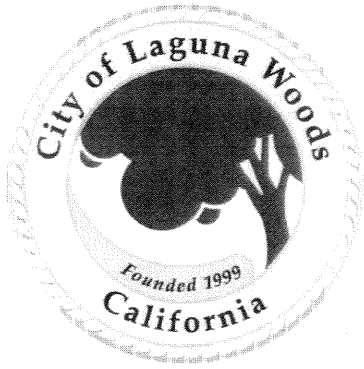




AGENDA of THE LAGUNA WOODS CITY COUNCIL

**Adjourned Regular Meeting
June 23, 2010
10:00 A.M.**

**Council Chambers
Laguna Woods City Hall
24264 El Toro Road
Laguna Woods, CA 92637**

AGENDA DESCRIPTION: The Agenda descriptions are intended to give notice, to members of the public, of a general summary of items of business to be transacted or discussed. The listed Recommended Action represents staff or a particular Committee's recommendation. The City Council may take any action, which it deems to be appropriate on the agenda item and is not limited in any way by the recommended action. Any person wishing to address the City Council on any matter, whether or not it appears on this agenda, is requested to complete a "Request to Speak" form available at the door. The completed form is to be submitted to the City Clerk prior to an individual being heard by the City Council. Whenever possible, lengthy testimony should be presented to the City Council in writing (8 copies) and only pertinent points presented orally. Requests to speak to items on the agenda shall be heard at the appropriate point on the agenda; requests to speak about subjects not on the agenda will be heard during the Public Comment section of the meeting.

I. CALL TO ORDER

II. FLAG SALUTE

III. ROLL CALL

COUNCILMEMBERS: ☐ Conners ☐ Rhodes ☐ Ring
☐ Hack, Mayor Pro Tem ☐ Robbins, Mayor

IV. CONSENT CALENDAR

- 4.1 Approve the reading by title of all ordinances and resolutions. Said ordinances and resolutions that appear on the public agenda shall be determined to have been read by title only and further reading waived.

RECOMMENDED ACTION: Waive reading of ordinances and resolutions.

- 4.2 November 2010 Municipal Elections

RECOMMENDED ACTION: Adopt two resolutions calling for the November 2010 election:

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LAGUNA WOODS, CALIFORNIA, CALLING AND GIVING NOTICE OF THE HOLDING OF A GENERAL MUNICIPAL ELECTION TO BE HELD ON TUESDAY, NOVEMBER 2, 2010 FOR THE ELECTION OF CERTAIN OFFICERS AS REQUIRED BY THE PROVISIONS OF THE LAWS OF THE STATE OF CALIFORNIA RELATING TO GENERAL LAW CITIES

AND

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LAGUNA WOODS, CALIFORNIA, REQUESTING THE BOARD OF SUPERVISORS OF THE COUNTY OF ORANGE TO CONSOLIDATE A GENERAL MUNICIPAL ELECTION TO BE HELD ON NOVEMBER 2, 2010, WITH THE STATEWIDE GENERAL ELECTION TO BE HELD ON THE DATE PURSUANT TO § 10403 OF THE ELECTIONS CODE

- 4.3 Fiscal Year 2010-11 Annual Budget

RECOMMENDED ACTION:

- A. Adopt four resolutions related to the implementation of the Fiscal Year 2010-11 budget, entitled:

1. A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LAGUNA WOODS, CALIFORNIA, APPROVING APPROPRIATIONS FOR THE FISCAL YEAR COMMENCING JULY 1, 2010 AND ENDING JUNE 30, 2011

AND

2. A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LAGUNA WOODS, CALIFORNIA, ADOPTING A SEVEN-YEAR CAPITAL IMPROVEMENT PROGRAM IN CONFORMANCE WITH MEASURE M REQUIREMENTS

AND

3. A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LAGUNA WOODS, CALIFORNIA, CONCERNING THE STATUS OF THE CIRCULATION ELEMENT OF THE CITY OF LAGUNA WOODS

AND

4. A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LAGUNA WOODS, CALIFORNIA, APPROVING AND ADOPTING THE ANNUAL APPROPRIATIONS LIMIT FOR THE FISCAL YEAR 2010-11

- B. Allocate Supplemental Law Enforcement Services Funds received from the state of California in FY 10-11 to salary, benefits, supervision, equipment and related services for one-half of the cost for the Orange County Sheriff's Department deputy assigned to traffic enforcement in Laguna Woods.

- C. Approve a resolution authorizing staff to apply for Transportation Enhancement Funds, entitled:

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LAGUNA WOODS, CALIFORNIA, AUTHORIZING THE APPLICATION FOR FUNDS FOR THE TRANSPORTATION ENHANCEMENT (TE) PROGRAM UNDER THE 2005 SAFE, ACCOUNTABLE, FLEXIBLE, EFFICIENT, TRANSPORTATION ACT-LEGACY FOR USERS (SAFETEA-LU) FOR THE EL TORO ROAD/ALISO CREEK ROAD PHASE II BICYCLE AND PEDESTRIAN ENHANCEMENT PROJECT

- D. Approve an agreement with the County of Orange for Fiscal Year 2010-11 law enforcement services in the City of Laguna Woods, and authorize the Mayor to execute the agreement subject to approval as to form by the City Attorney.
- E. Coastal Area Road Improvements and Traffic Signals Fee Program
1. Accept the distribution of \$361,915.86 in unallocated general Coastal Area Road Improvement and Traffic Signal (CARITS) funds that have been held on the City's behalf by the County of Orange.
 2. Authorize the City Manager to execute the CARITS implementation agreement with the County of Orange for the distribution of unallocated general CARITS funds, subject to approval as to form by the City Attorney.
- F. Authorize the City Manager to modify and extend the agreement with Curbside, Inc. for household hazardous waste, electronic waste, medical waste and bulky item collection services to June 30, 2012, subject to approval as to form by the City Attorney.

V. CITY MANAGER

5.1 Integrated Solid Waste Management Franchise Extension

RECOMMENDED ACTION: Award a five-year exclusive franchise to Ware Disposal, Inc. for the period July 28, 2010 through July 27, 2015, for the provision of solid waste collection and disposal services in the City of Laguna Woods, and authorize the City Manager to execute the franchise agreement, subject to approval of the agreement as to form by the City Attorney.

VI. PUBLIC COMMENTS

VII. CLOSED SESSION

VIII. ADJOURNMENT

The meeting will be adjourned to a meeting of the City Council at 2:00 p.m. on Wednesday, July 21, 2010 held at Laguna Woods City Hall, 24264 El Toro Road, Laguna Woods, CA 92637.

AMERICANS WITH DISABILITIES ACT: In compliance with Americans with Disabilities Act, if you need special assistance to participate in this meeting, please contact the City Clerk at (949) 639-0500 (Voice) or, TDD (949) 639-0535 or the California Relay Service at (800) 735-2929 if you have a TDD or (800) 735-2922 if you do not have a TDD. Notification 48 hours prior to the meeting should enable the City to make reasonable arrangements to assure accessibility to the meeting.

AGENDA: The City Council agenda and agenda back-up materials are available from the Office of the City Clerk, after 4:30 p.m., on the Friday prior to the City Council meeting. The office of the City Clerk is located at Laguna Woods City Hall, 24264 El Toro Road, Laguna Woods, CA 92637. Copies of the agenda are provided at no cost. Agenda back-up materials are available at City Hall for inspection and copies are available at no charge prior to the meeting. A per page copy cost does apply after the meeting. If you wish to be added to the e-mail or regular mail list to receive a copy of the agenda, a request must be made to the City Clerk in writing. Copies of the agenda are mailed only if stamped, self-addressed envelopes are provided. The City of Laguna Woods mailing address is 24264 El Toro Road, Laguna Woods, CA 92637. Phone: (949) 639-0500, FAX (949) 639-0591.

4.1-4.3
CONSENT CALENDAR SUMMARY

City of Laguna Woods Agenda Report

FOR: June 23, 2010 City Council Meeting

TO: Honorable Mayor and Councilmembers

FROM: Leslie A. Keane, City Manager 

Agenda Item: Consent Calendar

Recommendation

Approve all proposed actions on the June 23, 2010 Consent Calendar by single motion and Council action.

Discussion

In general, the Consent Calendar contains routine matters or matters that have already been discussed by Council. It is adopted in total with a single motion and Council action. However, if any councilmember or member of the public has questions or wishes to discuss an item further, it may be removed from the Consent Calendar and placed later in the agenda for discussion and action. The way to remove an item from the Consent Calendar is to request its removal, by agenda item number, immediately prior to the adoption of the Consent Calendar. Members of the public may fill out a request to speak on the item they wish removed and the City Clerk will note the item. No reason need be given with the request. Items pulled from the Consent Calendar are not discussed at the time they are pulled; they are scheduled for discussion immediately after action on the balance of the Consent Calendar.

The June 23rd Consent Calendar contains the following three items:

- 4.1 Approval of a motion to allow reading proposed ordinances and resolutions by title only – this is a standard practice in cities. If this motion is not approved, all ordinances and resolutions must be read out loud in their entirety during the Council Meeting.

4.2 November 2010 Municipal Elections

Approval of two resolutions related to the November 2, 2010 municipal election. The first resolution “calls” the election and the second authorizes the City’s participation in the countywide consolidated election and requests election services from the County. Once the resolutions are approved, the City Clerk will publish a notice calling for the election and provide the County with a certified copy of the resolution requesting election services.

4.3 Fiscal Year 2010-11 Annual Budget

- A. Approval of four resolutions implementing the Fiscal Year 2010-11 all funds budgets. The City Council discussed budget proposals at three public meetings. On June 16, 2010, the City Council discussed the city manager’s proposed Fiscal Year 2010-11 budget and directed staff to prepare the appropriate actions for implementation. Four separate resolutions are required to implement the proposed budget.

The city manager’s proposed budget totals \$11.7 million; this figure includes the base FY 2010-11 budget and the balance of the capital improvement program carried from prior years. The following specific Fund budgets are proposed:

General Fund	\$ 4,280,687
Transportation Fund	\$ 1,462,846
Grant Fund	\$ 834,302
Self Insurance Fund	\$ 142,000
Capital Improvement Program carryover*	\$ 5,021,544

* This amount is the estimate program balance on July 1, 2010

This proposed budget continues all existing programs and full time staff, does not include any new or increased taxes and continues the suspension of cable television franchise fees. In addition to establishing the approved appropriations, the proposed resolutions approve the seven year capital improvement program (#2) and verify the City’s conformance of the City’s Circulation Element (#3), in conformance with Measure M requirements, and establish the City’s annual appropriations limit (#4) as noted below.

Article XIII of the California State Constitution requires local governments to establish an annual appropriations limit. The base limit was established by Laguna Woods' voters in 2002. This limit is modified each year by the change in County or State population and the change in personal income or non-residential assessed valuation. Cities are not able to retain any proceeds of taxes that exceed their approved limit. The City's appropriations limit does not result in any changes to taxes or fees paid by residents or businesses; it simply allows the City the ability to retain funds it anticipates receiving during the fiscal year if they total less than the limit. The Fiscal Year 2010-11 limit totals \$7,415,492; specific calculation data is available on the Finance Manager's office. The City only anticipates actually receiving \$3,225,541 in Fiscal Year 2010-11 revenues that are subject to the appropriations limit.

- B. Allocation of the City's Fiscal Year 2010-11 Supplemental Law Enforcement (SLEF) funding for salary, benefits, supervision and equipment for the City's traffic deputy. This program requires the Council to take a specific action designating these funds.
- C. Approval of a resolution authorizing the application for federal Transportation Enhancement funds for Phase II of the El Toro Road/Aliso Creek Road Bicycle and Pedestrian Enhancement Project. Over the past several years, the City has applied and been granted over \$1 million for the widening of the intersection of El Toro Road and Aliso Creek Road. The westbound lane closest to the sidewalk ends at the intersection but is designed to be completed through to Laguna Beach. This project would construct the travel lane and provide a bicycle lane and sidewalk into Laguna Beach. If awarded, the TE funds will be matched by the other transportation grant funds already awarded for the project. The project is supported by the cities of Aliso Viejo and Laguna Beach, although its design will have to be approved by the Laguna Beach Design Review Board.
- D. Approval of the Fiscal Year 2010-11 law enforcement services contract with the Orange County Sheriff's Department in the amount of \$1,332,911. This represents a 2.7% increase in the current year contract amount. The proposed contract includes continuation of existing service level:
 - 1 patrol vehicle and officer, two shifts per day, seven days a week

- As needed after hours services from the Cities of Aliso Viejo and Laguna Hills
 - 1 traffic deputy, available 10 hours per day, four days per week
 - 1 investigator
 - Supervision and support equipment and services
- E. Approval of an agreement accepting the receipt of CARITS funds. The cities of Aliso Viejo, Dana Point, Laguna Hills, Laguna Niguel and Laguna Woods are within the program boundaries of the Coastal Area Road Improvements and Traffic Signals (CARITS) Fee Program, which collects mitigation funds from new development to improve traffic operations within the area. The agreed-upon formula uses a combination of housing units and Master Plan of Arterial Highways (MPAH) miles in each city to allocate the funds. A portion of these funds have been included in the Capital Improvement Program for installation of right turn arrows at seven intersections and for traffic signal improvements related to the Santa Maria Avenue Reconstruction project.
- F. Approval of an agreement to extend the contract for Household Hazardous Waste door to door pick up services. The City initiated a door-to-door Household Hazardous Waste (HHW) collection program in April 2002 and expanded the program in subsequent years to collect sharps, electronic waste (E-Waste), medications, fluorescent lights and bulky items. The City initially considered proposals from two qualified firms to provide these services. Curbside, Inc. was selected based on its long experience in providing door-to-door HHW disposal services and its lower costs. Curbside also was able to easily expand into sharps and E-Waste collection. The proposed agreement would extend the contract with Curbside through June 30, 2012, subject to the availability of funds in the budget for FY 10-11 and FY 11-12. The extended agreement increases rates as follows:

<u>Program</u>	<u>Old Rate</u>	<u>New Rate</u>	<u>% Increase</u>
E-Waste truck	\$675/day	\$700/day	3.7%
Sharps container	\$46	\$60	30.4%
Medicine Disposal	\$3.75/lb	\$4.50/lb	21.4%
Bulky Item Truck	\$775/day	\$800/day	3.2%
City Hall Pickups	\$75/stop	\$100/stop	33.0%

Prices have risen due to increased labor, shipping and fuel costs, higher vendor fees charged to Curbside and reduced E-Waste payments by the state. Collection fees are paid from a combination of Used Oil Recycling funds, Beverage Container Recycling funds and General Funds. If approved, rates for HHW and E-Waste collection will rise an average of 10%. Collections will be adjusted (i.e., reduced number of collection days per month) to ensure that costs remain within budget. The new rates are the third cost increase in the program since its initiation in 2001.

The above resolutions related to the November 2010 election are required by state law. Those items related to the budget were discussed by the Council in April, May and June; approval/adoptions will implement the actions and direction of the Council at these meetings.

If you have questions about any of the above items, feel free to call me prior to the meeting so that I may provide additional information.

4.1
WAIVE READING OF ORDINANCES AND
RESOLUTIONS
(No Report)

4.2

NOVEMBER 2010 MUNICIPAL ELECTIONS

RESOLUTION NO. 10-XX

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LAGUNA WOODS, CALIFORNIA, CALLING AND GIVING NOTICE OF THE HOLDING OF A GENERAL MUNICIPAL ELECTION TO BE HELD ON TUESDAY, NOVEMBER 2, 2010 FOR THE ELECTION OF CERTAIN OFFICERS AS REQUIRED BY THE PROVISIONS OF THE LAWS OF THE STATE OF CALIFORNIA RELATING TO GENERAL LAW CITIES

WHEREAS, under the provision of the laws relating to general law cities in the State of California, a General Municipal Election shall be held on November 2, 2010, for the election of Municipal Officers; and

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF LAGUNA WOODS, CALIFORNIA, DOES RESOLVE, DECLARE, DETERMINE AND ORDER AS FOLLOWS:

SECTION 1. That pursuant to the requirement of the laws of the State of California relating to General Law Cities, there is called and ordered to be held in the City of Laguna Woods, California on Tuesday, November 2, 2010, a General Municipal Election for the purpose of electing two (2) Members of the City Council for the full term of four years.

SECTION 2. That the ballots to be used at the election shall be in the form and content as required by law.

SECTION 3. That the City Clerk is authorized, instructed and directed to procure and furnish any and all official ballots, notices, printed matter and all supplies, equipment and paraphernalia that may be necessary in order to properly and lawfully conduct the election.

SECTION 4. That the polls for the election shall be open at seven o'clock a.m. of the day of the election and shall remain open continuously from that time until eight o'clock p.m. of the same day when the polls shall be closed, pursuant to Election Code § 10242 except as provided in § 14401 of the Elections Code of the State of California.

SECTION 5. That in all particulars not recited in this resolution, the election shall be held and conducted as provided by law for holding municipal elections.

SECTION 6. That notice of the time and place of holding the election is given and the City Clerk is authorized, instructed and directed to give further or additional notice of the election, in time, form and manner as required by law.

SECTION 7. That the City Clerk shall certify to the passage and adoption of the Resolution and enter it into the book of original Resolutions.

PASSED, APPROVED AND ADOPTED ON THE ____ DAY OF JUNE 2010

MILT ROBBINS, Mayor

ATTEST:

YOLIE TRIPPY, Deputy City Clerk

STATE OF CALIFORNIA)
COUNTY OF ORANGE) ss.
CITY OF LAGUNA WOODS)

I, YOLIE TRIPPY, Deputy City Clerk of the City of Laguna Woods, do HEREBY CERTIFY that the foregoing **Resolution No. 10-XX** was duly adopted by the City Council of the City of Laguna Woods at a regular meeting thereof, held on the ____ of June 2010 by the following vote:

AYES:	COUNCIL MEMBERS:
NOES:	COUNCIL MEMBERS:
ABSENT:	COUNCIL MEMBERS:

YOLIE TRIPPY, Deputy City Clerk

RESOLUTION NO. 10-XX

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LAGUNA WOODS, CALIFORNIA, REQUESTING THE BOARD OF SUPERVISORS OF THE COUNTY OF ORANGE TO CONSOLIDATE A GENERAL MUNICIPAL ELECTION TO BE HELD ON NOVEMBER 2, 2010, WITH THE STATEWIDE GENERAL ELECTION TO BE HELD ON THE DATE PURSUANT TO § 10403 OF THE ELECTIONS CODE

WHEREAS, the City Council of the City of Laguna Woods called a General Municipal Election to be held on November 2, 2010, for the purpose of the election of two (2) Members of the City Council; and;

WHEREAS, it is desirable that the General Municipal Election be consolidated with the Statewide General Election to be held on the same date and that within the city the precincts, polling places and election officers of the two elections be the same, and that the county election department of the County of Orange canvass the returns of the General Municipal Election and that the election be held in all respects as if there were only one election;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF LAGUNA WOODS, CALIFORNIA DOES RESOLVE, DECLARE, DETERMINE AND ORDER AS FOLLOWS:

SECTION 1. That pursuant to the requirements of § 10403 of the Elections Code, the Board of Supervisors of the County of Orange is hereby requested to consent and agree to the consolidation of a General Municipal Election with the Statewide General Election on Tuesday, November 2, 2010, for the purpose of the election of two (2) Members of the City Council.

SECTION 2. That the county election department is authorized to canvass the returns of the General Municipal Election. The election shall be held in all respects as if there were only one election, and only one form of ballot shall be used.

SECTION 3. That the Board of Supervisors is requested to issue instructions to the county election department to take any and all steps necessary for the holding of the consolidated election.

SECTION 4. That the City of Laguna Woods recognizes that additional costs will be incurred by the County by reason of this consolidation and agrees to reimburse the County for any costs.

SECTION 5. That the City Clerk is hereby directed to file a certified copy of this resolution with the Board of Supervisors and the county election department of the County of Orange.

SECTION 7. That the City Clerk shall certify to the passage and adoption of this resolution and enter it into the book of original resolutions.

PASSED, APPROVED AND ADOPTED ON THE ____ DAY OF JUNE 2010

MILT ROBBINS, Mayor

ATTEST:

YOLIE TRIPPY, Deputy City Clerk

STATE OF CALIFORNIA)
COUNTY OF ORANGE) ss.
CITY OF LAGUNA WOODS)

I, YOLIE TRIPPY, Deputy City Clerk of the City of Laguna Woods, do HEREBY CERTIFY that the foregoing **Resolution No. 10-XX** was duly adopted by the City Council of the City of Laguna Woods at a regular meeting thereof, held on the ____ of June 2010 by the following vote:

AYES:	COUNCIL MEMBERS:
NOES:	COUNCIL MEMBERS:
ABSENT:	COUNCIL MEMBERS:

YOLIE TRIPPY, Deputy City Clerk

4.3

FISCAL YEAR 2010-11 ANNUAL BUDGET

RESOLUTION NO. 10-XX

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LAGUNA WOODS, CALIFORNIA, APPROVING APPROPRIATIONS FOR THE FISCAL YEAR COMMENCING JULY 1, 2010 AND ENDING JUNE 30, 2011

THE CITY COUNCIL OF THE CITY OF LAGUNA WOODS, CALIFORNIA DOES HEREBY RESOLVE, DECLARE, DETERMINE AND ORDER AS FOLLOWS:

SECTION 1. The budget of the City of Laguna Woods for the fiscal year commencing July 1, 2010 and ending June 30, 2011 as prepared and submitted by the City Manager and as modified by the City Council, is hereby approved and adopted as the budget of the City of Laguna Woods for Fiscal Year 2010-11.

SECTION 2. From the effective date of said budget, the total amount as stated therein for each departmental activity account in the operating budget shall be, and is, appropriated subject to expenditure pursuant to all applicable ordinances of the City and statutes of the State. The operating budget may be reallocated by the City Manager providing there is no change in the total appropriations within any fund as authorized by the City Council.

SECTION 3. At the close of the fiscal year, unexpended appropriations in the operating budget will be encumbered as necessary to underwrite the expense of outstanding purchase commitments. Unexpended appropriations for capital projects as approved by the City Council will be carried forward to the next succeeding budget upon approval of the City Manager.

SECTION 4. Total appropriations within Funds will be increased only by amendment of the budget by motion of the City Council.

SECTION 5. The City Manager may decrease revenue estimates to reflect economic change during the fiscal year and may reduce expenditure appropriations within funds as a method of fiscal control.

SECTION 6. The following budget appropriations for Fiscal Year 2010-11 are hereby authorized:

GENERAL FUND	\$ 4,280,687
City Council	46,073
Administrative Services	996,583
Community Development	449,285
Community Services	240,100
Public Safety	1,674,455
Public Works	392,329
Non-Departmental	481,862
TRANSPORTATION FUND	\$ 1,462,846
GRANT FUND	\$ 834,302
SELF INSURANCE FUND	\$ 142,000

SECTION 7. The following full time staff positions are hereby authorized as a part of the Fiscal Year 2010-11 budget:

- 1.00 Administrative Coordinator
- 1.00 Assistant City Manager
- 1.00 Building Official
- 1.00 City Manager
- 1.00 City Planner
- 1.00 Code Enforcement Officer
- 1.00 Community Services Manager
- 1.00 Deputy City Clerk
- 1.00 Finance Manager
- 1.00 Special Projects Manager

SECTION 8. The Deputy City Clerk shall certify to the adoption of this resolution.

PASSED, APPROVED AND ADOPTED on this ____th day of June, 2010.

MILT ROBBINS, Mayor

ATTEST:

YOLIE TRIPPY, Deputy City Clerk

STATE OF CALIFORNIA)
COUNTY OF ORANGE) ss.
CITY OF LAGUNA WOODS)

I, YOLIE TRIPPY, Deputy City Clerk of the City of Laguna Woods, do
HEREBY CERTIFY that the foregoing **Resolution No. 10-XX** was duly adopted
by the City Council of the City of Laguna Woods at a regular meeting thereof, held
on the _____th day of June 2010, by the following vote:

AYES: COUNCIL MEMBERS:
NOES: COUNCIL MEMBERS:
ABSENT: COUNCIL MEMBERS:

YOLIE TRIPPY, Deputy City Clerk

RESOLUTION NO. 10-XX

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LAGUNA WOODS, CALIFORNIA, ADOPTING A SEVEN-YEAR CAPITAL IMPROVEMENT PROGRAM IN CONFORMANCE WITH MEASURE M REQUIREMENTS

WHEREAS, the City of Laguna Woods seeks to maintain eligibility to receive an apportionment of Measure M sales tax revenues that can be used to fund transportation-related projects and programs; and

WHEREAS, a prerequisite of such eligibility is the annual filing of a Measure M eligibility package for review and approval by the Orange County Transportation Authority; and

WHEREAS, one component of the Measure M eligibility package for Fiscal Year 2010-2011 is the preparation and City Council adoption of a Seven-Year Capital Improvement Program (CIP) which includes, at minimum, all projects and programs which are needed to meet and maintain adopted levels of service performance standards, in addition to all projects and programs proposed to receive Measure M funding; and

WHEREAS, the FY 2010-2011 expenditures identified in the CIP are consistent with the adopted City of Laguna Woods FY 2010-2011 budget; and

WHEREAS, the CIP is recognized as a program/project finance and planning tool to assist local governments in the long-term development and funding of transportation-related programs and projects, and not a budget commitment; and

WHEREAS, the CIP is updated annually to include adjustments to funding and project schedules;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF LAGUNA WOODS, CALIFORNIA, DOES HEREBY RESOLVE, DETERMINE, FIND, AND ORDER AS FOLLOWS:

SECTION 1. The City Council of the City of Laguna Woods adopts the City of Laguna Woods Seven-Year Capital Improvement Program, attached hereto as Exhibit

1 and incorporated herein by reference, in conformance with Measure M requirements.

SECTION 2. The Deputy City Clerk shall certify as to the adoption of this Resolution.

PASSED APPROVED AND ADOPTED on this ____ day of June 2010.

MILT ROBBINS, Mayor

ATTEST:

YOLIE TRIPPY, Deputy City Clerk

STATE OF CALIFORNIA)
COUNTY OF ORANGE) ss.
CITY OF LAGUNA WOODS)

I, YOLIE TRIPPY, Deputy City Clerk of the City of Laguna Woods, do HEREBY CERTIFY that the foregoing **Resolution No. 10-XX** was duly adopted by the City Council of the City of Laguna Woods at a regular meeting thereof, held on the ____ day of June 2010, by the following vote:

AYES: COUNCIL MEMBERS:
NOES: COUNCIL MEMBERS:
ABSENT: COUNCIL MEMBERS:

YOLIE TRIPPY, Deputy City Clerk

RESOLUTION NO. 10-XX

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LAGUNA WOODS, CALIFORNIA, CONCERNING THE STATUS OF THE CIRCULATION ELEMENT OF THE CITY OF LAGUNA WOODS

WHEREAS, the City of Laguna Woods desires to maintain and improve the streets within its jurisdiction, including those arterials contained in the Master Plan of Arterials Highways (MPAH); and

WHEREAS, the City of Laguna Woods has endorsed a definition of and a process for determining consistency of the City's Traffic Circulation Plan with the MPAH; and

WHEREAS, the City has adopted a General Plan Circulation Element which does not preclude implementation of MPAH within its jurisdiction; and

WHEREAS, the City is required to adopt a resolution every even numbered year informing the Orange County Transportation Authority (OCTA) that the City Circulation Element is in conformance with the MPAH and whether any changes to any arterial highways of said Circulation Element have been adopted by the City during Fiscal Year 2008-2009 and 2009-2010; and

WHEREAS, the City is required in every even numbered year to send to the OCTA all recommended changes to the City Circulation Element and the MPAH for the purposes of re-qualifying for participation in the Combined Transportation Funding Program;

NOW, THEREFORE, BE IT RESOLVED THAT THE CITY OF LAGUNA WOODS, CALIFORNIA, DOES HEREBY RESOLVE, DETERMINE, FIND AND ORDER AS FOLLOWS:

Section 1. The arterial highway portion of the Circulation Element of the City of Laguna Woods is in conformance with the Master Plan of Arterial Highways.

Section 2. The City attests that no unilateral reduction in through lanes has been made on any MPAH arterials during Fiscal Years 2008-2009 and 2009-2010.

Section 3. The City has adopted uniform setbacks in accordance with its Zoning Ordinance providing for the preservation of rights-of-way consistent with the MPAH arterial highway classification.

Section 4. The City has adopted provisions for the limitation of access to arterial highways in order to protect the integrity of the system.

PASSED, APPROVED AND ADOPTED on this ____ day of June 2010.

MILT ROBBINS, Mayor

ATTEST:

YOLIE TRIPPY, Deputy City Clerk

STATE OF CALIFORNIA)
COUNTY OF ORANGE) ss.
CITY OF LAGUNA WOODS)

I, YOLIE TRIPPY, Deputy City Clerk of the City of Laguna Woods, do
HEREBY CERTIFY that the foregoing **Resolution No. 10-XX** was duly adopted
by the City Council of the City of Laguna Woods at a regular meeting thereof, held
on the ____ day of June 2010, by the following vote:

AYES: COUNCIL MEMBERS:
NOES: COUNCIL MEMBERS:
ABSENT: COUNCIL MEMBERS:

YOLIE TRIPPY, Deputy City Clerk

RESOLUTION NO. 10-XX

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LAGUNA WOODS, CALIFORNIA, APPROVING AND ADOPTING THE ANNUAL APPROPRIATIONS LIMIT FOR THE FISCAL YEAR 2010-11

WHEREAS, the voters of California, on November 6, 1979, added Article XIII B to the State Constitution, placing various limitations on appropriations of state and local governments; and

WHEREAS, Article XIII B provides that the appropriations limit for the fiscal year 2010-11 is calculated by adjusting the base year appropriations of fiscal year 2009-10 and subsequent years for changes in the cost of living and population; and

WHEREAS, Proposition 111 (Section 1.5 of Article XIII B), enacted by the voters on June 5, 1990, modified the method of calculating the limit; and

WHEREAS, the voters of Laguna Woods set the permanent appropriations limit for the City of Laguna Woods at \$4,165,544, and approved the increase in the appropriations limit for the Fiscal Years 2002-03 through 2005-06 by an amount determined by the statutory increase in motor-vehicle-in-lieu fees provided to newly incorporated cities; and

WHEREAS, the City of Laguna Woods has complied with all of the provisions of Article XIII B in determining the appropriations limit for fiscal year 2009-10;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF LAGUNA WOODS, CALIFORNIA, DOES HEREBY RESOLVE, DECLARE, DETERMINE AND ORDER AS FOLLOWS:

SECTION 1. The City of Laguna Woods chooses to use the change in per capita personal income as the inflation adjustment factor for Fiscal Year 2010-11.

SECTION 2. The City of Laguna Woods chooses to use the change in population for the City of Laguna Woods as the growth adjustment factor for Fiscal Year 2010-11.

SECTION 3. Documentation for calculation of the limit is on file in the Finance Department and will be reviewed by the City's auditors during the annual financial audit, as required by Proposition 111.

SECTION 4. The Fiscal Year 2010-11 appropriations limit for the City of Laguna Woods is hereby established as \$7,415,492.

PASSED, APPROVED and ADOPTED on this ____ day of June 2010.

MILT ROBBINS, Mayor

ATTEST:

YOLIE TRIPPY, Deputy City Clerk

STATE OF CALIFORNIA)
COUNTY OF ORANGE) ss.
CITY OF LAGUNA WOODS)

I, YOLIE TRIPPY, Deputy City Clerk of the City of Laguna Woods, do
HEREBY CERTIFY that the foregoing **Resolution No. 10-XX** was duly adopted
by the City Council of the City of Laguna Woods at a regular meeting thereof, held
on the ____ day of June 2010, by the following vote:

AYES:	COUNCIL MEMBERS:
NOES:	COUNCIL MEMBERS:
ABSENT:	COUNCIL MEMBERS:

YOLIE TRIPPY, Deputy City Clerk

RESOLUTION NO. 10-XX

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LAGUNA WOODS, CALIFORNIA, AUTHORIZING THE APPLICATION FOR FUNDS FOR THE TRANSPORTATION ENHANCEMENT (TE) PROGRAM UNDER THE 2005 SAFE, ACCOUNTABLE, FLEXIBLE, EFFICIENT, TRANSPORTATION ACT-LEGACY FOR USERS (SAFETEA-LU) FOR THE EL TORO ROAD/ALISO CREEK ROAD PHASE II BICYCLE AND PEDESTRIAN ENHANCEMENT PROJECT

WHEREAS, the United States Congress enacted the Safe, Accountable, Flexible, Efficient, Transportation Equity Act-Legacy for Users (SAFETEA-LU) in August 2005, which makes funds available to the Orange County Transportation Authority (OCTA) for transportation enhancement activities; and

WHEREAS, OCTA has established procedures and criteria for reviewing applications for funding; and

WHEREAS, the City of Laguna Woods possesses authority to nominate transportation enhancement projects and to finance, acquire and construct such proposed projects; and

WHEREAS, through the adoption of this resolution the City Council of the City of Laguna Woods authorizes the nomination of the El Toro Road/Aliso Creek Road Phase II Bicycle and Pedestrian Enhancement Project, including all understandings and assurances contained therein, and authorizes the person identified as the official representative of the City of Laguna Woods to act in connection with the nomination and to provide such additional information as may be required; and

WHEREAS, the City of Laguna Woods will maintain and operate the property acquired, developed, rehabilitated or restored for the life of the resultant facility; and

WHEREAS, the City of Laguna Woods will cause work on the project to commence within a reasonable time after receipt of notification from the State that funds have been approved by the Federal Highway Administration and that the project will be carried to completion with reasonable diligence; and

WHEREAS, the City of Laguna Woods will comply, where applicable, with provisions of the California Environmental Quality Act, Natural Environmental Policy Act, American with Disabilities Act, and any other federal, state and/or local laws, rules and regulations;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF LAGUNA WOODS, CALIFORNIA, DOES HEREBY RESOLVE, DETERMINE, FIND AND ORDER AS FOLLOWS:

SECTION 1. The City Council of the City of Laguna Woods hereby authorizes the person identified as the official representative of the City of Laguna Woods to apply for the Transportation Enhancement Activities Program under the Safe, Accountable, Flexible, Efficient Transportation Equity Act-Legacy for User for the El Toro Road/Aliso Creek Road Phase II Bicycle and Pedestrian Enhancement Project.

SECTION 2. The City of Laguna Woods, agrees to fund its share of the project costs and any additional costs over the identified programmed amount.

PASSED APPROVED AND ADOPTED on this ____ day of June 2010:

MILT ROBBINS, Mayor

ATTEST:

YOLIE TRIPPY, Deputy City Clerk

STATE OF CALIFORNIA)
COUNTY OF ORANGE) ss.
CITY OF LAGUNA WOODS)

I, YOLIE TRIPPY, Deputy City Clerk of the City of Laguna Woods, do HEREBY CERTIFY that the foregoing **Resolution No. 10-XX** was duly adopted

by the City Council of the City of Laguna Woods at a regular meeting thereof, held on the ____ day of June 2010, by the following vote:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

YOLIE TRIPPY, Deputy City Clerk

[illegible]

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1 **A. TERM:**

2 The term of this Agreement shall commence July 1, 2010 and terminate June
3 30, 2011

4 **B. OPTIONAL TERMINATION OR EXTENSION:**

- 5 1. COUNTY or CITY may terminate this Agreement, without cause, upon one
6 hundred and eighty (180) days written notice to the other party.
- 7 2. If COUNTY and CITY have not entered into a written agreement by June
8 30, 2011 for COUNTY to provide to CITY, during all or part of the period
9 between July 1, 2011 and June 30, 2012, law enforcement services similar
10 to those specified herein, then SHERIFF, on behalf of COUNTY, and CITY's
11 Manager, on behalf of CITY, are authorized to execute a written amendment
12 to this Agreement that provides as follows and does not materially alter
13 other terms of the Agreement: SHERIFF shall continue to provide to CITY
14 all or a designated part of the law enforcement services specified herein, for
15 a specified time period between July 1, 2011 and August 31, 2011 and CITY
16 shall pay COUNTY the full costs of providing such services. Such full costs
17 may be greater than those listed herein for the period July 1, 2010 through
18 June 30, 2011. SHERIFF and CITY Manager shall file copies of any such
19 amendments to this Agreement with the Clerk of COUNTY's Board of
20 Supervisors and CITY's Clerk.

21 **C. REGULAR SERVICES BY COUNTY:**

- 22 1. COUNTY, through its Sheriff-Coroner and deputies, officers and employees,
23 hereinafter referred to as "SHERIFF", shall render to CITY law enforcement
24 services as hereinafter provided. Such services shall include the
25 enforcement of lawful State statutes and lawful municipal ordinances of
26 CITY other than licensing ordinances.

27 //

28 //

1 **C. REGULAR SERVICES BY COUNTY: (Continued)**

2 2. The night, day and evening patrol and supervisory shifts will be established
3 by SHERIFF. Personnel of each shift may work varying and different times
4 and may be deployed to other shifts when, in the opinion of SHERIFF and
5 CITY Manager, the need arises. Any long-term shift deployment change will
6 be reported to CITY's Council.

7 3. The level of service, other than for licensing, to be provided by COUNTY for
8 the period July 1, 2010 through June 30, 2011, shall be as follows:

9 **Patrol Services:**

- 10 • Two and four tenths (2.4) designated one-deputy units
11 (Each one-deputy unit provides service for 56 hours per week)
12 • Six hundredths of one (.06) sergeant unit
13 (4.8 hours per two-week pay period)
14 Deployment to be determined by SHERIFF in cooperation with CITY
15 Manager.

16 **Traffic Services:**

- 17 • One (1) Deputy Sheriff II (80 hours per two-week pay period)
18 Deployment to be determined by SHERIFF in cooperation with CITY
19 Manager.

20 **Investigation Services:**

- 21 • One (1) Investigator (80 hours per two-week pay period)

22 **South County Regional Support Services:**

- 23 • 2.15 percent of one half of one (.5) Sergeant – Traffic
24 • 2.15 percent of four (4) Deputy Sheriff IIs – Traffic
25 • 2.15 percent of one (1) Investigative Assistant – Traffic
26 • 2.15 percent of one (1) Office Specialist – Traffic
27 • 1.98 percent of one fourth of one (.25) Sergeant – Auto Theft
28 • 1.98 percent of two (2) Investigators – Auto Theft

1 **C. REGULAR SERVICES BY COUNTY: (Continued)**

- 2 • 1.98 percent of one (1) Investigative Assistant – Auto Theft
- 3 • 1.98 percent of one (1) Office Specialist – Auto Theft
- 4 • .52 percent of three (3) Investigative Assistants – Court

- 5 4. For any service listed in Subsection C-3 in this Agreement that is provided
6 to CITY at less than 100% of a full-time SHERIFF position, COUNTY retains
7 the option to terminate such service in the event the other city or cities that
8 contract(s) for the balance of the time of the employee providing the service
9 no longer pay(s) for such service and CITY does not request the Agreement
10 be amended to provide for payment of 100% of the cost of the employee
11 providing such service. The Maximum Obligation of CITY set forth in
12 Subsection G-3 will be adjusted accordingly.
- 13 5. All services contracted for in this Agreement may not be operational on the
14 precise date specified in this Agreement. In those instances, SHERIFF
15 shall notify CITY Manager of the date or dates such service or services are
16 to be implemented. COUNTY shall reduce the monthly charges to CITY,
17 based on the actual date of implementation of the service or services.
18 Charges shall be reduced on the next monthly billing tendered in
19 accordance with Subsection G-4 of this Agreement.
- 20 6. With respect to the licensing ordinances of CITY listed in Attachment A
21 hereto, which is incorporated herein by this reference, SHERIFF shall
22 receive applications for CITY licenses pursuant to said ordinances and
23 complete investigations relating to such applications. Such investigations
24 shall be forwarded to CITY Manager. COUNTY shall not provide any
25 advisory, administrative, hearing or litigation attorney support or services
26 related to licensing. COUNTY shall not provide any administrative or
27 investigatory services related to the licensing ordinances listed in
28 Attachment A hereto, except the investigations relating to initial

1 **C. REGULAR SERVICES BY COUNTY: (Continued)**

2 applications for which this subsection provides.

3 In the event, CITY amends Attachment A, CITY's Manager, on behalf of
4 CITY, and Sheriff, on behalf of COUNTY, have authority to execute an
5 amendment of this Agreement to substitute CITY's amended Attachment A
6 hereto, as long as said Amendment to this Agreement does not materially
7 change any other provision of this Agreement.

- 8 7. With the limitations set forth below, SHERIFF, on behalf of COUNTY, and
9 CITY Manager, on behalf of CITY, are authorized to execute written
10 amendments to this Agreement to increase or decrease the level of service
11 set forth in Subsection C-3, when SHERIFF and CITY Manager mutually
12 agree that such increase or decrease in the level of service is appropriate.
13 Any such amendment to the Agreement shall concomitantly increase or
14 decrease the cost of services payable by CITY set forth in Subsection G-2
15 and the Maximum Obligation of CITY set forth in Subsection G-3, in
16 accordance with the current year's COUNTY law enforcement cost study.
17 SHERIFF and CITY Manager shall file copies of any such amendments to
18 this Agreement with the Clerk of COUNTY's Board of Supervisors and
19 CITY's Clerk. Amendments to this Agreement executed by SHERIFF and
20 CITY Manager may not, in the aggregate, increase or decrease the cost of
21 services payable by CITY by more than one percent (1%) of the total cost
22 originally set forth in Subsection G-2 and the Maximum Obligation originally
23 set forth in Subsection G-3.

24 Prior approval by COUNTY's Board of Supervisors and CITY's Council is
25 required before execution of any amendment that brings the aggregate total
26 of changes in costs payable by CITY to more than one percent (1%) of the
27 total costs originally set forth in Subsection G-2 and the Maximum
28 Obligation originally set forth in Subsection G-3 of this Agreement.

1 **D. ENHANCED AND SUPPLEMENTAL SERVICES BY COUNTY:**

2 1. Enhanced services for events on CITY property. At the request of CITY,
3 through its City Manager, SHERIFF may provide enhanced law enforcement
4 services for functions, such as community events, conducted on property
5 that is owned, leased or operated by CITY. SHERIFF shall determine
6 personnel and equipment needed for such enhanced services. To the
7 extent the services provided at such events are at a level greater than that
8 specified in Subsection C-3 of this Agreement, CITY shall reimburse
9 COUNTY for such additional services, at an amount computed by
10 SHERIFF, based on the current year's COUNTY law enforcement cost
11 study. The cost of these enhanced services shall be in addition to the
12 Maximum Obligation of CITY set forth in Subsection G-3 of this Agreement.
13 SHERIFF shall bill CITY immediately after each such event.

14 2. Supplemental services for occasional events operated by private individuals
15 and entities on non-CITY property. At the request of CITY, through its City
16 Manager, and within the limitations set forth in this subsection D-2,
17 SHERIFF may provide supplemental law enforcement services to preserve
18 the peace at special events or occurrences that occur on an occasional
19 basis and are operated by private individuals or private entities on non-CITY
20 property. SHERIFF shall determine personnel and equipment needed for
21 such supplemental services, and will provide such supplemental services
22 only if SHERIFF is able to do so without reducing the normal and regular
23 ongoing services that SHERIFF otherwise would provide to CITY pursuant
24 to this Agreement. Such supplemental services shall be provided only by
25 regularly appointed full-time peace officers, at rates of pay governed by a
26 Memorandum of Understanding between COUNTY and the bargaining
27 unit(s) representing the peace officers providing the services. Such
28 supplemental services shall include only law enforcement duties and shall

1 **D. ENHANCED AND SUPPLEMENTAL SERVICES BY COUNTY: (Continued)**

2 not include services authorized to be provided by a private patrol operator,
3 as defined in Section 7582.1 of the Business and Professions Code. Law
4 enforcement support functions, including, but not limited to, clerical
5 functions and forensic science services, may be performed by non-peace
6 officer personnel if the services do not involve patrol or keeping the peace
7 and are incidental to the provision of law enforcement services. CITY shall
8 reimburse COUNTY its full, actual costs of providing such supplemental
9 services at an amount computed by SHERIFF, based on the current year's
10 COUNTY law enforcement cost study. The cost of these supplemental
11 services shall be in addition to the Maximum Obligation of CITY set forth in
12 Subsection G-3 of this Agreement. SHERIFF shall bill CITY immediately
13 after each such event.

- 14 3. Supplemental services for events operated by public entities on non-CITY
15 property. At the request of CITY, through its City Manager, and within the
16 limitations set forth in this subsection D-3, SHERIFF may provide
17 supplemental law enforcement services to preserve the peace at special
18 events or occurrences that occur on an occasional basis and are operated
19 by public entities on non-CITY property. SHERIFF shall determine
20 personnel and equipment needed for such supplemental services, and will
21 provide such supplemental services only if SHERIFF is able to do so without
22 reducing services that SHERIFF otherwise would provide to CITY pursuant
23 to this Agreement. CITY shall reimburse COUNTY its full, actual costs of
24 providing such supplemental services at an amount computed by SHERIFF,
25 based on the current year's COUNTY law enforcement cost study. The cost
26 of these supplemental services shall be in addition to the Maximum
27 Obligation of CITY set forth in Subsection G-3 of this Agreement. SHERIFF
28 shall bill CITY immediately after each such event.

1 **D. ENHANCED AND SUPPLEMENTAL SERVICES BY COUNTY: (Continued)**

- 2 4. Notwithstanding the foregoing, CITY, through its permit process, may utilize
- 3 the services of the Sheriff at events, for which CITY issues permits, that are
- 4 operated by private individuals or entities or public entities. SHERIFF shall
- 5 determine personnel and equipment needed for said events. If said events
- 6 are in addition to the level of services listed in Subsection C-3 of this
- 7 Agreement, CITY shall reimburse COUNTY for such additional services at
- 8 an amount computed by SHERIFF, based upon the current year's COUNTY
- 9 law enforcement cost study. The cost of these services shall be in addition
- 10 to the Maximum Obligation of CITY set forth in Subsection G-3 of this
- 11 Agreement. SHERIFF shall bill CITY immediately after said services are
- 12 rendered.

13 **E. PATROL VIDEO SYSTEMS:**

- 14 1. As part of the law enforcement services to be provided to CITY, COUNTY
- 15 has provided, or will provide, patrol video systems (hereinafter called "PVS")
- 16 that are or will be mounted in patrol vehicles designated by COUNTY for
- 17 use within CITY service area.
- 18 2. SHERIFF has the exclusive right to use said PVS for law enforcement
- 19 services related to this Agreement.
- 20 3. CITY shall pay COUNTY the full costs to COUNTY of a) the acquisition and
- 21 installation of PVS that are or will be mounted in patrol vehicles assigned to
- 22 CITY, and b) recurring costs, as deemed necessary by COUNTY, including
- 23 the costs of maintenance and contributions to a fund for replacement and
- 24 upgrade of such PVS when they become functionally or technologically
- 25 obsolete.

26 The costs to be paid by CITY for recurring costs, including maintenance and

27 replacement/upgrade of PVS, are included in the costs set forth in

28 Subsection G-2 and the Maximum Obligation of CITY set forth in

1 **E. PATROL VIDEO SYSTEMS: (Continued)**

2 Subsection G-3 of this Agreement unless CITY has already paid such costs.
3 CITY shall not be charged additional amounts for maintenance or
4 replacement/upgrade of said PVS during the period July 1, 2010 through
5 June 30, 2011.

- 6 4. If, following the initial acquisition of PVS referenced above, CITY requires
7 PVS for additional patrol cars designated for use in the CITY service area,
8 COUNTY will purchase said additional PVS. Upon demand by COUNTY,
9 CITY will pay to COUNTY a) the full costs of acquisition and installation of
10 said additional PVS, and b) the full recurring costs for said PVS, as deemed
11 necessary by COUNTY, including the costs of maintenance, and
12 contributions to a fund for replacement and upgrade of such PVS when they
13 become functionally or technologically obsolete. Said costs related to
14 additional PVS are not included in, and are in addition to, the costs set forth
15 in Subsection G-2 and the Maximum Obligation of CITY set forth in
16 Subsection G-3 of this Agreement.
- 17 5. COUNTY will replace and/or upgrade PVS as needed. The costs of
18 replacing/upgrading PVS shall be paid by COUNTY from the replacement/
19 upgrade funds to be paid by CITY in accordance with the foregoing. CITY
20 shall not be charged any additional charge to replace or upgrade PVS.

21 **F. LICENSING SERVICES BY CITY:**

22 Upon receipt from COUNTY of investigations of applications for licenses
23 referred to in Subsection C-6 of this Agreement, CITY Manager shall determine
24 whether to grant or deny the licenses and will issue the licenses or notify the
25 applicants of denial. CITY shall provide all attorney services related to the
26 granting, denial, revocation and administration of said licenses and the
27 enforcement of CITY ordinances pertaining to said licenses.

28 //

1 **G. PAYMENT:**

- 2 1. Pursuant to Government Code Section 51350, CITY agrees to pay to
3 COUNTY the full costs of performing the services mutually agreed upon in
4 this Agreement. The costs of services include salaries, wages, benefits,
5 mileage, services, supplies, equipment, and divisional, departmental and
6 COUNTY General overhead.
- 7 2. Unless the level of service described in Subsection C-3 is increased or
8 decreased or CITY is required to pay for increases as set forth in
9 Subsection G-5, the Maximum Obligation of CITY for services, other than
10 Licensing Services, described in Subsection C-3 of this Agreement, to be
11 provided by COUNTY for the period July 1, 2010 through June 30, 2011
12 shall be as follows:

13 **SERVICE**

COST OF SERVICE

14 **Patrol Services:**

- 15 • Two and four tenths of one (2.4) Deputy Units
16 @ \$303,267/unit \$ 727,842
- 17 • Six hundredths of one (.06) Sergeant Unit
18 @ \$255,201/unit \$ 15,312

19 **Traffic Services:**

- 20 • One (1) Deputy Sheriff II
21 @ \$205,088/unit \$ 205,088

22 **Investigation Services:**

- 23 • One (1) Investigator
24 @ \$248,091/each \$ 248,091

25 **South County Regional Support:**

- 26 • 2.15% of one half of one (.5) Sergeant – Traffic
27 @ \$250,346/each \$ 2,691

28 //

1 G. PAYMENT: (Continued)

2 SERVICE

COST OF SERVICE

- 3 • 2.15% of four (4) Deputy Sheriff IIs – Traffic
- 4 @ \$191,583/each \$ 16,476
- 5 • 2.15% of one (1) Investigative Assistant – Traffic
- 6 @ \$91,485/each \$ 1,967
- 7 • 2.15% of one (1) Office Specialist - Traffic
- 8 @ \$74,583/each \$ 1,604
- 9 • 1.98% of one fourth of one (.25) Sergeant – Auto Theft
- 10 @ \$250,346/each \$ 1,239
- 11 • 1.98% of two (2) Investigators – Auto Theft
- 12 @ \$219,399/each \$ 8,688
- 13 • 1.98% of one (1) Investigative Assistant – Auto Theft
- 14 @ \$92,138/each \$ 1,824
- 15 • 1.98% of one (1) Office Specialist - Auto Theft
- 16 @ \$75,495/each \$ 1,495
- 17 • .52% of three (3) Investigative Assistants – Court
- 18 @ \$94,315/each \$ 1,471

19 Other Charges and Credits: \$ 99,123

20 Charges: Contract administration; direct services and supplies;

21 holiday pay; comp and straight time; Integrated Law & Justice

22 Agency of Orange County; mileage interest for replacement

23 vehicles; mobile data computer (MDC) recurring costs; on-call

24 pay; patrol video system (PVS) recurring costs; training;

25 transportation costs including vehicle fuel and maintenance.

26 Credits: False alarm fees; MDC and PVS adjustment.

27 TOTAL COST OF SERVICES \$1,332,911

28 //

1 **G. PAYMENT: (Continued)**

2 3. Unless the level of service provided in Subsection C-3 is increased by
3 mutual agreement of the parties, or CITY is required to pay increases as set
4 forth in Subsection G-5, the Maximum Obligation of CITY for services, other
5 than Licensing Services, described in Subsection C-3 of this Agreement, to
6 be provided by the COUNTY for the period July 1, 2010 through June 30,
7 2011, is \$1,332,911.

8 4. COUNTY shall invoice CITY monthly. During the period of July 1, 2010
9 through June 30, 2011, said invoices will require payment by CITY of one-
10 twelfth (1/12) of the Maximum Obligation of CITY set forth in Subsection G-3
11 of this Agreement, as said Maximum Obligation may have been increased
12 or decreased pursuant to mutual agreement of the parties. In addition, if a
13 determination is made that increases described in Subsection G-5 must be
14 paid, COUNTY thereafter shall include the pro-rata charges for such
15 increases in its monthly invoices to CITY for the balance of the period
16 between July 1, 2010 and June 30, 2011.

17 5.a. At the time this Agreement is executed, there are unresolved issues
18 pertaining to potential increases in salaries and benefits for COUNTY
19 employees. The cost of such potential increases are not included in the
20 Fiscal Year 2010-11 costs set forth in Subsection G-2 nor in the Fiscal Year
21 2010-11 Maximum Obligation of CITY set forth in Subsection G-3 of this
22 Agreement. If COUNTY incurs or becomes obligated to pay for any such
23 increases for or on account of personnel whose costs are included in the
24 calculations of costs charged to CITY hereunder, CITY shall pay COUNTY,
25 in addition to the Maximum Obligation set forth in Subsection G-3 of this
26 Agreement, the full costs of said increases to the extent such increases are
27 attributable to work performed by such personnel after July 1, 2010, and
28 CITY's Maximum Obligation hereunder shall be deemed to have increased

1 **G. PAYMENT:** (Continued)

2 accordingly. CITY shall pay COUNTY in full for such increases on a pro-
3 rata basis over the portion of the period between July 1, 2010 and June 30,
4 2011 remaining after COUNTY notifies CITY that increases are payable.

5 5.b. If CITY is required to pay for cost increases as set forth in Subsection G-5a
6 above, COUNTY, at the request of CITY, will thereafter reduce the level of
7 service to be provided to CITY, pursuant to Subsection C-3 of this
8 Agreement to a level that will make the Maximum Obligation of CITY
9 hereunder for the period July 1, 2010 through June 30, 2011 an amount
10 specified by CITY that is equivalent to or higher than the Maximum
11 Obligation set forth in Subsection G-3 for said period at the time this
12 Agreement originally was executed. The purpose of such adjustment of
13 service levels will be to give CITY the option of keeping its Maximum
14 Obligation hereunder at the pre-increase level or at any other higher level
15 specified by CITY. In the event of such reduction in level of service and
16 adjustment of costs, the parties shall execute an amendment to this
17 Agreement so providing. Decisions about how to reduce the level of service
18 provided to CITY shall be made by SHERIFF with the approval of CITY.

19 6. CITY shall pay COUNTY in accordance with COUNTY Board of
20 Supervisors' approved County Billing Policy, which is attached hereto as
21 Attachment B and incorporated herein by this reference.

22 7. COUNTY shall charge CITY late payment penalties in accordance with the
23 County Billing Policy.

24 8. As payment for the Licensing Services described in Subsection C-6 of this
25 Agreement, COUNTY shall retain all fees paid by applicants for licenses
26 pursuant to CITY ordinances listed in Attachment A hereto. Retention of
27 said fees by COUNTY shall constitute payment in full to COUNTY for costs
28 incurred by COUNTY in performing the functions related to licensing

1 **G. PAYMENT: (Continued)**

2 described in Subsection C-6; provided, however, that if any of said fees are
3 waived or reduced by CITY, CITY shall pay to COUNTY the difference
4 between the amount of fees retained by COUNTY and the fees that were
5 set forth in the ordinances listed in Attachment A at the time this Agreement
6 was executed. If CITY increases the fee schedule for the licensing
7 ordinances set forth in Attachment A, either party shall have the right to
8 seek amendment of this Agreement with respect to the division of the
9 increased fees between CITY and COUNTY.

- 10 9. Fees generated or collected by SHERIFF contract personnel for copying of
11 documents related to the services provided in this Agreement will be at
12 COUNTY-established rates and will be credited to CITY on an annual basis.
13 10. Narcotic asset forfeitures will be handled pursuant to Attachment C hereto,
14 which is incorporated herein by this reference.

15 **H. NOTICES:**

- 16 1. Except for the notices provided for in Subsection 2 of this Section, all
17 notices authorized or required by this Agreement shall be effective when
18 written and deposited in the United States mail, first class postage prepaid
19 and addressed as follows:

20 **CITY:** ATTN: CITY MANAGER
21 24264 EL TORO ROAD
22 LAGUNA WOODS, CA 92653

23 **COUNTY:** ATTN: LAW ENFORCEMENT CONTRACT MANAGER
24 SHERIFF-CORONER DEPARTMENT
320 NORTH FLOWER STREET, SUITE 108
SANTA ANA, CA 92703

- 25 2. Termination notices shall be effective when written and deposited in the
26 United States mail, certified, return receipt requested and addressed as
27 above.

28 //

1 **I. STATUS OF COUNTY:**

2 COUNTY is, and at all times shall be deemed to be, an independent contractor.
3 Nothing herein contained shall be construed as creating the relationship of
4 employer and employee, or principal and agent, between CITY and COUNTY
5 or any of COUNTY's agents or employees. COUNTY and its SHERIFF shall
6 retain all authority for rendition of services, standards of performance, control of
7 personnel, and other matters incident to the performance of services by
8 COUNTY pursuant to this Agreement. COUNTY, its agents and employees
9 shall not be entitled to any rights or privileges of CITY employees and shall not
10 be considered in any manner to be CITY employees.

11 **J. STATE AUDIT:**

12 Pursuant to Government Code Section 8546.7, CITY and COUNTY shall be
13 subject to examination and audit by the State Auditor for a period of three (3)
14 years after final payment by CITY to COUNTY under this Agreement. CITY
15 and COUNTY shall retain all records relating to the performance of this
16 Agreement for said three-year period, except that those records pertaining to
17 any audit then in progress, or to any claims or litigation, shall be retained
18 beyond said three-year period until final resolution of said audit, claim or
19 litigation.

20 **K. ALTERATION OF TERMS:**

21 This Agreement fully expresses all understanding of CITY and COUNTY with
22 respect to the subject matter of this Agreement and shall constitute the total
23 Agreement between the parties for these purposes. No addition to, or
24 alteration of, the terms of this Agreement shall be valid unless made in writing,
25 formally approved and executed by duly authorized agents of both parties.

26 //

27 //

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1 **L. INDEMNIFICATION:**

2 1. COUNTY, its officers, agents, employees, subcontractors and independent
3 contractors shall not be deemed to have assumed any liability for the
4 negligence or any other act or omission of CITY or any of its officers,
5 agents, employees, subcontractors or independent contractors, or for any
6 dangerous or defective condition of any public street or work or property of
7 CITY, or for any illegality or unconstitutionality of CITY's municipal
8 ordinances. CITY shall indemnify and hold harmless COUNTY and its
9 elected and appointed officials, officers, agents, employees, subcontractors
10 and independent contractors from any claim, demand or liability whatsoever
11 based or asserted upon the condition of any public street or work or
12 property of CITY, or upon the illegality or unconstitutionality of any municipal
13 ordinance of CITY that SHERIFF has enforced, or upon any act or omission
14 of CITY, or its elected and appointed officials, officers, agents, employees,
15 subcontractors or independent contractors related to this Agreement,
16 including, but not limited to, any act or omission related to the maintenance
17 or condition of any vehicle or motorcycle that is owned or possessed by
18 CITY and used by COUNTY personnel in the performance of this
19 Agreement, for property damage, bodily injury or death or any other element
20 of damage of any kind or nature, and CITY shall defend, at its expense
21 including attorney fees, and with counsel approved in writing by COUNTY,
22 COUNTY and its elected and appointed officials, officers, agents,
23 employees, subcontractors and independent contractors in any legal action
24 or claim of any kind based or asserted upon such condition of public street
25 or work or property, or illegality or unconstitutionality of a municipal
26 ordinance, or alleged acts or omissions. If judgment is entered against
27 CITY and COUNTY by a court of competent jurisdiction because of the
28 concurrent active negligence of either party, CITY and COUNTY agree that

1 **L. INDEMNIFICATION: (Continued)**

2 liability will be apportioned as determined by the court. Neither party shall
3 request a jury apportionment.

- 4 2. COUNTY shall indemnify and hold harmless CITY and its elected and
5 appointed officials, officers, agents, employees, subcontractors and
6 independent contractors from any claim, demand or liability whatsoever
7 based or asserted upon any act or omission of COUNTY or its elected and
8 appointed officials, officers, agents, employees, subcontractors or
9 independent contractors related to this Agreement, for property damage,
10 bodily injury or death or any other element of damage of any kind or nature,
11 and COUNTY shall defend, at its expense, including attorney fees, and with
12 counsel approved in writing by CITY, CITY and its elected and appointed
13 officials, officers, agents, employees, subcontractors and independent
14 contractors in any legal action or claim of any kind based or asserted upon
15 such alleged acts or omissions.

16 **M. TRAFFIC VIOLATOR APPREHENSION PROGRAM:**

- 17 1. COUNTY has established a Traffic Violator Apprehension Program ["the
18 Program"], which is operated by SHERIFF, and is designed to reduce
19 vehicle accidents caused by unlicensed drivers and drivers whose licenses
20 are suspended and to educate the public about the requirements of the
21 Vehicle Code and related safety issues with regard to driver licensing,
22 vehicle registration, vehicle operation, and vehicle parking. The Program
23 operates throughout the unincorporated areas of the COUNTY and in the
24 cities that contract with COUNTY for SHERIFF's law enforcement services,
25 without regard to jurisdictional boundaries, because an area-wide approach
26 to reduction of traffic accidents and driver education is most effective in
27 preventing traffic accidents. In order for CITY to participate in the Program,
28 CITY has adopted a fee pursuant to Vehicle Code section 22850.5, in the

1 **M. TRAFFIC VIOLATOR APPREHENSION PROGRAM:** (Continued)

2 amount and under the terms and conditions set forth in the resolution that is
3 attached hereto as Attachment D and incorporated into this Agreement by
4 reference [hereinafter called a "TVAP resolution"], and has directed that the
5 revenue from such fee be used for the Program. CITY's participation in the
6 Program may be terminated at any time by rescission or amendment of the
7 TVAP resolution that is attached hereto as Attachment D. In the event CITY
8 1) amends said TVAP resolution, or rescinds said TVAP resolution and
9 adopts a new TVAP resolution pertaining to the above-referenced fee and
10 the Program, and 2) remains a participant in the Program thereafter, CITY's
11 Manager, on behalf of CITY, and SHERIFF, on behalf of COUNTY, have
12 authority to execute an amendment of this Agreement to substitute CITY's
13 amended or new TVAP resolution for Attachment D hereto, as long as said
14 amendment to this Agreement does not materially change any other
15 provision of this Agreement.

- 16 2. COUNTY will make available for review, at the request of CITY, all financial
17 data related to the Program as may be requested by CITY.
- 18 3. Fee revenue generated by COUNTY and participating cities will be used to
19 fund the following positions, which will be assigned to the Program:
- 20 • One fourth of one (.25) Sergeant
21 (20 hours per two-week pay period)
 - 22 • One (1) Staff Specialist
23 (80 hours per two-week pay period)
 - 24 • One (1) Information Processing Specialist
25 (80 hours per two-week pay period)
 - 26 • One (1) Administrative Manager I, Extra Help
27 (960 hours per fiscal year)

28 //

1 **M. TRAFFIC VIOLATOR APPREHENSION PROGRAM: (Continued)**

- 2 • One (1) Investigative Assistant
- 3 (80 hours per two-week pay period)
- 4 • One (1) Office Specialist
- 5 (80 hours per two-week pay period)

6 4. Fee revenue generated by CITY may be used to reimburse CITY for
7 expenditures for equipment and/or supplies directly in support of the
8 Program. In order for an expenditure for equipment and/or supplies to be
9 eligible for reimbursement, CITY shall submit a request for and obtain pre-
10 approval of the expenditure by using the form as shown in Attachment E.
11 The request shall be submitted within the budget schedule established by
12 SHERIFF. SHERIFF shall approve the expenditure only if both of the
13 following conditions are satisfied: 1) there are sufficient Program funds,
14 attributable to revenue generated by CITY's fee, to pay for the requested
15 purchase, and 2) CITY will use the equipment and/or supplies, during their
16 entire useful life, only for purposes authorized by its TVAP resolution in
17 effect at the time of purchase.

18 In the event that CITY terminates its participation in the Program, CITY
19 agrees that the equipment purchased by CITY and reimbursed by Program
20 funds will continue to be used, during the remainder of its useful life,
21 exclusively for the purposes authorized by CITY's TVAP resolution in effect
22 at the time of purchase.

23 5. In the event the fees adopted by COUNTY, CITY and other participating
24 jurisdictions are not adequate to continue operation of the Program at the
25 level at which it operated previously, COUNTY, at the option of CITY, will
26 reduce the level of Program service to be provided to CITY or will continue
27 to provide the existing level of Program services. COUNTY will charge CITY
28 the cost of any Program operations that exceed the revenue generated by

1 **M. TRAFFIC VIOLATOR APPREHENSION PROGRAM: (Continued)**

2 fees. Such charges shall be in addition to the Maximum Obligation of CITY
3 set forth in Subsection G-3 of this Agreement. The amount of any revenue
4 shortfall charged to CITY will be determined, at the time the revenue
5 shortfall is experienced, according to CITY's share of Program services
6 rendered. In the event of a reduction in level of Program service,
7 termination of Program service or adjustment of costs, the parties shall
8 execute an amendment to this Agreement so providing. Decisions about
9 how to reduce the level of Program service provided to CITY shall be made
10 by SHERIFF with the approval of CITY.

11 **N. MOBILE DATA COMPUTERS:**

- 12 1. As part of the law enforcement services to be provided to CITY, COUNTY
13 has provided, or will provide, mobile data computers (hereinafter called
14 "MDCs") that are or will be mounted in patrol vehicles and motorcycles
15 designated by COUNTY for use within CITY limits.
- 16 2. SHERIFF has the exclusive right to use said MDCs for law enforcement
17 services related to this Agreement.
- 18 3. CITY shall pay COUNTY the full costs to COUNTY of a) the acquisition and
19 installation of MDCs that are or will be mounted in patrol vehicles and
20 motorcycles assigned to CITY, and b) recurring costs, as deemed
21 necessary by COUNTY, including the costs of maintenance and
22 contributions to a fund for replacement and upgrade of such MDCs when
23 they become functionally or technologically obsolete.

24 The costs to be paid by CITY for recurring costs, including maintenance and
25 replacement/upgrade of MDCs, are included in the costs set forth in
26 Subsection G-2 and the Maximum Obligation of CITY set forth in Subsection
27 G-3 of this Agreement unless CITY has already paid such costs. CITY shall
28 not be charged additional amounts for maintenance or replacement/upgrade

1 **N. MOBILE DATA COMPUTERS: (Continued)**

2 of said MDCs during the period July 1, 2010 through June 30, 2011.

3 4. If, following the initial acquisition of MDCs referenced above, CITY requires
4 MDCs for additional patrol cars or motorcycles designated for use in the
5 CITY, or for CITY's Emergency Operations Center, COUNTY will purchase
6 said additional MDCs. Upon demand by COUNTY, CITY will pay to
7 COUNTY a) the full costs of acquisition and installation of said additional
8 MDC's, and b) the full recurring costs for said MDCs, as deemed necessary
9 by COUNTY, including the costs of maintenance, and contributions to a
10 fund for replacement and upgrade of such MDCs when they become
11 functionally or technologically obsolete. Said costs related to additional
12 MDCs are not included in, and are in addition to, the costs set forth in
13 Subsection G-2 and the Maximum Obligation of CITY set forth in Subsection
14 G-3 of this Agreement.

15 5. COUNTY will replace and/or upgrade MDCs as needed. The costs of
16 replacing/upgrading MDCs shall be paid by COUNTY from the replacement/
17 upgrade funds to be paid by CITY in accordance with the foregoing. CITY
18 shall not be charged any additional charge to replace or upgrade MDCs.

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CITY OF LAGUNA WOODS
LICENSING ORDINANCES

BINGO GAME
BINGO OFFICIAL
CANVASSER/SOLICITOR
COIN DEALER
COMMERCIAL FORTUNETELLER
DANCE INSTRUCTOR (NUDE)
DANCE STUDIO (NUDE)
ESCORT
ESCORT BUREAU
FIGURE MODEL (NUDE)
FIGURE MODEL STUDIO (NUDE)
GUN DEALER
INTERLOCUTRIX (NUDE)
INTRODUCTORY SERVICE
JUNK COLLECTOR
JUNK DEALER
MEDICAL MARIJUANA DISPENSARY
PEDDLER
POOL ROOM
PUBLIC DANCE
RAP SESSION (NUDE)
SECONDHAND DEALER (Pawnbroker)
TAXICAB STAND

05/27/10

COUNTY BILLING POLICY
APPROVED BY BOARD MINUTE ORDER DATED OCTOBER 27, 1992

I. POLICY

All County agencies/departments/districts (County) governed by the Board of Supervisors shall bill contracting entities for materials and/or services provided under contract in accordance with the following standardized billing and collection policy. Billing frequency is dependent on whether the contract is a fixed price or actual cost contract. Payment due date is designed to be both responsive to the County's cash flow needs and reasonable enough as to not require special processing by the contracting entity. If payments are not received by the required due dates, a late payment fee shall be computed and billed to the contracting entity in accordance with the requirements of this procedure.

Nothing herein shall affect the liability, including pre-judgment interest, of the contracting party for services or materials in as much as this is a policy to enact standard billing practices.

II. DEFINITIONS

- A. Contract for the purposes of this policy - A contract is a formal written agreement, a purchase order from the contracting entity, or any other acceptable mutual understanding between the contracting parties.
- B. Received by the County - The phrase "received by the County", as used in Section VI of this policy, refers to the date a payment is received by the County. It is defined as the date the payment is in the County's possession. It is not the date the payment is posted or deposited by the County.

III. FIXED PRICE CONTRACTS

- A. Fixed Price (One-Time/Non-Recurring Contracts) - Invoices that represent a billing for a one-time, non-recurring provision of materials and/or services shall be issued no later than five (5) working days after delivery by the County of the materials and/or services. Examples of such one-time, non-recurring provision of materials and/or services might be a city contracting with the Sheriff for security service at a parade or sporting event; or, a city purchasing a computer listing containing certain city-requested data. Payment due date shall be invoice date plus 30 days.
- B. Fixed Price (Ongoing/Recurring Contracts) - Invoices that represent a billing for an ongoing, recurring provision of materials and/or services shall be issued according to the following frequency:
1. Annual Billings that total \$10,000 or less per 12-month period shall be billed via one (1) annual invoice. Annual invoices will be issued for each 12-month period of the contract, or portions thereof. Invoices shall be issued no later than five working days after the beginning of each 12-month period. Payment due date shall be invoice date plus 30 days.

2. Quarterly Billings that are greater than \$10,000 but not more than \$200,000 per 12-month period, shall be billed in quarterly installments. Quarterly invoices will be issued representing the contract amount for each 12-month period of the contract, or portions thereof, prorated into four (4) installments. Invoices shall be issued no later than 30 days after the beginning of each quarter. Payment due date shall be 60 days after the beginning of each calendar quarter.
3. Monthly Billings that are greater than \$200,000 per 12-month period shall be billed in monthly installments. Monthly invoices will be issued representing the contract amount for each 12-month period of the contract, or portions thereof, prorated into 12 installments. Invoices shall be issued on or before the first day of each service month. Payment due date shall be 30 days after the beginning of each service month.

An example of a fixed price contract for ongoing, recurring provision of materials and/or services might be a city contracting with the Sheriff for law enforcement services.

IV. ACTUAL COST CONTRACTS

- A. Actual Cost (One-Time/Non-Recurring Contracts) - Invoices that represent a billing for a one-time, non-recurring provision of materials and/or services shall be issued after delivery by the County of the materials and/or services and no later than 15 days after actual cost data is available. Payment due date shall be invoice date plus 30 days.
- B. Actual Cost (Ongoing/Recurring Contracts) - Invoices that represent a billing for an ongoing, recurring provision of materials and/or services shall be issued on a monthly basis and shall represent the cost of materials and/or services provided to the contracting entity during the previous calendar month. Such invoices shall be issued no later than 15 days after the close of the monthly billing period. If the County agency/department/district does not utilize a monthly billing cycle, the invoice shall be issued no later than 15 days after actual cost data is available. Payment due date shall be invoice date plus 30 days.

Examples of actual cost contracts for the ongoing, recurring provision of materials and/or services might be a city contracting with the County for communications equipment repair or waste disposal at a County landfill.

V. PAYMENT DUE DATES

Notwithstanding the provisions of Sections II and III above, payment due date shall be at least invoice date plus 30 days. If the County is late in issuing an invoice, the contracting entity would always have at least invoice date plus 30 days to pay. If the County is early in issuing an invoice, the contracting entity would still have a payment due date of either 60 days after the beginning of the quarter (quarterly invoices) or 30 days after the beginning of the service month (monthly invoices).

(EXAMPLES: An invoice for October service, dated and issued October 8 (late) would have a payment due date of November 7. An invoice for August service, dated and issued July 20 (early) would have a payment due date of August 30.)

VI. LATE CHARGES

The late payment of any invoiced amount by a contracting entity will cause the County to incur costs not contemplated by the County/contracting entity agreement, the exact amount of such cost will be extremely difficult to ascertain. Such costs include, but are not limited to, costs such as administrative follow-up and processing of delinquent notices, increased accounting costs, etc.

Late charges will be assessed in the following situations:

- Over-the-counter payments will be assessed a late charge if any payment is not received by the County by the payment due date.
- Payments transmitted to the County via the U.S. Mail that have the payer's postage meter mark will be assessed a late charge if any payment is not received by the County by the payment due date plus one day.
- Payments transmitted to the County via the U.S. Mail that have a U.S. Post Office postmark dated after the payment due date will be assessed a late charge.

The late charge assessed in each of these situations shall be three-quarters of one percent (0.75%) of the payment due and unpaid plus \$100.00 for late payments made within 30 days of the payment due date. An additional charge of three-quarters of one percent (0.75%) of said payment shall be added for each additional 30-day period that the payment remains unpaid. Late charges shall be added to the payment and invoiced to the contracting entity in accordance with this policy.

VII. COLLECTIONS

Any invoice remaining unpaid 90 days after the invoice date shall be referred to the Auditor-Controller for subsequent collection action, such as deduction from contracting entity moneys on deposit with the County Treasurer in accordance with Government Code Section 907 and any other applicable provision of law. Non-payment of invoices and applicable late charges will constitute a breach of contract for which the County retains all legal remedies including termination of the contract.

VIII. DISCOUNT FOR EARLY PAYMENT

Any payment received by the County from a contracting entity 20 days or more before the payment due date shall be entitled to a discount of one-quarter of one percent (0.25%). If the contracting entity takes a discount, and the payment is received by the County less than 20 days before the payment due date, County staff shall immediately notify the contracting entity by telephone that the discount should not have been taken and that the balance is due by the original payment due date.

If the balance is not received by the County in accordance with the dates as specified in Section VII, applicable late charges shall be calculated on the balance due.

IX. DEFERRED REVENUE

At fiscal year end, any portion of revenue invoiced (not necessarily received) during the fiscal year being closed out that represents charges or prepayment for materials and/or services for the upcoming fiscal year shall be reclassified from a revenue account to a deferred revenue account (liability). In the new fiscal year the deferred revenue shall be reclassified to a revenue account. (EXAMPLE: On June 1, 19X1, a city is invoiced \$48,000 which represents charges for the 12-month period June 1, 19X1 to May 31, 19X2. The amount to be reclassified to deferred revenue would be \$44,000, representing 11/12ths of the total amount. In July 19X1, the \$44,000 would be reclassified to revenue.) Reclassification entries shall be made by Auditor-Controller Agency Accounting units, or for those agencies/departments/districts without such a unit, the agency/department/district shall notify the Auditor-Controller of the amounts to be reclassified.

X. COST RECOVERY

All County agencies/department/districts shall include all costs of providing contracted services in contract rates. Including all direct costs, allocated indirect costs such as departmental and County (CWCAP) overhead, and cost of capital financing.

XI. EXISTING CONTRACTS

Billing terms and provisions contained in existing contracting entity agreements (existing as of the date this policy is approved by the Board of Supervisors) shall remain in effect for the life of the contract. However, when these existing contracts are renegotiated, they shall contain the billing provisions as set forth in this policy.

XII. DEVIATIONS FROM POLICY

Deviations from this policy shall be approved by the Board of Supervisors. Proposed deviations by agencies/departments/districts shall be submitted to the CEO for concurrence in advance of filing an Agenda Item Transmittal (AIT) with the Clerk of the Board. The CEO, or his/her designee, shall advise the agency/department/district of approval or disapproval of the proposed deviations. If a County agency/department/district submits a contract to the Board of Supervisors for approval, and the billing provisions in the contract deviate from this policy, the agency/department/district shall specifically advise the Board of Supervisors in the AIT of the deviation, the reason for the deviation, and of the CEO's recommendation relative thereto.

POLICY FOR DISTRIBUTION OF FORFEITED AND SEIZED ASSETS

BACKGROUND

The Orange County Sheriff's Department provides contract law enforcement services to cities in Orange County. Because of the increased likelihood that contracted patrol or investigation personnel may become involved in significant narcotic seizures, which could affect law enforcement services provided by the Sheriff's Department to contract cities, the following policy is in effect.

1. NON-RNSP CONTRACTED PATROL AND INVESTIGATION OFFICERS

When assets (cash or property) are seized in CITY by contracted patrol or investigation personnel other than RNSP personnel, and subsequently forfeited to COUNTY, the forfeited assets shall be shared with CITY as set forth below, for the purpose of augmenting law enforcement services in CITY, subject to approval by the forfeiting agency (U.S. Attorney or State) of such sharing and use of forfeited assets. A portion of forfeited assets may be retained by COUNTY's Sheriff Department, hereinafter referred to as "SHERIFF", to pay for departmental expenses not recovered through law enforcement contracts.

In such cases, SHERIFF shall apply to the forfeiting agency for the return of a share of the assets to COUNTY. In his application, SHERIFF shall specify the percentage of shared assets returned to COUNTY that will be used to augment law enforcement services in CITY and the use of said assets by CITY.

In those cases in which assets are seized within CITY by non-RNSP personnel assigned to CITY pursuant to this Agreement, without the involvement of other law enforcement personnel, and in which the seizure is a result solely of activities self-initiated by non-RNSP SHERIFF personnel assigned to CITY or initiated by said personnel in response to calls for service within CITY, SHERIFF shall apply to have all of the assets used to augment CITY law enforcement services.

In those cases in which non-RNSP SHERIFF personnel assigned to CITY pursuant to this Agreement play an ancillary role in a seizure or in which other law enforcement personnel are involved in a seizure, SHERIFF shall determine the percentage of the total forfeited assets for which he will apply to augment CITY's law enforcement services. This determination will be based on the circumstances of the seizure, including the pro-rata involvement of all personnel, including those assigned to CITY.

Each seizure will be evaluated on an individual and independent basis, and said evaluations will be available for review to CITY's manager. Examples of those incidents which would be evaluated as set forth in this section include situations in which a contract patrol deputy provides uniformed backup at a SHERIFF's Narcotic Bureau search warrant location or in which contract investigators participate in the service of a search warrant that was initiated by non-contract law enforcement personnel.

NON-RNSP CONTRACTED PATROL AND INVESTIGATION OFFICERS (Continued)

Assets (cash or property) that are returned to COUNTY by the forfeiting agency with the understanding that they will be used to augment CITY law enforcement services shall be used by CITY and COUNTY only for such purposes. If the forfeiting agency attaches additional or more specific conditions to the use of said assets, CITY and COUNTY shall also abide by those conditions. SHERIFF and CITY's manager shall determine the specific use of said assets within the conditions imposed by the forfeiting agency.

Subject to conditions imposed by the forfeiting agency and to the requirement that forfeited assets be used to augment law enforcement services, COUNTY shall place forfeited cash, or cash from the sale of forfeited assets in the interest-bearing account (Agency 139) for use in CITY in compliance with the forfeiting agency's regulations.

2. CONTRACTED REGIONAL NARCOTICS SUPPRESSION PROGRAM (RNSP) OFFICERS

Assets forfeited as a result of activities conducted by contracted RNSP officers will be used to augment CITY's law enforcement services. Because activities of this type result from the efforts of both contracted officers and other RNSP officers, the percentage of sharing will be determined pursuant to the RNSP Memorandum of Understanding in effect at the time of the seizure. Said Memorandum of Understanding provides that assets are distributed according to percentage amounts based on the number of sworn personnel participating in the RNSP at the time of the seizure. The number of personnel in RNSP, as well as the number of participating agencies in RNSP, may fluctuate during the course of a contract year, thereby affecting the percentage amounts distributed to participating agencies. The percentage amounts distributed to participating agencies may also be affected by action taken by the RNSP Executive Board.

CITY will use RNSP forfeited assets only to augment CITY's law enforcement services. If the forfeiting agency or applicable RNSP Memorandum of Understanding attaches any additional or more specific conditions on the use of said assets, CITY shall abide by those conditions. SHERIFF and CITY's manager shall determine the specific use of said assets within the conditions imposed by the forfeiting agency and the RNSP Memorandum of Understanding.

Subject to conditions imposed by the forfeiting agency and the RNSP Memorandum of Understanding and to the requirement that RNSP forfeited assets be used to augment law enforcement services, COUNTY shall place forfeited cash or cash from the sale of forfeited assets in the interest-bearing account (Agency 139) for use in CITY in compliance with the forfeiting agency's regulations and the RNSP Memorandum of Understanding.

RESOLUTION NO.01-11

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
LAGUNA WOODS, CALIFORNIA, ESTABLISHING A TRAFFIC
VIOLATOR APPREHENSION PROGRAM AND SETTING FEES
FOR THE IMPOUND OF VEHICLES

WHEREAS, the Orange County Sheriff-Coroner (hereinafter "the Sheriff") has instituted a Traffic Violator Apprehension Program designed to reduce vehicle accidents caused by unlicensed drivers and drivers whose licenses are suspended and to educate the public about the requirements of the Vehicle Code and related safety issues with regard to driver licensing, vehicle registration, vehicle operation, and vehicle parking; and

WHEREAS, the Sheriff operates said Traffic Violator Apprehension Program in the unincorporated areas of Orange County and in the cities in Orange County that contract for the Sheriff's law enforcement services, including this city; and

WHEREAS, the operation of the Traffic Violator Apprehension Program in the unincorporated areas of Orange County and in the cities in Orange County that contract for the Sheriff's law enforcement services, including this city; and

WHEREAS, the operation of the Traffic Violator Apprehension Program on an area-wide basis, without regard to jurisdictional boundaries between the County and the cities, serves the public purposes of the City of Laguna Woods because drivers routinely cross jurisdictional boundaries, making an area-wide approach to reduction of traffic accidents and driver education most effective in preventing traffic accidents in all participating jurisdictions; and

WHEREAS, the Orange County Board of Supervisors already has adopted fees for the unincorporated areas of the County that are identical to those described therein; and

WHEREAS, the Orange County Board of Supervisors has directed the establishment in the County Treasury of an interest-earning, budgeted special revenue fund, called "the Traffic Violator Fund" and designated as Fund No. 13B, to be controlled by the Sheriff; and

WHEREAS, the Orange County Board of Supervisors has directed that the proceeds of the County fees that are identical to the fees described herein be deposited in the Traffic Violator Fund; and

WHEREAS, the Orange County Board of Supervisors has directed that the Traffic Violator Fund be used exclusively for the Traffic Violator Apprehension Program operated by the Sheriff in the unincorporated areas of Orange County and the cities that contract for the Sheriff's law enforcement services; and

WHEREAS, the Orange County Board of Supervisors has directed that permissible expenditures from the Traffic Violator Fund include, but are not limited to, the costs of personnel

who perform duties for the Traffic Violator Apprehension Program, and the purchase and maintenance of equipment, materials and supplies utilized in the Traffic Violator Apprehension Program; and

WHEREAS, the Orange County Board of Supervisors has directed that until further order of that Board, the balance remaining in the Traffic Violator Fund at the close of any fiscal year shall be carried forward and accumulated in said Fund for the above-described purposes; and

WHEREAS, the Sheriff has advised this Council of his plans to seek adoption, by the city councils of each of the other cities that contract for the Sheriff's law enforcement services, of fees identical to those described herein, to be used for the Traffic Violator Apprehension Program; and

WHEREAS, the Sheriff impounds numerous and various vehicles removed from highways, public property, or private property in this city during the normal course of duty; and

WHEREAS, the Sheriff impounds said vehicles pursuant to his authority under the California Vehicle Code as follows:

Vehicle Code Section and Impound Ground

14602.6	Suspended, revoked or unlicensed driver/30-day hold
22651 (a)	Unattended vehicle on bridge
22651 (d)	Vehicle blocking driveway
22651 (e)	Vehicle blocking fire hydrant
22651 (f)	Vehicle blocking freeway
22651 (h) (1)	Driver arrested
22651 (h) (2)	Order of suspension or revocation pursuant to section 13388
22651 (i) (1)	Multiple parking citations
22651 (j)	Lack of vehicle registration
22651 (k)	Parking over seventy-two hours
22651 (l)	Parking in a construction zone
22651 (m)	Violation of special events restrictions
22651 (n)	No parking zone
22651 (o) (1)	Delinquent vehicle registration
22651 (p)	Drive unlicensed or license suspended
22651 (r)	Vehicle blocking another vehicle
22651 (t)	Notice to appear/illegal amber lights
22655.3	Removal for investigation (fleeing in violation of Section 2800.1 or 2800.2)
22655.5 (b)	Vehicle is evidence of crime
22669	Abandoned vehicle;

WHEREAS, Vehicle Code section 22850.5 authorizes this Council, by resolution, to establish a fee equal to the administrative costs relating to the removal, impound, storage or release of properly impounded vehicles; and

WHEREAS, the Sheriff is proposing adoption of the following fees pursuant to Vehicle Code section 22850.5:

- (a) \$152.00 when a vehicle is impounded pursuant to or on account of violation of Vehicle Code section 14602.6, which relates to the licensing status of the driver, and
- (b) \$50.00 when a vehicle is impounded pursuant to or on account of violation of any of the other Vehicle Code provisions listed above;

WHEREAS, a cost study conducted by the Sheriff shows that the administrative costs relating to removal, impound, storage or release of vehicles properly impounded pursuant to or on account of violation of Vehicle Code section 14602.6 exceed \$152.00 per impound; and

WHEREAS, a cost study conducted by the Sheriff shows that the administrative costs relating to the removal, impound, storage or release of vehicles properly impounded pursuant to or on account of violation of the other Vehicle Code provisions listed above exceed \$50.00 per impound; and

WHEREAS, the above-described difference in costs is attributable to the additional costs of ascertaining the licensing status of the driver and complying with the complex requirements of Vehicle Code section 14602.6; and

WHEREAS, persons whose vehicles are impounded, rather than the public as a whole, should bear the administrative costs of processing such impounds; and

WHEREAS, Vehicle Code section 22850.5 imposes the following restrictions on the imposition of an administrative fee:

- (a) The fee may only be imposed on the registered owner or the agents of that owner and may not include any vehicle towed under an abatement program or sold at a lien sale pursuant to Sections 3068.1 to 3074, inclusive of, and Section 22851 of, the Civil Code unless the sale is sufficient in amount to pay the lien holder's total charges and proper administrative costs; and
- (b) The fee may not be imposed for any hearing or appeal relating to the removal, impound, storage, or release of a vehicle unless that hearing or appeal was requested in writing by the registered or legal owner of the vehicle or an agent of that registered or legal owner, and the fee may be imposed only upon the person requesting that hearing or appeal; and

WHEREAS, it also is unfair to impose the administrative fee authorized by Vehicle Code section 22850.5 in the following circumstances: (1) when the vehicle was left because it became inoperable while being driven, if the owner makes good faith attempts promptly to remove the vehicle from a location where it is not permitted, (2) when the vehicle was stolen, (3) when the

vehicle was left by an ill or injured driver, and (4) when it is demonstrated to the satisfaction of the Sheriff or his designee that neither the registered owner of the vehicle nor his agent, if any, was at fault in creating the circumstances leading to the impounding of the vehicle; and

WHEREAS, a notice of public hearing with respect to the proposed new fees was given according to law; and

WHEREAS, a public hearing pertaining to said proposed new fees was held on April 18, 2001;

NOW, THEREFORE, BE IT RESOLVED that this Council finds, in accordance with California Public Resources Code section 21080 (b) (8), that the charges listed herein below are only for the purposes of meeting operating expenses and are, therefore, exempt from compliance with the Californian Environmental Quality Act.

BE IT FURTHER RESOLVED that on July 1, 2000, the administrative fees indicated below shall become effective for the removal, impound, storage or release of vehicles properly impounded after removal from locations in this city in accordance with or on account of violation of the provisions of the Vehicle Code listed below.

- (a) A fee of \$152.00 for each impound of a vehicle in accordance with or on account of violation of Vehicle Code section 14602.6, and
- (b) A fee of \$50.00 for each impound of a vehicle in accordance with or on account of violation of Vehicle Code section

22651 (a),
22651 (d),
22651 (e),
22651 (f),
22651 (h) (1),
22651 (h) (2),
22651 (i) (1),
22651 (j),
22651 (k),
22651 (l),
22651 (m),
22651 (n),
22651 (o) (1),
22651 (p),
22651 ®,
22651 (t),
22655.3,
22655.5 (b), or
22669.

BE IT FURTHER RESOLVED that the Sheriff is authorized to collect said fees, on behalf of this city, at the time of release of vehicles that are subject to the fees.

BE IT FURTHER RESOLVED that said fees shall be imposed on the registered owner or the agent of the owner of the impounded vehicle and shall not include any vehicle towed under an abatement program or sold at a lien sale pursuant to Sections 3068.1 to 3074, inclusive, of, and Section 22851 of, the Civil Code unless the sale is sufficient in amount to pay the lien holder's total charges and proper administrative costs.

BE IT FURTHER RESOLVED that said fees shall not be imposed for any hearing or appeal relating to the removal, impound, storage, or release of a vehicle unless that hearing or appeal was requested in writing by the registered or legal owner of the vehicle or an agent of that registered or legal owner, and such fees, if otherwise applicable, shall be imposed only upon the person requesting that hearing or appeal.

BE IT FURTHER RESOLVED that said fees shall not be imposed in any of the following circumstances: (a) when the vehicle was left because it became inoperable while being driven, if the owner made good faith attempts promptly to remove the vehicle from a location where it was not permitted; (b) when the vehicle was stolen; (c) when the vehicle was left by an ill or injured driver; or (d) when it is demonstrated to the satisfaction of the Sheriff or his designee that neither the registered owner of the vehicle nor his agent, if any, was at fault in creating the circumstances leading to the impounding of the vehicle.

BE IT FURTHER RESOLVED that at Sheriff headquarters or at any Sheriff substation, a registered owner or an agent of a registered owner who believes he/she/it is exempt from either of said fees in accordance with any of the above-listed criteria may apply in writing for a waiver of the fee and shall present such supporting information or documentation as the Sheriff may request.

BE IT FURTHER RESOLVED that upon presentation of a written application for waiver of either of said fees, together with such supporting documentation as the Sheriff may request, the Sheriff shall determine promptly whether the applicant meets the above-listed criteria for waiver of the fee, and if so, shall waive the fee.

BE IT FURTHER RESOLVED that until further order of this Council, the Sheriff is directed to deposit the proceeds of the fees established by this Resolution in the above-described Traffic Violator Fund in the county Treasury, to be used exclusively for the Traffic Violator Apprehension operated by the Sheriff in the unincorporated areas of Orange County and the cities in Orange County that contract for the Sheriff's law enforcement services.

BE IT FURTHER RESOLVED that expenditure of said fee proceeds from the Traffic Violator Fund may include, but are not limited to, the costs of personnel who perform duties for the Traffic Violator Apprehension Program, and the purchase and maintenance of equipment, materials and supplies utilized in the Traffic Violator Apprehension Program.

BE IT FURTHER RESOLVED that until further order of this Council, the Orange County Board of Supervisors is authorized to carry forward in the Traffic Violator Fund and accumulate any

balance of proceeds of fees imposed by this Resolution that is remaining at the end of a fiscal year, as long as such fee proceeds will be used for the purposes recited herein.


ROBERT BOUER, Mayor

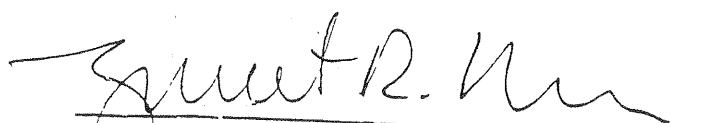
ATTEST:


MARGARET R. MONAHAN, City Clerk

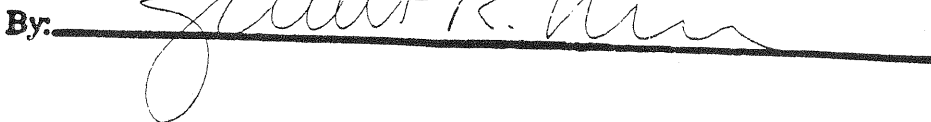
STATE OF CALIFORNIA)
COUNTY OF ORANGE) ss.
CITY OF LAGUNA WOODS)

I, MARGARET R. MONAHAN, City Clerk of the City of Laguna Woods, do HEREBY CERTIFY that the foregoing **Resolution No. 01-11** was duly adopted by the City Council of the City of Laguna Woods at a regular meeting thereof, held on the 18th day of April 2001, by the following vote:

AYES:	COUNCIL MEMBERS:	Thorpe, Ross, Hack, McLaughlin, Bouer
NOES:	COUNCIL MEMBERS:	None
ABSENT:	COUNCIL MEMBERS:	None


MARGARET R. MONAHAN, City Clerk

The foregoing instrument is a correct copy of the original on file in this office:
Attest this 24th day of April, 2001
City Clerk of the City Laguna Woods, County of Orange, State of California.

By: 

**ORANGE COUNTY SHERIFF-CORONER
TRAFFIC VIOLATOR APPREHENSION PROGRAM**

REQUEST	CONTRACT CITY		
	Participating City Request to Purchase From the TVA in FY _____	Date _____	
	<u>QUANTITY</u>	<u>ITEM DESCRIPTION</u>	<u>APPLICABILITY TO TVA PROGRAM</u>
			<u>ESTIMATED COST</u>
	THE CITY CERTIFIES THAT THE EQUIPMENT PURCHASED BY CITY AND TO BE REIMBURSED BY PROGRAM FUNDS WILL BE USED FOR ITS ENTIRE USEFUL LIFE EXCLUSIVELY FOR THE PURPOSES OF THE TRAFFIC VIOLATOR APPREHENSION PROGRAM CITY MANAGER REQUEST: Printed Name _____ DATE _____ Signature: _____		
CERTIFICATION			
APPROVALS	ORANGE COUNTY SHERIFF-CORONER DEPARTMENT		
	Recommended For Approval CITY POLICE SERVICES CHIEF		MANAGER – TVA PROGRAM

ITEM 4.3 D

6-23-10

OCSD
BUDGET
USE ONLY

Agreement No. D10-021

COOPERATIVE AGREEMENT FOR ROAD FEE PROGRAM
TRANSFER OF CARITS FUNDS

THIS AGREEMENT is entered into this _____ day of _____, 2010
BY AND BETWEEN

CITY OF LAGUNA WOODS, a municipal
corporation, hereinafter referred to as CITY,

and

COUNTY OF ORANGE, a political
subdivision of the State of California,
hereinafter referred to as COUNTY.

Which are sometimes individually referred to as "Party" or collectively as "Parties"

RECITALS

WHEREAS, the County adopted the Coastal Area Road Improvements and Traffic Signals Fee Program (CARITS) on December 14, 1988 by Resolution No. 88-1682, which Resolution and CARITS Fee Program documents are incorporated herein by this reference; and

WHEREAS, the COUNTY possesses unexpended traffic signal funds that the COUNTY desires to share with the CITIES for remaining CITY projects that qualify under the CARITS Fee Program ("Unallocated Traffic Signal Funds"); and

WHEREAS, all Unallocated Traffic Signal Funds are located within the incorporated cities, and the CITIES and COUNTY have agreed upon a distribution formula for the \$3,162,960 of Unallocated Traffic Signal Funds (attached as Exhibit A); and

WHEREAS, the COUNTY intends to allocate to the CITY its share of Unallocated Traffic Signal Funds subject to the provisions of this Agreement

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the COUNTY AND CITY hereby agree as follows:

SECTION A – CITY AND COUNTY OBLIGATIONS

1. COUNTY and CITY agree with the distribution formula contained in Exhibit A and COUNTY agrees to transfer \$361,915.86 to CITY. CITY and COUNTY agree that the COUNTY shall have no other obligation under this

Agreement or the CARITS Fee Program other than the allocation of Unallocated Traffic Signal Funds.

2. CITY agrees to accept \$361,915.86 in Unallocated Traffic Signal Funds as its full and final allocation under the CARITS fee Program and for all Unallocated Traffic Signal Funds, and shall deposit such funds in a separate project fund to be used only for Unallocated Traffic Signal Fund expenditures.
3. CITY agrees to only expend Unallocated Traffic Signal Funds in accordance with the CARITS Fee Program requirements contained in the CARITS Fee Program, Resolution No. 88-1682 and all applicable laws. Should the CITY fail to expend Traffic Signal Improvement funds in accordance with these requirements, CITY shall immediately return to COUNTY an amount equivalent to the ineligible expenditure and any unused Unallocated Traffic Signal Funds.
4. Should the CITY at any time determine that it cannot expend Unallocated Traffic Signal Funds, CITY shall immediately return any unused funds to the COUNTY.
5. CITY agrees to comply with all applicable provisions of Government Code section 66484.3 and all reporting, expenditure and other state law requirements that govern the holding and expenditure of development fees, including but not limited to Government Code section 66001 et seq. This section contemplates that the CITY shall satisfy all annual reporting requirements to the State of California and that the COUNTY shall no longer have such obligation with respect to Unallocated Traffic Signal Funds.
6. For all projects involving Unallocated Traffic Signal Funds, CITY shall be designated as the lead agency to secure environmental approvals under the California Environmental Quality Act (CEQA) and any and all other regulatory approvals for such projects.
7. CITY agrees to accept all responsibility to perform, accomplish and fulfill all obligations for the Unallocated Traffic Signal Funds.

SECTION B – MISCELLANEOUS PROVISIONS

1. **Indemnification.** CITY agrees to indemnify, defend with counsel approved in writing by COUNTY, and hold COUNTY, its elected and appointed officials, officers, employees, agents and those special districts and agencies which County of Orange Board of Supervisors acts as the governing Board harmless from any claims, demands or liability of any kind or nature, including but not limited to personal injury or property damage, arising from or related to performance provided by CITY pursuant to this Agreement. If judgment is entered against CITY and COUNTY by a court of competent

jurisdiction because of the concurrent active negligence of COUNTY, CITY and COUNTY agree that liability will be apportioned as determined by the court. Neither party shall request a jury apportionment.

2. **Venue & Law.** This Agreement shall be governed by and construed under the laws of the State of California. In the event of any legal action to enforce or interpret this Agreement, the sole and exclusive venue shall be a court of competent jurisdiction located in Orange County, California, and the Parties hereto agree to and do hereby submit to the jurisdiction of such court, notwithstanding Code of Civil Procedure Section 394. The Parties agree to waive any and all rights to request that an action be transferred for trial to another County.
3. **NOTICE.** Written notice, whenever required by this Agreement, shall become effective upon personal service or deposit in the United States mail, postage prepaid, addressed to the following:

4. CITY:

COUNTY:

Attn: Public Works Director/City Engineer
City of Laguna Woods
24264 El Toro Road
Laguna Woods, CA 92653

Attn: County Traffic Engineer
Public Works/Road/Traffic Engineering
County of Orange
300 North Flower Street
Santa Ana, CA 92703

Entire Agreement. This Agreement contains the entire understanding between the parties relating to the obligations of the parties described in this Agreement.

Litigation. Any litigation concerning this Agreement shall take place in a court of competent jurisdiction located in Orange County, California. In any action or proceeding to enforce or interpret any provision of this Agreement, or where any provision hereof is validly asserted as a defense, each party shall bear its own attorney's fees, costs and expenses.

Assignment. Neither party shall assign its performance of this Agreement, nor any part thereof, without the prior written consent of the non-assigning party.

Severability. If any term, condition, provision or article of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby.

IN WITNESS THEREOF, CITY has caused this Agreement to be executed by its Mayor and attested by its Clerk, and COUNTY has caused this Agreement to be executed by the Chairman of its Board of Supervisors and attested by its Clerk, on the dates written opposite their signatures, all thereunto duly authorized by the City Council and Board of Supervisors respectively.

City of Laguna Woods
A municipal corporation

Dated: _____

By: _____
Mayor/Milton Robbins

Attest:

Approved as to form:

Clerk of the Council/Yolie Trippy

By: _____
City Attorney/Stephen McEwen

County of Orange, a political
subdivision of the State of California

Dated: _____

By: _____
Chairman
Board of Supervisors

SIGNED AND CERTIFIED THAT A
COPY OF THIS DOCUMENT HAS
BEEN DELIVERED TO THE
CHAIRMAN OF THE BOARD

Clerk of Board of Supervisors
Of Orange County, California

APPROVED AS TO FORM
OFFICE OF THE COUNTY COUNSEL
ORANGE COUNTY, CALIFORNIA

By: _____
Deputy

Date: _____

5.1
INTEGRATED SOLID WASTE MANAGEMENT
FRANCHISE EXTENSION

City of Laguna Woods Agenda Report

FOR: June 23, 2010 City Council Meeting

TO: Honorable Mayor and Councilmembers

FROM: Douglas C. Reilly, Assistant City Manager 

Agenda Item: Integrated Solid Waste Management Franchise Extension

Recommendation

Award a five-year exclusive franchise to Ware Disposal, Inc. for the period July 28, 2010 through July 27, 2015, for the provision of solid waste collection and disposal services in the City of Laguna Woods, and authorize the City Manager to execute the franchise agreement, subject to approval of the agreement as to form by the City Attorney.

Background

In May 2005, the City of Laguna Woods awarded a five-year integrated solid waste management franchise to Ware Disposal, Inc. The agreement became effective in July 2005 and service to the community started with commercial areas on September 1, 2005 and with Laguna Woods Village on October 1, 2005. In October 2009, the City Council voted to extend the franchise for an additional five years and authorized the City Manager to finalize the new agreement for approval by the City Council. Ware Disposal requested the extension and proposed several modifications to improve waste collection and recycling services.

Discussion

The new franchise agreement proposed changes to the existing franchise, as follows:

1. Term – The new agreement allows for a five-year extension of the franchise, as with the current agreement.

2. Recycling Collection – The new agreement requires Ware to provide recycling containers and sets rates for its collection of source-separated and/or commingled recyclables from all residential and commercial areas in the City. The agreement also maintains rates for Ware to continue to collect and consolidate newspaper or collect and recycle newspaper, at the option of Laguna Woods Village. Ware will continue to provide free collection of newspaper and white paper from businesses in the City and retain any revenue associated with such recyclables.
3. Bulky Item Collection – The new agreement provides for collection of an unlimited number of bulky items placed at the curb or similar location one day per month instead of 1200 bulky items each year.
4. Material Recovery Facility (MRF) – The new agreement requires Ware to provide free MRF recycling services to maintain, at a minimum, current diversion levels from bin-served sources of the City's waste stream, which includes multi-family residential units. Ware continues the commitment to provide, throughout the term of this franchise, a capacity of up to 100 tons per day at its Madison Materials MRF for processing of solid waste from the City. All recycle bins and carts and approximately 60% of trash bins will continue to be processed at Madison Materials. The remaining 40% of trash bins are expected to hold too much food waste to be processed at Madison Materials. In addition, the new agreement provides an option to residential facilities in the City, including individual Laguna Woods Village housing mutuals, to send waste that does not go to Madison Materials to a "dirty" MRF that can separate recyclables from trash that has higher quantities of food waste, at an additional cost over the landfill rate.
5. California Redemption Value (CRV) Revenues – The new agreement requires Ware to pay quarterly to the City the full CRV for recyclable solid waste until such time as the City becomes eligible to be a registered beverage container collection operator.
6. New Trash Collection Rates – The new agreement increases franchise rates by 11.8% for residential customers and 18.8% for commercial customers, which reflect pass through of increased County tipping (landfill) fees as of July 1, 2010. Ware is proposing a 50% increase in the rate for temporary roll-off containers (10 – 40 yards) to bring these fees in line with other Orange County cities. All trash collection rates will increase annually to reflect annual CPI increases imposed by the County.

7. New Recycling Collection Rates – The new agreement also establishes rates for the collection of recyclables from blue recycle bins and carts. The blue recycle bin pilot program ended earlier this year but provided strong evidence that residents wanted to source-separate their recyclables. The new rates provide flexibility for residential facilities, such as Laguna Woods Village, to negotiate rates and potential revenues from newspaper collection and recycling, or to consolidate all recyclables, including newspaper, into a community-wide blue recycle bin program. The monthly costs for blue recycle cart collection would be \$1.09 and for blue recycle bin collection would be \$20.29, each collected one time per week. If separate newspaper collection is continued, blue recycle carts collected at curbside would continue at no charge; for every five (5) 95-gallon newspaper carts in service, Ware would provide and collect one (1) 3-yard recycle bin at no charge. The Village has approximately 1,200 95-gallon newspaper carts currently in service, equating to 240 blue recycle bins that would be serviced at no charge if Village management so chooses.
8. Rate Adjustment – In addition to increases for County tipping fees, the new agreement provides for a one time rate adjustment during the franchise period, based on Ware's negotiated contract with its union.

Fiscal Impact

As part of a franchise extension, Ware Disposal will continue to share recycled material revenues at the rate of approximately \$110,000 per year until such time as the City is certified by the state. In addition, Ware will continue to pay a franchise fee, estimated to total \$75,000, which will cover the cost of franchise management.

Conclusion

The current integrated solid waste management franchise expires in July 2010 and a new agreement has been drafted to extend the current franchise to July 2015. Rates are being increased by 11.8% for residential areas and 18.8% for commercial areas only to compensate for the 36% increase in County tipping (landfill) fees that will take effect in July. Rates for collection of source-separated recyclables have also been established, although some fees may be waived based on the mix of services provided. Laguna Woods will continue to have the lowest solid waste collection rates in the County even with the rate increases proposed with this new agreement.

Approved by:

A handwritten signature in cursive script, reading "Leslie A. Keane", written over a horizontal line.

Leslie A. Keane
City Manager

Attachment: Franchise Agreement

ITEM 5.1 ATTACHMENT

**AGREEMENT FOR
INTEGRATED SOLID WASTE MANAGEMENT SERVICES
FOR THE RESIDENTIAL AND COMMERCIAL SECTORS
BETWEEN THE
CITY OF LAGUNA WOODS
AND
WARE DISPOSAL, INC.**

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**AGREEMENT FOR
INTEGRATED SOLID WASTE MANAGEMENT SERVICES
FOR THE RESIDENTIAL AND COMMERCIAL SECTORS
BETWEEN
THE CITY OF LAGUNA WOODS
AND
WARE DISPOSAL, INC.**

This “**AGREEMENT FOR INTEGRATED WASTE MANAGEMENT SERVICES FOR RESIDENTIAL AND COMMERCIAL SECTORS BETWEEN THE CITY OF LAGUNA WOODS AND WARE DISPOSAL, INC.**” (“Agreement”), is entered into this _____ day of _____ 2010, by and between the **CITY OF LAGUNA WOODS**, California, (“City”), a municipality, and **WARE DISPOSAL, INC.** a California corporation, (**hereinafter referred to as “Contractor”**) for the collection, transportation, recycling and disposal of residential and commercial solid wastes.

RECITALS

WHEREAS, Article XI, § 7 of the California Constitution authorizes cities to protect public health and safety by taking measures in furtherance of their authority over police and sanitary matters, and the Legislature of the State of California, by enactment of the California Integrated Waste Management Act of 1989, (the “Act” or “AB 939”) established a solid waste management process which requires cities and other local jurisdictions to implement plans for source reduction, reuse and recycling as integrated waste management practices; and

WHEREAS, the Public Resources Code, including § 40059, provides that aspects of solid waste handling of local concern include but are 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 services, and whether the services are to be provided by means of nonexclusive, partially exclusive or wholly exclusive franchise, contract, license or otherwise which may be granted by local government under terms and conditions prescribed by the governing body of the local agency; and

WHEREAS, the City is obligated to protect the public health and safety of the residents and businesses of the City of Laguna Woods and collection of residential and commercial solid wastes should be made in a manner consistent with the exercise of the City’s obligations for the protection of public health and safety; and

WHEREAS, the City and Contractor are mindful of the provisions of the laws governing the safe collection, transport, recycling and disposal of solid waste, including AB 939, the Resource Conservation and Recovery Act (“RCRA”), 42 U.S.C. §§ 6901 *et seq.* the Comprehensive Environmental Response, Compensation and Liability Act (“CERCLA”), 42 U.S.C. §§ 9601 *et seq.*; and the Electronic Waste Recycling Act of 2003 (SB 20); and

WHEREAS, the City and Contractor desire to leave no doubts as to their respective roles and to make it clear that by entering into this Agreement, City is not thereby becoming a “generator” or an “arranger” as those terms are used in the context of CERCLA § 107(a)(3) and that it is Contractor, an independent entity, and not City, which will collect from residential and commercial premises in the City of Laguna Woods, transport and dispose of solid wastes (which may contain small amounts of consumer products with the characteristics of hazardous substances); collect, transport and recycle Recyclable Solid Wastes collected from residential and commercial premises in the City of Laguna Woods; and

WHEREAS, there are no places within the City of Laguna Woods where landfills are located, or which are suitable for the siting of a landfill, and therefore residential and commercial solid waste must be exported from the City; and

WHEREAS, Contractor, and not the City, will select the transfer station, landfill or transformation facility destination of the unrecoverable residential and commercial solid waste that Contractor will collect and City has not, and by this Agreement does not instruct Contractor on its collection methods, nor supervise the collection of waste.

WHEREAS, Contractor represents and warrants to City that it has the experience, responsibility and qualifications to conduct recycling programs, to provide City with information sufficient to meet the City’s reporting requirements under AB 939, to meet the diversion rate set forth in Contractor’s Proposal, to assist the City in meeting City’s other requirements under AB 939, to collect, transport and dispose of solid waste in a safe manner which will minimize the adverse effects of collection vehicles on air quality and traffic and has the ability to indemnify the City against liability under CERCLA; and

WHEREAS, the City Council of the City of Laguna Woods determines and finds pursuant to California Public Resources Code Section 40059(a)(1), that the public health, safety and well-being, including the minimization of adverse impacts on air quality and traffic from excessive numbers of collection vehicles, the implementation of measures consistent with the City’s Source Reduction and Recycling Element, and the steps taken in an effort to protect the City against CERCLA liability, require that Contractor be awarded a contract for collection, recycling and disposal of solid waste from residential and commercial premises in the City of Laguna Woods.

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

SECTION 1. GRANT OF RIGHT AND PRIVILEGE TO COLLECT RESIDENTIAL AND COMMERCIAL SOLID WASTE

A. Binding Agreement. In consideration of the mutual promises contained herein, City and Contractor agree to be bound by and comply with all of the requirements of this Agreement.

B. Grant of Rights; Exclusions. This Agreement grants to Contractor for the period specified in SECTION 2 of this Agreement during which collection services are to be provided, the right and privilege to collect, transport, process, recycle, retain and dispose of all residential and commercial solid waste, as defined in this Agreement, produced, generated and/or accumulated within the City, except as otherwise provided below. Service to all residential and commercial premises in the City, utilizing barrel, bin, compactor and roll-off box service is covered by this Agreement. The collection and disposal of construction and demolition waste and/or debris from residential and commercial premises, through the use of temporary bins and roll off boxes, is also within the scope of this Agreement. However, residents and construction contractors retain the right to self-haul the solid waste they generate provided they deliver it to a facility approved by the City. As provided below, specialized source-separated "niche" recycling services, *e.g.*, collection of newspaper (ONP) within the Leisure World community, specialized collection and consolidation programs for organic wastes, *etc.*, are excluded by City from the rights awarded by this Agreement.

C. Gardeners and Landscapers. This Agreement shall not prohibit gardeners and landscapers from collecting and composting or transporting Green Waste, as long as they transport such Green Waste to a Compost Facility or other site permitted (or exempt from permitting) by the California Integrated Waste Management Board in accordance with all governing laws and regulations and they submit timely proof of disposition reports to City and Contractor.

D. Sale or Gift of Recyclable Materials. This Agreement shall not be construed to prohibit any person or business from selling or giving away Recyclable Materials they generate to persons or entities other than Contractor. Contractor's ownership of recyclable solid wastes begins only when said material is placed in the Contractor's collection containers, with the exception of Green Waste and ONP.

E. Annexation. Territory that is annexed into the City shall be added to the area covered by this Agreement.

F. Other Services; Niche Recycling Services. City reserves the right to enter into agreements with other entities for other solid waste and recycling services not provided for in this Agreement, including, but not limited to street sweeping (and disposal incident to the conduct of street sweeping operations), disposal/composting of Green Waste produced by landscape maintenance operations on City property and within the Leisure World community, contract services and "niche" recycling services which Contractor fails to provide, and the conduct of Household Hazardous Waste pickups. In the event another solid waste enterprise proposes to provide niche recycling services, *e.g.*, collection of water heaters, the recyclable materials must be segregated from and not mixed with solid waste (less than or equal to 10% residue).

G. Flow Control. City reserves whatever, if any, right it might have or receive from Congress to exercise "flow control" *i.e.*, the right to select disposal facilities and materials recovery facilities to which the solid waste to be collected pursuant to this Agreement is to be taken. In the event City directs Contractor to transport solid waste to a particular disposal or other facility, City and Contractor agree to use their best efforts to obtain indemnification against CERCLA and

related claims from the operator of the landfill or other destination to which solid waste collected pursuant to this Agreement is taken for disposal. In the event City requires Contractor to utilize a landfill or other disposal facility not owned or operated by Contractor or an affiliate of Contractor, Contractor shall be relieved of its liability with respect to the matters addressed in SECTION 16.B of this Agreement with respect to the solid waste delivered to a disposal facility designated by City. In addition, Contractor shall be relieved of its duties under SECTION 16.C "AB 939 Goals" to the extent that Contractor's ability to meet the diversion goals is adversely affected by City's selection of a disposal facility. In the event that City selects a transfer or disposal facility, Contractor shall be entitled to a rate adjustment to offset for any substantiated increase in expenses resulting from the City's exercise of flow control.

H. "Exclusive Franchise." Contractor agrees that this Agreement is an "exclusive franchise" as that term is used in Public Resources Code § 49520.

SECTION 2. TERM OF AGREEMENT

Subject to the provisions of SECTION 19 "ADMINISTRATIVE REMEDIES; TERMINATION" of this AGREEMENT, the term of this AGREEMENT shall be for a period of five (5) years, from July 28, 2010 to July 27, 2015. Such term may be extended an additional five (5) years upon written agreement of both parties to this AGREEMENT.

SECTION 3. DEFINITIONS

Whenever any term used in this Agreement has been defined by the Laguna Woods City Code, Division 30, Part 1, Chapter 2 of the California Public Resources Code or the California Health and Safety Code, the definitions in the City Code, Public Resources Code or Health and Safety Code shall apply unless the term is otherwise defined in this Agreement.

A. "AB 939" or "Act" means the California Integrated Waste Management Act of 1989, codified in part at Public Resources Code §§ 40,000 *et. seq.*, as it may be amended and as implemented by the regulations of the California Integrated Waste Management Board, or its successor.

B. "Barrels" means containers (e.g., carts, toters, trash cans) that are no larger than 35 gallons and intended to be utilized for the temporary accumulation and collection of residential solid waste from attached single and multi-family residences that reflect service indicative of a single-family dwelling unit.

C. "Bins" means containers provided by a solid waste enterprise, usually one – four (1 – 4) cubic yards or more in capacity, suitable for the storage and collection of solid waste at or near commercial or residential premises.

D. **“Bulky Items”** means large hard to handle items including appliances, furniture, mattresses, and other large items that cannot conveniently be disposed of with other solid waste.

E. **“Construction and Demolition Waste”** means discarded building materials, recyclable construction and demolition materials, wood, packaging, plaster, rock, brick, sand, soil, ceramics, cured asphalt, drywall, concrete and rubble resulting from construction, remodeling, repair and demolition operations.

F. **“Contract Rights”** means the rights and privileges granted to Contractor by this Agreement.

G. **“Franchise Fee”** means the fee or assessment imposed by the City on Contractor because of its status as party to this Agreement and which, *inter alia*, is intended to offset the City’s expenses in administering this Agreement and the City’s Integrated Waste Management Program and to compensate City for damage to its streets, sidewalks, curbs and gutters and other infrastructure resulting from Contractor’s exercise of its Contract Rights, the expenses of administering the program for the solid waste stream, reporting requirements under the Act and other related expenses.

H. **“Green Waste” or “Yard Waste”** means leaves, grass clippings, brush and branches generated from landscapes or gardens at any premises, holiday trees, and incidental pieces of scrap lumber.

I. **“Gross Revenues”** means any and all revenue or compensation in any form, excluding revenue from the sale or other disposition of Recyclable Materials or Recyclable Solid Waste, derived directly or indirectly, of Contractor or subsidiaries, parent companies or other affiliates of Contractor in which Contractor has a financial interest, for the collection, transportation, processing, recycling, diversion and disposal of solid waste pursuant to this Agreement, in accordance with Generally Accepted Accounting Principles, including, but not limited to, monthly customer fees for collection of Solid Waste, without subtracting Franchise Fees or any other cost of doing business. Gross Revenues does not include compensation received by Madison Materials from Contractor for processing of materials collected in City.

J. **“Hazardous Substance” or “Hazardous Waste”** means any substance or waste materials or mixture of wastes defined as a “hazardous substance” or “hazardous waste” pursuant to the Resource Conservation and Recovery Act (“RCRA”), 42 U.S.C. §§ 6901 *et seq.*, the Comprehensive Environmental Response, Compensation and Liability Act (“CERCLA”), 42 U.S.C. §§ 9601 *et seq.*, the Carpenter-Presley-Tanner Hazardous Substance Account Act (“HSAA”), codified at California Health & Safety Code §§ 25300 *et seq.*; and all future amendments to any of them, or as defined by the California Integrated Waste Management Board, or the Department of Toxic Substances Control, or a successor agency. If there is a conflict in the definitions employed by two or more agencies having jurisdiction over hazardous

or Solid Waste, the term “Hazardous Substance” or “Hazardous Waste” shall be construed to have the broader, more encompassing definition.

K. “Materials Recovery Facility” means 1) A facility licensed or permitted in accordance with AB 939 which separates secondary materials, such as mixed glass and metal containers and processes them for sale to end users; 2) A firm that purchases and markets source-separated solid wastes and recyclable materials.

L. “Multi-Family Residences” means residential units such as apartments, condominiums and town homes, other than single-family residences (SFRs), which utilize bins or barrels, cans, or carts, as defined in this Agreement, for the temporary accumulation and collection of residential solid waste. Multi-family residences (MFRs) that use bins are covered by the residential service portion of this Agreement. Hotels, nursing homes or convalescent centers, or other similar places are covered by the commercial service portion of this Agreement, and are not defined as MFRs.

M. “Recyclable Material” means a commodity which is sold for compensation, or given away, but which is not discarded into the waste stream. A Recyclable Material which is discarded into the waste stream loses its character as a Recyclable Material and becomes Solid Waste subject to this Agreement.

N. “Recyclable Solid Waste” means recyclable items that have been source-separated before having been discarded into the solid waste stream. “Recyclable Solid Waste” is a part of the solid waste stream which can be reused or processed into a form suitable for reuse through reprocessing or remanufacture, consistent with the requirements of AB 939. As of the date of execution of this Agreement, Recyclable Solid Waste includes:

1. Aluminum cans;
2. Glass jars and bottles;
3. Steel, bi-metal and tin cans;
4. Plastic soda pop bottles and other Type #1 containers (PET- polyethylene terephthalate);
5. Plastic milk and water jugs and other Type #2 containers (HDPE- high density polyethylene);
6. Type #3 plastic containers (V- polyvinyl chloride);
7. Type #4 plastic containers (LDPE- low density polyethylene);
8. Type #5 plastic containers (PP- polypropylene);
9. Juice boxes and milk cartons (aseptic packaging)
10. Newspapers (ONP);
11. Mixed paper (e.g., ledger, computer, junk mail, magazines, paperback books, envelopes, paper shopping bags and non-metallic wrapping paper);
12. Corrugated cardboard;

13. Chlorofluorocarbons (contained in bulky goods set out for collection to be collected under SECTION 5.G); and
14. Tires (if set out for collection as bulky goods to be collected under SECTION 5.G).

The foregoing list may be modified in writing to add additional recyclables as markets develop. Contractor shall collect all of the foregoing, and process and market such of the foregoing items as Contractor determines are feasible to market for recycling.

O. “Recycled” means the act of having processed Recyclable Solid Waste into a form suitable for reuse and having marketed those processed materials for a use consistent with the requirements of AB 939. The act of marketing does not require that revenue is generated from the processed materials.

P. “Recycling Container” means any container for the temporary accumulation and collection of source-separated Recyclable Solid Wastes delivered by Contractor, at Contractor’s sole expense, to any premises covered by this Agreement or provided by City or any other entity.

Q. “Residential Solid Waste” means all types of solid waste, including any household products with the characteristics of Hazardous Waste which may be found to have been placed in the residential solid waste stream, including Green Waste and Recyclable Solid Wastes placed for collection by service recipients, which originates from SFRs and MFRs located within the City that utilize barrels or bins, and which is to be collected pursuant to this Agreement. “Residential Solid Waste” does not include commercial solid waste generated or accumulated at hotels, motels, nursing homes or convalescent centers, or other similar places or institutions.

R. “Scavenging” means the unauthorized removal of Recyclable Solid Waste. Scavenging is prohibited by Public Resources Code § 41950.

S. “Single-Family Residences” means all detached or attached residential units, including homes, condominiums, and town homes, that utilize barrels for the temporary storage and collection of solid waste, Green Waste, and recyclables.

SECTION 4. COMPLIANCE WITH LAWS AND REGULATIONS

Contractor warrants that it will comply with all applicable laws and implementing regulations of the federal and state government, as they may be amended, specifically including, but not limited to, RCRA, CERCLA, and AB 939; the Electronic Waste Recycling Act of 2003 (SB 20), as amended, laws governing Universal Waste, regulations and orders of the California Department of Toxic Substances Control, the California Air Resources Board, and all applicable ordinances of the City.

SECTION 5. TYPES AND FREQUENCY OF SERVICE

A. Solid Waste Services - General. In order to protect the public health and safety, Contractor shall provide for the collection of all solid waste generated or accumulated within the City from residential and commercial premises covered by this Agreement not less often than once per week. Contractor shall collect residential solid waste from the rear yard or other location convenient to the resident for physically challenged residents with State of California handicapped placards at no additional charge to the resident or to City. Contractor shall provide route maps and schedules to City, and consider City's suggestions, as City's Air Quality Transportation Demand Management Plan may be affected by routes and scheduling. In addition, Contractor shall adopt routing that is consistent with any plan by the City for street sweeping. Contractor shall implement programs for the safe handling, separation, recycling, disposal and reporting of Electronic and Universal Wastes improperly placed in the waste stream.

B. Recycling Services.

1. Recyclable Solid Waste Collection. Contractor, at Contractor's sole expense, shall deliver Recycling Containers, to be used exclusively for accumulation, separation and collection of Recyclable Solid Wastes to residential and commercial solid waste service recipients. Contractor shall collect, remove and, if a market exists, recycle, all Recyclable Solid Waste as defined pursuant to SECTION 3, placed in Recycling Containers. Contractor agrees to provide Recycling Containers at its sole expense and collect source separated and/or commingled recyclables from all residents and commercial centers in Laguna Woods. The Contractor will also provide a separate program for ONP recycling in Laguna Woods Village which may be consolidated at a location designated by Laguna Woods Village, or recycled by the Contractor at Laguna Woods Village's option. Contractor, at Contractor's sole expense, shall seek advice from property managers in the City to create and operate recycling programs that are acceptable to residents and businesses. Contractor is required to offer free ONP and ledger paper recycling services to all commercial businesses in the City.

2. Purchase of Recyclable Materials. Contractor may offer services for the purchase of Recyclable Materials from its residential and commercial solid waste service recipients, but will not have any exclusive rights to do so.

3. Scavenging - Discouragement. Contractor will take whatever, if any, legal actions which may be appropriate and effective to discourage scavenging of Recyclable Solid Waste from the commercial solid waste stream.

C. Green Waste Collection. At the sole discretion of Laguna Woods Village, Contractor, at Contractor's sole expense, shall collect and consolidate Green Waste generated within the Leisure World community at the Leisure World compost facility, including holiday trees.

D. Hours of Collection. Contractor agrees that, in order to protect the peace and quiet of residents, its collection of solid waste shall not start before 7:00 a.m. or continue after 6:00

p.m. No collections shall occur on Sundays. Site and route-specific exceptions may be made to these limitations by the City Manager, at his or her sole discretion, if requested by Contractor.

E. Telephone Book Collection. As part of Contractor's recycling program, at a minimum of twice per calendar year the Contractor shall provide residents with an adequate number of designated containers for the collection and recycling of outdated telephone books/directories. This service shall be provided throughout the Laguna Woods Village community and at multi-family residential complexes in the City but outside of Laguna Woods Village.

G. Bulky Goods Pick-Up. Contractor shall provide free collection of bulky goods that are placed at the curb or a similar location on one day each month for the entire term of this agreement. The day and locations for bulky items to be collected will be designated by the City. Collections will be scheduled on a recurring basis (i.e., third Saturday of each month) by the City so that residents can reasonably plan for collections, but may include separate collection days for different areas. This bulky goods service is for the use of residents and does not extend to the collection of construction, renovation and demolition debris, or other similar materials put out for collection by the commercial sector. Contractor shall not be required to remove automobile bodies or any other items which may not be handled safely by two persons. Contractor shall comply with all applicable regulations governing the recovery of ozone-depleting refrigerants during the disposal of air conditioning or refrigeration equipment including but not limited to 40 CFR Part 82.

Bulky goods collected by Contractor may not be landfilled or disposed of until the following hierarchy has been followed by Contractor :

1. Reuse as is (if energy efficient)
2. Disassemble for reuse or recycling
3. Recycle
4. Disposal.

This hierarchy precludes the use of front- or rear-loading packer vehicles for bulky goods unless the compaction mechanism is not used to compact the bulky goods, or they have been designated for disposal.

H. Construction and Deconstruction Waste. The franchised hauler shall have the exclusive right to provide temporary bin and roll-off services, including but not limited to bins for construction and deconstruction projects, except in instances noted as "Exclusions" in Section 1 B of this agreement. The franchised hauler shall provide source separated construction and deconstruction waste recycling services for debris from development and redevelopment projects. The franchised hauler must achieve a minimum 50% diversion rate for temporary bin and roll-off services. Contractor shall use its best efforts to remove "inert wastes" from the waste stream and not dispose of them in a solid waste landfill so they may be deducted from the amount of solid waste required to be reported by the City to the CIWMB. See PRC § 41821.3.(b).

I. Material Recovery Facility (MRF). Contractor shall provide MRF recycling services to maintain, at a minimum, current diversion levels from bin-served sources of the City's waste stream, as of the effective date of this Agreement, which includes multi-family residential units, at no additional charge over established collection rates. Contractor shall use its best efforts to maximize the amount of materials collected in City that it delivers to Madison Materials for this free processing service, including by implementing source separation programs. As reflected in Exhibit C, Contractor has made arrangements such that throughout the term of this franchise, Madison Materials has committed a capacity of 100 tons per day for processing of solid waste attributed to the City of Laguna Woods, and Contractor shall ensure that such commitment remains in place. Contractor shall utilize other MRF facilities for solid waste not able to be processed at the Madison Materials facility as directed by a residential facility in the City, including a Laguna Woods Village housing mutual and/or management entity. If directed to use a MRF other than Madison Materials the Contractor is required to pay a portion of the negotiated MRF rate equal to the Orange County landfill disposal fee rate. Additional charges above the Orange County landfill disposal fee rate amount will be the responsibility of the residential facility association and/or management entity directing this service.

J. Customer Education Program. Contractor will develop and implement an Education Program for the City's Integrated Solid Waste program, with goals, strategies and timetables (at no additional cost to City or Service Recipients). The Education Program will include information with respect to AB 939 diversion goals, bulky goods pick-ups, ONP and phone book diversion programs and the importance of the safe disposal of Universal Wastes, including, but not limited to e-waste, other Universal Wastes and household hazardous waste. Contractor will provide and distribute information on City's Community Television and literature in the form of fliers, cards, stickers, or otherwise as the Contractor and City determines to be most effective. Contractor may also utilize other promotional activities to achieve the goals of this Agreement, including participation in Chamber of Commerce and other local functions, parades and other civic events.

SECTION 6. COLLECTION EQUIPMENT

All solid waste collection vehicles used by the franchised hauler shall be alternative fuel vehicles and meet or exceed all applicable air quality standards. The City, at its sole discretion, may grant Contractor a waiver of this requirement due to the unavailability of equipment or delays in manufacture; evidence of such unavailability or delay shall be used by City to determine the period for which the waiver shall apply. Contractor warrants that it shall provide an adequate number of vehicles and equipment for the collection, disposal and transportation services for which it is responsible under this Agreement. To protect peace and quiet in residential areas the noise level generated by compaction vehicles using compaction mechanisms during the stationary compaction process shall not exceed a single-event noise level of seventy-five (75) decibels (dB)A at a distance of twenty-five (25) feet from the collection vehicle measured at an elevation of five (5) feet above ground level. Contractor shall submit to City, upon City's request, a certificate of vehicle noise level testing, by an independent testing entity, for any collection vehicle as to which City or Contractor has received more than one complaint regarding excessive noise in any twelve-month period. Contractor warrants that it will comply with all measures and procedures promulgated by all

agencies with jurisdiction over the safe, sanitary operation of all its equipment. All bins and carts used for solid waste and recyclables collection will be new or "as new" and shall be maintained in this condition throughout the term of the Agreement. Contractor is responsible for maintenance and cleaning of disposal container enclosures. Contractor agrees to use its best efforts to prevent damage to all streets over which its collection equipment may be operated and to obtain all required approvals for operation of its collection vehicles on all streets. Contractor agrees to maintain its solid waste containers in the City of Laguna Woods free of graffiti or "tagging." In addition, any emergency containers placed within the City must likewise be kept free of graffiti or "tagging" and to remove or paint over graffiti or tagging within 24 hours (Sundays and holidays excepted) of notice from the City identifying the bin or container by location or unique identifier. Contractor shall mark all of its solid waste containers in the City with conspicuous notices warning that the disposal of hazardous substances is prohibited. Contractor, at its sole expense, shall refurbish or replace solid waste and recycling containers which are not in good working condition or have been lost or stolen, all of which are determined by the City.

SECTION 7. PRIVACY

A. General. Contractor shall strictly observe and protect the rights of privacy of service recipients. Information identifying individual service recipients, or the composition or contents of a service recipient's solid waste shall not be revealed to any person, governmental unit, private agency or company, unless required by law or upon authorization of the service recipient. This provision shall not be construed to preclude Contractor from preparing, participating in, or assisting in the preparation of solid waste characterization studies or waste stream analyses that may be required by AB 939.

B. Mailing Lists. Contractor shall not market or distribute mailing lists with the names and addresses of service recipients.

C. Privacy Rights Cumulative. The rights accorded service recipients pursuant to this SECTION shall be in addition to any other privacy rights accorded service recipients pursuant to federal or state law.

SECTION 8. SERVICE EXCEPTIONS; HAZARDOUS WASTE NOTIFICATIONS

A. Refusal or Failure to Collect. When solid waste, including Universal Waste, is not collected from any solid waste service recipient, Contractor shall notify its service recipient in writing, at the time collection is not made, through the use of a "tag" or otherwise, of the reasons why the collection was not made.

B. Hazardous and Universal Waste Inspection and Reporting. Contractor reserves the right and has the duty under law to inspect solid waste put out for collection and to reject solid waste observed to be contaminated with household hazardous waste (HHW) or Universal Wastes improperly placed for collection, and the right not to collect HHW and Universal Wastes put out with solid waste. Contractor shall notify all agencies with jurisdiction, if appropriate, including the California Department of Toxic Substances Control and Local

Emergency Response Providers and the National Response Center of reportable quantities of HHW, found or observed in solid waste anywhere within the City. In addition to other required notifications, if Contractor observes any substances which it or its employees reasonably believe or suspect to contain HHW unlawfully disposed of or released on any City property, including storm drains, streets or other public rights of way, Contractor will immediately notify the City Manager or the City Manager's designee.

C. Hazardous and Universal Waste Diversion Records. Contractor shall maintain records regarding and shall report to City, the types and quantities, if any, of HHW or Universal Wastes found in solid waste, which was inadvertently collected from service recipients within the City, but diverted from the landfill.

SECTION 9. CUSTOMER SERVICE

A. Office Hours. Contractor has represented to City that Contractor will maintain an office accessible by a local phone number. Contractor's office hours are to be from 8:00 a.m. to 5:00 p.m. on regular collection days. At Contractor's expense, its regular and emergency telephone numbers shall be listed in Laguna Woods-area telephone directories under both Contractor's name and the City's name. In addition, Contractor's employees are to be accessible by telephone under SECTION 9.B, Emergency Telephone Number, below. Contractor shall have the capability of responding to service recipients in English and any other languages deemed necessary by the City for communication between Contractor and its service recipients.

B. Emergency Telephone Number. Contractor will maintain an emergency telephone number for use outside normal business hours. Contractor shall have a representative, or an answering or call-forwarding service to contact such representative, available at the emergency telephone number during all hours other than normal office hours. Contractor shall be able to respond to inquiries in English and any other languages deemed necessary by the City for communication between Contractor and its service recipients.

C. Service Complaints. City and Contractor agree that the protection of public health, safety and well-being require that service complaints be acted on promptly and that a record be maintained in order to permit City and Contractor to identify potential public health and safety problems. Accordingly, all service recipients' complaints shall be directed to Contractor. During office hours, Contractor shall maintain a complaint service and a telephone answering system. Contractor shall record all complaints, including date, time, complainant's name and address if the complainant is willing to give this information, and date and manner of resolution of complaint. Contractor shall maintain this information in a computerized daily Service Complaint Log. In the case of a complaint for a missed collection received on a collection day, Contractor shall make the collection not later than 5 p.m. if it has been notified by noon, or on the first collection day after the complaint is received, if the complaint was received after noon. Any such calls received via Contractor's answering service shall be recorded in the Service Complaint Log the following working day. This Service Complaint Log shall be available for review by City representatives during Contractor's office hours and be accessible to the City during business hours via modem.

Contractor shall provide a copy of this Service Complaint Log electronically, in a format compatible with City's computer system, to the City with the monthly report.

SECTION 10. OWNERSHIP OF SOLID WASTE

Subject to Contractor's duties under SECTION 8 of this Agreement, ownership and the right to possession of solid waste, with the possible exceptions of Green Waste and ONP, shall transfer directly from the service recipient to Contractor upon collection by Contractor by operation of law, and not as a result of this Agreement. At no time shall the City obtain any right of ownership or possession of residential solid waste, commercial solid waste or hazardous waste placed for collection and nothing in this Agreement shall be construed as giving rise to any inference that City has any such rights.

SECTION 11. MARKETING OF RECYCLABLE SOLID WASTE AND REVENUE SHARING

Contractor agrees to market all Recyclable Solid Wastes collected pursuant to this Agreement at fair market value, and to share revenues with the City as described herein. Contractor agrees to pay quarterly to the City the full California Redemption Value (CRV) for Recyclable Solid Waste collected under this Agreement. Based on a waste composition study conducted in 2009, this is estimated to equate to the sum of \$110,000 annually. Calculation of CRV shall be based on actual weights collected of Recyclable Solid Waste qualifying under the CalRECYCLE Beverage Container program regardless of the certification status of the Contractor. Payments to the City are made within thirty days of the close of the preceding quarter. At the City's sole discretion, Contractor shall pay the full cost of waste composition studies performed by a consultant of the City's choosing to verify the accuracy of payments required by this section.

SECTION 12. RATES AND BILLING

A. Rates. The rates for all solid waste collection, transportation, processing, recycling and disposal services (including temporary bins and roll off boxes, and containers for Recyclable Solid Waste) are set forth in EXHIBIT "A" "RATE SHEET" to this Agreement.

B. Adjustment of Rates. Rates for all solid waste (including Green Waste and Recyclable Solid Waste) services shall be adjusted once during the term of this agreement based on the terms and conditions of the renegotiated labor contract between the Contractor and Teamsters Local Union 396, with detailed information on the renegotiated contract to be provided by Contractor to the City. After the renegotiated contract with the Teamsters union has been approved by Contractor and Teamsters Local Union 396, Contractor will negotiate a predetermined rate with the City for the remainder of the term of this Agreement.

C. Disposal Component Adjustments. If, during the period in which Contractor is to provide collection services pursuant to this Agreement, tipping fees are increased or decreased from the rate in effect on the date of this Agreement (the Initial Rate), then the disposal

component of the rates shall be adjusted, effective as of the effective date of the new tipping fees. Assumptions regarding tip fee adjustments shall be disclosed, including tip fee arrangements that are different than those applied to posted gate rates.

D. Resolution of Disputes Regarding Rate Adjustments. Any dispute regarding the computation of a rate adjustment shall be decided by the City Manager, or referred by the City Manager to the City Council as provided in SECTION 19. A rate adjustment computation decision by the City Manager or the City Council may be appealed by Contractor in accordance with the procedures provided in SECTIONS 19 and 20. The rates in effect at the time a rate adjustment dispute is submitted to the City Council shall remain in effect pending resolution of that dispute. The effective date of a rate determined through the dispute resolution procedures provided in SECTIONS 19 and 20, shall be July 1 of the year in question.

E. Billing and Payment. Contractor shall bill all solid waste service recipients for solid waste services and any other fees or charges, as determined by Contractor. Billings may be made monthly for all service recipients. For the residential solid waste services rendered pursuant to this Agreement, there will be a single monthly billing for all services rendered (currently paid through the contracted management company). It is possible that up to four separate monthly billings may be required during the contract term. Contractor billing services shall not be construed as creating a joint venture or agency relationship with City.

F. Franchise Fee; Payment. Contractor shall pay City a Franchise Fee for each month during which Contractor provides collection services pursuant to this Agreement. For the term of this Agreement, the Franchise Fee is set at a rate of five percent (5%) of Gross Revenues, in accordance with Generally Accepted Accounting Principles. The Franchise Fee shall be paid by Contractor to City not later than 12:00 noon on or before the last day of the month following the calendar month during which collection services were provided by Contractor. Accompanying each monthly payment shall be an accounting of the gross revenues for the corresponding month, and number of units served. Failure of Contractor to make any payment within the appropriate time period shall result in interest accruing thereon at the maximum rate permitted under California law, in addition to all other remedies of City pursuant to this Agreement

SECTION 13. CONTRACTOR'S BOOKS AND RECORDS; AUDITS

A. In addition to the record retention requirements of SECTIONS 15.I and 16.D, below, Contractor shall maintain all records relating to the services provided hereunder, including, but not limited to, route maps, customer lists, billing records, weight tickets, maps, AB 939 records, and customer complaints, for the period during which collection services are provided pursuant to this Agreement, and an additional period of not less than thirty (30) years, or any longer period required by law. The City shall have the right, upon five business days advance notice, to inspect, audit and copy all of Contractor's records relating to Contractor's provision of services pursuant to this Agreement, including, but not limited to, route maps, customer lists, billing records, weight tickets, AB 939 records and service recipient complaints, Contractor's payment of fees to City and records which may be relevant in the event of an action under CERCLA or related claims. In the

absence of extraordinary circumstances, five (5) business days' notice shall be considered reasonable. Such records shall be made available to City at Contractor's regular place of business, but in no event outside the County of Orange. Prior to destruction of records relating to the services provided pursuant to this Agreement, Contractor shall provide copies or originals of such records to City.

B. Should any examination or audit of Contractor's records reveal an overpayment or underpayment by Contractor, the amount of underpayment, plus interest compounded monthly at the maximum lawful rate, shall be paid by Contractor to City within thirty (30) days. The amount of any overpayment shall be paid by City to Contractor in the ordinary course of business. Should an underpayment of more than one percent (1%) be discovered, Contractor shall bear the entire cost of the examination or audit.

SECTION 14. AB 939 COMPLIANCE REQUIREMENTS

Contractor, inclusive of applicable third party diversion, shall maintain the City's compliance with state diversion mandates through the term of this Agreement. Contractor shall cooperate with City in solid waste disposal characterization studies and waste stream audits and shall implement measures adequate to achieve the diversion goals for the solid waste stream covered by this Agreement. See §§ 16.C, 19.E.7 and 21.C, below. During the period in which collection services are provided pursuant to this Agreement, Contractor at Contractor's sole expense, shall submit to City information and reports necessary for City to meet its reporting obligations imposed by AB 939, and the regulations implementing AB 939, for the waste stream covered by this Agreement. Contractor agrees to submit such reports and information on computer discs, or by modem, in format compatible with City's computers, at no additional charge, if requested by City.

SECTION 15. ACTIVITIES AND FINANCIAL REPORTS AND ADVERSE INFORMATION

A. **Monthly and Quarterly Reports and Other Information.** Contractor, at its sole expense, shall submit to the City such other information or reports in such forms and at such times as the City may reasonably request or require, including, but not limited to the following:

1. Monthly Reports. Monthly Reports will be submitted to City, transmitted in a format acceptable to City. The monthly report shall show the number of tons collected and the tonnage delivered to disposal and recycling facilities, itemized by facility. An electronic copy of the customer complaint log shall be submitted with the monthly report. Data must be maintained at Contractor's place of business identifying individual commercial generators' diversion tonnage, and be accessible to the City during normal business hours. Monthly reports are due to the City within 20 calendar days of that Month's end.

2. Quarterly Reports. In addition to providing a quarterly summary of the monthly reports, Quarterly Reports shall include the following:

a. Recyclable Solid Wastes:

- (1) A statement showing, by type of material, tons received each month and tons marketed during the month.
- (2) A report providing recycling information and the number of residential and commercial service recipients participating.
- (3) A narrative description of problems encountered and actions taken, including efforts to deter and prevent scavenging.
- (4) A report of recycling program promotional activities, including materials distributed by Contractor to its service recipients.

b. Hazardous and Universal Waste Diversion Reports:

A copy or summary of the records required by SECTION 8.C, above.

B. Annual Report. By April 15th of each calendar year in which collection services are provided pursuant to this Agreement, Contractor shall submit to City a written year-end Annual Report, for the preceding calendar year, in a form approved by the City. The Annual Report shall include the following information for the year:

1. General Information. General information about Contractor, including a list of Contractor's officers and members of its board of directors. A copy of Contractor's most recent annual and other periodic public financial reports and those of its parent corporation, affiliated corporations and other entities, if any, performing services under this Agreement, as the City, following consultation with Contractor, may request, and as may be available.

2. Prior Year's Activities. A report of the previous calendar year's activities in the City, including a cumulative summary of the Quarterly Reports, and information and statistics with respect to City's compliance with AB 939.

3. Recommendations. Changes in integrated waste management, including projections and proposed implementation dates and costs, recommended by Contractor and recommended amendments to the City's Source Reduction and Recycling Element or this Agreement, based on developments in the law or technology. Contractor's recommendations with

respect to compliance with AB 939 shall state the specific requirement of AB 939 that the implementation of the recommendation is intended to satisfy.

C. Reporting Adverse Information. Contractor shall provide City two copies (one to the City Manager, one to the City Attorney) of all reports, pleadings, applications, notifications, Notices of Violation, communications or other material relating specifically to Contractor's performance of services pursuant to this Agreement, submitted by Contractor to, or received by Contractor from, the United States or California Environmental Protection Agency, the California Integrated Waste Management Board, the California Department of Toxic Substances Control, Local Enforcement Agency, the Securities and Exchange Commission, or their respective successor agencies, or any other federal, state or local agency, including any federal or state court. Copies shall be submitted to City simultaneously with Contractor's filing or submission of such matters with said agencies. Contractor's routine correspondence to said agencies need not be routinely submitted to City, but shall be made available to City promptly upon City's written request.

D. Failure to Report. The refusal or failure of Contractor to file any required reports, or to provide required information to City, or the inclusion of any materially false or misleading statement or representation by Contractor in such report shall be deemed a material breach of the Agreement and shall subject Contractor to all remedies which are available to the City under the Agreement or otherwise, provided, that the City must follow the procedures for dispute resolution found in SECTION 19 of this Agreement before declaring any such material breach.

E. City's Review of Contractor's Performance. Annually, within ninety days of City's receipt of the Annual Report required by SECTION 15.B, above, City shall review the Annual Report and other available information and may hold a public hearing to determine whether Contractor's performance for the year reported on was satisfactory and whether to implement any changes recommended by Contractor. The reports required by this Agreement shall be utilized as the primary basis for review. In addition, any customer comments or complaints and any other relevant information may be considered. A Contractor representative shall be entitled to be present and may participate at any public hearing held by City to review Contractor's performance. If any noncompliance with the Agreement is reported to have occurred, City shall offer Contractor the opportunity to comment and offer information in rebuttal and to correct any deficiencies.

F. Costs. All reports and records required under this Agreement shall be furnished at the sole expense of Contractor.

1. Certification:

Contractor will provide a certification statement, under penalty of perjury, by the responsible corporate official, that the report is true and correct.

G. Submission of Reports. Reports shall be submitted to:

City Manager [or designated representative]
City of Laguna Woods
24264 El Toro Road
Laguna Woods, California 92637
Telephone Number: 949-639-0500
Facsimile Number: 949-639-0591
And by email to: lkeane@lagunawoodscity.org
dreilly@lagunawoodscity.org
ytrippy@lagunawoodscity.org

H. Contractor agrees that cooperation between Contractor and the City is critical to the success of this program. City reserves the right to request from Contractor additional information reasonably and directly pertaining to this Agreement on an "as-needed" basis.

I. CERCLA Defense Records. City and Contractor agree that the ability to defend against CERCLA and related litigation is of great importance. For this reason, City and Contractor regard the ability to prove where solid waste collected in the City was taken for disposal, as well as where it was not taken, to be matters of concern. Contractor shall maintain data retention and preservation systems which, in the event of claims or litigation, could establish where solid waste collected in the City was disposed (and therefore establish where it was not disposed) and will provide a copy of the reports required by SECTIONS 8.B, "Hazardous and Universal Waste Inspection and Reporting," 8.C, "Hazardous and Universal Waste Diversion Records" and 15.A, "Monthly and Quarterly Reports," above, to the City Clerk, upon request. In addition, Contractor agrees to maintain copies of the foregoing reports for thirty (30) years after the end of the period during which collection services are to be provided pursuant to this Agreement. Contractor agrees to notify City's Risk Manager and City Attorney before destroying Contractor's copies of such records. This provision shall survive the expiration of the period during which collection services are to be provided under this Agreement.

SECTION 16. INDEMNIFICATION AND INSURANCE

A. Indemnification of City. Contractor, upon demand of the City, made by attorney retained to represent the City, shall protect, defend, indemnify and hold harmless City, its elected officials, officers, employees, volunteers and agents from and against any and all losses, liabilities, fines, penalties, claims, damages, liabilities or judgments, including attorneys fees, arising out of or resulting in any way from City's grant of this Agreement to Contractor or Contractor's exercise of its Contract Rights, including the provision of services under this Agreement, unless such claim is due to the sole negligence or willful acts of the City, its elected officials, officers, employees, agents or contractors.

Contractor, upon demand of the City, made by an attorney retained to represent the City, shall protect City and appear in and defend the City and its elected officials, officers, employees and

agents, in any claims or actions by third parties, whether judicial, administrative or otherwise, including, but not limited to disputes and litigation over the definitions of “solid waste” or “Recyclable Material” or the limits of City’s authority with respect to the grant of Licenses, or agreements, exclusive or otherwise, asserting rights under the Commerce Clause (including the dormant Commerce Clause and federal or state legislation governing the process for the award of solid waste contracts) to provide solid waste services. This provision shall survive the expiration of the period during which collection services are to be provided under this Agreement, for claims arising prior to the expiration of the period during which collection services are to be provided pursuant to this Agreement.

B. Hazardous Substances Indemnification. With respect to solid waste collected by Contractor pursuant to this Agreement and disposed of in permitted landfills within the County of Orange, that are operated by the County Integrated Waste Management Department, the contractor is not required to prepare and caused to have signed by the County a Hazardous Substances Indemnification form or similar document.

With respect to solid waste collected by Contractor pursuant to this Agreement which has been disposed of at places owned or operated by Contractor, or an affiliate of Contractor, Contractor shall deliver to the City a Hazardous Substances Indemnification form, or similar document, signed and executed by a principal or person with binding signature authority. Such facility shall be considered a “Contractor Facility.”

With respect to solid waste collected by Contractor pursuant to this Agreement which has been disposed of at permitted landfills operated by the County of Orange Integrated Waste Management Department or facilities owned or operated by Contractor, Contractor shall cause the owner or operator of this facility to deliver a Hazardous Substances Indemnification form, or a document of similar substance, signed and executed by a principal or person with binding signature authority for that facility. Upon delivery and during the effective period of the Hazardous Substances Indemnification, such facility shall be considered an “Approved Alternative Facility.”

Contractor represents and warrants to City that the disposal of solid waste shall occur only at permitted landfills within the County of Orange operated by the County Integrated Waste Management Department, unless written consent to use the Contractors facility or an alternate facility is provided by the City.

This indemnity is intended to operate as an agreement pursuant to § 107(e) of the Comprehensive Environmental Response, Compensation and Liability Act, “CERCLA,” 42 U.S.C. § 9607(e), and California Health and Safety Code § 25364, to defend, protect, hold harmless and indemnify City from all forms of liability under CERCLA, RCRA, other statutes or the common law for any and all matters addressed in this Section 16.B. This provision shall survive the expiration of the period during which collection services are to be provided under this Agreement.

C. **AB 939 Goals.** Contractor, inclusive of third party diversion, shall maintain the City's compliance with state diversion mandates through the term of this Agreement. The City requires that the Contractor divert a sufficient percentage of the waste stream covered by this Agreement to allow the City to meet or exceed state diversion mandates as determined by the California Integrated Waste Management Board, ("CIWMB") or its successor agency. Contractor agrees that failure to achieve that diversion level or other applicable diversion requirements of the CIWMB or its successor agency shall be a material breach of this Agreement. In the event of a determination by the CIWMB or City that City has failed or will fail to meets its diversion goal performance level, Contractor shall have an opportunity to cure the material breach. See also §§ 14, above and 19.E.7 and 21.C, below.

D. Contractor agrees to obtain and maintain in full force and effect during the term of this Agreement the insurance policies set forth in Exhibit "B" "INSURANCE" of this Agreement. All insurance policies shall be subject to approval by City as to form and content. These requirements are subject to amendment or waiver if so approved in writing by the City Manager. Contractor agrees to provide City with copies of required policies upon request.

SECTION 17. CASH AND PERFORMANCE BONDS

A. Contractor shall deposit and maintain funds, on terms satisfactory to City, in an interest-bearing account at an institution satisfactory to both City and Contractor, or provide a letter of credit, from an institution satisfactory to City, at the option of Contractor, in the amount of FIFTY THOUSAND DOLLARS (\$50,000). (The funds on deposit and the letter of credit are referred to collectively in this Agreement as the "Cash Bond.") In addition to the Cash Bond, Contractor shall deposit and maintain either a letter of credit or a performance bond (collectively referred to as "Performance Bond") in the amount of ONE HUNDRED AND FIFTY THOUSAND DOLLARS (\$150,000), or in such lesser amount as the City's Risk Manager may determine to provide adequate protection to the City. The Cash Bond (including any letter(s) of credit) and the Performance Bond (including any letter of credit) (collectively referred to as "Bonds") shall be on terms acceptable to the City. The Bonds shall serve as security for the faithful performance by Contractor of all the provisions and obligations of this Agreement. All interest on a cash deposit, if made, shall accrue to Contractor .

B. Upon Contractor's failure to pay the City an amount owing under this Agreement, the Cash Bond may be assessed by the City, for purposes including, but not limited to:

1. Reimbursement of costs borne by the City to correct violations of the Agreement not corrected by Contractor, after City provides notice in accordance with SECTION 20.A.1.

2. To provide monetary remedies or to satisfy damages assessed against Contractor due to a material breach of this Agreement; or

3. To satisfy an order of the City Council.

C. Contractor shall deposit a sum of money or a replacement instrument sufficient to restore the Cash Bond to the original amount within thirty (30) days after notice from the City that any amount has been withdrawn from the Cash Bond. Contractor shall be relieved of the foregoing requirement to replenish the Cash Bond during the pendency of an appeal from the City's decision to draw on the Cash Bond.

D. In the event the City draws on the Cash Bond, all of City's costs of collection and enforcement of the provisions relating to the Cash Bond called for by this SECTION, including reasonable attorneys' fees and costs, shall be paid by Contractor.

E. Any decision or order of City under this SECTION 17 may be appealed by Contractor through the dispute resolution procedures provided by SECTION 19 and 20 of this Agreement.

SECTION 18. EMERGENCY SERVICE

A. Should Contractor for any reason whatsoever, except the occurrence or existence of any of the events or conditions set forth in SECTION 24.A, "*Force Majeure*," below, refuse or be unable for a period of more than forty-eight (48) hours, to collect a material portion or all of the solid waste which it is obligated under this Agreement to collect, and as a result, solid waste should accumulate in City to such an extent, in such a manner, or for such a time that the City Manager in the reasonable exercise of the City Manager's discretion, should find that such accumulation endangers or menaces the public health, safety or welfare, then City shall have the right to contract with another solid waste enterprise to collect and transport any or all solid waste which Contractor is obligated to collect and transport pursuant to this Agreement. City shall provide twenty-four (24) hours prior written notice to Contractor during the period of such emergency, before contracting with another solid waste enterprise to collect and transport any or all solid waste which Contractor would otherwise collect and transport pursuant to this Agreement, for the duration of period during which Contractor is unable to provide such services. In such event Contractor shall identify sources from which such substitute solid waste services are immediately available, and shall reimburse City for all of its expenses for such substitute services during period in which Contractor is unable to provide collection and transportation services required by this Agreement.

B. Contractor will assist City in the event of major disaster, such as an earthquake, mudslide, storm, flood, fire, terrorist attack, riot or civil disturbance, by providing collection vehicles and drivers normally assigned to the City, at the rates provided in EXHIBIT "A," "RATE SHEET."

C. Contractor shall furnish to the City upon request at no additional charge up to 10 35 gallon, 90 gallon or 3 yard bin emergency containers to store materials and supplies to be used in the event of an emergency. The number and size of these containers shall be requested by the City and placed at City Hall or other facilities identified by the City Manager.

SECTION 19. ADMINISTRATIVE REMEDIES; TERMINATION

A. Notice; Response; Resolution; Appeal.

1. Notice of Deficiencies; Response. If the City staff person charged with administering or overseeing this Agreement (Administrator) determines that Contractor's performance pursuant to this Agreement may not be in conformity with the provisions of this Agreement, the California Integrated Waste Management Act (including, but not limited to, requirements for diversion, source reduction and recycling as to the waste stream subject to this Agreement) or any other applicable federal, state or local law or regulation, including but not limited to, the laws governing transfer, storage or disposal of solid and hazardous waste, the Administrator may advise Contractor in writing of such suspected deficiencies, specifying the deficiency in reasonable detail. The Administrator, in any written Notification of Deficiencies, shall set a reasonable time within which Contractor is to respond. Unless the circumstances necessitate correction and response within a shorter period of time, Contractor shall respond to the written Notification of Deficiencies within thirty (30) days from the receipt by Contractor of such written notice. Contractor may request additional time to correct deficiencies. City shall approve reasonable requests for additional time.

2. Review by Administrator; Notice of Appeal.

a. The Administrator shall review any written response from Contractor and decide the matter. If the Administrator decision is adverse to Contractor, the Administrator may order remedial actions to cure any deficiencies, assess the Cash Bond or invoke any other remedy in accordance with this Agreement and, in the event the Administrator determines that there has been a material breach and that termination is the appropriate remedy, terminate the Agreement. The Administrator shall promptly inform Contractor, of the Administrator's decision. In the event the decision is adverse to Contractor, the Administrator shall inform Contractor, in writing, of the specific facts found and evidence relied on, and the legal basis in provisions of the Agreement or other laws for the Administrator's decision and any remedial action taken or ordered. An adverse decision by the Administrator shall be final and binding on Contractor unless Contractor files a "Notice of Appeal" with the City Clerk (with copies to the City Manager and City Attorney) within 30 days of receipt of the notification of the adverse decision by the Administrator.

b. In any "Notice of Appeal" Contractor shall state its factual contentions and include all relevant evidence, which may be in the form of affidavits, documents, photographs and videotapes which Contractor may choose to submit. In addition, Contractor shall include all of its legal contentions, citing provisions of the Agreement or other laws to support its contentions.

3. Review by City Manager; Appeal.

a. Within thirty (30) days of receipt by the City Clerk of a Notice of Appeal, the City Manager shall decide the matter. If the City Manager's decision is adverse to Contractor, the City Manager may order remedial actions to cure any deficiencies, assess the Cash Bond or invoke any other remedy in accordance with this Agreement; and, in the event the City Manager determines that there has been a material breach and that termination is the appropriate remedy, terminate the Agreement. In addition to the foregoing actions, the City Manager may refer the matter to the City Council for proceedings in accordance with SECTION 19.B and 19.C, below. The City Manager shall promptly inform Contractor of the City Manager's decision. In the event the City Manager's decision is adverse to Contractor, the City Manager shall inform Contractor, in writing, of the specific facts found and evidence relied on, and the legal basis in provisions of the Agreement or other laws for the City Manager's decision and any remedial action taken or ordered.

b. An adverse decision by the City Manager shall be final and conclusive unless Contractor files a "Notice of Appeal to the City Council" with the City Clerk (and serves a copy, by mail, on the City Manager and the City Attorney) within 10 calendar days of receipt of the decision of the City Manager. A "Notice of Appeal to the City Council" shall state the factual basis and all legal contentions and shall include all relevant evidence, including affidavits, documents, photographs and videotapes, which Contractor may choose to submit.

B. City Council Hearing. If a matter is referred by the City Manager to the City Council, or an adverse decision of the City Manager is appealed to the City Council by Contractor, the City Council will set the matter for an administrative hearing and act on the matter. If the City Council elects to hear the matter, the City Clerk shall give Contractor fourteen (14) days written notice of the time and place of the administrative hearing. At the hearing, the City Council shall consider the administrative record, consisting of the following:

1. A Staff Report by the City Manager, summarizing the proceedings to date and outlining the City Council's options.
2. The Administrator's written Notification of Deficiencies;
3. Contractor's response to the Notification of Deficiencies;
4. The Administrator's written notification to Contractor of adverse decision;
5. Contractor's Notice of Appeal
6. The City Manager's written notification to Contractor of adverse decision; and
7. The Notice of Appeal to the City Council.

No new legal issues may be raised or new evidence submitted by Contractor or City at this or at any further point in the proceedings, absent a showing of good cause. Contractor's representatives and other interested persons shall have a reasonable opportunity to be heard.

C. City Council Determination. Based on the administrative record, the Council shall determine by resolution whether the decision or order of the City Manager should be upheld. A tie vote of the City Council shall be regarded as upholding the decision of the City Manager. If, based upon the administrative record, the City Council determines that the performance of Contractor is in breach of any term of this Agreement or any provision of any applicable federal, state or local statute or regulation, the City Council, in the exercise of its discretion, may order Contractor to take remedial actions to cure the breach or impose any other remedy in accordance with this Agreement. The City Council may not terminate the Agreement unless it determines that Contractor is in material breach of a material term of this Agreement or any material provision of any applicable federal, state or local statute or regulation. Contractor's performance under the Agreement is not excused during the period of time prior to a final determination as to whether or not Contractor performance is in material breach of this Agreement, or the time set by City for Contractor to discontinue a portion or all of its services pursuant to this Agreement. The decision or order of the City Council shall be final and conclusive. Contractor has the right to seek review by a court as provided in SECTION 19.D. With the exception of draws on the Cash Bond, the execution of City's remedies shall be stayed until Contractor has exhausted its appeals under SECTIONS 19 and 20 of this Agreement.

D. Judicial Review. Except as otherwise provided in this Agreement, Contractor may appeal any decision, order or action by the City Council under this SECTION 19, as provided in SECTION 20, below, by filing a legal action with a Court having jurisdictional authority within ten (10) business days of receipt of the decision by the City Council and following the procedures set forth in SECTION 20, below. A decision of the City Manager to refer a matter to the City Council may not be appealed.

E. Reservation of Rights by City. City further reserves the right to terminate this Agreement in the event of any material breach of this Agreement, including, but not limited to any of the following:

1. If Contractor practices, or attempts to practice, any fraud or deceit upon the City, or practiced any fraud or deceit or made any intentional misrepresentations in the negotiations which preceded the execution of this Agreement;

2. If Contractor becomes insolvent, unable or unwilling to pay its debts, or upon listing of an order for relief in favor of Contractor in a bankruptcy proceeding;

3. If Contractor fails to provide or maintain in full force, effect and amount, the workers compensation, liability and indemnification coverage, Cash and Performance Bonds as required by this Agreement;

4. If Contractor violates any orders or rulings of any regulatory body having jurisdiction over Contractor relative to this Agreement, in any material manner, provided that Contractor may contest any such orders or rulings by appropriate proceedings conducted in good

faith, in which case no breach of this Agreement shall be deemed to have occurred until a final decision adverse to Contractor is entered;

5. If Contractor ceases to provide collection service as required under this Agreement over a substantial portion of the area of the City of Laguna Woods for a period of two (2) calendar days or more, for any reason within the control of Contractor;

6. If Contractor fails to make any payments required under this Agreement or refuses to provide City with required information, reports or test results as to a material matter in a timely manner as provided in this Agreement;

7. If Contractor fails to divert a sufficient percentage of the waste stream covered by this Agreement to allow the City to meet or exceed state diversion mandates as determined by the California Integrated Waste Management Board, ("CIWMB") or its successor agency. In the event that the California Integrated Waste Management Board, or its successor agency, or City determines that Contractor has failed to meet the diversion goals set forth in its proposal, Contractor shall have an opportunity to cure this material breach, within time allotted by the CIWMB, its successor agency, or City, as appropriate. See also Sections 14 and 16.C, above, and Section 21.C, below.

8. Any other act or omission by Contractor which materially violates the terms, conditions or requirements of this Agreement and which is not corrected or remedied within the time set forth in the written Notification of Deficiencies or if Contractor cannot reasonably correct or remedy the breach within the time set forth in such notice, if Contractor should fail to commence to correct or remedy such alleged deficiencies within the time set forth in such notice and diligently effect such correction or remedy thereafter.

F. Cumulative Rights. City's rights of termination are in addition to any other rights of City upon a failure of Contractor to perform its obligations under this Agreement. See § 19.E, above, and § 21, below.

SECTION 20. JUDICIAL REVIEW

Either party to this Agreement, after exhaustion of administrative remedies, if applicable, and following the review procedure set forth in SECTION 19, if applicable, may seek judicial review in a court of competent jurisdiction pursuant to the California Code of Civil Procedure. The venue of any proceeding hereunder shall be as indicated in SECTION 24.F.

SECTION 21. CITY'S ADDITIONAL REMEDIES

In addition to the remedies set forth above, City shall have the following rights:

A. The right to contract with others to perform the services otherwise to be performed by Contractor; and

B. The right to obtain damages and/or injunctive relief. Both parties recognize and agree that in the event of a breach under the terms of this Agreement by Contractor, City may suffer irreparable injury and incalculable damages sufficient to support injunctive relief to enforce the provisions of this Agreement and to enjoin the breach thereof.

C. **City's Damages for Contractor's Failure to Achieve Diversion Goals.** Contractor agrees that its failure to divert a sufficient percentage of the waste stream covered by this Agreement to allow the City to meet or exceed state diversion mandates as determined by the California Integrated Waste Management Board, ("CIWMB") or its successor agency, in accordance with the terms and conditions of this Agreement, or its breach of the requirements of §§ 14 and 16.C, above, related to waste diversion, shall be a material breach of this Agreement. See also § 19.E.7, above. If the California Integrated Waste Management Board, or its successor agency, were to impose administrative civil penalties against City, then the City's damages for Contractor's material breach in its failure to achieve the diversion goals for the City as required by this Agreement, shall include, but not be limited to such administrative civil penalties, attorneys' costs and fees and City's staff time devoted to the resolution of the administrative civil penalties against City, and the expenses of the procurement of a solid waste enterprise to replace Contractor in the event this Agreement is terminated.

SECTION 22. TRANSFER OF RIGHTS; CITY CONSENT; FEES

A. Contractor may not convey, assign, sublet, license, hypothecate, encumber or otherwise transfer or dispose of (collectively "Transfer"), this Agreement, the Franchise granted under it or any rights or duties under it, in whole or in part, whether voluntarily or involuntarily, without the City's prior written consent as expressed by written resolution of the City Council. Any dissolution, merger, consolidation, or other reorganization of Contractor, except as provided in Sub-Section 22.C, below, any sale or other transfer or change in ownership or control of any of the capital stock or other capital or equity interests, or any sale or transfer of fifty percent (50%) or more of the value of the assets shall be deemed a Transfer of this Agreement, the Franchise granted under it or any rights or duties under it. Any Transfer or attempted Transfer of this Agreement, the Franchise granted under it or any rights or duties under it made without the City's consent will be a material breach of this Agreement and, at the City's option, may be voided.

B. The City has no obligation to give its consent to a Transfer of the Franchise granted by this Agreement. Without obligating the City to give its consent, the proposed transferee must demonstrate to the City's satisfaction that it has the operational and financial ability to perform the terms of this Agreement. The City may also require the prospective transferee to demonstrate that it, and its officers and managers do not have criminal records for environmental or public integrity offenses. If the City gives its consent, it may impose conditions, including, without limitation, requiring acceptance of amendments to this Agreement.

C. Contractor's internal reorganization shall not constitute a Transfer provided that City consent to the reorganization is sought and received prior to any internal reorganization.

An internal reorganization includes any change in control of any of the voting stock through its conveyance to an affiliate of Contractor, or by operation of law. Any request for an internal reorganization must be submitted in writing to the City Manager, no less than one hundred and twenty (120) days prior to the proposed effective date of the internal reorganization. Contractor shall reimburse City for all of its costs to review the request and to determine if it is an internal reorganization. City's expenses may include, but are not limited to, Staff, City Attorney's and Special Counsel's fees and costs and Accountants' fees and costs. Determination by the City Manager shall be final. Any attempt to implement an internal reorganization without the consent of City shall constitute a material breach of this Agreement.

D. Fees. Any application for a Franchise Transfer shall be made in a manner prescribed by the City Manager. The application shall include a deposit of \$50,000, to cover the estimated cost of all direct and indirect expenses, including City staff, consultants' and attorneys' fees, incurred by City to adequately analyze the application and the qualifications of the prospective transferee. Any costs incurred by the City in excess of \$50,000 shall be reimbursed by the Contractor prior to submission of the proposed Transfer to the City Council. In the event that the City's costs are less than \$50,000, City shall refund remaining any remaining portion of the deposit to Contractor. If Transfer is approved, upon approval, the transferee shall pay to City a Transfer fee in the amount of \$50,000 or five percent (5%) of Gross Revenues, in addition to any Franchise Fees, for the first twelve months, whichever is greater.

SECTION 23. USE OF PROGRAM NAME

The program name "Laguna Woods Recycles," or any other name developed and used during the term of this Agreement, refers to all Integrated Solid Waste Management Services available to service recipients of the City of Laguna Woods and is the property of the City. Contractor may use "Laguna Woods Recycles" to help people identify with the civic pride and environmental good of responsibly managing solid waste. Contractor's use of the program name does not relieve Contractor of its obligations under this Agreement, nor is it to be construed as constituting an arrangement by the City for the disposal of solid waste, nor to create an agency relationship.

SECTION 24. GENERAL PROVISIONS

A. Force Majeure. Contractor shall not be in default under this Agreement in the event that the collection, transportation and/or disposal services of Contractor are temporarily interrupted for any of the following reasons which are deemed to be acts outside of Contractor's control: terrorist attack, riots; war or national emergency declared by the President or Congress and affecting the City of Laguna Woods; sabotage; civil disturbance; insurrection; explosion; natural disasters such as floods, earthquakes, landslides and fires; strikes, lockouts and other labor disturbances; or other catastrophic events which are beyond the reasonable control of Contractor. "Other catastrophic events" does not include the financial inability of Contractor to perform or failure of Contractor to obtain any necessary permits or licenses from other governmental agencies or the right to use the facilities of any public entity where such failure occurs where Contractor has

failed to exercise reasonable diligence. In the event a labor disturbance interrupts collection and transportation of residential solid waste, and/or disposal of residential solid waste by Contractor as required under this Agreement, City may elect to exercise its rights under SECTION 21 of this Agreement.

B. Computer Hardware and Software. Contractor will be required to obtain all necessary computer software, hardware, supplies, personnel and training at Contractor's expense to comply with the City's reporting requirements. Contractor will incur all costs of moving computers, including phone lines in the event they need to relocate. Contractor will maintain a computerized data base, with the capacity to maintain an account history of at least eighteen months. Any older account information will be maintained on data storage devices compatible with City computer equipment for the full term of the Agreement and three years thereafter. City will have access to these records during regular business hours.

C. Independent Status. Contractor is an independent entity and not an officer, agent, servant or employee of City. Contractor is solely responsible for the acts and omissions of its officers, agents, employees, Contractors and sub-Contractors, if any. Nothing in this Agreement shall be construed as creating a partnership or joint venture between City and Contractor, nor an arrangement for the disposal of hazardous substances. Neither Contractor nor its officers, employees, agents or sub-Contractors shall obtain any rights to retirement or other benefits which accrue to City employees.

D. Pavement Damage. Normal wear and tear on City streets resulting from general vehicular traffic excepted, Contractor shall be responsible for damage to City's driving surfaces (including roads within the Leisure World community), whether or not paved, resulting from the operation of Contractor's vehicles providing solid waste collection services within the City. Contractor understands that the exercise of this Agreement will involve operation of its collection vehicles over private roads and streets. Disputes between Contractor and its service recipients as to damage to private pavement are civil matters and complaints of damage will be referred to Contractor as a matter within its sole responsibility and as a matter within the scope of SECTION 16.A., above.

E. Property Damage. Any physical damage caused by the negligent or willful acts or omissions of employees of Contractor to public or private property shall be repaired or replaced by Contractor at Contractor's sole expense. Except as provided in SECTIONS 16 and 24.D, above, this Agreement does not purport to affect, in any way, Contractor's civil liability to any third parties.

F. Law to Govern; Venue. The law of the State of California shall govern this Agreement without regard to any otherwise governing principles of conflicts of laws. In the event of litigation between the parties, venue in state trial courts shall lie exclusively in the Superior Court of California, in the County of Orange. In the event of litigation in a U.S. District Court, exclusive venue shall lie in the District of California in which the City is located.

G. Gratuities. Contractor shall not, nor shall it permit any officer, agent or employee to request, solicit, demand or accept, either directly or indirectly, any gratuity for the collection of solid waste required to be collected under this Agreement.

H. AB 939 Amendments. This Agreement is part of City's efforts to comply with the provisions of the California Integrated Waste Management Act of 1989, ("AB 939") as it may be amended and as implemented by the regulations of the California Integrated Waste Management Board or its successor agency (the "Regulations"), as they may be amended, the regulations of the Department of Toxic Substances Control, as they may be amended, and the City's Source Reduction and Recycling Element, as it may be amended. In the event that AB 939 or other state or federal laws or regulations enacted or amended after this Agreement has been executed prevent, preclude, or eliminate the need for compliance with one or more provisions of this Agreement, or significantly increase Contractor's costs, such provisions of this Agreement shall be modified or suspended as may be necessary to comply with such state or federal laws or regulations. In the case of an amendment to the laws which has the effect of eliminating the need for a service provided for in this Agreement and City informs Contractor that City desires to discontinue the service, City and Contractor shall negotiate a reduction in rates. In the case of an amendment to the laws that increases the cost of Contractor's service, Contractor may seek a rate increase to offset the costs directly attributable to the amended or newly enacted provision of law or regulations.

I. Amendments. All amendments to this Agreement shall be in writing, duly executed by the parties. Purported oral amendments shall be void and of no force or effect.

J. Notices. All notices required or permitted to be given under this Agreement shall be in writing and shall be personally delivered or sent by telecopier or United States certified mail, postage prepaid, return receipt requested, and by email, addressed as follows:

To City: City Manager
 City of Laguna Woods
 24264 El Toro Road
 Laguna Woods, California 92637
 Telecopier Number 949-639-0591
 Email to: lkeane@lagunawoodscity.org
 dreilly@lagunawoodscity.org
 ytrippy@lagunawoodscity.org

To Contractor: Judith Ware
 Ware Disposal, Inc.
 PO BOX 8206
 NEWPORT BEACH, CA 92658

AND

1016 E Stafford Street
Santa Ana, CA 92701

AND

1035 E. 4TH Street
Santa Ana, CA 92701
Telecopier Number 714-664-0696
Email to: waredisp@aol.com
MADISONMATERIALS@AOL.COM
JUDITHWAREATMM@AOL.COM

or to such other addresses as either party may designate by notice to the other given in accordance with this SECTION. Notice shall be deemed effective on the date personally served or sent by telecopier or, if mailed, three (3) business days from the date such notice is deposited in the United States mail.

L. Savings Clause and Entirety. If any non-material provision of this Agreement shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such provision shall not affect the validity and enforceability of any of the remaining provisions of this Agreement.

M. Joint Drafting. This Agreement was drafted jointly by the parties to this Agreement.

O. Inclusion of EXHIBITS and Additional Documents. This Agreement incorporates by this reference the following: EXHIBITS "A" (RATE SHEET), "B" (INSURANCE), "C" ((AGREEMENT GUARANTEEING PROCESSING CAPACITY FOR THE CITY OF LAGUNA WOODS) and any amendments to any of the foregoing.

WITNESS the execution of this Agreement on the day and year written above.

City of Laguna Woods

ATTEST:

Yolie Trippy
Deputy City Clerk

By _____
Leslie A. Keane
City Manager

APPROVED AS TO FORM:

Stephen A. McEwen
City Attorney

Ware Disposal, Inc.

By: _____
Judith A. Ware
President

And by: _____
[The Secretary, any assistant secretary, CFO
or any assistant treasurer of Ware Disposal]

State of California, County of Orange, ss.

On this ____ day of _____, in the year 2010, before me
_____, personally appeared _____, and
_____ personally known to me (or proved to me on the basis of
satisfactory evidence) to be the persons whose names are subscribed to this instrument and
acknowledged that he (she or they) executed it pursuant to a resolution of the Board of Directors
of Ware Disposal, Inc.

SIGNED _____

EXHIBIT "A"
RATE SHEET

CITY OF LAGUNA WOODS
SOLID WASTE FRANCHISE PRICING MATRIX
RATES EFFECTIVE JULY 1, 2010

Residential Trash Rates

PRICING ITEM	New Rate/Month	11.80% Increase to all Residential Trash Rates
Curbside - 35 gallon cart (1 or 2)	\$ 7.28	
Curbside - Extra Pick Up 35 gallon cart	\$ 4.85	
Curbside - Each 35 gallon cart over 2	\$ 7.28	
3-YARD BIN 1X PER WEEK	\$ 47.60	
3-YARD BIN 2X PER WEEK	\$ 72.58	
3-YARD BIN 3X PER WEEK	\$ 145.83	
3-YARD BIN 4X PER WEEK	\$ 194.44	
3-YARD BIN 5X PER WEEK	\$ 228.46	
3-YARD BIN 6X PER WEEK	\$ 262.47	
4-YARD BIN 1X PER WEEK	\$ 65.45	
4-YARD BIN 2X PER WEEK	\$ 95.20	
4-YARD BIN 3X PER WEEK	\$ 215.54	
4-YARD BIN 4X PER WEEK	\$ 285.35	
4-YARD BIN 5X PER WEEK	\$ 355.16	
4-YARD BIN 6X PER WEEK	\$ 386.75	
Extra Bin Pick Ups	\$ 72.67	
Bin Exchange - Twice Per Year Per Bin	No Charge	
Bin Exchange - Over 2, Per Exchange	\$ 30.31	
Bulky Items - One Designated Day Per Month	No Charge	
Bulky Items - Additional Days, Per Item	\$ 25.77	

Residential trash rates applicable to all residential units in the City, including multi-family buildings, regardless of size.

Commercial Trash Rates

PRICING ITEM	New Rate/Month	
3-YARD BIN 1X PER WEEK	\$ 52.64	
3-YARD BIN 2X PER WEEK	\$ 105.28	
3-YARD BIN 3X PER WEEK	\$ 158.23	
3-YARD BIN 4X PER WEEK	\$ 210.55	
3-YARD BIN 5X PER WEEK	\$ 263.20	
3-YARD BIN 6X PER WEEK	\$ 315.84	
4-YARD BIN 1X PER WEEK	\$ 82.24	18.83% Increase to all Commecial Trash Rates
4-YARD BIN 2X PER WEEK	\$ 157.83	
4-YARD BIN 3X PER WEEK	\$ 233.41	
4-YARD BIN 4X PER WEEK	\$ 308.99	
4-YARD BIN 5X PER WEEK	\$ 384.58	
4-YARD BIN 6X PER WEEK	\$ 460.17	
Roll-Off Containers - Sized 10 to 40 Yards	\$ 327.31	
Compactors - Sized 10 to 40 Yards	\$ 327.31	
Per Ton Charge - Over 6 Tons	\$ 61.85	
Bin Exchange - Twice Per Year Per Bin	No Charge	
Bin Exchange after 2x	\$ 32.21	
Extra Bin Pick Ups	\$ 90.20	

Construction & Demolition Hauling Rates

PRICING ITEM	New Rate/Month
95 Gallon Cart	\$ 28.99
3-YARD BIN	\$ 83.76
Roll-Off Containers - Sized 10 to 40 Yards	\$ 413.16
Per Ton Charge - Over 6 Tons	\$ 61.85

Recycling Program Rates

Residential

PRICING ITEM	New Rate/Month
Curbside Newspaper Consolidation (per unit)	\$ 2.01
95 Gallon Newspaper Cart	\$ 8.44
95 Gallon Newspaper Cart - Extra Pick-Up	\$ 16.86
Curbside Extra Pick Up (newspaper)	\$ 5.21
Curbside 35 Gallon Mixed Recycling (per unit)	\$ 1.09
3-YARD BIN - Mixed Recycling	\$ 20.29

Curbside units charged for newspaper consolidation will receive free 35 gallon mixed recycling service.

For every five (5) 95 gallon newspaper carts in service one (1) free 3-yard bin will be provided for mixed recycling.

Commercial

PRICING ITEM	New Rate/Month
3-YARD RECYCLE BIN 1X PER WEEK	\$ 20.29
3-YARD RECYCLE BIN 2X PER WEEK	\$ 40.58
3-YARD RECYCLE BIN 3X PER WEEK	\$ 60.87
3-YARD RECYCLE BIN 4X PER WEEK	\$ 81.16
3-YARD RECYCLE BIN 5X PER WEEK	\$ 101.45
3-YARD RECYCLE BIN 6X PER WEEK	\$ 121.74

95 Gallon Cart - Paper	\$ -
95 Gallon Cart - Beverage Containers	\$ -

Special Service Rates

PRICING ITEM	New Rate/Month
Green Waste Hourly	\$ 92.17
Green Waste Daily	\$ 704.86
Roll Off Box Haul Only	\$ 74.82
Compactor Haul Only	\$ 96.51

100% Material Recovery Facility Option (Dirty MRF)

Residential

PRICING ITEM	New Rate/Month
3-YARD BIN 1X PER WEEK	\$ 69.39
3-YARD BIN 2X PER WEEK	\$ 105.80
3-YARD BIN 3X PER WEEK	\$ 212.58
3-YARD BIN 4X PER WEEK	\$ 283.44
3-YARD BIN 5X PER WEEK	\$ 333.03
3-YARD BIN 6X PER WEEK	\$ 382.60

4-YARD BIN 1X PER WEEK	\$ 95.41
4-YARD BIN 2X PER WEEK	\$ 138.77
4-YARD BIN 3X PER WEEK	\$ 314.19
4-YARD BIN 4X PER WEEK	\$ 415.95
4-YARD BIN 5X PER WEEK	\$ 517.72
4-YARD BIN 6X PER WEEK	\$ 563.77

Commercial

PRICING ITEM	New Rate/Month
3-YARD BIN 1X PER WEEK	\$ 76.73
3-YARD BIN 2X PER WEEK	\$ 153.47
3-YARD BIN 3X PER WEEK	\$ 230.65
3-YARD BIN 4X PER WEEK	\$ 306.92
3-YARD BIN 5X PER WEEK	\$ 383.67
3-YARD BIN 6X PER WEEK	\$ 460.40
4-YARD BIN 1X PER WEEK	\$ 119.88
4-YARD BIN 2X PER WEEK	\$ 230.07
4-YARD BIN 3X PER WEEK	\$ 340.24
4-YARD BIN 4X PER WEEK	\$ 450.41
4-YARD BIN 5X PER WEEK	\$ 560.60
4-YARD BIN 6X PER WEEK	\$ 670.79
Roll-Off Containers - Sized 10 to 40 Yards	\$ 477.12
Per Ton Charge - Over 6 Tons - OC Landfill Rate + \$31.90	

Note: 100% MRF option rates are based upon a facility charge of \$31.90 above Orange County landfill tipping fees.

EXHIBIT "B"

INSURANCE

1. **Workers' Compensation and Employers' Liability Insurance.** Contractor shall obtain and maintain in full force and effect throughout the entire term of this Agreement full workers' compensation insurance and Employers' Liability Insurance with a minimum limit of ONE MILLION DOLLARS (\$1,000,000.00) in accord with the provisions and requirements of the Labor Code of the State of California. Copies of policies and endorsements that implement the required coverage shall be filed and maintained with the City Clerk throughout the term of this Agreement. The policy providing coverage shall be amended to provide that the insurance shall not be suspended, voided, canceled, reduced in coverage or in limits except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to City. The policy shall also be amended to waive all rights of subrogation against the City, its elected or appointed officials, employees, or agents for losses that arise from work performed by the named insured for the City.

2. **Liability Insurance.** Contractor shall obtain and maintain in full force and effect throughout the entire term of this Agreement a Broad Form Comprehensive General Liability (occurrence) policy with a minimum limit of TEN MILLION DOLLARS (\$10,000,000.00) aggregate and FIVE MILLION DOLLARS (\$5,000,000.00) per occurrence and a Commercial Auto Liability Insurance policy with a minimum limit of FIVE MILLION DOLLARS (\$5,000,000.00). Said insurance shall protect Contractor and City from any claims for damages for bodily injury, including accidental death, as well as from any claim for property damage, which may arise from operations, performed pursuant to this Agreement. The following language is required to be made a part of all of the insurance policies required by this SECTION:

A. "City of Laguna Woods and its elected and appointed boards, officers, officials, agents, employees and volunteers are additional insured." This shall be reflected on Insurance Services Office (ISO) form CG 2010 11 85 or an exact equivalent.

B. "This policy shall be considered primary insurance as respects any other valid and collectible insurance the City of Laguna Woods may possess including any self-insured retention the City of Laguna Woods may have, and any other insurance the City does possess shall be considered excess insurance and shall not contribute with it."

C. "This policy shall act for each insured, as though a separate policy had been written for each. This, however, will not act to increase the limit of liability of the insuring company."

D. "Thirty (30) days' prior written notice by certified mail, return receipt requested, shall be given to the City of Laguna Woods in the event of suspension, cancellation, reduction in coverage or in limits or non-renewal of this policy for whatever reason. Such notice

shall be sent to the City Manager, City Attorney and City Clerk.”

The insurance required by this Agreement shall be with insurers that are Best A rated, and California-Admitted, or better. The City shall be included as an additional insured on each of the policies and policy endorsements. The insurance required by this Agreement is in addition to, and not in lieu or limitation of, the indemnification provisions in SECTIONS 16.A, 16.B and 16.C, above. Contractor shall obtain the written consent of City’s Risk Manager prior to changing insurers providing insurance under this Agreement, which consent shall not be withheld unreasonably.

3. Pollution Liability Insurance. Pollution liability insurance shall be written on a contractor’s pollution liability form or other form acceptable to the City providing coverage for liability arising out of sudden, accidental and gradual pollution and remediation. The policy limit shall be no less than \$1,000,000 per claim and aggregate.

4. Evidence of Insurance Coverage; Insurance Repository. Contemporaneously with the execution of this Agreement, Contractor shall file copies of the policies or executed endorsements evidencing the above-required insurance coverage with the City Clerk. In addition, City shall have the right of inspection of all insurance policies required by this Agreement. Contractor also agrees to establish an insurance policy repository and to maintain copies of insurance policies required pursuant to this Agreement for thirty years (30 years) after the end of the term during which collection services are to be provided pursuant to this Agreement. Contractor shall notify City’s Risk Manager and City Attorney before destroying copies of such policies. This provision shall survive the expiration of the period during which collection services are to be provided under this Agreement.

5. Self-Insurance. To the extent provided by law, all or any part of any required insurance may be provided under a plan of self-insurance approved by the State of California.

EXHIBIT "C"

AGREEMENT GUARANTEEING PROCESSING CAPACITY FOR THE CITY OF LAGUNA WOODS

This AGREEMENT GUARANTEEING PROCESSING CAPACITY ("Agreement") is entered into to be effective as of _____, 2010, by and between MADISON MATERIALS, a California corporation ("Processor"), and WARE DISPOSAL, INC ("Contractor") for the benefit of the CITY OF LAGUNA WOODS, a public agency ("City").

RECITALS

- A. Processor holds a Solid Waste Facility Permit (the "SWFP") granted by the California Integrated Waste Management Board for a large volume transfer processing facility which is located in the city of Santa Ana (the "Facility"), which among other things limits the total daily tonnage which Processor may accept at the Facility.
- B. On _____ 2010 Contractor and City entered into an agreement for Integrated Solid Waste Management Services (the "Hauling Agreement") which provides for Contractor to provide an exclusive franchise for solid waste handling services within the City.
- C. Section 5(I) of the Hauling Agreement, as well as Contractor's proposal which is Exhibit D thereto, obligates Contractor to ensure Processor, during the term of the Hauling Agreement, at all times will make available not less than 100 tons per day of capacity at the Facility for materials collected by Contractor in the City.
- D. Processor has agreed to guarantee capacity for the City as set forth above and by entering into this Agreement, and Contractor, Processor and City desire to memorialize the duties and obligations of the parties in this regard.

COVENANTS

Based upon the foregoing Recitals and for good and valuable consideration, the receipt and sufficiency of which is acknowledged by the parties, the parties agree as follows:

- 1. The Parties acknowledge the foregoing Recitals are true and correct and incorporate them into this Agreement as if fully restated.
- 2. Processor hereby represents, warrants and guarantees that during the term of the Integrated Waste Management Services Agreement it will at all times make available not less than 100 tons per day of capacity at the Facility for materials collected by Contractor in the City.

3. Nothing in this Agreement shall be deemed to require Processor to accept any materials at the Facility which may not be accepted pursuant to the SWFP.
4. This Agreement is intended for the benefit of City which is hereby named as a third-party beneficiary pursuant to Civil Code § 1559, with the right, but not the obligation, to enforce the obligations of this Agreement, in addition to any other legal and equitable remedies available to the City.

Ware Disposal, Inc.

By: _____
Judith A. Ware
President

And by: _____
[The Secretary, any assistant secretary, CFO
or any assistant treasurer of Ware Disposal]

State of California, County of Orange, ss.

On this ____ day of _____, in the year 2010, before me _____, personally appeared _____, and _____ personally known to me (or proved to me on the basis of satisfactory evidence) to be the persons whose names are subscribed to this instrument and acknowledged that he (she or they) executed it pursuant to a resolution of the Board of Directors of Ware Disposal, Inc.

SIGNED _____

Madison Materials.

By: _____
President

And by: _____
[The Secretary, any assistant secretary, CFO
or any assistant treasurer of Ware Disposal]

State of California, County of Orange, ss.

On this ____ day of _____, in the year 2010, before me _____, personally appeared _____, and _____ personally known to me (or proved to me on the basis of satisfactory evidence) to be the persons whose names are subscribed to this instrument and acknowledged that he (she or they) executed it pursuant to a resolution of the Board of Directors of Ware Disposal, Inc.

SIGNED _____