (hereinafter, the "Contractor") (together, the "Parties").

RECITALS

WHEREAS, the Legislature of the State of California, by enactment of the California Integrated Waste Management Act of 1989 ("AB 939") and subsequent modifications thereto, established a Solid Waste management process which requires cities and other local jurisdictions to implement source reduction, reuse and Recycling as integrated waste management practices; and

WHEREAS, AB 939 authorizes and requires local agencies to make adequate provisions for Solid Waste handling within their jurisdictions; and

WHEREAS, Section 40059 of the State Public Resources Code provides that the City may determine aspects of Solid Waste handling which are of local concern, including, but not limited to, frequency of Collection, means of Collection and Transportation, level of services, charges and fees and nature, location, and extent of providing Solid Waste handling services and whether the services are to be provided by means of partially exclusive or wholly exclusive Agreements, contracts, licenses, permits or otherwise; and

WHEREAS, the City is obligated to protect the public health and safety of the residents of the City and arrangements by waste haulers for the Collection of Solid Waste should be made in a manner consistent with the protection of public health and safety; and

WHEREAS, the City has entered into a compliance plan with CalRecycle in order to come into full compliance with AB939 and the Parties understand that the implementation of and continued compliance with that plan and the City's Source Reduction and Recycling Element (SRRE) will become the primary responsibility of the Contractor; and

WHEREAS, the City and the Contractor are mindful of the provisions of the laws governing the safe Collection, Transport, Recycling, and Disposal of Solid Waste, including AB 939 and the Resource Conservation and Recovery Act 42 U.S.C. 9601 et seq.; and

WHEREAS, the City Council determines and finds that the public interest, health, safety and well being would be served if the Contractor performs these services for Residential and Commercial Customers; and

WHEREAS, in accordance with Section 40059 of the State Public Resources Code, the City Council is empowered to enter into agreements with any Person or corporation and to prescribe the terms and conditions of such agreements; and

WHEREAS, the City Council has selected Contractor through a competitive procurement process and has authorized the execution of this Agreement on September 7, 2011; and

37 WHEREAS, neither the City nor Contractor could anticipate all of the possible needs,
38 considerations, or eventualities that may arise during the Term of this Agreement and the Parties agree
39 that they will work together in a spirit of mutual cooperation to resolve any such issues as and when
40 they arise;

41 NOW THEREFORE, in consideration of the respective and mutual covenants and promises
42 herein, and subject to all the terms and conditions hereof, the Parties agree as follows:

ARTICLE 1: GRANT AND ACCEPTANCE OF FRANCHISE

Section 1.1: Grant and Limitations of Exclusive Franchise

By the signing of this Agreement, the City grants to Contractor and Contractor accepts an exclusive franchise within the corporate limits of the City. Subject to the Municipal Code, the franchise granted to Contractor shall be the exclusive right to collect, transport, handle, process, recycle, and, dispose of all Solid Waste (including Greenwaste, Recyclable Materials, Construction & Demolition Waste and Food Waste) generated by Residential Premises and Non-Residential Premises in the City, as more particularly set out in the scope of services described in Article 4 of this Agreement and subject to the limitations described below in Section 1.1.A and except where otherwise precluded by Federal, State, and local laws and regulations.

A. **Limitations to Exclusivity.** The award of this Agreement shall not preclude the categories of Solid Waste and Recyclable 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 the City which is otherwise required by law:

1. **Recyclable Materials.** Other Persons shall maintain the right to accept donated Recyclable Materials and to pay the service recipient for Recyclable Materials so long as there is no net payment made by the service recipient to such other Person;
2. **Self-Hauled Materials.** A Commercial business Owner or Resident may Dispose of Solid Waste and Recyclable Materials generated in or on their own Premises using their own vehicles and equipment, and, with respect to a commercial business, its own employees;
3. **Donated Materials.** Any items which are donated by the Generator to youth, civic, or charitable organizations;
4. **Beverage Containers.** Containers delivered for Recycling under the California Beverage Container Recycling and Litter Reduction Act, Section 14500, et seq. California Public Resources Code;
5. **Materials Removed by Customer's Contractor as Incidental Part of Services.** Solid Waste and/or Recyclable Materials removed from a Premises by a contractor (e.g., gardener, landscaper, tree-trimming service, construction contractor, Residential clean-out service), using its own employees, vehicles and equipment as an incidental part of the service being performed and such contractor is providing a service which is not included in the scope of this Agreement;
6. **Animal, Grease Waste, and Used Cooking Oil.** Animal waste and remains from slaughterhouse or butcher shops, grease, or used cooking oil;
7. **Sewage Treatment By-Product.** By-products of sewage treatment, including sludge, sludge ash, grit, and screenings;
8. **Excluded Waste.** Excluded Waste regardless of its source; and,

80 9. Materials Generated by State, County, and Federal Facilities. Materials generated by State,
81 County, and Federal facilities located in the City.

82 Contractor acknowledges and agrees that the City may permit other Persons besides the Contractor to
83 Collect any and all types of materials excluded from the scope of this Franchise, as set forth above,
84 without seeking or obtaining approval of Contractor. If Contractor can produce evidence that other
85 Persons are servicing Collection Containers or are Collecting and Transporting Solid Waste and/or
86 Recyclable Materials (collectively "Franchised Materials") in a manner that is not consistent with this
87 Agreement or the City's Municipal Code, it shall report the location, the name and phone number of the
88 Person or company to the City Contract Manager along with Contractor's evidence. In such case, the
89 City may notify the Generator and Person providing service of Contractor's rights under this Agreement.

90 This Agreement and scope of this franchise shall be interpreted to be consistent with Applicable Law,
91 now and during the Term of the Agreement. If future judicial interpretations of current law or new laws,
92 regulations, or judicial interpretations limit the ability of the City to lawfully contract for the scope of
93 services in the manner and consistent with all provisions as specifically set forth herein, Contractor
94 agrees that the scope of the Agreement will be limited to those services and materials which may be
95 lawfully included herein and that the Agency shall not be responsible for any lost profits or losses
96 claimed by Contractor to arise out of limitations to the scope or provisions of the Agreement set forth
97 herein. In such an event, it shall be the responsibility of Contractor to minimize the financial impact of
98 such future judicial interpretations or new laws and the Contractor may meet and confer with Agency
99 and may petition for a Rate adjustment pursuant to Section 8.3.

100 **ARTICLE 2: REPRESENTATIONS AND WARRANTIES**
101 **OF THE PARTIES**

102 **Section 2.1: Representations and Warranties**

103 The Parties, by acceptance of this Agreement, represent and warrant that:

- 104 A. **Existence and Powers.** The Parties are duly organized and validly existing under the laws of the
105 State of California, with full legal right, power, and authority to enter into and perform their
106 obligations under this Agreement.
- 107 B. **Due Authorization and Binding Obligation.** The Parties have duly authorized the execution and
108 delivery of this Agreement. This Agreement has been duly executed and delivered and constitutes
109 the legal, valid, and binding obligation of the Parties, enforceable against the Parties in accordance
110 with its terms, except insofar as such enforcement may be affected by bankruptcy, insolvency,
111 moratorium, and other laws affecting creditors' rights generally.
- 112 C. **No Conflict.** Neither the execution, nor the performance by the Parties of their obligations under
113 this Agreement: (1) conflicts with, violates, or results in a breach of any law or governmental
114 regulations applicable to either Party; or, (2) conflicts with, violates, or results in a breach of any
115 term or condition of any judgment, decree, franchise, agreement (including, without limitation,
116 the certificate of incorporation of the Contractor), or instrument to which the Contractor or any
117 Affiliate is a party or by which the Contractor or any Affiliate or any of their properties or assets
118 are bound, or constitutes a default under any such judgment, decree, agreement, or instrument.
119 The Parties have read and are aware of the provisions of Section 1090 et seq. and Section 87100
120 et seq. of the California Government Code relating to conflicts of interest for public officers and
121 employees. Contractor represents it is unaware of any financial or economic interest of any public
122 officer or employee of the City relating to this Agreement.
- 123 D. **No Litigation.** There is no action, suit, or other proceeding as of the Agreement Date, at law or in
124 equity, before or by any court or governmental authority, pending, or to the Parties' best
125 knowledge, threatened against the either Party which is likely to result in an unfavorable decision,
126 ruling, or finding which would materially and adversely affect the validity or enforceability of this
127 Agreement or any such agreement or instrument entered into by either Party in connection with
128 the transactions contemplated hereby, or which would materially and adversely affect the
129 performance by that Party of its obligations hereunder or by the Contractor under any such other
130 agreement or instrument.
- 131 E. **No Legal Prohibition.** The Parties have no knowledge of any Applicable Law in effect on the
132 Agreement Date which would prohibit the performance by either Party of this Agreement and the
133 transactions contemplated hereby.
- 134 F. **Contractor's Statements.** The Contractor's Proposal and any other supplementary information
135 submitted to the City, which the City has relied on in awarding and entering this Agreement, do
136 not: (i) contain any untrue statement of a material fact, or (ii) omit to state a material fact that is
137 necessary in order to make the statements made, in light of the circumstances in which they were
138 made, not misleading.

- 139 G. **Contractor's Investigation.** Contractor has made an independent investigation (satisfactory to it)
140 of the conditions and circumstances surrounding the Agreement and the work to be performed
141 hereunder. Contractor has taken such matters into consideration in entering this Agreement to
142 provide services in exchange for the compensation provided for under the terms of this
143 Agreement.
- 144 H. **Ability to Perform.** Contractor possesses the business, professional, and technical expertise to
145 manage, Collect, Transport, and Dispose of the Solid Waste and to manage, Collect, Transport, and
146 Process Recyclable Materials and Compostable Materials; and Contractor possesses the
147 equipment, facility, and employee resources required to perform this Agreement.
- 148 I. **Voluntary Use of Designated Disposal Facility.** The Contractor, without constraint and as a free-
149 market business decision in accepting this Agreement, agrees to use the Approved Disposal
150 Location for the purposes of Disposing of all Solid Waste Collected in the City. Such decision by
151 Contractor in no way constitutes a restraint of trade notwithstanding any Change in Law regarding
152 flow control limitations or any definition thereof.

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ARTICLE 3: TERM OF AGREEMENT

154 **Section 3.1: Term of Agreement**

155 The Term of this Agreement is from the Agreement Date of October 1, 2011 through December 31, 2018
156 and shall continue in full force for a period of seven (7) years and three (3) months, unless earlier
157 terminated pursuant to Section 3.3 hereof. The Agreement may be extended in accordance with this
158 Section or terminated pursuant to Article 13.

159 **Section 3.2: City's Option to Extend**

160 This Agreement may be extended without amendment for a period of no less than one (1) year and no
161 more than five (5) additional years for a total Term that does not exceed twelve (12) years and three (3)
162 months, upon mutual agreement of the parties. If the City desires to extend the Agreement, the City
163 shall provide the Contractor with written notice of its desire to extend the Agreement at least one
164 hundred eighty (180) days before the expiration of the Term. Such notice by the City shall specify the
165 desired duration of the extension.

166 **Section 3.3: Termination for Failure to Implement Services**

167 The Contractor has agreed herein, through either its own labor, equipment, and facilities or facilities
168 provided by others, to implement various programs in order to expand the types of services provided to
169 the City. Failure to implement the services described in this Agreement upon the commencement of this
170 Agreement for any reason, shall constitute an Event of Default in accordance with Section 13.1 hereof.

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ARTICLE 4: SCOPE OF SERVICES

Contractor shall perform the Services described in this Article 4. This Article 4 describes the requirements for the services to be provided including the types and sizes of Containers to be provided by Contractor, available Service Levels and frequencies, acceptable and prohibited materials, and any additional services to be provided to Customers who subscribe to that program. Failure to specifically require an act necessary to perform the service does not relieve Contractor of its obligation to perform such act.

Section 4.1: Residential Services

Contractor shall provide the services described in this Section 4.1 to any Residential Customer within the City who subscribes with Contractor for such service. The Residential sector includes Multiple-Unit Dwellings with four (4) or less units.

A. **Solid Waste Collection.** Contractor shall Collect Solid Waste in Contractor-provided Carts one (1) time per week from Residential Customers and Transport all Solid Waste to the Designated Disposal Facility for Disposal.

- Containers:** Carts
- Container Sizes:** 95-gallons (or similar size); 65-gallons (or similar size); and 35-gallons (or similar size)
- Service Frequency:** One (1) time per week
- Service Location:** Curbside
- Acceptable Materials:** Solid Waste
- Prohibited Materials:** Recyclable Materials, Excluded Waste
- Additional Service:** Contractor shall provide additional Solid Waste Carts to Residential Customers upon request and may charge the “Additional Solid Waste Cart” Rate approved by the City.

B. **Recyclable Materials Collection.** Contractor shall Collect Recyclable Materials in Contractor-provided Containers one (1) time every other week from Residential Customers and Transport all Recyclable Materials to the Approved Recyclable Materials Processing Facility for Processing.

- Containers:** Carts
- Container Sizes:** 95-gallons (or similar size)
- Service Frequency:** One (1) time every other week on the same day as Solid Waste Collection
- Service Location:** Curbside
- Acceptable Materials:** Recyclable Materials
- Prohibited Materials:** Solid Waste, Excluded Waste
- Additional Service:** Contractor shall provide one (1) additional Recyclable Materials Cart to Residential Customers upon request at no additional charge and may charge the “Additional Recycling Cart” Rate approved by the City for any Carts requested by a Residential Customer which exceeds two (2). During the first two (2) Collection Days of each year for each Residential Customer, Contractor shall Collect up to an additional five (5) bags of

211 Recyclables set out curbside at no additional cost to the Customer to
212 accommodate additional Recyclables generated during the Holidays.

213 **Section 4.2: Commercial Services**

214 Contractor shall provide the services described in this Section 4.2 to any Commercial Customer within
215 the City who subscribes with Contractor for such service. The Commercial sector includes Multiple-Unit
216 Dwellings with five (5) or more units.

217 A. **Solid Waste Collection.** Contractor shall Collect Solid Waste in Contractor-provided Containers not
218 less than one (1) time per week from Commercial Customers and Transport all Solid Waste to the
219 Designated Disposal Facility for Disposal.

220 **Containers:** Carts, Bins, Drop Boxes, Compactors

221 **Container Sizes:** 95-gallon Carts;

222 1.5-, 3-, 4-, and 6- cubic yard Bins; and,

223 Drop Boxes or Compactors (as requested by Customer)

224 **Service Frequency:** Up to five (5) times per week but not less than one (1) time per week, as
225 requested by Customer

226 **Service Location:** Curbside; or other Customer-selected service location at the
227 Commercial Premises (push/pull charges may apply if Container is not
228 immediately accessible by the Collection Vehicle).

229 **Acceptable Materials:** Solid Waste

230 **Prohibited Materials:** Recyclable Materials, Excluded Waste

231 **Additional Service:** Upon Customer request and to accommodate periodic additional
232 service needs, Contractor shall provide Collection service at a greater
233 frequency than the Customer's regularly scheduled service, up to the
234 maximum Service Frequency and Contractor may charge the
235 appropriate Rate for the higher Service Frequency.

236 Contractor shall provide a Bin exchange to any Commercial Customer
237 for cleaning and maintenance once (1) each year, upon Customer
238 request.

239 **Other Requirements:** Contractor shall, at Customer's request and for an additional charge,
240 open and close gates, push and/or pull Containers, lock and unlock
241 Containers, or perform other services as reasonably necessary to access
242 and empty Containers.

243 B. **Recyclable Materials Collection.** Contractor shall Collect Recyclable Materials in Contractor-
244 provided Containers not less than one (1) time every other week and, when appropriate based on
245 the volume of Recyclable Materials generated, up to one (1) time per week from Commercial
246 Customers and Transport all Recyclable Materials to the Approved Recyclable Materials Processing
247 Facility for Processing.

248 **Containers:** Carts, Drop Boxes, Compactors

249 **Container Sizes:** 96-gallon Carts;

250 1.5-, 3-, 4-, and 6- cubic yard Bins; and,

251 Drop Boxes or Compactors (as requested by Customer)

252 **Service Frequency:** Up to one (1) time per week but not less than one (1) time every other
 253 week, as requested by Customer
 254 **Service Location:** Curbside or other Customer-selected service location at the Commercial
 255 Premises (push/pull charges may apply if Container is not immediately
 256 accessible by the Collection Vehicle).
 257 **Acceptable Materials:** Recyclable Materials
 258 **Prohibited Materials:** Solid Waste, Excluded Waste
 259 **Additional Service:** Upon Customer request and to accommodate periodic additional
 260 service needs, Contractor shall provide Collection service at a greater
 261 frequency than the Customer’s regularly scheduled service, up to the
 262 maximum Service Level and Contractor may charge the appropriate
 263 Rate for the higher Service Level.
 264 **Other Requirements:** Contractor shall, at Customer’s request and for an additional charge,
 265 open and close gates, push and/or pull Containers, lock and unlock
 266 Containers, or perform other services as reasonably necessary to access
 267 and empty Containers.

268 **Section 4.3: Collection Service Operating Requirements**

- 269 A. **Regular Hours of Service.** The Contractor shall schedule no Collections from any Premises on any
 270 day earlier than 6:00 a.m. or later than 6:00 p.m. provided, however, that the City may, at its sole
 271 discretion, change the Collection time as required by the needs of the Customers or the
 272 Contractor.
- 273 B. **Emergency Service.** Collections of Solid Waste necessitated by an emergency, which the City
 274 Contract Manager determines threatens the public health and safety within the City will be made
 275 by the Contractor at the direction of the City Contract Manager. Such Emergency Services may be
 276 required outside of the regular Collection hours and schedule. If the City requests the Contractor
 277 to provide Emergency Services, the Contractor will use the Contractor's good faith best efforts to
 278 respond to such a request. The City shall reimburse the Contractor for all documented and
 279 reasonable costs incurred in order to comply with the provisions of this Section.
- 280 C. **Noise Levels.** The Contractor shall perform the Collection Services in a manner that minimizes the
 281 noise resulting from its equipment and personnel and shall ensure that it is in compliance with
 282 Applicable Law and the City’s Municipal Code.
- 283 D. **Holidays.** Collection of Solid Waste and Recyclable Materials shall not be required on the following
 284 legal holidays: New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day
 285 and Christmas Day, except in case of emergency or as otherwise required by the City Contract
 286 Manager. Whenever a regular Collection falls on such a holiday, the Collection shall be made on
 287 the following working day, and Collections throughout the City shall become current within one
 288 (1) week thereafter. Written notice of this policy shall be provided to Customers no more than
 289 thirty (30) days prior to such alternative service day. Collection shall not be rescheduled when the
 290 holiday falls on a Saturday or Sunday, unless otherwise agreed to by the City and the Contractor.
- 291 E. **Preservation of Public Health and Safety.** The Contractor shall at all times operate in such a
 292 manner as to protect the public health and safety. The Contractor agrees to establish procedures
 293 and educate its employees as to such procedures regarding proper methods for the protection of

294 the general public, including, but not limited to, arranging for the proper and legal Disposal of
295 hazardous substances encountered during its performance under this Agreement.

296 **Section 4.4: Other Services**

297 A. **Bulky Waste Collection.** Contractor shall offer Bulky Waste Collection Services to Residential
298 Customers on an on-call basis up to three (3) times per year (as requested by Customer) within
299 five (5) Business Days after the Customer-requested service date at no additional charge to
300 Customers. Contractor shall offer additional service levels and frequencies to Customers upon
301 request for an additional charge. Contractor shall make reasonable efforts to schedule on-call
302 Bulky Waste Collections on a day that is convenient to the Customer.

303 Contractor shall Collect Bulky Waste from Customers and Transport the Bulky Waste to the
304 Designated Disposal Facility.

- 305 **Containers:** Not applicable
- 306 **Service Level:** Up to three (3) cubic yards of Solid Waste, Recyclable Materials, and E-
307 Waste OR up to one (1) Appliance or Bulky Waste Item
- 308 **Service Frequency:** Up to three (3) times per year (as requested by Customer)
- 309 **Service Location:** Curbside
- 310 **Acceptable Materials:** Solid Waste, Recyclable Materials, Bulky Waste, E-Waste, and U-Waste
- 311 **Prohibited Materials:** Excluded Waste or any single item that exceeds two hundred (200) lbs.
312 in weight
- 313 **Additional Service:** Contractor shall Collect additional items that exceed the above
314 described service level and may charge the "Additional Bulky Waste
315 Item" Rate approved by the City (as requested by Customer).
316 Contractor shall provide additional Collection events for a Customer
317 beyond three (3) per year and may charge the "Additional Bulky Waste
318 Item Collection" Rate approved by the City.
- 319 **Other Requirements:** The Contractor shall provide the service to the Customer within five (5)
320 Business Days of the Customer's requested service date, as mutually
321 agreed upon by the Customer and Contractor.

322 B. **City Facilities and Events.** Contractor shall Collect Solid Waste and Recyclable Materials from City
323 facilities in the same manner as those services are provided to Commercial Customers. Contractor
324 shall provide service to all City facilities identified in Exhibit G as well as any future facilities owned
325 and operated by the City. Contractor shall provide Solid Waste and Recyclable Materials services
326 to City-sponsored public event held within the City to include, at a minimum, Carts for the
327 collection of both Solid Waste and Recyclable Materials and staffing sufficient to ensure that such
328 Carts are serviced frequently enough to prevent overflowing or spillage. Contractor shall provide
329 these services at no cost to the City or Customers.

330 In addition to the services described above, the Contractor shall provide City Hall with technical
331 assistance. This shall involve an assessment of its current Recycling Service Levels. The Contractor
332 shall supply City Hall with an adequate number of Recycling Containers, educational materials,
333 conduct a kick off meeting, and provide training of custodial staff.

334 C. **Christmas Trees.** The Contractor shall Collect all Christmas trees properly placed curbside by
335 Residential Premises on the first two (2) regularly scheduled Collection days after Christmas Day,
336 or such other days as agreed by the City Contract Manager and the Contractor, free of any
337 additional charge to any Customer.

338 D. **Special Services.** The Contractor shall have the right, but not the obligation, to provide additional
339 Special Services requested by any Customer which are directly related or ancillary to any of the
340 other Collection Services authorized hereunder. The nature and terms of any such Special Services
341 shall be negotiated with the Customer and compensation therefore shall be paid by the
342 requesting Customer. In the event that Customer and Contractor cannot agree on a rate, the
343 Contractor shall provide the City with information supporting the level of Rate proposed by the
344 Contractor. Upon receipt and review of such information, the City may set the Rate, which shall
345 become binding on the Contractor.

346 E. **Illegal Dumping.** Contractor shall, at all times, take reasonable measures to keep the roads and
347 streets in the City free from litter from the operations of its Operating Assets. In addition, within
348 the City, the Contractor shall, without charge to the City or Customers:

349 1. Cleanup three (3) cubic yards or less per event of non-Hazardous Waste from public areas
350 within one (1) Business Day, upon request by City;

351 2. Cleanup three (3) Bulky Waste Items or less per event of unquestionably discarded Bulky
352 Waste from public roadways or alleys when observed by Contractor’s personnel; and,

353 3. Provide Containers and Collection service for cleanup by City-provided labor crews and City-
354 coordinated volunteer cleanups of over three (3) cubic yards of illegally dumped waste.

355 Contractor shall work with the County to deliver such illegally dumped waste at the Designated
356 Disposal Facility at no additional charge to the City or Contractor. In the event that the Designated
357 Disposal Facility is required to charge for the receipt of such materials, the City and Contractor
358 shall meet and confer regarding the cost of Disposal of material related to this program and
359 Contractor shall be relieved of its requirement to Dispose of this material until arrangements can
360 be made for payment of such charges.

361 F. **Public Education and Outreach.** The Contractor shall perform all public education and outreach
362 activities as described in its Public Education and Outreach Plan in Exhibit C5.

363 G. **Median Weed Abatement.** Contractor shall perform monthly weed abatement on City medians
364 located on, at least, Drummond, Downs, and China Lake Boulevard. Collected material will be
365 diverted to the extent possible dependant on the composition of the material and volume
366 collected. Contractor shall provide this service through its own forces or the use of a
367 subcontractor. The Contractor’s annual budget for this program shall be five thousand dollars
368 (\$5,000). The Parties agree to meet on or about October 1, 2011 and thereafter prior to the
369 commencement of each Rate Year to develop the specifications and budget for the weed
370 abatement program.

371 H. **Recycling Participation Incentive Program.** Contractor shall provide and promote the “Think
372 Green Rewards Program” to Residential Customers that will award points to program participants
373 based on the amount of Recyclable Materials Collected on each Residential route. Points shall be

374 redeemable for discount coupons for local and national retail stores and restaurants and as
375 donations to charitable organizations or schools. Contractor will provide detailed specifications for
376 the Recycling Participation Incentive program for review and approval by City on or before January
377 1, 2012 and each June 1 thereafter beginning on June 1, 2013.

378 I. **WM Lamp Tracker Recycling for City Facilities.** Contractor shall provide all City facilities with a
379 fluorescent lighting recycling program using a mail-back program through United Parcel Service, or
380 some other Contractor selected parcel service which approves the shipment of such material.
381 Service shall be provided in various sizes and container types to accommodate various sizes
382 lighting. Container types and sizes shall include: four (4) foot, six (6) foot, and eight (8) foot
383 straight tubes, compact fluorescent bulbs, high intensity discharge (metal halide or sodium),
384 ultraviolet lighting, and “U-bent” lighting. Contractor shall offer this service to the City at a not to
385 exceed annual dollar value of one thousand dollars (\$1,000.00).

386 J. **Sharps Collection Program.** Contractor shall provide any Residential Customer with a Sharps home
387 delivery program, upon request. Contractor shall deliver an approved container to the requesting
388 Residential Customer’s home within one (1) week of request. Delivery of the container shall also
389 include recycling awareness materials and the approved sharps container. To ensure maximum
390 customer convenience, the collection of Sharps containers will be administered through a one and
391 four tenths (1.4) quart, postage paid, container approved by the United States Postal Service (or
392 other parcel service) for shipment of such material. Customers using the mail-based service will
393 receive one (1) sharps container/ mailing kit per calendar year at no charge. Additional sharps
394 containers/ mailing kits will be available for a fee. Outreach efforts shall include advertising on
395 City-specific website, bill inserts, and Contractor’s community education and outreach activities.

396 K. **Senior Sharps Event.** To keep Sharps, lancets, needles and other medications out of the waste
397 stream Contractor shall host an annual “Sharps Round-Up” to be held at a local senior center in
398 order that residents will be able to drop off used Sharps and learn about the Sharps program at no
399 extra charge. The schedule for each drop-off event shall focus on convenience to senior citizens,
400 shall allow drop-off for a minimum of four hours per event, and shall be approved by the City
401 Contract Manager.

402 L. **Community Drop Off Battery Recycling Program.** Contractor shall provide the City with postage-
403 paid 1.25- and 3.5-gallon buckets for alkaline-nickel batteries (Alkaline, Carbon-Zinc, NiCad, NiMH,
404 Silver Oxide, and Mercury) and postage-paid 5-gallon buckets for lead-acid batteries, upon request
405 by the City. Buckets shall be provided for up to four (4) select drop off locations, which will be
406 designated by the City Contract Manager and may include, but shall not be limited to, such
407 locations as the library, City Hall, or senior center. Residents may drop off their batteries at no
408 charge. City shall be responsible for mailing the full buckets to the recycling facility and Contractor
409 shall, within five (5) Business Days supply a replacement container. Contractor shall offer this
410 service to the City at a not to exceed annual dollar value of one thousand dollars (\$1,000).

411 M. **Newspaper Collection.** Contractor shall work with the City’s largest newspaper generator to
412 establish or enhance the current on-site newspaper recycling program.

413 N. **Green Business Certification.** The Contractor shall work with the City and Chamber of Commerce
414 to certify and recognize “green” businesses in the community. To participate, businesses may
415 complete an application with information about energy conservation, water conservation,

416 environmentally preferable purchasing, and waste reduction practices and other environmentally-
417 conscious policies practiced. Contractor shall work with the City to determine appropriate
418 requirements for certifying a business as a "Green Business" and Contractor shall coordinate such
419 certifications with the City, at the request of any business in the City. Awards shall be presented
420 annually at an event determined mutually by the City and the Contractor.

421 O. **California Redemption Value (CRV) Fundraising Challenge.** Subject to the requirements of
422 Applicable Law, Contractor shall offer to host its CRV Fundraising Challenge to all schools in the
423 City annually, with prizes awarded for the school facilities collecting the largest number of CRV
424 containers. Contractor shall provide each participating school with the cash value of all CRV
425 containers collected from that school during the program period. Contractor will provide detailed
426 specifications for the CRV Fundraising Challenge for review and approval by the City on or before
427 January 1, 2012 and each June 1 thereafter starting with June 1, 2013.

428 P. **Multi-Family Recycling Toolkit.** Contractor shall distribute public education and outreach
429 materials for both building managers and residents on Multi-Family Recycling programs. Materials
430 shall be bilingual, full color, and graphically-based. Materials shall include, at a minimum: i) a
431 "personal recycling bin" for each Multiple-Unit Dwelling that requests one, ii) an introductory
432 letter about the new Recycling program, iii) a guide for the property manager with information on
433 how to manage a Multi-Family Recycling program, iv) door hangers, v) Recycling Container labels,
434 and vi) workshops at community outreach events. Contractor shall contact each individual
435 property manager during the first six months of this Agreement to introduce the program, provide
436 the Multi-Family Recycling Toolkit, and determine the best Recycling program for each Customer.

437 Q. **Container Signage and Recycling Education.** On or before July 1, 2013, Contractor shall undertake
438 a pilot program to test the feasibility of wrapping Commercial Recycling Containers not located in
439 enclosures with customized Recycling education and artwork. The initial pilot plan will be for fifty
440 (50) Containers. If determined to be feasible, this program may be continued as a Change in Scope
441 under Section 4.8 of this Agreement.

442 R. **Annual Reuse Collection Event.** The Contractor shall host an annual City-wide reuse drop off
443 event for the Collection of unlimited amounts of reusable items including, but not necessarily
444 limited to clothing, books, toys, and textiles from Residential Customers. Contractor shall avoid
445 the Disposal of and donate such reusable items to the greatest extent practicable. Contractor
446 shall use the reuse drop-off event as an opportunity to provide outreach and educational
447 materials regarding other services provided under this Agreement.

448 S. **Mini Recycling and Drop off Facility.** Contractor shall host the a Recyclable Materials drop off
449 facility at the City's corporate yard, or other location agreed-upon by the Contractor and City
450 Contract Manager, at no additional charge to the City. The Contractor shall provide Recyclable
451 Materials Bins at the drop-off facility in a number and size adequate to prevent overflowing of
452 material deposited therein. The drop-off facility shall accept all of the Recyclable Materials
453 accepted in the Commercial Recyclable Materials program. Contractor shall also provide a Bin for
454 Greenwaste at the drop-off facility. Contractor shall work with the City Contract Manager and the
455 County to ensure that Greenwaste Collected from the drop-off facility is Diverted to the extent
456 practical.

457 T. **Commercial Mix Waste Processing Pilot Program.** During Rate Period One, Contractor shall
458 operate a Commercial wet/dry selection pilot program that designates accounts with high
459 concentrations of Recyclable Materials in their Solid Waste Container to “dry” routes. Dry routes
460 shall be designed to avoid collection of food waste or other waste materials which would prevent
461 Recycling or make it significantly more difficult. Contractor shall identify Customers that are
462 suitable for a dry route on or before June 1, 2013. Contractor shall Process Recyclable Materials
463 Collected from the dry routes at the Approved Recyclable Materials Processing Facility.
464 Contractor shall provide a report to the City on this pilot program in its annual report described in
465 Exhibit D. Contractor’s report on this pilot program shall include information regarding the
466 number of Customers included in the program, volume of material Diverted by the program, and a
467 statement of the Contractor’s desire to either continue or cancel the program. This program may
468 be continued beyond Rate Period One without amendment to this Agreement as a Change in
469 Scope under Section 4.8.

470 U. **Green Works.** Contractor shall implement a workplace Recycling incentive program for
471 Commercial Customers. The program shall include, at a minimum: i) personal visits to and
472 information for business managers providing the technical assistance needed to establish a
473 successful workplace Recycling program; ii) flyers, posters, and stickers that Commercial
474 Customers can place at their indoor Recyclable Materials collection locations promoting the
475 Recycling program; and, iii) environmentally-conscious prizes (e.g. reusable water bottles,
476 reusable shopping bags, etc.) to be provided to employees as a reward for their contribution to
477 the success of the Recycling program.

478 V. **Waste Watch Program.** The Contractor shall include a neighborhood watch program to provide
479 observational assistance to the local law enforcement. The program shall involve a partnership
480 between local police and fire departments and the Contractor’s employees who are trained to
481 recognize and report unusual or suspicious situations to the appropriate emergency responder.

482 W. **Disaster Preparedness and Emergency Services Planning.** In the event of an emergency, disaster
483 or service interruption of any kind, the Contractor shall utilize its disaster plan and shall provide
484 the City with adequate emergency services. The Contractor shall follow its disaster plan is to be as
485 prepared as possible in order to minimize down time and expedite reestablishing service to
486 customers. A copy of this plan shall be available to the City Contract Manager upon request.

487 **Section 4.5: Standard of Performance**

488 Contractor shall at all times comply with Applicable Laws and provide services in a manner that is safe to
489 the public and the Contractor’s employees. Except to the extent that a higher performance standard is
490 specified in this Agreement, Contractor shall perform services in accordance with Solid Waste and
491 Recyclable Materials management practices common to California.

492 A. **Clean Up: Avoiding Damage to Property.** The Contractor shall use due care to prevent spills or
493 leaks of material placed for Collection. If any materials are spilled or leaked during Collection or
494 Transportation, the Contractor shall clean up all spills or leaks before leaving the site of the spill.
495 The Contractor shall close all gates after making Collections and shall not do damage to or trespass
496 upon private or public property.

497 B. **Hazardous Waste.** The Contractor acknowledges its obligation to arrange for the Disposal of
498 Hazardous Waste that inadvertently comes into its possession or control. The Contractor agrees to
499 establish all reasonable practices for the screening and elimination of Hazardous Waste from the
500 waste stream including, but not limited to, the training of personnel and the revision of such
501 practices as necessary to reflect prudent waste screening considered to be good practice in the
502 Solid Waste Collection and Disposal industry at the time.

503 If the Contractor finds what reasonably appears to be discarded Hazardous Waste or Household
504 Hazardous Waste at a Designated Collection Location, the Contractor, in addition to the procedure
505 outlined in the previous paragraph, shall either:

- 506 1. Notify the Owner or Generator, if such can be determined, that the Contractor may not
507 lawfully Collect such waste and leave a tag specifying the nearest location available for such
508 appropriate Disposal; or,
- 509 2. Follow such other procedure as the City Contract Manager shall approve.

510 In the event of a threat to the public health and safety, the Contractor shall immediately contact
511 the local fire department. The Contractor shall notify the City Contract Manager of such incident
512 within one (1) day.

513 C. **Employees:**

514 1. **Uniform.** The Contractor shall take all steps necessary to ensure that its employees
515 performing Collection Services conduct themselves in a safe, proper, and workmanlike
516 manner, and that they work as quietly as possible. All such employees shall at all times of
517 employment be dressed in uniforms with suitable identification.

518 2. **Driver Qualifications.** All drivers must have in effect a valid license, of the appropriate class,
519 issued by the California Department of Motor Vehicles. Contractor shall use the Class II
520 California Department of Motor Vehicles employer "Pull Notice Program" to monitor its
521 drivers for safety.

522 3. **Safety Training.** Contractor shall provide suitable operational and safety training for all of
523 its employees who operate Collection Vehicles or equipment. Contractor shall train its
524 employees involved in Collection to identify, and not to Collect, Excluded Waste. Upon the
525 City Contract Manager's request, Contractor shall provide a copy of its safety policy and
526 safety training program, the name of its safety officer, and the frequency of its trainings.

527 D. **Improper Loading of Containers.** The Contractor may decline to Collect any Solid Waste and
528 Recyclable Materials that been loaded or left for Collection in any manner which would prohibit its
529 safe Collection.

530 E. **Record of Non-Collection.** When any Solid Waste and Recyclable Materials placed for Collection
531 are not Collected by the Contractor, the Contractor shall leave a tag listing the reasons for such
532 non-Collection and a telephone number at which the Customer may contact the Contractor. This
533 information shall either be in writing or by means of a checked box on a form. The Contractor shall
534 maintain, at its place of business, a log book listing all such circumstances in which Collection is
535 denied. The log book shall contain the names and/or addresses of the Collection Premises

536 involved, the date of such tagging, the reason for non-Collection, and the date and manner of
537 disposition of each case. The log book shall be kept so that it may be conveniently inspected by
538 the City Contract Manager upon request. The log relating to any particular tagging shall be
539 retained for a period of one (1) year following such tagging. As an alternative to Non-Collection,
540 where the basis for the Non-Collection notice is not resolved by the Customer and where
541 photographic evidence is provided by the Contractor, Contractor may complete the Collection and
542 charge the Customer at the “extra can or bag of Solid Waste” Rate, as specified in Exhibit C3,
543 equivalent to the Customer’s Container size to compensate it for the costs of extra pickups and/or
544 sorting of materials.

545 F. **Fees and Gratuities.** The Contractor shall not, nor shall it permit any agent, employee, or
546 Subcontractor employed by it, to request, solicit, or demand, either directly or indirectly, any
547 compensation for the Collection of Solid Waste and Recyclable Materials or other Collection
548 Services, except such compensation as is specifically provided for herein as approved by the City.

549 G. **Compliance with Applicable Law.** The Contractor shall comply with all Applicable Law relating to
550 any aspect of the Collection Services or this Agreement, shall obtain and maintain all legal
551 entitlements required for the Operating Assets and the Collection Services, shall comply with all
552 valid acts, rules, regulations, orders, and directions of any Governmental Body applicable to the
553 Operating Assets and the Collection Services provided hereunder, and shall pay all taxes in
554 connection therewith. The Contractor shall keep all records indicating compliance required by the
555 Federal Immigration and Control Act of 1986 and shall make such records available for inspection
556 by the City Contract Manager upon request.

557 H. **Taxes and Utility Charges.** The Contractor shall pay all taxes lawfully levied or assessed upon or in
558 respect of the Operating Assets or the Collection Services, or upon any part thereof or upon any
559 revenues of the Contractor there from, and shall provide and pay the cost of all utilities necessary
560 for the operation of the Operating Assets and the provision of the Collection Services, when the
561 same shall become due.

562 **Section 4.6: Collection Locations**

563 A. **General.** The Contractor shall be responsible for the Collection of all Solid Waste and Recyclable
564 Materials placed for Collection in a legal manner. The Contractor shall immediately notify the City
565 Contract Manager of any condition at or near any Designated Collection Location which creates a
566 safety hazard or accessibility problem. Upon authorization by the City Contract Manager, the
567 Contractor shall discontinue Collection for any such location until the safety hazard or accessibility
568 problem is corrected. Contractor may charge the “Extra Pick-up” Rate in the amount set forth in
569 Exhibit C3 where its collection vehicle is required to return to the service location to complete
570 Collection due to a safety hazard or access restriction caused by the Customer and documented
571 with photographic evidence.

572 B. **Enclosures.** Where the Designated Collection Location is within an enclosure constructed pursuant
573 to the requirements of any public agency having jurisdiction over the design, construction, and
574 location of such enclosures, the Contractor shall be responsible for the removal and replacement
575 of all Containers placed therein. The Contractor shall use sufficient care in the handling of such
576 Containers so as to prevent any damage to the enclosure, the enclosure doors, and adjacent
577 facilities or improvements. The Contractor shall promptly repair at its own expense any such

578 enclosure or adjacent facilities or improvements damaged by the Contractor. The City shall resolve
579 any disputes relating to such damage, and the Contractor agrees to abide by such decision.

580 **Section 4.7: Other Wastes**

581 The Parties acknowledge that this Agreement is granted only with respect to the Collection Services and
582 does not include the Collection, Transportation, Processing, or Disposal of Hazardous Waste, Medical
583 Waste, and Liquid Waste. If the Contractor elects to provide any such services with respect to Hazardous
584 Waste, Infectious Waste, or any other waste regulated by the Department of Toxic Substances Control,
585 such services shall be performed by a separate legal entity separately insured and liable, and according
586 to Applicable Law. The Parties further acknowledge that the provision by the Contractor of any services
587 not specifically included within the Agreement are excluded from the protection of this Agreement and
588 may be the subject of competition among any and all legally authorized haulers.

589 **Section 4.8: Changes in Scope of Collection Services**

590 Pursuant to the Municipal Code, the City may modify the scope of services performed by the Contractor
591 pursuant to this Agreement.

592 The City shall provide written notice of any request modification to the scope of services provided by
593 Contractor pursuant to this Agreement, and the Contractor shall provide the City with any information
594 requested by the City in connection with the proposed changes. The Contractor shall, within sixty (60)
595 days after receipt of such notice by the City, respond to the City's order. The Contractor may seek
596 additional compensation in the event the scope of services is modified in accordance with this Section
597 4.8. The need for and amount of additional compensation shall be calculated following a change in
598 scope Rate review pursuant to Section 11.3.

599 **Section 4.9: Billing**

600 Contractor shall bill all Customers and be solely responsible for collecting billings at Rates set in
601 accordance with Article 11. Billing shall be performed on the basis of services rendered and this
602 Agreement shall create no obligation on the part of any Person on the sole basis of the ownership of
603 property.

604 Contractor's website shall provide Customers with the ability to pay their bills through an electronic
605 check or credit card and include the ability for Customer billings to be automatically charged on a
606 recurring basis. Contractor shall prepare, mail, and collect bills from Customers who decline to use such
607 internet-based billing system. Contractor shall make arrangements to allow Customers to pay bills by
608 cash, check, electronic check, money order, and credit card at a location within the City which shall be
609 available to Customers from 8:00 a.m. to 5:00 p.m. Monday through Friday.

610 Contractor shall maintain copies of all billings and receipts, each in chronological order, for the Term of
611 this Agreement, for inspection and verification by the City Contract Manager at any reasonable time but
612 in no case more than thirty (30) calendar days after receiving a request to do so.

613 Contractor shall be responsible for collection of payment from Customers with past due accounts ("bad
614 debt"). Contractor shall make reasonable efforts to obtain payment from delinquent accounts through

615 issuance of late payment notices, telephone requests for payments, and assistance from collection
616 agencies.

617 Invoices are due thirty (30) days following the date of the invoice. The date of the invoice shall not be
618 prior to the first day of the service period for the billing. In the event that any account becomes more
619 than forty-five (45) calendar days past due, Contractor shall notify such Customer of the delinquency via
620 written correspondence and telephone contact. Should any account become more than ninety (90)
621 calendar days past due, Contractor shall provide notice to the Customer via written correspondence,
622 with a copy to the City Contract Manager, that service may be discontinued if the account becomes
623 more than one hundred twenty (120) calendar days past due. Should any account become more than
624 one hundred twenty (120) calendar days past due, Contractor may discontinue providing service to the
625 Customer. No less than seven (7) calendar days prior to discontinuing service to a Customer, Contractor
626 shall notify the City Contract Manager of the address, Service Level, service frequency, and delinquent
627 billing amount. Contractor may withhold service from a delinquent account until past delinquencies are
628 paid in full. Upon restoring service to a previously delinquent account, Contractor may require a deposit
629 from the Customer not to exceed one (1) month's billings at the Customer's Service Level. Contractor
630 may charge interest at a rate of one and on-half percent (1 ½%), or the highest rate of interest allowable
631 under law, whichever is less, on account balances that are more than forty-five (45) calendar days past
632 due.

633 **Section 4.10: Transition to Next Contractor at End of Agreement**

634 If applicable, before expiration or earlier termination of this Agreement, Contractor will take direction
635 from the City and subsequent contractor to assist in a timely and orderly transition of services from
636 Contractor to subsequent contractor. In response to the City's direction, Contractor shall provide then-
637 current route lists, which identify each Customer on the route, its service level (number of Containers,
638 Container sizes, frequency of Collection, scheduled Collection day), and any special Collection notes, and
639 detailed then-current Customer account and billing information. Contractor may, but shall not be
640 obliged to, sell Collection vehicles, equipment, or facilities to the next contractor.

ARTICLE 5: PROCESSING AND TRANSFER

641

642 **Section 5.1: Processing and Transfer Arrangements**

643 The Contractor shall make its own Processing and Transfer arrangements, so long as such arrangements
644 are in full compliance with Applicable Law. The City may order the Contractor to modify or terminate its
645 Processing and/or Transfer arrangements if:

- 646 A. The City determines that such arrangements threaten public health or safety, or
- 647 B. The City determines that the City is not adequately protected from liability for the activities of the
648 Processing or Transfer entities, or
- 649 C. The City determines that the diversion levels of the particular facility causes the City to be out of
650 compliance with AB 939 or any other regulations regarding Solid Waste and Recyclable Materials
651 management, or the Contractor is Disposing of Recovered Materials in a manner or volume which
652 does not result in significant diversion credit to the City.

653 In the event the City directs the Contractor to modify or terminate waste Processing or Transfer
654 arrangements, the City acknowledges that the Contractor shall nonetheless be entitled to recover,
655 through the Rates to be charged and authorized to be imposed hereunder, the reasonable costs of the
656 Contractor incurred in implementing such Processing or Transfer arrangements (determined in
657 accordance with generally accepted accounting principles).

658 **Section 5.2: Recyclable Materials Marketing**

659 The Contractor shall be responsible for marketing Recyclable Materials Collected in the City.
660 Contractor's marketing strategy shall make reasonable business efforts to promote the highest and best
661 use of materials presented in the waste management hierarchy established by AB 939. Where practical
662 and cost-effective, the marketing strategy should include use of local, regional, and domestic markets
663 for Recyclable Materials. Contractor shall make available to the City Contract Manager any and all
664 documentation of the final disposition of marketed Recyclable Materials as well as certification that
665 such materials have not been landfilled or incinerated.

666 **Section 5.3: Title to Recovered Materials**

667 As between the Parties, the Contractor has title to and liability for all Recovered Materials, and shall
668 indemnify, defend, and hold harmless the City from any property damage, personal injury, or
669 consequential damages suffered by any Person from exposure to or as a result of Processing any
670 Recovered Materials or subsequent product made from Recovered Materials based on any theory of
671 liability. The Contractor shall promptly notify the City of any claim by any Person arising out of the
672 marketing, Disposal, or reuse of Recovered Materials.

673

ARTICLE 6: SOLID WASTE DISPOSAL

674 Section 6.1: Solid Waste Disposal

675 A. **Disposal Generally.** The Contractor shall Transport and Dispose of all Solid Waste and Recyclable
676 Materials which it Collects but does not divert from landfill Disposal at the Designated Disposal
677 Facility in accordance with the requirements of Applicable Law, and shall comply with the
678 requirements, rules and regulations of the Owner or operator of the Designated Disposal Facility.

679 B. **Designated Disposal Facilities.** The City shall have the right during the Term of the Agreement to
680 designate the Designated Disposal Facility, or multiple concurrent Designated Disposal Facilities, in
681 its sole and absolute discretion. The initial Designated Disposal Facilities shall be any of the Kern
682 County landfills as approved by the City. The City shall notify the Contractor in writing of any
683 changes in or additions to the Designated Disposal Facility. City acknowledges that the Contractor
684 shall nonetheless be entitled to recover, through the Rates to be charged and authorized to be
685 imposed hereunder, the reasonable costs of the Contractor incurred as the result of a change in
686 the Designated Disposal Facility.

687 C. **Disposal Records.** The Contractor shall keep and maintain such logs, records, manifest, bills of
688 lading or other documents as the City may deem to be necessary or appropriate to confirm
689 compliance by the Contractor with this Agreement and shall retain all weight slips or other call
690 information provided to the Contractor's drivers by the Owner or operator of the Designated
691 Disposal Facility.

692 D. **Failure to Transport to Designated Disposal Facility.** The Contractor's failure to properly
693 Transport, or cause to be Transported, Solid Waste and Recyclable Materials as described herein is
694 an Event of Default. as described in Section 13.1.A of this Agreement, unless the failure to
695 Transport such Solid Waste and Recyclable Materials to the Designated Disposal Facility is the
696 result of an Uncontrollable Circumstance or such waste has been diverted by means of alternative
697 technology allowing AB 939 diversion credit to the City; provided however, that any residue from
698 Processing or diversion activities occurring within the County shall be Disposed at the Designated
699 Disposal Facility.

700 E. **Flow Control Covenant.** The Contractor hereby waives any right which it may possess under
701 Applicable Law to contest on any ground, constitutional, statutory, case law, administrative or
702 otherwise: (a) the right, power, or authority of the City to engage in the practice of legal Solid
703 Waste "flow control" or to enter into or perform obligations under this Agreement; or, (b) the
704 right, power, or authority of the City to deliver or cause the delivery of all Solid Waste Collected
705 within the City to the Designated Disposal Facility in accordance with this Agreement.

706 Section 6.2: Gate and Bin Fees

707 To the extent that the Contractor Disposes or causes the Disposal of Non-Residential Waste at the
708 Designated Disposal Facility, it shall pay the bin fees and/or gate fees required under County Ordinance
709 No. G-8057, as may be amended from time to time, unless specifically exempted hereunder.

710

ARTICLE 7: RECYCLING PROGRAMS

711

712 **Section 7.1: The Contractor's Responsibility for Implementation**

713 The Contractor will implement its Recycling Plan (Exhibit C6), SRRE programs (Exhibit E), and compliance
714 order programs (Exhibit F) in a manner approved by the City Contract Manager. The requirements of
715 and level of specificity contained within each of these exhibits may conflict or be redundant in some
716 cases. Regardless of such inconsistencies, Contractor shall be obligated to comply with all of the
717 requirements contained therein and in the case of any inconsistency, the City Contract Manager's
718 determination of which requirements must be met shall be conclusive.

719 In the event that the State of California diversion goals in existence at the time this Agreement is
720 effective are increased, the Contractor will be obligated to amend the Recycling Plan to the extent
721 necessary to comply with the increased diversion levels. In the event the City's SRRE is revised in
722 response to the increased requirements, the Contractor will, at the request of the City Contract
723 Manager, develop and submit for the City's approval suggested revisions to the Recycling Plan designed
724 to enable the City to meet the revised requirements, including estimated costs of implementation and
725 targeted diversion rates. After approval by the City, the Recycling Plan will be revised and the Contractor
726 will implement such revised Recycling Plan. City acknowledges that the Contractor shall nonetheless be
727 entitled to recover, through the Rates to be charged and authorized to be imposed hereunder, the
728 reasonable costs of the Contractor incurred as the result of implementation of the revised Recycling
729 Plan.

730 **Section 7.2: Recycling Plan**

731 The Contractor is responsible for developing and implementing Residential and Commercial source
732 reduction, Recycling, education, and outreach programs to all Customers in the City. The Contractor's
733 Recycling Plan is attached hereto as Exhibit C6. Any amendment to the Recycling Plan must be approved
734 by the City.

735 **Section 7.3: Public Awareness**

736 The Contractor agrees, at its own expense, to provide information to Customers at least quarterly on
737 such topics as proper Household Hazardous Waste Disposal, waste reduction and Recycling, or such
738 other topics included as part of the Contractor's Recycling Plan (Exhibit C6). Any reference to the City
739 must be approved in advance by the City Contract Manager. To the extent reasonably possible, the
740 Contractor shall accommodate the inclusion of any City-directed information on its regular billing
741 statements upon the request of the City Contract Manager without cost to the City. If the City requests
742 the distribution of information on a topic other than that required for compliance with the Recycling
743 Plan in a form that cannot be printed or included with the Contractor's regular bill, the City and
744 Contractor will share in the cost of printing and distribution.

745 **Section 7.4: Termination for Failure to Implement Strategies**

746 Failure to implement any one of the programs listed in the Recycling Plan (Exhibit C6), SRRE programs
747 (Exhibit E), and/or compliance order programs (Exhibit F) will be deemed an Event of Default unless

748 Contractor can demonstrate to the satisfaction of the City Contract Manager that implementation of
749 such programs is beyond the reasonable scope of their control despite their reasonable business efforts.
750 For example, and not by way of limitation, it is beyond the reasonable scope of the Contractor's control
751 to affect ordinances adopted by the City Council..

752

ARTICLE 8: OPERATING ASSETS

753 Section 8.1: Operating Assets

754 A. **Obligation to Provide.** The Contractor shall acquire and maintain at its own cost and expense,
755 Operating Assets which in number, nature, and capacity shall be sufficient to enable the
756 Contractor to provide the Collection Services in accordance with the terms hereof and such assets
757 shall be subject to inspection by the City at any time.

758 B. **Vehicle and Equipment Identification.** The Contractor's name, phone number, and Vehicle or
759 equipment number shall be visibly displayed in letters not less than three (3) inches in height on
760 both sides of its Vehicles or other Collection equipment used by the Contractor, as required by the
761 Municipal Code.

762 C. **Vehicle Specifications, Maintenance, and Appearance.** All Vehicles shall be properly registered
763 with the Department of Motor Vehicles of the State of California, shall be properly insured, shall
764 be of a type approved by the City, shall be kept clean and in good repair, and shall be continuously
765 maintained in a watertight condition. Vehicles used to Collect or Transport Solid Waste shall be
766 kept covered at all times except when such material is actually being loaded or unloaded, or when
767 the Vehicles are moving along a Collection route in the course of Collection. All Vehicles shall carry
768 a broom, shovel, and operable fire extinguisher. Solid Waste Collection Vehicles shall be washed
769 at least once every seven (7) days and cleaned and painted as required to maintain a clean
770 appearance. All Vehicles must be made available for inspection upon reasonable notice by the City
771 Contract Manager.

772 D. **Spillage.** Any cover or screen shall be so constructed and used that Solid Waste shall not blow, fall,
773 or leak out of the Vehicle onto the street. In the event of a spill, leak, or loss of payload during
774 transit, the Contractor shall immediately arrange for the clean-up and Transportation of the
775 payload to the appropriate facility at the Contractor's sole cost and expense, shall pay any
776 resulting fines, assessments, penalties, or damages resulting therefrom, and shall indemnify and
777 hold harmless the City in accordance with the procedures provided in Section 12.1 hereof from all
778 loss-and-expense resulting therefrom.

779 E. **Computer System Compatibility.** The Contractor shall maintain records and data in an electronic
780 format compatible with the versions of Microsoft Word and Excel currently in use by the City at
781 any given time during the Term of this Agreement. The Contractor will, at its cost and expense, if
782 requested by the City Contract Manager, provide any reports or data required by this Agreement
783 via email, on computer disc, or through other electronic format. Raw or printed data may not be
784 submitted as a substitute to the Contractor's obligation to provide various reports under this
785 Agreement.

786 Section 8.2: Operation and Maintenance of the Operating Assets

787 The Contractor, at its cost and expense, shall at all times: 1) operate the Operating Assets properly and
788 in a safe, sound, and economical manner; 2) shall maintain, preserve, and keep the Operating Assets in
789 good repair, working order, and condition; 3) shall staff the Operating Assets with the appropriate

790 number of licensed employees consistent with good management practice; and, 4) shall make all
791 necessary and proper repairs, replacements, and renewals, so that at all times the operation of the
792 Operating Assets may be properly and advantageously conducted. The Contractor shall maintain the
793 safety of the Operating Assets at a level consistent with Applicable Law, the Insurance Requirements,
794 and prudent Solid Waste management practices.

795 **Section 8.3: Containers**

796 A. **City Regulations.** The City shall approve the number, type, size, and other specific physical
797 requirements for Containers. The Contractor shall not be required to Collect Solid Waste and
798 Recyclable Materials from Containers which have not been approved by the City.

799 B. **General Requirements.** The Contractor shall supply the Containers for each Customer free of
800 charge upon inception of Collection Services. After emptying any Container, the Contractor shall
801 replace the Container in an upright position at the place where such Container was placed for
802 Collection. The Contractor shall handle Containers in a manner so as to prevent damage or
803 spillage, and shall not throw, drop, or otherwise mishandle Containers during or after emptying
804 them. The Contractor shall repair or replace, at its own expense and within five (5) days, any
805 Container which is damaged by the Contractor and which is no longer serviceable (e.g. broken
806 wheels, cracked lid, broken axle, cracked or leaking body, etc.)..

807 C. **Containers for Residential Customers.** The Contractor shall supply all Containers required for the
808 services provided under this Agreement. The Containers shall be sturdy, water tight, and equipped
809 with heavy-duty wheels and closeable lids. The Contractor shall maintain the Containers in good
810 repair, shall bear the cost of normal wear and tear, and shall replace the Containers as needed.
811 The Contractor may charge a fee to Customers that have Containers that must be repaired or
812 replaced due to other than normal wear and tear and will notify the City Contract Manager if such
813 fee has been charged. If repairs require removal of the Container from a Customer's Premises, the
814 Contractor shall supply the Customer with a replacement Container or "loaner" Container. The
815 Contractor shall, within seven (7) days, repair or replace damaged or dilapidated Containers. The
816 Contractor shall provide the Containers required pursuant to this Section at its own cost and
817 expense and any such Containers shall constitute Operating Assets. The Contractor shall promptly
818 replace stolen Containers, provided that the Contractor shall only bear the cost of replacement of
819 such Container the first time it is stolen; and, thereafter such cost of replacement shall be borne
820 by the Customer.

821 D. **Containers for Commercial Customers.** The Contractor shall provide, as an Operating Asset the
822 Containers required pursuant to Section 8.3 at its own cost and expense. Each such Container shall
823 be identified with the Contractor's name and phone number, and be equipped with heavy-duty
824 casters and closeable lids. Each such Container shall be watertight. The Contractor shall be
825 responsible for the general maintenance and repair of Containers so provided, and shall provide
826 an equivalent Container as replacement during repairs and maintenance. If repairing,
827 maintenance, steam cleaning, and/or repainting is required as a result of abuse, neglect, or misuse
828 on the part of any Customer, the Contractor may charge the Customer a fee, to compensate for
829 the cost thereof. The Contractor shall, within seven (7) days, repair or replace any stolen,
830 damaged or dilapidated Container, provided that the Contractor shall only bear the cost of
831 replacement of such Container the first time it is stolen and thereafter such cost of replacement
832 shall be borne by the Customer.

833 E. **Ownership of Containers.** All Containers for Solid Waste and Recyclable Materials provided by the
834 Contractor to Customers in accordance with this Agreement shall, at the sole discretion of the
835 City, the City may acquire or purchase the Containers upon expiration or early termination of this
836 Agreement for the net book value as of the date of expiration or termination of the Agreement,
837 based on a seven (7) year straight-line depreciation. In the event that the City desires to retain
838 ownership of said Containers, the City shall notify Contractor of such determination. Contractor
839 shall be entitled to receive payment from the City or a future franchisee to the City, the remaining
840 book value of such Containers based on a seven (7) year straight-line depreciation schedule. All
841 Containers in service upon the expiration or termination of the Agreement shall be assumed to
842 have been placed in service on September 5, 2011 unless Contractor can provide specific evidence
843 documenting the serial number (or other distinguishing inventory designation) of each and every
844 Container placed in service after that date and accompanying invoices from Contractor's
845 Container vendor(s) with matching identifying information.

846 **Section 8.4: Vehicle Requirements**

847 Contractor shall provide a fleet of Collection Vehicles sufficient in number and capacity to efficiently
848 perform the work required by the Agreement in strict accordance with its terms. Contractor shall have
849 available sufficient back-up Vehicles for each type of Collection Vehicle used to respond to scheduled
850 and unscheduled maintenance, service requests, complaints, and emergencies. All such Vehicles shall
851 have watertight bodies designed to prevent leakage, spillage, or overflow. All such Vehicles shall comply
852 with all Federal, State, and local laws and regulations including, without limitation, safety and emissions
853 requirements and such compliance shall come at no additional cost to the City or Customers during the
854 Term of this Agreement.

855 Collection Vehicles shall present a clean appearance while providing service under this Agreement.
856 Contractor shall inspect each Vehicle daily to ensure that all equipment is operating properly. Vehicles
857 that are not operating properly shall be taken out of service until they are repaired and operate
858 properly. Contractor shall repair, or arrange for the repair of, all of its Vehicles and equipment for which
859 repairs are needed because of accident, breakdown or any other cause so as to maintain all equipment
860 in a safe and operable condition.

ARTICLE 9: GENERAL REQUIREMENTS

861

862 Section 9.1: Public Access to the Contractor

- 863 A. **Office Facilities.** The Contractor shall establish and maintain an office within the City through
864 which the Contractor's representatives may be contacted, unless otherwise approved by the City
865 Contract Manager.
- 866 B. **Office Hours.** The Contractor's office hours shall be, at a minimum, from 8:00 a.m. to 5:00 p.m.
867 daily except Saturdays, Sundays, and holidays. These hours may be altered with the approval of
868 the City Contract Manager.
- 869 C. **Emergency Telephone Number.** The Contractor shall provide the City with an emergency
870 telephone number for use by the City Contract Manager outside normal business hours. The
871 Contractor shall have a representative, or an answering service to contact such representative,
872 available at the emergency telephone number during all hours other than normal office hours.

873 Section 9.2: Service Complaints

- 874 A. **Complaints to Contractor.** The Contractor shall maintain during office hours a complaint service
875 and telephone answering system having an answering capacity satisfactory to the City Contract
876 Manager. All service complaints and billing complaints will be directed to the Contractor. The
877 Contractor shall record all complaints in a log, including date, complainant name and address, and
878 nature and resolution of complaint. This log shall be available for inspection by the City Contract
879 Manager during the Contractor's regular office hours. Copies thereof shall be furnished to the City
880 Contract Manager upon request.
- 881 B. **Required Response to Complaints.** The Contractor, within twenty-four (24) hours of its receipt of
882 notice from a Customer or the City Contract Manager of a failure to provide any service(s) as
883 required by the terms of this Agreement, shall provide such service in a manner consistent with
884 the requirements of this Agreement.

885 Section 9.3: Accounting and Records

- 886 A. **Maintenance and Audit of Records.** The Contractor shall maintain in its principal office in the
887 County full and complete financial statements and accounting records for operations under this
888 Agreement. Contractor shall account for revenues received and expenses incurred as a result of
889 this Agreement separate from the accounting for other operations performed by Contractor or its
890 affiliates. The Gross Receipts derived from the Collection Services under this Agreement, whether
891 such services are performed by the Contractor or by a Subcontractor, shall be recorded as
892 revenues in the accounts of the Contractor. Upon demand, the Contractor shall permit the City
893 Contract Manager to examine and audit the books of account of the Contractor at any and all
894 reasonable times for the purpose of verifying Contractor's performance under this Agreement.
895 Upon request, the Contractor shall allow the City Contract Manager to examine the reports of
896 Gross Receipts and the invoices pertaining to any fee or charge approved by the City Council for

897 Services provided under this Agreement. Such request shall be made at reasonable times and with
898 reasonable notice.

899 In the event that a Special Circumstance Rate adjustment is requested, such records shall be
900 subject to review in accordance with appropriate professional standards, and inspection, for the
901 primary purpose of reviewing changes in costs to the Contractor attributable to the Special
902 Circumstance request, at any reasonable time by an independent third party. The selection of the
903 independent third party as well as the scope of work for such review shall be approved in advance
904 by the City Contract Manager. The independent reviewer shall provide any and all drafts of its
905 review to the City and the Contractor. The Party requesting the Special Circumstance Rate review
906 shall bear the cost of the review.

907 The Contractor shall maintain and preserve all cash, billing, and Disposal records throughout the
908 Term of this Agreement and for a period of not less than three (3) years following expiration or
909 early termination of the Agreement. The Contractor shall obtain, within one hundred twenty (120)
910 days of a request by the City Contract Manager, complete independently audited financial
911 statements for the prior calendar year, including its balance sheet, statement of revenues and
912 expenses, and statement of changes in cash position, and provide such financial statements to the
913 City Contract Manager.

914 B. **Confidentiality.** The City agrees to hold financial statements delivered pursuant to this Section as
915 confidential and shall not disclose the same unless and to the extent disclosure is required
916 pursuant to Applicable Law.

917 **Section 9.4: Reporting**

918 The Contractor shall maintain on file at its business premises documentation setting forth its Routing
919 and Collection System, a list of all Collection Premises in the City, organized alphabetically or by address,
920 and the identification of all services each receives. This information shall be updated and provided at no
921 additional cost to the City along with Contractor's annual report (as required in Exhibit D) to the City and
922 any time upon request of the City Contract Manager. The Contractor shall cooperate with the City to
923 periodically monitor the average volume of Solid Waste and Recyclable Materials generated from each
924 Collection Premises. Customer-specific records are subject to inspection, and copying by the City during
925 regular business hours with reasonable advance notice.

926 **Section 9.5: Integrated Waste Management Act (AB 939) Compliance**

927 The Contractor shall provide on a monthly basis all necessary reporting data requested by the City
928 relating to the City's compliance requirements pertaining to AB 939 as it affects the County's Integrated
929 Waste Management Plan and the City's SRRE. Such report shall be provided to the City within thirty (30)
930 days after the end of each month. The Contractor shall cooperate in activities requested by the City to
931 measure diversion of Solid Waste from landfills including, but not limited to, providing a location for
932 conducting waste sorting at the Contractor's facility, re-routing trucks on a temporary basis to facilitate
933 composition analysis. Such report shall include throughput, recovery rates per material type, residue,
934 costs, Recyclable Material commodity values, and final disposition of Recyclable Materials. The
935 Contractor shall also supply any other information reasonably requested by the City to meet State or

936 Federal regulatory requirements and the reporting requirements of the City's SRRE, as those
937 requirements may be amended from time to time.

938 **Section 9.6: Personnel and Subcontractors**

939 A. **Employment Practices.** The Contractor shall at all times maintain and follow employment
940 practices in accordance with all state and federal laws and regulations, and shall indemnify the
941 City for any Legal Proceeding relating to its noncompliance with such laws or regulations.

942 B. **Non-Discrimination.** In the performance of the terms of this Agreement, the Contractor agrees
943 that it will not engage in nor permit such Subcontractors as it may employ to engage in
944 discrimination against any employee or applicant for employment on the basis of race, sex, color,
945 religion, ancestry, national origin, marital status, age or as a qualified individual with a disability.
946 This prohibition shall pertain to employment, upgrading, demotion, or transfer; recruitment
947 advertising; layoff or termination; rates of pay and other forms of compensation; selection for
948 training, including apprenticeship, and any other action or inaction pertaining to employment
949 matters.

950 C. **Personnel.** The Contractor shall employ personnel sufficient in number, training, experience, and
951 capability to ensure that the Collection Services required to be performed under this Agreement
952 are properly carried out.

953 D. **Subcontractors.** The Contractor shall not utilize any Affiliates or Subcontractors for the
954 performance of the Collection Services except with the consent of the City Contract Manager,
955 which may be withheld or delayed if the City Contract Manager determines, in their sole
956 discretion, that such consent is not in the best interest of the public health, safety, or general
957 welfare. In the event Subcontractors are utilized, the Contractor shall provide the City with direct
958 access to a designated representative from the Subcontractor, such designation not to be changed
959 without prior approval of the City Contract Manager, except in cases of termination of the
960 employee. The Parties acknowledge the City's direct contact with any Subcontractors in no way
961 eliminates the Contractor's responsibility to fulfill its obligations under this Agreement.

962 **Section 9.7: City Contract Manager**

963 The City has designated the City Contract Manager to be responsible for the monitoring and
964 administration of this Agreement. Contractor shall meet and confer with the City Contract Manager to
965 resolve differences of interpretation and implement and execute the requirements of this Agreement in
966 an efficient and effective manner that is consistent with the stated objectives of this Agreement.

967 From time to time the City Contract Manager may designate other agents at the City to work with
968 Contractor on specific matters. In such cases, those individuals should be considered designates of the
969 City Contract Manager for those matters to which they have been engaged. Such designates shall be
970 afforded all of the rights and access granted thereto. In the event of a dispute between the City Contract
971 Manager's designate and Contractor, the City Contract Manager's determination shall be conclusive.

972 In the event of dispute between the City Contract Manager and the Contractor regarding the
973 interpretation of or the performance of services under this Agreement, the City Contract Manager's
974 determination shall be conclusive except where each such determination results in a material impact to

975 the Contractor's revenue and/or cost of operations. In the event of a dispute between the City Contract
976 Manager and the Contractor that results in such material impact to the Contractor, Contractor may
977 appeal the determination of the City Contract Manager to the City Council, whose determination shall
978 be conclusive. For the purposes of this definition, "material impact" is an amount equal to or greater
979 than one-quarter (1/4) of one (1) percent of Contractor's annual Gross Receipts under this Agreement.

980 City Contract Manager or their designate shall have the right to observe and review Contractor
981 operations and Processing Facilities and enter Premises for the purposes of such observation and
982 review, including review of Contractor's records, during reasonable hours with reasonable notice. In no
983 event shall Contractor prevent access to such Premises for a period of more than three (3) calendar days
984 after receiving such a request.

985 The City contract manager is authorized and empowered to adjust, settle, or compromise any
986 controversy or charge arising from the operations under this Agreement, either on behalf of the City,
987 contractor, or the public, pursuant to Municipal Code Section 3-5.11-(e).

988

ARTICLE 10: CITY FEES

989 Section 10.1: City Fees

990 A. **Administrative Fee.** The Contractor shall pay an Administrative Fee to the City each quarter. The
 991 amount of the Administrative Fee shall be one hundred thousand dollars (\$100,000) in Rate Period
 992 One and shall be adjusted in subsequent Rate Periods pursuant to Section 10.2. The
 993 Administrative Fee shall be paid in equal quarterly installments. The City shall use the
 994 Administrative Fee to offset expenses including costs related to contract management,
 995 compliance monitoring, and to enforce the franchise with respect to any violations by third
 996 parties, including initiating and/or assisting in prosecuting enforcement actions. The City shall
 997 retain the sole right to set priorities for its contract monitoring and enforcement among the City
 998 personnel. This fee shall be a Pass-Through Cost.

999 B. **Franchise Fees.** Pursuant to Municipal Code Section 3-5.704, in consideration of the rights
 1000 provided Contractor herein, Contractor shall pay Franchise Fees to the City each quarter equal to
 1001 ten percent (10%) of Gross Receipts for all services performed under this Agreement. This fee may
 1002 be adjusted by a City Council resolution. This fee shall be a Pass-Through Cost.

1003 C. **Other Fees.** The City shall reserve the right to set other fees as it deems necessary, subject to City
 1004 Council approval. The time and method of payment shall be consistent with those for the
 1005 Administrative Fee, and the fee adjustment process shall be consistent with that specified in
 1006 Section 10.2.

1007 Section 10.2: Adjustment to Fees

1008 Pursuant to the Municipal Code, the City may adjust the fees established in this Article from time-to-
 1009 time during the Term of this Agreement and such adjustments shall be included in the adjustment of
 1010 Rates as described in Section 11.2 and Exhibit B. The City acknowledges that the Contractor shall be
 1011 entitled to recover, through the Rates to be charged and authorized to be imposed hereunder, the
 1012 reasonable costs of the Contractor incurred due to the adjustment in the fees.

1013 The amounts of the Franchise Fee and Administrative Fee for subsequent Rate Periods shall be adjusted
 1014 annually in accordance with the adjustment method described in Exhibit B, or shall be the amount
 1015 specified by the City. The City acknowledges that the Contractor shall be entitled to recover, through the
 1016 Rates to be charged and authorized to be imposed hereunder, the reasonable costs of the Contractor
 1017 incurred due to the adjustment in the fees.

1018 Section 10.3: Payment Schedule and Late Fees

1019 Within thirty (30) days of the end of each calendar quarter, during the Term of this Agreement and
 1020 including the final calendar quarter or portions thereof at the end of the Term of this Agreement,
 1021 Contractor shall remit to City all fees as described in this Article. Such fees shall be payable to City and
 1022 sent or delivered to the City Contract Manager.

1023 If such remittance is not paid to City on or before the thirtieth (30th) day following the end of a calendar
 1024 quarter, all fees dues shall be subject to a delinquency penalty of three percent (3%), which attaches on

1025 the first day of delinquency. The delinquency penalty shall be increased an additional three percent (3%)
1026 and applied to both the original amount due as well as any delinquency penalties previously applied for
1027 each additional month the payment remains delinquent. For example, if the amount of the original fees
1028 owed equals one hundred thousand dollars (\$100,000) the initial delinquency amount applied on the
1029 first day of delinquency will be three thousand dollars (\$3,000) bringing the total amount to one
1030 hundred three thousand dollars (\$103,000). If that amount becomes past due for an additional month,
1031 the additional delinquency penalty shall be applied to the one hundred three thousand dollars
1032 (\$103,000) therefore, the new total amount due would be one hundred six thousand ninety dollars
1033 (\$106,090).

1034 Each quarterly remittance to the City shall be accompanied by a statement listing the amount of each
1035 fee paid; calculation of each fee; and, statement of Gross Receipts, by line of business for the period
1036 Collected from all operations conducted or permitted by this Agreement. The City Contract Manager
1037 may, at any time during the Term, request a detailed calculation of Gross Receipts which may include,
1038 but is not necessarily limited to, the number of Customers charged at each Service Level and Rate for
1039 each billing period.

1040 The City Contract Manager may, at any time during the Term or within three years following the
1041 expiration or early termination of this Agreement, perform an audit of Contractor's billings and payment
1042 of fees. Contractor shall fully cooperate with the City Contract Manager in any such audit. Should the
1043 City or its agent perform this review and identify billing errors or other errors in payment of fees valued
1044 at one (1%) percent or more of Gross Receipts, Contractor shall, in addition to compensating the City for
1045 lost fees and applicable delinquency penalties, reimburse the City's cost of the review.

1046 **ARTICLE 11: CONTRACTOR'S COMPENSATION AND RATE SETTING**

1047 **Section 11.1: General**

1048 The Contractor's compensation for performance of all its obligations under this Agreement shall be
1049 Gross Receipts. Contractor's compensation provided for in this Article shall be the full, entire and
1050 complete compensation due to Contractor pursuant to this Agreement for all labor, equipment,
1051 materials and supplies, Processing and Disposal fees, fees due to the City, taxes, insurance, bonds,
1052 overhead, operations, profit, and all other things necessary to perform all the services required by this
1053 Agreement in the manner and at the times prescribed. Nothing herein shall obligate the City to provide
1054 any compensation to Contractor beyond Gross Receipts.

1055 If Contractor's actual costs, including fees due to the City, are more than Gross Receipts, Contractor shall
1056 not be compensated for the difference in actual costs and actual Gross Receipts. If Contractor's actual
1057 costs, including fees due to the City, are less than the actual Gross Receipts, Contractor shall retain the
1058 difference.

1059 Under this Agreement, Contractor shall have the right and obligation to charge and collect from
1060 Customers, Rates that are approved by the City pursuant to the Municipal Code for provision of services
1061 to Customers. The Rates for Rate Period One (Exhibit C3) are based on the Contractor's Proposal.
1062 Contractor's proposed costs and operating assumptions for Rate Period One are presented in Exhibit C2.
1063 The rates established by the City are maximum Rates and Contractor may, in its sole discretion, charge
1064 Customers any amount up to and including the approved maximum Rate for a given level of service.

1065 Revenues received for the sale of Recyclable Materials including California Redemption Value revenues
1066 have been considered in the establishment of Rates for services provided under this Agreement.
1067 Neither Contractor nor the Approved Recyclable Materials Processing Facility are entitled to grant funds
1068 available through CalRecycle through its "Curbside Supplemental Payments" for registered curbside
1069 Recycling programs or "City/County Payment Program" pursuant to Section 14581(a)(5)(A) of the
1070 California Beverage Container Recycling and Litter Reduction Act.

1071 **Section 11.2: Rates and Annual Adjustments**

1072 **A. General.** The City shall be responsible for approving maximum Rates as described in this Article.
1073 If at any time during the Term of the Agreement, the Contractor determines the need for a Rate
1074 that does not appear on the City -approved Rate schedule in Exhibit C3, Contractor shall
1075 immediately notify the City and request establishment of such Rate. For example, if a Customer
1076 requires Collection of Recyclable Materials in a fifteen (15) cubic yard Compactor five (5) times
1077 per week and the City -approved Rate schedule does not include this level of service, the
1078 Contractor must request that the City approve a Rate for this level of service.

1079 **B. Maximum Rates for Rate Period One.** Maximum Rates for Rate Period One, which are
1080 presented in Exhibit C3, were determined by Contractor and were approved by the City
1081 resolution on or before the execution of the Agreement. The maximum Rates for Rate Period
1082 One shall be effective from the Commencement Date of this Agreement through June 30, 2013.

1083 **C. Rates for Subsequent Rate Periods.** Maximum Rates for subsequent Rate Periods shall be

1084 adjusted annually in accordance with this Section 11.2 and Exhibit B.

1085 The multi-index based adjustment, which is described in Exhibit B, involves use of various cost
1086 adjustment factors (such as the percentage change in the Consumer Price Index, the percentage
1087 change in the Fuel Index, and percentage change in the Designated Disposal Facility Tipping
1088 Fees) to calculate adjusted Rates. Such Rate adjustment calculations shall be performed in strict
1089 conformance to the procedures described in Exhibit B.

1090 **D. Rate Structure.** The City and Contractor shall meet and confer to change the relationship of
1091 individual Rates in comparison with other Rates. Any such changes would occur in conjunction
1092 with the annual Rate adjustment process described in Section 11.2.C or in conjunction with a
1093 Rate adjustment resulting from an extraordinary Rate adjustment in accordance with Section
1094 11.3. Changes to the Rates charged under the new structure shall be calculated in such a way
1095 that the revised Rate structure generates at least the same amount of total revenue when the
1096 number of accounts at each Service Level are multiplied by the Rates charged for each Service
1097 Level and the total for all Service Levels are summed.

1098 **Section 11.3: Special Circumstances Rate Adjustments**

1099 It is understood that the Contractor accepts the risk for changes in cost of providing services and the
1100 Service Levels requested by Customers and therefore the Special Circumstance adjustments to Rates
1101 shall be limited to: (i) a Change in Law (as defined in Exhibit A); (ii) an increase or decrease in a direct per
1102 ton surcharge assessed on the collection, transportation, processing or disposal of Solid Waste or
1103 Recyclable Materials by Federal, State or local regulatory agencies after the Effective Date of the
1104 Agreement (Surcharge); or (iii) a City-directed Change in Scope (pursuant to Section 4.8). If a Change in
1105 Law, Surcharge, or a City-directed change in scope occurs, the Contractor or City Contract Manager may
1106 petition the City Council for an adjustment to the maximum Rates (either increasing or decreasing the
1107 Rates) calculated in accordance with Section 11.2.

1108 Contractor shall prepare an application for the extraordinary Rate adjustment calculating the net
1109 financial effect on its operations (both increases and decreases of costs and revenues) resulting from the
1110 Change in Law or City Directed Change in Scope (but not resulting from unrelated changes in costs and
1111 revenues), clearly identifying all assumptions related to such calculations and providing the underlying
1112 documentation supporting the assumptions. City Contract Manager shall evaluate the application for
1113 reasonableness. As part of that review, the City Contract Manager may request access to the financial
1114 statements and accounting records required to be maintained by the Contractor (pursuant to Section
1115 9.3) in order to determine the reasonableness of the Contractor's application. Should the Contractor
1116 not grant such access, then the City may rely on the Contractor's Proposal and other information
1117 available to it as the basis for making reasonable assumptions regarding what those accounting and
1118 financial records would have shown and therefore the reasonableness of the Contractor's application.
1119 Contractor shall pay all reasonable costs incurred by the City, including the costs of outside accountants,
1120 attorneys, and/or consultants, in order to make a determination of the reasonableness of the requested
1121 Rate adjustment.

1122 In the event of such an application for Special Circumstances Rate Adjustment, it is understood that the
1123 City or Contractor, as the case may be, shall have the burden of demonstrating the reasonableness of
1124 the requested adjustment

1125 The Contractor may appeal the decision of the City Contract Manager to the City Council, which shall
1126 then make the final determination as to whether an adjustment to the maximum Rates will be made,
1127 and if a Rate adjustment is permitted, the amount of the Rate adjustment. With respect to an
1128 Extraordinary Rate adjustment requested by the City Contract Management, the City Council shall then
1129 make the final determination as to whether an adjustment to the maximum Rates will be made, and if a
1130 Rate adjustment is permitted, the amount of the Rate adjustment.

1131 **Section 11.4: Publication of Rates**

1132 The Contractor shall provide written notice to Customers of proposed Rate changes. Such written notice
1133 shall be delivered to all Customers as part of the next quarterly or monthly billing statement which
1134 Contractor sends to Customers. Contractor shall also publish such Rates in a convenient and easily found
1135 location on its website.

1136 **ARTICLE 12: INDEMNITY, INSURANCE, AND PERFORMANCE**
1137 **BOND**

1138 **Section 12.1: Indemnification**

1139 **A. General.** Contractor shall indemnify, defend with counsel acceptable to City, and hold harmless
1140 (to the full extent permitted by law) City and its officers, officials, employees, volunteers, and
1141 agents from and against any and all claims, liability, loss, injuries, damage, expense, and costs
1142 (including without limitation costs and fees of litigation, including attorneys’ and expert witness
1143 fees) (collectively, “Damages”) of every nature arising out of or in connection with Contractor’s
1144 performance under this Agreement, or its failure to comply with any of its obligations contained
1145 in the Agreement, except to the extent such loss or damage was caused by the negligence or
1146 willful misconduct of the City.

1147 **B. Excluded Waste.** Contractor acknowledges that it is responsible for compliance during the
1148 entire Term of this Agreement with all Applicable Laws. Contractor shall not store, Transport,
1149 use, or Dispose of any Excluded Waste except in strict compliance with all Applicable Laws.

1150 In the event that Contractor negligently or willfully mishandles Excluded Waste in the course of
1151 carrying out its activities under this Agreement, Contractor shall at its sole expense promptly
1152 take all investigatory and/or remedial action reasonably required for the remediation of such
1153 environmental contamination. Prior to undertaking any investigatory or remedial action,
1154 however, Contractor shall first obtain the City’s approval of any proposed investigatory or
1155 remedial action. Should Contractor fail at any time to promptly take such action, the City may
1156 undertake such action at Contractor’s sole cost and expense, and Contractor shall reimburse the
1157 City for all such expenses within thirty (30) calendar days of being billed for those expenses, and
1158 any amount not paid within that thirty (30) calendar day period shall thereafter be deemed
1159 delinquent and subject to the delinquent fee payment provision of Section 10.3. These
1160 obligations are in addition to any defense and indemnity obligations that Contractor may have
1161 under this Agreement. The provisions of this Section shall survive the termination or expiration
1162 of this Agreement.

1163 Notwithstanding the foregoing, Contractor’s duties under this subsection shall not extend to any
1164 claims arising from the Disposal of Solid Waste at the Designated Disposal Facility, including, but
1165 not limited to, claims arising under Comprehensive Environmental Response, Compensation and
1166 Liability Act (CERCLA) unless such claim is a direct result of Contractor’s negligence or willful
1167 misconduct.

1168 **C. Environmental Indemnity.** Contractor shall defend, indemnify, and hold the City harmless
1169 against and from any and all claims, suits, losses, penalties, damages, and liability for damages
1170 of every name, kind and description, including attorneys’ fees and costs incurred, attributable to
1171 the negligence or willful misconduct of Contractor in handling Excluded Waste.

1172 **D. Related to the Act.** Contractor’s duty to defend and indemnify herein includes all fines and/or
1173 penalties imposed by CalRecycle, subject to the restrictions set forth in Public Resources Code
1174 Section 40059.1, if the requirements of the act are not met by the Contractor with respect to
1175 the waste stream Collected under this Agreement, and such failure is: (i) due to the failure of

1176 Contractor to meet its obligations under this Agreement; or, (ii) due to Contractor delays in
1177 providing information that prevents Contractor or the City from submitting reports required by
1178 the Act in a timely manner.

1179 **E. Related to Proposition 218.** Should there be a Change in Law or a new judicial interpretation of
1180 Applicable Law, including, but not limited to, Article XIII C and D of the California Constitution
1181 (Commonly Proposition 218), which impacts the Rates for the Collection Services established in
1182 accordance with this Agreement, Contractor agrees to meet and confer with the City to discuss
1183 the impact of such Change in Law on either Party’s ability to perform under this Agreement.

1184 If, at any time, a Rate adjustment determined to be appropriate by both the City (which
1185 determination shall not be unreasonably withheld) and Contractor to compensate Contractor
1186 for increases in costs as described in this Agreement cannot be implemented for any reason,
1187 Contractor shall be granted the option to negotiate with the City, in good faith, a reduction of
1188 services equal to the value of the Rate adjustment that cannot be implemented. If the City and
1189 Contractor are unable to reach agreement on such a reduction in services, then Contractor may
1190 terminate this Agreement upon one hundred eighty (180) calendar days prior written notice to
1191 the City, in which case the Contractor and the City shall each be entitled to payment of amounts
1192 due for contract performance through the date of termination.

1193 Should a court of competent jurisdiction determine that the Contractor cannot charge and/or
1194 increase its Rates for charges related to any new or increased Franchise Fees and Governmental
1195 Fees and charges, Contractor shall reduce the Rates it charges Customers a corresponding
1196 amount and shall discontinue payment of any new or increased Franchise Fee, Governmental
1197 Fees, and/or charges which have been invalidated by the court.

1198 Nothing herein is intended to imply that California Constitution, Articles XIIC or XIID, apply to
1199 the Rates established for services provided under this Agreement; rather this Section is provided
1200 merely to allocate risk of an adverse judicial interpretation between the Parties.

1201 This provision (i.e., Section 12.1) will survive the expiration or earlier termination of this
1202 Agreement and shall not be construed as a waiver of rights by the City to contribution or
1203 indemnity from third parties.

1204 **Section 12.2: Insurance**

1205 **General Requirements.** Contractor shall, at its sole cost and expense, maintain in effect at all times
1206 during the Term of this Agreement not less than the following coverage and limits of insurance:

1207 **A. Coverages and Requirements.** During the Term of this Agreement, Contractor shall at all times
1208 maintain, at its expense, the following coverages and requirements. The comprehensive general
1209 liability insurance shall include broad form property damage insurance.

1210 1. Insurance coverage shall be with limits not less than the following:

1211 **Comprehensive General Liability** – \$2,000,000 combined single limit per occurrence for
1212 bodily injury, personal injury, and property damage.

- 1213 **Automobile Liability** – \$2,000,000 combined single limit per accident for bodily injury
1214 and property damage (include coverage for Hired and Non-owned Vehicles).
- 1215 **Workers’ Compensation – Statutory Limits/Employers’ Liability** - \$1,000,000/accident
1216 for bodily injury or disease.
- 1217 **Employee Blanket Fidelity Bond** – \$500,000 per employee covering dishonesty, forgery,
1218 alteration, theft, disappearance, and destruction (inside or outside).
- 1219 **Pollution Legal Liability** - \$1,000,000 per claim/occurrence and \$2,000,000 aggregate
1220 for bodily injury, property damage, and remediation of contaminated site.
- 1221 2. The City, its officers, agents, employees, and volunteers shall be named as additional
1222 insured on all but the workers’ compensation and professional liability coverages.
- 1223 3. Said policies shall remain in force through the life of this Agreement and, with the
1224 exception of professional liability coverage, shall be payable on a “per occurrence” basis
1225 unless the City’s Risk Manager specifically consents in writing to a “claims made” basis.
1226 For all “claims made” coverage, in the event that the Contractor changes insurance
1227 carriers Contractor shall purchase “tail” coverage or otherwise provide for continuous
1228 coverage covering the Term of this Agreement and not less than three (3) years
1229 thereafter. Proof of such “tail” or other continuous coverage shall be required at any
1230 time that the Contractor changes to a new carrier prior to receipt of any payments due.
- 1231 4. The Contractor shall declare all aggregate limits on the coverage before commencing
1232 performance of this Agreement, and the City’s Risk Manager reserves the right to
1233 require higher aggregate limits to ensure that the coverage limits required for this
1234 Agreement as set forth above are available throughout the performance of this
1235 Agreement.
- 1236 5. The deductibles or self-insured retentions are for the account of Contractor and shall be
1237 the sole responsibility of the Contractor.
- 1238 6. Each insurance policy shall provide or be endorsed to state that coverage shall not be
1239 suspended, voided, canceled by either Party, reduced in coverage or in limits except
1240 after thirty (30) calendar days prior written notice by certified mail, return receipt
1241 requested, has been given to the City Contract Manager ten (10) Business Days for
1242 delinquent insurance premium payments).
- 1243 7. Insurance is to be placed with insurers with a current A.M. Best’s rating of no less than
1244 A-VII, unless otherwise approved by the City Risk Manager.
- 1245 8. The policies shall cover all activities of Contractor, its officers, employees, agents and
1246 volunteers arising out of or in connection with this Agreement.
- 1247 9. For any claims relating to this Agreement, the Contractor’s insurance coverage shall be
1248 primary, including as respects the City, its officers, agents, employees, and volunteers.
1249 Any insurance maintained by the City shall apply in excess of, and not contribute with,
1250 insurance provided by Contractor’s liability insurance policy.

1251 10. The Contractor shall waive all rights of subrogation against the City, its officers,
1252 employees, agents, and volunteers related to the performance of services under this
1253 Agreement.

1254 **B. Endorsements.** Prior to the effective date pursuant to this Agreement, Contractor shall furnish
1255 the City Contract Manager with certificates or original endorsements reflecting coverage
1256 required by this Agreement. The certificates or endorsements are to be signed by a Person
1257 authorized by that insurer to bind coverage on its behalf. All certificates or endorsements are to
1258 be received by, and are subject to the approval of, the City Risk Manager before work
1259 commences.

1260 **C. Renewals.** During the Term of this Agreement, Contractor shall furnish the City Contract
1261 Manager with certificates or original endorsements reflecting renewals, changes in insurance
1262 companies, and any other documents reflecting the maintenance of the required coverage
1263 throughout the entire Term of this Agreement. The certificates or endorsements are to be
1264 signed by a Person authorized by that insurer to bind coverage on its behalf.

1265 **D. Workers' Compensation.** Contractor shall provide workers' compensation coverage as required
1266 by State law, and prior to the effective date pursuant to this Agreement, Contractor shall file the
1267 following statement with the City.

1268 "I am aware of the provisions of Paragraph 3700 of the Labor Code that require every employer
1269 to be insured against liability for workers' compensation or to undertake self-insurance in
1270 accordance with the provisions of that code, and I will comply with such provisions before
1271 commencing any services required by this Agreement.

1272 The Person executing this Certificate on behalf of Contractor affirmatively represents that
1273 she/he has the requisite legal authority to do so on behalf of Contractor, and both the Person
1274 executing this Agreement on behalf of Contractor and Contractor understand that the City is
1275 relying on this representation in entering into this Agreement."

1276 **Section 12.3: Performance Bond**

1277 Within seven (7) calendar days of the City's notification to Contractor that the City has executed this
1278 Agreement, Contractor shall file with the City a bond, payable to the City, securing the Contractor's
1279 performance of its obligations under this Agreement and such bond shall be renewed annually if
1280 necessary so that the performance bond is maintained at all times during the Term. The principal sum of
1281 the bond shall be five hundred sixty thousand dollars (\$560,000) and shall be adjusted every three (3)
1282 years, commencing with Rate Period Three, to equal three (3) months of the prior Rate Period's annual
1283 Gross Receipts. The bond shall be executed as surety by a corporation authorized to issue surety bonds
1284 in the State of California that has a rating of A or better in the most recent edition of Best's Key Rating
1285 Guide, and that has a record of service and financial condition satisfactory to the City. The bond shall be
1286 in the form attached as Exhibit E.

ARTICLE 13: DEFAULT, REMEDIES AND TERMINATION

1287

1288 Section 13.1: Default and Remedies

1289 A. **Events of Default.** Each of the following shall constitute an Event of Default:

1290 1. Any transaction, without any requirement of notice or cure opportunity, not complying with
1291 the requirements of Section 15.7 hereof.

1292 2. The failure by the Contractor for any reason to deliver to the Designated Disposal Facility
1293 Solid Waste Collected by the Contractor.

1294 3. Failure or refusal of the Contractor to perform any term, covenant, obligation or condition in
1295 this Agreement other than a failure or refusal described in items (1) or (2) above, except
1296 that no such failure or refusal shall give the City the right to terminate this Agreement under
1297 this Section unless:

1298 (i) The City has given prior written notice to the Contractor, stating the existence of a
1299 specific failure or refusal to perform exists which will, unless corrected, constitute a
1300 material breach of this Agreement on the part of the Contractor and which will, in the
1301 City's opinion, give the City a right to terminate this Agreement for cause under this
1302 Section unless such default is corrected within fifteen (15) days, and

1303 (ii) The Contractor has neither challenged in an appropriate forum the City's conclusion
1304 that such failure or refusal to perform has occurred or constitutes a material breach of
1305 this Agreement nor corrected or diligently taken steps to correct such default within
1306 such fifteen (15) day period from receipt of the notice given pursuant to the clause (i)
1307 of this subsection (but if the Contractor shall have diligently taken steps to correct
1308 such default within a reasonable period of time, the same shall not constitute an
1309 Event of Default for as long as the Contractor is continuing to take such steps to
1310 correct such default in a timely manner).

1311 4. The written admission by the Contractor that it is bankrupt, or the filing by the Contractor of
1312 a voluntary petition under the Federal Bankruptcy Code, or the consent by the Contractor or
1313 either Guarantor to the appointment by a court of a receiver or trustee for all or a
1314 substantial portion of its property or business, or the making by the Contractor or either
1315 Guarantor of any arrangement with or for the benefit of its creditors involving an
1316 assignment to a trustee, receiver or similar fiduciary, regardless of how designated, of all or
1317 a substantial portion of the Contractor's property or business.

1318 5. The final adjudication of the Contractor as bankrupt after the filing of an involuntary petition
1319 under the Bankruptcy Act, but no such adjudication shall be regarded as final unless and
1320 until the same is no longer being contested by the Contractor nor until the order of the
1321 adjudication is no longer appealable.

1322 6. The failure of the Contractor to provide or maintain the Performance Bond required
1323 pursuant to Section 12.3 hereof.

1324 7. Any failure by the Contractor to comply with the Ridgecrest Municipal Code including, but
1325 not limited to, Sections 3-501 through 3-5.112, Sections 3-5.701 through 3-5.704, and
1326 Sections 13-2.2 through 13-5.4, following notice and opportunity to cure in accordance with
1327 Section 13.1.A.3(ii).

1328 8. Failure of the Contractor to timely implement the operational changes and adjusted
1329 maximum Rates resulting from the Change of Law or City-directed Change in Scope. The
1330 Contractor shall have 30 days after notice of breach from the City to implement the
1331 operational changes. Should the Contractor thereafter not implement the operational
1332 changes it shall be in default of the Agreement. In addition to being liable for all damages
1333 and penalties to the City resulting from such default, the City may terminate the Agreement
1334 in accordance with Section 13.1.B.

1335 B. **Right to Terminate Upon Default.** Upon a determination by the City Contract Manager that an
1336 Event of Default has occurred, the City Council shall conduct a hearing upon ten (10) days notice
1337 to the Contractor to determine if termination of the Agreement is in the best interests of the
1338 public health, safety, and general welfare of the citizens of the City. If the fact finder makes such a
1339 determination, the Contractor shall be deemed to have waived any right it may have under
1340 Applicable Law to notice of termination in excess of those notice provisions explicitly set forth
1341 herein.

1342 C. **City's Remedies Cumulative: Specific Performance.** The City's right to terminate this Agreement
1343 under this Section 13.1 is not exclusive, and the City's termination of the Agreement shall not
1344 constitute an election of remedies. Instead, they shall be in addition to any and all other legal and
1345 equitable rights and remedies which the City may have, including but not limited to specific
1346 performance, and fees and expenses incurred by or on behalf of the City in enforcing payment or
1347 performance of the Contractor's obligations hereunder if such non-performance results in a
1348 judicially determined Event of Default by the Contractor.

1349 D **Possession of Property upon Termination or Suspension.** In the event of termination or
1350 suspension for default, the City shall have the right to take possession of any and all of
1351 Contractor's equipment and other property used or useful in the Collection, Transportation,
1352 Processing, and Disposal of Solid Waste or Recyclable Materials and the billing and collection of
1353 fees for these services and to use such property. The City shall have the right to retain the
1354 possession of such property until such time as Contractor remedies the default or substitute
1355 services can be provided by another contractor. If the City retains possession of Contractor's
1356 equipment or other property after the period of time for which Contractor has already been paid
1357 by means of bills issued in advance of providing service for the service involved, the Contractor
1358 shall be entitled to the reasonable rental value of such property (which shall be offset against any
1359 damages due the City for the Contractor's default). Contractor shall furnish the City with
1360 immediate access to all of its business records related to its Customers and billing of accounts for
1361 Collection services.

1362 **Section 13.2: Liquidated Damages**

1363 In addition to any other remedies provided for in this Agreement, the City Contract Manager may levy a
1364 charge in the amounts listed below for the Contractor's failure to meet the requirements enumerated
1365 below that constitute a breach of the terms and conditions of this Agreement. The City Contract

1366 Manager's decision to levy such a charge shall not be deemed an election of remedies, but shall be
1367 cumulative with any other remedies provided for in this Agreement. The City Contract Manager's
1368 decision not to levy any such charge shall not be deemed a waiver of any breach by Contractor under
1369 this Agreement. The Parties agree that the following Liquidated Damages represent a reasonable
1370 estimate of the amount of such damages, considering all of the circumstances existing on the date of the
1371 Agreement, including the relationship of the sums to the range of harm to the City that reasonably could
1372 be anticipated and anticipation that proof of actual damages would be costly or inconvenient. In signing
1373 this Agreement, each Party specifically confirms the accuracy of the statements made above and the
1374 fact that each Party had ample opportunity to consult with legal counsel and obtain an explanation of
1375 this Liquidated Damage provision at the time that this Agreement was entered into.

1376 A. Excessive complaints. When Contractor or the City Contract Manager receives complaints from
1377 more than one percent (1%) of its client base within a six (6) month period, Contractor will be
1378 assessed twenty-five (\$25) per complaint per occurrence during that period; and an additional
1379 twenty-five (\$25) each twenty-four (24) hours until the complaint is reasonably resolved. For
1380 purposes of this section, "complaints" shall mean substantive and credible Customer notifications
1381 to the Contractor or the City Contract Manager of missed pick-ups, property damage, missed
1382 commitments, employee misconduct or poor quality of service (e.g. litter on property or public
1383 right-of-way or misplacement of Containers).

1384 B. Failure to remit the City Fees, or file required reports in an accurate and complete manner by the
1385 fifth working day following the due date of such fees or reports: fifty dollars (\$50) per day for the
1386 first five (5) days, then five hundred dollars (\$500) per day for each day after the first five (5) days.

1387 C. Failure to provide access to Operating Assets or any other documents or information within
1388 fourteen (14) days of a request by the City Contract Manager: one hundred dollars (\$100) per day
1389 per occurrence.

1390 D. Failure to charge a Customer at or below the maximum approved Rate, where not refunded on
1391 the next invoice: fifty dollars (\$50) per occurrence per Customer where the number of Customers
1392 overcharged is less than twenty-five (25); five hundred dollars (\$500) per occurrence per
1393 Customer where the number of Customers overcharged is twenty-five (25) or more. In addition,
1394 Contractor shall be responsible for refunding any amount overcharged to each Customer
1395 determined to be overcharged. Contractor shall not be entitled to any refund from the City for
1396 Franchise Fees or other fees paid on overcharged amounts.

1397 E. Failure to implement any one of the strategies listed in the Recycling Plan: fifty dollars (\$50) per
1398 day for each day in excess of fifteen (15) days following Contractor's receipt of written notice from
1399 City.

1400 F. Collection outside permitted hours: one hundred dollars (\$100) per occurrence.

1401 In the event the Liquidated Damages permitted to be imposed under this Section exceed ten thousand
1402 dollars (\$10,000) during any three hundred sixty five (365) day period or the Contractor has violated the
1403 requirements for a particular service indicator more than four (4) times in an Agreement Year, the City
1404 Contract Manager may impose an additional penalty of twenty-five percent (25%) of the original
1405 amount of Liquidated Damages. For example, if the original amount of the Liquidated Damages totals
1406 one thousand dollars (\$1,000) the penalty amount would be two hundred fifty dollars (\$250).

1407 The City Contract Manager shall give the Contractor written notice of charges levied pursuant to this
1408 Section. Any such damages shall be paid directly to the City, and may not be included by the Contractor
1409 as justification for an upward adjustment in the Rate schedule or offset against any fees.

1410 The decision of the City Contract Manager shall be final and binding on the Contractor unless the
1411 Contractor files with the Clerk of the City Council a Notice of Appeal within fifteen (15) days of receipt of
1412 the City Contract Manager's decision. The Notice of Appeal shall be in writing and shall contain a
1413 detailed statement of the basis for the appeal. Upon receipt of the Notice of Appeal, the City Contract
1414 Manager shall set the matter for a public hearing within thirty (30) days. The City Contract Manager shall
1415 give the Contractor and any interested Person requesting the same, ten (10) days written notice of the
1416 time and place of the hearing. At the hearing, the City Council shall determine, based on the record, the
1417 appropriate action to be taken. The decision of the City Council shall be final and conclusive.

1418 **Section 13.3: Uncontrollable Circumstances**

1419 A. **Excuse from Performance.** In the event that a Party is prevented from performing its obligations
1420 under this Agreement by an Uncontrollable Circumstance, it shall not constitute a default of this
1421 Agreement, so long as the Party in good faith has used its best efforts to perform its respective
1422 obligations.

1423 The Party claiming excuse from performance shall, within five (5) days after such Party has notice
1424 of the effect of such cause, give the other Party notice of the facts constituting such cause and
1425 asserting its claim to excuse under this Section. Specifically, such information shall include the
1426 following:

- 1427 1. The Uncontrollable Circumstance and the cause thereof (to the extent known);
- 1428 2. The date the Uncontrollable Circumstance began and the cause thereof, its estimated
1429 duration" the estimated time during which the performance of such Party's obligations
1430 hereunder will be delayed;
- 1431 3. Its estimated impact on the other obligations of such Party under this Agreement; and
- 1432 4. Potential mitigating actions which might be taken by the Contractor or City and any areas
1433 where costs might be reduced and the approximate amount of such cost reductions.

1434 While the delay continues, the Contractor or City shall give daily notice to the other Party updating
1435 the information previously submitted.

1436 In the event that either Party validly exercises its rights under this Section, the Parties hereby
1437 waive any claim against each other for any damages sustained thereby.

1438 B. **City's Right to Terminate.** The partial or complete interruption or discontinuance of the
1439 Contractor's services caused by one (1) or more of the events described in this Section 13.3 shall
1440 not constitute a default by the Contractor under this Agreement. Notwithstanding the foregoing,
1441 however, if the Contractor is excused from performing its obligations hereunder because of any
1442 Uncontrollable Circumstance for a period of thirty (30) days or more, the City shall nevertheless
1443 have the right, in its sole discretion, to terminate this Agreement by giving sixty (60) days notice.

1444 C. **Work Stoppages.** Notwithstanding anything in this Agreement to the contrary, any strikes, work
1445 stoppages, or other labor disputes or disturbances occurring with respect to an) activity
1446 performed or to be performed by the Contractor or any of the Contractor's Subcontractors in
1447 connection with the Operating Assets or the Collection Services and which last beyond seven (7)
1448 days shall not constitute an Event of Default under Section 13.1.A.

1449 However, in the event of such occurrence which prevents or diminishes the ability of Contractor to
1450 Collect, Transport and Dispose of any or all the Solid Waste and Recyclable Materials which it is
1451 obligated under this Agreement to Collect, Transport or Dispose of for a period of more than
1452 seventy-two (72) hours and the City Contract Manager, in his or her discretion, should find that
1453 such accumulation endangers or menaces the public health, safety or welfare, then City shall have
1454 the right, upon twenty-four (24) hours notice to Contractor, to find the Contractor in Default and
1455 to contract with any other third parties to Collect and Transport any and all Solid Waste and
1456 Recyclable Materials which Contractor would otherwise be obligated to Collect and Transport
1457 pursuant to this Agreement. Contractor agrees that in such event, it will fully cooperate with City
1458 and its third-party contractor to effect such transfer of operations in as smooth and efficient a
1459 fashion as is practicable. All costs, fees, rates or other expenses incurred by City and/or its third-
1460 party contractor that exceed those that would have been incurred by City had no such emergency
1461 arisen shall be the responsibility of the Contractor and shall be paid to City within thirty (30) days
1462 of receipt of written notice to pay.

1463 **Section 13.4: Right to Demand Assurances of Performance**

1464 If the City believes in good faith that the Contractor's ability to perform under the Agreement has been
1465 placed in substantial jeopardy by one (1) of the events enumerated below, the City Contract Manager
1466 may, at his option and in addition to all other remedies the City may have, require that Contractor
1467 provide City Contract Manager with sufficient proof that none of the events enumerated below will in
1468 fact impair Contractor from performing its obligations under the Agreement:

- 1469 A. Contractor is the subject of any labor unrest, including work stoppages or slowdown, sick-out,
1470 picketing, or other concerted job action;
- 1471 B. Contractor appears, in the reasonable judgment of the City, to be unable to regularly pay its bills
1472 as they become due; or,
- 1473 C. Contractor is the subject of a civil or criminal judgment or order entered by a federal, state,
1474 regional, or local agency for violation of an environmental law.

1475 If the Contractor fails or refuses to provide to the City adequate information to establish its ability to
1476 perform within thirty (30) days, such failure or refusal shall be an Event of Default for purposes of
1477 Section 13.1.A.

1478 **Section 13.5: Waiver of Defenses**

1479 In order to insure the non-interruption of a vital public service, except as provided in Section 13.3, the
1480 Contractor acknowledges that it is solely responsible for providing the services described herein, and
1481 hereby irrevocably waives the following defenses to the payment and performance of its obligations
1482 under this Agreement: any defense based upon failure of consideration, contract of adhesion,

1483 impossibility or impracticability of performance, commercial frustration of purpose, or the existence,
1484 non-existence, occurrence or non-occurrence of any foreseen or unforeseen fact, event, or contingency
1485 that may be a basic assumption of the Contractor with regard to any provision of this Agreement.

1486

ARTICLE 14: RESOLUTION OF DISPUTES

1487 Should a dispute arise with respect to the performance and obligations of the Parties hereunder, at any
1488 time during the Term of this Agreement, the provisions of this Section shall apply. Either Party shall give
1489 the other written notice of such dispute. Such notice shall specify a date and location for the Parties to
1490 meet and confer in good faith to resolve any dispute that may arise. In the event such dispute cannot be
1491 resolved by the Parties themselves within thirty (30) days of such notice, either Party may propose the
1492 appointment of a mediator. If the other Party is in agreement, both Parties may refer the matter in
1493 dispute to such mediator for advice and non-binding mediation. If the mediator is unable, within 30 days
1494 thereafter, to reach a determination as to the matter in dispute in a manner acceptable to the Parties
1495 hereto, the matter may be referred by either Party to a Court of competent jurisdiction.

1496 **ARTICLE 15: MISCELLANEOUS PROVISIONS**

1497 **Section 15.1: Relationship of the Parties**

1498 Neither Party to this Agreement shall have any responsibility whatsoever with respect to services
1499 provided or contract obligations or liabilities assumed by the other Party hereto, whether accrued,
1500 absolute, contingent or otherwise, or whether due or to become due. The Contractor is an independent
1501 Contractor and Agreement holder and nothing in this Agreement shall be deemed to constitute either
1502 Party a partner, agent or legal representative of the other Party or to create any fiduciary relationship
1503 between the Parties.

1504 **Section 15.2: Notice to Parties**

1505 All notices required or provided for in this Agreement shall be provided to the Parties at the following
1506 addresses, by personal delivery or deposit in the U.S. Mail, postage prepaid, registered or certified mail,
1507 addressed as specified below. Notices delivered personally shall be deemed received upon receipt;
1508 mailed or expressed notices shall be deemed received five (5) days after deposit. A Party may change
1509 the address to which notice is given by giving notice as provided herein.

1510 To City:

1511 City of Ridgecrest
1512 Attn: City Manager
1513 100 W. California Ave.
1514 Ridgecrest, CA 93555
1515

1516 To Contractor:

1517 Waste Management of California, Inc.
1518 Attn: Mr. Douglas Corcoran
1519 9081 Tujunga Ave.
1520 Sun Valley, CA 91352
1521

1522 **Section 15.3: Actions of the City in its Governmental Capacity**

1523 Nothing in this Agreement shall be interpreted as limiting the rights and obligations of the City in its
1524 governmental or regulatory capacity, or as limiting the right of the Contractor to bring any legal action
1525 against the City, not based on this Agreement, arising out of any act or omission of the City in its
1526 governmental or regulatory capacity.

1527 **Section 15.4: Binding Effect**

1528 This Agreement shall bind and inure to the benefit of the Parties hereto and any successor or assignee
1529 acquiring an interest hereunder consistent with the provisions hereof.

1530 **Section 15.5: Amendments**

1531 Neither this Agreement nor any provision hereof may be changed, modified, amended or waived except
1532 by written agreement duly executed by both Parties.

1533 **Section 15.6: Further Assurance**

1534 Each Party agrees to execute and deliver any instruments and to perform any acts as may be necessary
1535 or reasonably requested by the other in order to give full effect to this Agreement.

1536 **Section 15.7: Assignment and Transfer of Agreement**

1537 A. **Consent of the City Required.** This Agreement shall not be transferred, sold, pledged,
1538 hypothecated, leased, or assigned, nor shall any of the rights or privileges herein be transferred,
1539 sold, pledged, hypothecated, leased, or assigned, either in whole or in part, nor shall title hereto
1540 or thereto, either legal or equitable, or any right, interest or property herein or therein, pass to or
1541 vest in any Person, except the Contractor, either by action or inaction of the Contractor, or by
1542 operation of law, without the prior written consent of the City, which may be withheld or delayed
1543 in its sole and absolute discretion.

1544 The Contractor shall provide written notice of any request to assign or transfer this Agreement,
1545 and shall provide the City with any information requested by the City in connection with the
1546 proposed transfer, included but not limited to information regarding the general business
1547 qualifications of the proposed assignee, as well as its ability to perform the Collection Services and
1548 a statement of its financial resources. The Contractor's notice of intention to assign this
1549 Agreement shall contain a statement of the allocation of dollars in the consideration to be paid by
1550 the assignee to the Contractor for (a) goodwill, (b) equipment, and (c) any other asset transfer
1551 which has any connection with said assignment, all as agreed upon by the Contractor and the
1552 assignee. The notice shall also contain a statement showing the method of payment for the
1553 consideration and whether the Contractor proposes to hold some security interest as security for
1554 the payment of the unpaid balance of the consideration.

1555 The City shall respond to any such request within ninety (90) days after receipt of any information
1556 requested by the City pursuant to the preceding sentence. The Contractor acknowledges that,
1557 prior to approving such a transfer, the City must find that such a transfer is in the best interests of
1558 the public health, safety, and general welfare. Any attempt by the Contractor to effectuate any of
1559 the foregoing without such consent of the City shall be null and void, and any effectuation of any
1560 of the foregoing without such consent of the City shall constitute an Event of Default resulting in
1561 the immediate termination of this Agreement as provided in Section 13.1.A hereof.

1562 Any transfer of this franchise shall constitute the granting of a "new franchise" for purposes of
1563 Municipal Code Sections 3-5.104 and 3-5.105. In addition to the procedural requirements of this
1564 Section, any transfer is subject to the procedural requirements of these portions of the Municipal
1565 Code. Furthermore, any assigned or transferred franchise is subject to the term limitations of
1566 Municipal Code Section 3-5.106 as calculated from the original date of the granting of this
1567 franchise.

1568 B. **Consolidation, Merger, Sale, Transfer, and Change in Control.** Subject to the provisions of section
1569 3.7.A above, the Contractor shall not, without the prior written consent of the City which may be
1570 withheld or delayed in its sole and absolute discretion, consolidate with or merge with another
1571 entity or permit one (1) or more other entities to consolidate with or merge into it.
1572 Notwithstanding the above, any such transaction between Contractor and an Affiliate shall not be
1573 considered an assignment or transfer for purposes of this Section 15.7, and the City's consent to
1574 such transaction is not required.

1575 C. **Transfer of Voting Stock.** The City's prior written consent, which may be withheld or delayed in its
1576 sole and absolute discretion, shall be required for the sale or transfer by any means, whether by
1577 agreement or by operation of law (including transfers resulting from death, bankruptcy or
1578 divorce), of any of the voting stock of the Contractor. Notwithstanding the above, any such
1579 transaction between Contractor and an Affiliate shall not be considered an assignment or transfer
1580 for purposes of this Section 15.7, and the City's consent to such transaction is not required.

1581 D. **Reimbursement of Cost Related to Assignment Review.** If the Contractor requests the consent of
1582 the City for any transaction described in Section 15.7 hereof (except for those transactions
1583 described in subsections B. and C. above between Contractor and an Affiliate),, the proposed
1584 assignee, as a condition of assignment, shall reimburse the City for all costs and expenses incurred
1585 by the City in reviewing, examining, and analyzing the request, including all direct and indirect
1586 administrative expenses of the City and consultants and attorney's fees and expenses. Along with
1587 its written request for the review of the assignment, Contractor shall remit to City an assignment
1588 review fee in the amount of one hundred thousand dollars (\$100,000) which shall be intended to
1589 compensate the City of the costs of its review of the requested assignment. Such fee shall not be
1590 refundable to the Contractor in the event that the City determines, in its sole discretion, that the
1591 proposed assignment is unacceptable. In the event that the City's total costs for the review of the
1592 assignment exceed one hundred thousand dollars (\$100,000) the assignee shall compensate the
1593 City for its actual and reasonable costs within thirty (30) days of receiving the City's invoice. Such
1594 costs shall be supported with evidence of the expense or cost incurred.

1595 E. **Transfer Fee.** On the date the City approves the Contractor's written request for an assignment,
1596 Contractor shall pay the City a transfer fee in the amount of one (1) percent of the Gross Receipts
1597 for the most-recently completed Rate Period. The City's approval of such an assignment shall be
1598 conditioned on the receipt of the transfer fee.

1599 **Section 15.8: Interpretation**

1600 In this Agreement, unless the context otherwise requires:

1601 A. **References Hereto.** The terms "hereby," "hereof," "herein," hereunder," and any similar terms
1602 refer to this Agreement, and the term "hereafter" means after, and the term "heretofore" means
1603 before, the date of execution of this Agreement.

1604 B. **Gender and Plurality.** Words of the masculine gender mean and include correlative words of the
1605 feminine and neuter genders, and words importing the singular number mean and include the
1606 plural number and vice versa.

- 1607 C. **Persons.** Words importing Persons include firms, companies, associations, general partnerships,
1608 limited partnerships, trusts, business trusts, corporations, non-profit corporations, and other legal
1609 entitles, including Governmental Bodies, as well as individuals.
- 1610 D. **Headings.** The table of contents and any headings preceding the text of the articles, sections, and
1611 subsections of this Agreement shall be solely for convenience of reference and shall not constitute
1612 a part of this Agreement, nor shall they affect its meaning, construction, or effect.
- 1613 E. **Entire Agreement.** This Agreement contains the entire agreement between the Parties hereto
1614 with respect to the transactions contemplated by this Agreement. Furthermore, nothing in this
1615 Agreement is intended to confer on any Person other than the Parties hereto and their respective
1616 successors and assigns hereunder any rights or remedies under or by reason of this Agreement.
- 1617 F. **Reference to Days.** All references to days herein are to calendar days, including Saturdays,
1618 Sundays, and holidays, except as otherwise specifically provided.
- 1619 G. **Units of Measure.** Weights or volumes described herein may be reported in either metric or U.S.
1620 Standard terms of measurement, unless State or Federal law or regulation specifies the system of
1621 measurement to be used.
- 1622 H. **Counterparts.** This Agreement may be executed in any number of original counterparts. All such
1623 counterparts shall constitute but one and the same Agreement.
- 1624 I. **Applicable Law.** This Agreement shall be governed by and construed in accordance with
1625 Applicable Law. This Agreement is intended to be fully consistent with the requirements of the
1626 Ridgcrest Municipal Code and any subsequent amendments thereto. In the event there is an
1627 inconsistency or conflict between this Agreement and the Municipal Code, the Municipal Code is
1628 controlling and shall substitute for the inconsistent provision.
- 1629 J. **Severability.** If any clause, provision, subsection, section, or article of this Agreement shall be
1630 determined to be invalid by any court of competent jurisdiction, then the Parties hereto shall:
- 1631 1. Promptly meet and negotiate a substitute for such clause, provision, section, or article
1632 which shall, to the greatest extent legally permissible, effect the intent of the Parties
1633 therein.
- 1634 2. If necessary or desirable to accomplish item (1) above, apply to the court having declared
1635 such invalidity for a judicial construction of the invalidated portion of this Agreement.
- 1636 3. Negotiate such changes in, substitutions for or additions to, the remaining provisions of this
1637 Agreement as may be necessary in addition to and in conjunction with items (1) and (2)
1638 above, to effect the intent of the Parties in the invalid provision. The invalidity of such
1639 clause, provision, subsection, section, or article shall not affect any of the remaining
1640 provisions hereof, and this Agreement shall be construed and enforced as if such invalid
1641 portion did not exist.

1642 **Section 15.9:Jurisdiction**

1643 Any lawsuits between the Parties arising out of this Agreement shall be brought and concluded in the
1644 courts of Kern County in the State of California, which shall have exclusive jurisdiction over such
1645 lawsuits. With respect to venue, the Parties agree that this Agreement is made in and will be performed
1646 in Kern County.

1647 **Section 15.10: Entire Agreement**

1648 This Agreement, including the Exhibits, represents the full and entire Agreement between the Parties
1649 with respect to the matters covered herein. Each of the Exhibits identified as Exhibits "A" through "G" is
1650 attached hereto and incorporated herein and made a part hereof by this reference.

1651 IN WITNESS WHEREOF, the Parties have executed this Agreement on the dates stated below:

1652 Dated: _____, 2011.

1653 **City of Ridgecrest**

1654

1655 By: _____

1656 Kurt Wilson, City Manager

1657

1658

1659 Attest:

1660

1661 By: _____

1662 Rachael J. Ford, City Clerk

1663

1664

1665

1666 Dated: _____, 2011

1667 Approved as to Form:

1668

1669 By: _____

1670 W. Keith Lemieux, City Attorney

Dated: _____, 2011.

Waste Management of California, Inc.

By: _____

Douglas Corcoran, Director of Operations

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CITY COUNCIL/REDEVELOPMENT AGENCY AGENDA ITEM

SUBJECT:

Approval of Proposition 1B Funds to purchase buses.

PRESENTED BY:

Dennis Speer, Director of Public Works

SUMMARY:

In March of 2011, Public Transportation Modernization, Improvement and Service Enhancement Account (PTMISEA) or Proposition 1B allocated \$28,014 for the purchase of a Dispatch system for Transit Operations. However, the City of Ridgecrest purchased the system in 2010 without utilizing PTMISEA funds. Subsequently, the funds from PTMISEA can now be reallocated toward the purchase of a new bus. The Transportation Development Act (TDA) account has funds in the amount of \$69,986.00 to supplement the PTMISEA funds. The City can combine these two funding sources into a funding plan to purchase a bus.

FISCAL IMPACT: None

Reviewed by Finance Director

ACTION REQUESTED:

Approve the resolution that approves the reallocation of \$28,014 toward the purchase of a bus with Proposition 1B funds.

CITY MANAGER / EXECUTIVE DIRECTOR RECOMMENDATION:

Action as requested:

Submitted by: Dennis Speer
(Rev. 6/12/09)

Action Date: September 7, 2011

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RESOLUTION NO. 11-

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF RIDGECREST APPROVING THE PROPOSITION 1B FUNDS TO PURCHASE A BUS.

WHEREAS, in March of 2011, Public Transportation Modernization, Improvement and Service Enhancement Account (PTMISEA) allocated \$28,014.00 for the purchase of a Dispatcher System for Transit Operations, and

WHEREAS, the City of Ridgecrest purchased the system in 2010 without utilizing PTMISEA funds, and

WHEREAS, funds from PTMISEA can now be reallocated for the purchase of a new bus along with funds that are available in the Transportation Development Act (TDA) account in the amount of \$69,986.00, and

WHEREAS, the combination of the funding sources allows the City of Ridgecrest to purchase a new bus.

NOW THEREFORE, be it resolved, that the City Council of City of Ridgecrest approves the reallocation of Proposition 1B Funds to purchase a bus.

APPROVED AND ADOPTED this 7th day of September 2011 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Ronald H Carter, Mayor

ATTEST:

Rachel J. Ford, CMC
City Clerk

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**Public Transportation Modernization, Improvement and
Service Enhancement Program (PTMISEA)
PROJECT DESCRIPTION AND ALLOCATION REQUEST**

	Regional Entity: Kern Cog
Project Lead*: City of Ridgecrest	County: Kern
Project Title: Purchase of Ford Bus	

I certify the scope, cost, schedule, and benefits as identified in the attached Project Description and Allocation Request (Request) and attachments are true and accurate and demonstrate a fully funded operable project. I understand the Request is subject to any additional restrictions, limitations or conditions that may be enacted by the State Legislature, including the State's budgetary process, which may effect the amount of bond proceeds received by the project sponsor now and in the future. Project sponsors may need to consider alternative funding sources if bond proceeds are not available. In the event the project cannot be completed as originally scoped, scheduled and estimated, or the project is terminated prior to completion, project sponsor shall, at its own expense, ensure that the project is in a safe and operable condition for the public. I understand this project will be monitored by the California Department of Transportation -- Division of Mass Transportation.

Name: Kurt Wilson

Signature:

Title: City Manager

Agency: City of Ridgecrest

Date:

*If this project includes funding from more than one project sponsor, the project sponsor above becomes the "recipient agency" and the additional contributing project sponsor(s) must also sign and state the amount and type of PTMISEA funds (GC Section 8879.55(a)(2) and/or Section 8879.55(a)(3)) contribution. Sign below or **attach a separate officially signed letter providing that information.**

Name:

Signature:

Title:

Agency:

Date:

Amount:

PTMISEA PROJECT DESCRIPTION AND ALLOCATION REQUEST

	7/8	8/9	9/10	10/11
Request Amount per GC 8879.55(a)(2)/PUC 99313:	\$12,085	\$0		
Request Amount per GC 8879.55(a)(3)/PUC 99314:	\$10,189	\$5,740		
Total Project Allocation Request:	\$22,274	\$5,740	\$0	\$0
Project Title:	Purchase of Ford Bus			
Project Location/Address:	100 W. California Ave. Ridgecrest ca 93555			

Table 1: Project Lead/Recipient Agency Information

Project Lead/ Recipient Agency: <u>City of Ridgecrest</u> Contact: <u>Starla Shaver</u> Contact Phone #: <u>760-499-5041</u> Email Address: <u>sshaver@ci.ridgecrest.ca.us</u> Address: <u>100 W. California Ave</u> <u>Ridgecrest, Ca. 93555</u>	Legislative District Numbers Assembly: _____ Senate: _____ Congressional: _____ Amount: _____ Fund Type: _____ 99314
	\$ <u>15929</u>

Table 2: Contributing PTMISEA-Eligible Project Sponsor Information

PTMISEA Contributors: <u>Kern Cog</u> Contact: <u>Bob Snoddy</u> Contact Phone #: <u>661-861-2191</u> Email Address: <u>snoddy@kerncog.org</u> Address: <u>1401 19th st. Suite 300</u> <u>Bakersfield, Ca. 93301</u>	Amount : <u>\$12,085</u> <u>\$</u>	Fund Type: <u>99313</u>
Other PTMISEA Contributors (Attach sheet with contact info) _____ _____ _____	Amount: <u>\$</u> <u>\$</u> <u>\$</u>	Fund Type: _____ _____ _____
TOTAL	\$28,014	

(*Contributing project sponsors attach signed letters of verification as to amount and eligibility or sign cover page)

Table 3: Project Category

Check only 1 box that best fits the description of the project being funded.

- | | |
|--|--|
| <input type="checkbox"/> Rehabilitation, Safety or Modernization Improvement | <input type="checkbox"/> Bus Rapid Transit |
| <input type="checkbox"/> Capital Service Enhancement or Expansion | <input checked="" type="checkbox"/> Rolling Stock Procurement: |
| <input type="checkbox"/> New Capital Project | ___ Expansion |
| | ___ Rehabilitation |
| | ___ <u>X</u> Replacement |

Table 4: Project Summary

a) Describe the project (or minimum operable segment) for which you are applying for funds. Attach additional sheets if necessary. If the application is for the purchase of vehicles or rolling stock, please include information on number of vehicles, size, passenger count, accessibility, and fuel type:

Purchase of 1 Ford gasoline Bus to replace old bus

b) Useful Life of the Project: 7 years

Table 5: Description of Major Benefits/Outcomes

a) Please check appropriate Benefit/Outcome:

<input type="checkbox"/> Increase Ridership	by <u> </u> %
<input checked="" type="checkbox"/> Reduce Operating/Maintenance Cost	by <u> 25 </u> %
<input type="checkbox"/> Reduce Emissions	by <u> </u> %
<input checked="" type="checkbox"/> Increase System Reliability	by <u> 25 </u> %

b) Please summarize and describe any other benefits:

Will provide safe reliable transportation.

Table 6: Project Schedule

	Date
Begin Project Approval & Environmental Document Phase	
CEQA/ Environmental Compliance	
End Project Approval & Environmental Document Phase	
Begin Plans, Specifications & Estimates Phase	
End Plans, Specifications & Estimates Phase	
Begin Right of Way Phase	
End Right of Way Phase	
Begin Construction Phase (Contract Award)	
End Construction Phase (Contract Acceptance)	
Begin Vehicle/Equipment Order (Contract Award)	9/10/2011
End Vehicle/Equipment Order (Contract Acceptance)	12/10/2011
Begin Closeout Phase	3/10/2012
End Closeout Phase	3/10/2012

Table 7: Tax Compliance Information

Is it reasonably anticipated that any money will be derived at any point in the future as a result of the project that will be paid to the State?

<input type="checkbox"/>
<input checked="" type="checkbox"/>

YES
NO

If yes, please describe the source of the money and provide an estimate of the amount:

Estimate: \$ _____

**Public Transportation Modernization, Improvement, and Service Enhancement Account
Total Project Cost and Funding Plan**

Shaded fields are automatically calculated. Please do not fill these fields.

Proposed Total Project Cost									Project Total
Component	Prior	07/08	08/09	09/10	10/11	11/12	12/13		
PA&ED	0	0	0	0	0	0	0	0	0
PS&E	0	0	0	0	0	0	0	0	0
R/W	0	0	0	0	0	0	0	0	0
CON	0	0	0	0	0	0	0	0	0
Veh/Equip Purchase	0	22,274	5,740	69,986	0	0	0	0	98,000
Other	0	0	0	0	0	0	0	0	0
TOTAL	0	22,274	5,740	69,986	0	0	0	0	98,000

Public Transportation Modernization, Improvement, and Service Enhancement Account (PTMISEA)								
Component	Prior	07/08	08/09	09/10	10/11	11/12	12/13	Total
PA&ED								0
PS&E								0
R/W								0
CON								0
Veh/Equip Purchase		22,274	5,740					28,014
Other TDA								0
TOTAL	0	22,274	5,740	0	0	0	0	28,014

Funding Source: PTMISEA INTEREST								
Component	Prior	07/08	08/09	09/10	10/11	11/12	12/13	Total
PA&ED								0
PS&E								0
R/W								0
CON								0
Veh/Equip Purchase								0
Other								0
TOTAL	0							

Funding Source: TDA								
Component	Prior	07/08	08/09	09/10	10/11	11/12	12/13	Total
PA&ED								0
PS&E								0
R/W								0
CON								0
Veh/Equip Purchase				69,986				69,986
Other								0
TOTAL	0	0	0	69,986	0	0	0	69,986

Funding Source:								
Component	Prior	07/08	08/09	09/10	10/11	11/12	12/13	Total
PA&ED								0
PS&E								0
R/W								0
CON								0
Veh/Equip Purchase								0
Other								0
TOTAL	0							

Funding Source:								
Component	Prior	07/08	08/09	09/10	10/11	11/12	12/13	Total
PA&ED								0
PS&E								0
R/W								0
CON								0
Veh/Equip Purchase								0
Other								0
TOTAL	0							

**Public Transportation Modernization, Improvement, and Service Enhancement Account
Total Project Cost and Funding Plan**

Shaded fields are automatically calculated. Please do not fill these fields.

Funding Source:								
Component	Prior	07/08	08/09	09/10	10/11	11/12	12/13	Total
PA&ED								0
PS&E								0
R/W								0
CON								0
Veh/Equip Purchase								0
Other								0
TOTAL	0							

Funding Source:								
Component	Prior	07/08	08/09	09/10	10/11	11/12	12/13	Total
PA&ED								0
PS&E								0
R/W								0
CON								0
Veh/Equip Purchase								0
Other								0
TOTAL	0							

Funding Source:								
Component	Prior	07/08	08/09	09/10	10/11	11/12	12/13	Total
PA&ED								0
PS&E								0
R/W								0
CON								0
Veh/Equip Purchase								0
Other								0
TOTAL	0							

Funding Source:								
Component	Prior	07/08	08/09	09/10	10/11	11/12	12/13	Total
PA&ED								0
PS&E								0
R/W								0
CON								0
Veh/Equip Purchase								0
Other								0
TOTAL	0							

Funding Source:								
Component	Prior	07/08	08/09	09/10	10/11	11/12	12/13	Total
PA&ED								0
PS&E								0
R/W								0
CON								0
Veh/Equip Purchase								0
Other								0
TOTAL	0							

Funding Source:								
Component	Prior	07/08	08/09	09/10	10/11	11/12	12/13	Total
PA&ED								0
PS&E								0
R/W								0
CON								0
Veh/Equip Purchase								0
Other								0
TOTAL	0							

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CITY COUNCIL AGENDA ITEM

SUBJECT:

Approval of the purchase of a new transit bus using of Proposition 1B funds.

PRESENTED BY:

Dennis Speer

SUMMARY:

The City of Ridgecrest has been allocated \$98,000.00 in funds from the Public Transportation Modernization, Improvement and Service Enhancement Account (PTMISEA) or Proposition 1B, which was approved by the voters of the State of California. The proposed use of these funds is to purchase a new transit bus.

As part of the Proposition 1B process, the City Council must approve the expenditure of the Proposition 1B funds and therefore, the proposed bus acquisition.

FISCAL IMPACT: None

Reviewed by Finance Director:

ACTION REQUESTED:

Approval of the purchase of a new transit bus as noted above.

CITY MANAGER 'S RECOMMENDATION:

Action as requested:

Submitted by: Dennis Speer

Action Date: September 7, 2011

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RESOLUTION NO. 11-

A RESOLUTION OF THE RIDGECREST CITY COUNCIL APPROVING EXPENDITURE OF PROPOSITION 1B FUNDS IN THE AMOUNT OF \$98,000 FOR THE PURCHASE OF A NEW TRANSIT BUS

WHEREAS, the City of Ridgecrest has been allocated \$98,000.00 in Proposition 1B funds by the State of California, and;

WHEREAS, City has proposed to expend these Proposition 1B funds to purchase a new transit bus.

NOW THEREFORE, BE IT RESOLVED THAT, the City Council of the City of Ridgecrest approves the expenditure of \$98,000 in Proposition 1B funds to purchase a new transit bus.

APPROVED AND ADOPTED this 7th day of September 2011 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Ronald H Carter, Mayor

ATTEST:

Rachel J. Ford, CMC
City Clerk

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