

AMENDED AND RESTATED DEVELOPMENT AGREEMENT

Between

THE CITY OF SIGNAL HILL

(“City”)

And

EDCO TRANSPORT SERVICES, LLC

A California Limited Liability Company

(“EDCO”)

Designated As

“Development Agreement No. “ or “DA “

JUNE 11, 2024

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AMENDED AND RESTATED DEVELOPMENT AGREEMENT

THIS AMENDED AND RESTATED DEVELOPMENT AGREEMENT (this “Agreement”) is entered into on this _____ day of May, 2024 (“Effective Date”), by the CITY OF SIGNAL HILL (“City”), a municipal corporation, and EDCO TRANSPORT SERVICES, LLC, a California limited liability company (“EDCO”) (collectively, the “Parties”).

RECITALS:

A. Initial Development Agreement. The Parties executed a Development Agreement approved by the Signal Hill City Council on or around February 17, 2009 (“Initial Development Agreement”), and now desire to amend and restate it through this Agreement, which integrates revised provisions that reflect the current understandings and agreements between the Parties. Except as otherwise specifically set forth in this Agreement, the remaining provisions of the Initial Development Agreement shall remain in full force and effect only to the extent they remain applicable.

B. Recitals and Capitalized Terms. The recitals in this Agreement constitute part of this Agreement and each Party shall be entitled to rely on the truth and accuracy of each recital as an inducement to enter into this Agreement. The capitalized terms used in these Recitals and throughout this Agreement shall have the meaning assigned to them in Article 1.0. Any capitalized terms not defined in Article 1.0 shall have the meaning otherwise assigned to them in this Agreement, one of the other Agreements, or apparent from the context in which they are used.

C. Legislation Authorizing Development Agreements. To strengthen the public planning process, encourage private participation in comprehensive planning and reduce the economic risk of development, the legislature of the State of California adopted the Development Agreement Statute, Sections 65864, et seq., of the Government Code, authorizing City to enter into an agreement with any person having a legal or equitable interest in real property providing for the development of such property and establishing certain development rights therein.

D. Integrated Waste Management Act. The State of California through enactment of the California Integrated Waste Management Act of 1989 (Public Resources Code Sections 40000 et seq. (the “Act”)), directed all local jurisdictions to promote recycling and to maximize the use of feasible source reduction, recycling and composting options in order to reduce the amount of solid waste required to be disposed of by land disposal. Furthermore, the Puente Hills Landfill, a major solid waste disposal facility for the region, is required by permit conditions to reduce the quantities of waste accepted and to close by the year 2013, resulting in the need for additional waste processing facilities and transfer stations to be developed in the region in order to meet the solid waste management needs of jurisdictions and protect public health and safety.

E. General Industrial Specific Plan. The City adopted the General Industrial Specific Plan (the “Specific Plan”) to promote industrial development in the General Industrial Area (generally bounded by California Avenue, Spring Street, Atlantic Avenue, and 27th Street and referred to herein as Street the “Specific Plan Area”), a blighted area due to environmental constraints such as oil wells (both active and abandoned), oil field pipelines and facilities, soil contamination, lack of public infrastructure, and small parcel sizes inhibiting land assembly for

modern development. Concurrently with adopting the Specific Plan, and at the cost of approximately \$9 Million, the Redevelopment Agency acquired an approximately 2-acre site within the Specific Plan Area and relocated a concrete batch plant to the location (“A&A Plant”). This was the first significant investment within the Specific Plan Area since oil exploration commenced in the late 1920s. EDCO or an affiliate of EDCO now owns a ± 3.57-acre site located at Patterson Street and California Avenue (“EDCO Parcel”) and across Patterson from the A&A Plant. The two projects represent an investment in excess of \$20 million in the Specific Plan area to revitalize the area.

F. EDCO as Qualified Operator. City has determined that it is in the best interest of City to delegate the responsibility for constructing, managing and operating waste disposal and recycling facilities to a private company with experience and expertise in the construction, management and operation of materials recovery facilities and transfer stations. EDCO and its related companies are well known and have provided waste and recycling service in the State of California since 1967. EDCO and its related companies have built and currently operate thirteen (13) materials recovery and/or transfer stations ranging in capacities from 174 tons per day to 5,000 tons per day. In addition, an affiliate of EDCO, Signal Hill Disposal, had the franchise contract to collect and dispose of refuse in Signal Hill since 1986. The initial franchise agreement was entered into on May 22, 2002 and was scheduled to expire February 1, 2010, unless amended or extended by both parties prior to termination date. City and Signal Hill Disposal subsequently extended the agreement and entered into an franchise agreement (the “Trash Hauling Contract”) concurrently with and as a condition of the Initial Development Agreement.

G. Development of Project. On July 8, 2008, in order to reduce blight and promote industrial development in the Specific Plan Area, expand and diversify the City’s revenue base, and fulfill the City’s obligation under the Act, City and EDCO, along with the Signal Hill Community Redevelopment Agency (“Agency”), entered into that certain Memorandum of Understanding (“MOU”) for the development and operation of a solid waste materials recovery facility/transfer station (“MRF/TS” or “Facility”) as more specifically described in the MOU (the “Project”). The Parties intend to provide for the long-term management of municipal solid waste generated in the City through the MRF/TS. The MRF/TS serves as a point to accept, process, recover, and transfer mixed municipal waste (“MMW”) and residue following diversion activities to an appropriate permitted disposal facility. The Project has been developed on the EDCO Parcel and an approximate 6,500 square-foot Agency Parcel (the Agency Parcel and EDCO Parcel are collectively referred to as the “Site,” approximately 3.87 acres), which Site is shown on the “Site Map” attached hereto as Exhibit “A”. Agency and EDCO entered into a separate Disposition and Development Agreement establishing the terms to which interest in Agency Parcel was conveyed to EDCO.

H. Public Benefits of Project. The grant of development rights hereunder is made in consideration for EDCO’s MRF/TS to accept, process, recover, and transfer MMW and residue following diversion activities to an appropriate permitted disposal facility. The Project will continue to benefit the City by creating new jobs in the community, diversifying and expanding the City’s revenue base, revitalizing a blighted area and the general economy of the City, improving City’s compliance with State-mandated waste reduction requirements, and promoting recycling and refuse rate stability for residents and businesses within the community. The Project

will also continue to benefit the public by serving the MMW management needs of other jurisdictions in the region, reducing municipal costs, and protecting public health and safety.

I. Intent of the Parties. The Parties have determined that the Project is a development for which a development agreement is appropriate. The Parties desire to define the parameters within which the obligations of EDCO for infrastructure and public improvements and facilities will be met, as applicable, and to provide for the orderly development of the Project, assist in attaining the most effective utilization of resources within the City, and otherwise achieve the goals of the Development Agreement Statute. In consideration of these benefits to City and the public benefits of the development of the Project, EDCO will receive assurances that the City shall grant all permits and approvals required for total development of the Project in accordance with this Agreement to the extent applicable and EDCO will further agree not to open or operate a competing facility within thirteen (13) miles of the Facility except that, within Orange County, the distance limit shall be ten (10) miles.

J. Public Hearings: Findings. In accordance with the requirements of the California Environmental Quality Act (Public Resources Code Sections 21000, et seq. (“CEQA”), appropriate studies, analyses, reports or documents were prepared and considered by the Planning Commission and the City Council for the Project. After a public hearing, the Planning Commission recommended to, and the City Council, after making appropriate findings, certified a Final Environmental Impact Report (“EIR”) for the Project, SCH # 2008081009, by Resolution No. 631-02-09 adopted on February 17, 2009, in compliance with CEQA. Also on February 17, 2009 the City Council, after providing public notice as required by law, held a public hearing to consider EDCO’s application for the Project. The Planning Commission and the City Council both found on the basis of substantial evidence that the proposed Project is consistent with all applicable plans, including the General Plan and General Industrial Specific Plan, rules, regulations and official policies of City. Accordingly, the City Council approved EDCO’s application for a Conditional Use Permit. Subsequently, an Addendum to the EIR was prepared to address changes to the Project that would not result in any new significant impacts not addressed in the EIR, nor increase the significance level of any impacts identified in the EIR. After a public hearing, Planning Commission recommended and City Council adopted the Addendum by Resolution No. __, adopted on June __, 2024.

K. Public Improvements. Public improvements required by this Project included both internal improvements benefiting only the Project and area-wide improvements benefiting other property as well. More specifically, these improvements included the construction of or contribution to: drainage and flood control facilities; street improvements; and improvements associated with streets including sidewalks, street lights, utilities, and parkways.

L. Other Agreements. The Parties understand that this Agreement is for the continued operation of the Project, and intended to incorporate the current understandings and agreements between the Parties. The Parties also acknowledge that the following necessary documents or amended versions of these documents have been, or will be, negotiated in order to fulfill the obligations and goals under the MOU to develop and operate the Project: (i) the Facility Operations Agreement (“Operations Agreement”) defining and regulating EDCO’s maintenance and operational obligations and performance standards for the MRF/TS; (ii) the Conditional Use Permit (“CUP”) approved by the City Council on February 17, 2009 to permit and impose

conditions on the use of the Site for the Project; (iii) the Disposition and Development Agreement (“DDA”) between the Agency and EDCO for conveyance originally by lease of the Agency Parcel to EDCO for the development of the Project with an option to buy the Agency Parcel; (iv) a Reimbursement Agreement (“Reimbursement Agreement”) between the City and EDCO under which EDCO is obligated to reimburse or advance funds to City for all development costs associated with the Project, including but not limited to conducting environmental reviews under CEQA, processing and negotiating permits, entitlements and conditions, and legal costs; (v) an existing agreement (“Trash Hauling Contract”) between City and EDCO to provide for the collection of mixed municipal waste and recycling from properties within City’s limits for collection, processing, and disposal by EDCO; and (vi) a set of covenants, conditions and restrictions (“CC&Rs”) devoting the Site to the uses specified therefor in the Redevelopment Plan and in the DDA. The foregoing agreements and instruments, together with all City ordinances approving the foregoing agreements and instruments, are collectively referred to as the “Agreements.” The Parties hereto acknowledge that this Agreement and the other Agreements bear overlapping impact upon the Site and EDCO’s operations, and thus the effectiveness of this Agreement is conditioned on approval and execution by the City and EDCO of each of the other Agreements.

M. Mutual Agreement. Based on the foregoing and subject to the terms and conditions set forth herein, the Parties desire to enter into this Agreement.

NOW, THEREFORE, in consideration of the mutual promises and covenants herein contained, and having determined that the foregoing recitals are true and correct and should be and hereby are incorporated into this Agreement, the Parties agree as follows:

ARTICLE 1.0 DEFINITIONS

Whenever any term used in this Agreement has been defined by Division 30, Part 1 Chapter 2 of the California Public Resources Code or any law, regulation, or City ordinance, the definitions in the Public Resources Code, law, regulation, or City ordinance as presently defined and as they may be amended in the future shall apply unless the term is otherwise defined in this Agreement. In the event of conflict between the definition of a term as found in the California Public Resources Code, any law, regulation, or in City ordinances and this Agreement, the definition in this Agreement shall, unless otherwise mutually agreed in writing by the Parties, supersede the definition found in the Public Resources Code, any law, regulation, or City ordinance.

1.1 Agency. “Agency” means the Signal Hill Community Redevelopment Agency, a California public body, corporate, and politic.

1.2 Agency Parcel. “Agency Parcel” means the approximately 6500 square foot lot located at 859 Patterson Street, adjacent to the EDCO Parcel, which is necessary and originally leased by Agency to EDCO for the Project and currently owned by eDCO and which is more specifically shown and described in Exhibit “A”.

1.3 Agreement. “Agreement” means this Development Agreement between the City and EDCO for the development and continued operation of the Project.

1.4 Agreements. “Agreements” means all those contractual instruments and City ordinances identified in the preceding Recital L of this Agreement.

1.5 Applicable Law. “Applicable Law” means all statutes, rules, regulations, guidelines, actions, determinations, Permits, orders, or requirements of the United States, State, County, City and local and regional government authorities and agencies having applicable jurisdiction, that apply to or govern the Facility, the Site or the performance of the Parties’ respective obligations hereunder, including any of the foregoing which concern health, safety, fire, environmental protection, labor relations, mitigation monitoring plans, building codes, zoning, non-discrimination, prevailing wages if applicable, and the Los Angeles County Integrated Waste Management Plan. All references herein to Applicable Law include subsequent amendments or modifications thereof, unless otherwise specifically limited in this Agreement or one of the other Agreements.

1.6 Applications. “Application(s)” means a complete application for the applicable land use approvals meeting all current City ordinances, provided that any additional or alternate requirements in said ordinances enacted after the Effective Date which affect the Project application shall apply only to the extent permitted by this Agreement.

1.7 Assignment. All forms of use of the verb “assign” and the nouns “assignment” and “assignee” shall include all contexts of hypothecations, sales, conveyances, transfers, leases, and assignments.

1.8 Authorizing Ordinance. “Authorizing Ordinance” means Resolution No. 2009-02-5747 approving the Initial Development Agreement.

1.9 Best Management Practices (“BMP”). “Best Management Practices” or “BMP” means structural, nonstructural, and managerial techniques recognized to be the most effective and practical means to reduce environmental impacts arising from the Project, whether affecting soils, air, water, noise, traffic, public infrastructure, public health/safety, or other impacts emanating from the Facility while still allowing the productive use of resources. BMPs also include treatment requirements, operating procedures, and practices to control Site runoff, spillage or leaks, sludge or waste disposal, trash or debris, or drainage from raw material storage or similar matters.

1.10 Buyback/Recycling Center. “Buyback/Recycling Center” means the Site facility designed for the public drop-off of recyclables for redemption with scrap or California Redemption Value.

1.11 CEQA. “CEQA” means the California Environmental Quality Act, Section 21000 et seq. of the California Public Resources Code and its implementing regulations and guidelines, including future amendments to or recodification thereof.

1.12 CEQA Completion Date. “CEQA Completion Date” means the later date of either: (i) 30 days after the Notice of Determination; or (ii) the date of the final settlement or resolution of any appeal, lawsuit or other action by a third party challenging the Development Approvals or the CEQA process.

1.13 City. “City” means the City of Signal Hill, California, a chartered municipal corporation.

1.14 City Council. “City Council” means the governing body of the City of Signal Hill.

1.15 Claims or Litigation. “Claims or Litigation” means any challenge by adjacent owners or any other third parties as to (i) the legality, validity approval or adequacy of the Specific Plan, this Agreement, the other Agreements, the EIR, other development approvals, or other actions of City or Agency pertaining to the Project, (ii) EDCO’s exercise of the rights under this Agreement, or (iii) damages against City or Agency as a consequence of the foregoing actions or for the taking or diminution in value of their property, or (iii) damages against the City or Agency for injuries, losses or damages due to EDCO’s use of or operations on the Site, or (iv) any repair, cleanup or detoxification, or preparation and implementation of any removal, remediation, response, closure, or other plan (regardless of whether undertaken due to governmental action) concerning any hazardous waste and/or HHW (as such terms will be broadly defined) deposited after the commencement of Project construction at any place where EDCO delivers, stores, processes, composts, or disposes of solid waste, or (v) Claims pursuant to Section 107(e) of the Comprehensive Environmental Response, Compensation and Liability Act, “CERCLA”, 42 U.S.C. Section 9607(e), and California Health and Safety Code Section 25364, the Resource Conservation and Recovery Act, “RCRA”, 42 U.S.C. Sections 6901 et seq. or other similar federal, state or local law or regulation, or (vii) actions or injuries otherwise arising from the Project.

1.16 Commencement of Operations Date. “Commencement of Operations Date” means the date that operations commence within the MRF/TS which shall be the day EDCO first receives fees for services provided at the Site.

1.17 Correction Plan. “Correction Plan” means a plan undertaken by EDCO and subject to City approval, for the correction or remediation of violations of performance standards and/or nuisance conditions pursuant to Section 6.5.

1.18 Conditional Use Permit. “Conditional Use Permit” or “CUP” means a permit issued by the City to permit and impose conditions on the use of the EDCO Parcel and the Agency Parcel for the MRF/TS. In the event of a clear and explicit conflict between the conditions stated in the CUP and those stated herein, which conflict cannot be resolved through interpretation, the terms of this Agreement shall prevail.

1.19 City’s Design Guidelines. “City’s Design Guidelines” means applicable design guidelines stated in City’s Municipal Codes, including but not limited to those guidelines articulated in the General Plan, the General Industrial Specific Plan, or by City’s Planning Commission or Planning Division of the Community Development Department.

1.20 CC&Rs. “CC&Rs” means that form of Declaration of Covenants, Conditions and Restrictions to be recorded against the Site as described in Section 9.6 of this Agreement.

1.21 CIWMB. “CIWMB” means the California Integrated Waste Management Board, as established pursuant to the Act (Public Resources Code §§ 4000 et seq.).

1.22 Default. “Default” (used herein with a lower case initial letter, “default”) means any material default, breach, or violation of a provision of this Agreement as defined in Article 12. “City Default” refers to a Default by City, while “EDCO Default” refers to a Default by EDCO.

1.23 Development Agreement Statute. “Development Agreement Statute” means Sections 65864 through 65869.5 of the California Government Code as it exists on the Effective Date, as may be amended.

1.24 Development Approvals. “Development Approvals” means all site-specific (meaning specifically applicable to the Site only and not generally applicable to some or all other properties within the City) plans, maps, permits, and entitlements to use of every kind and nature, whether legislative, administrative or contractual in nature. Development Approvals include, but are not limited to, specific plans, land use contracts, site plans, tentative and final subdivision maps, vesting tentative maps, variances, zoning designations, planned unit developments, conditional use permits, grading, building, and other similar permits, the Site-specific provisions of general plans, environmental assessments, including environmental impact reports, and any amendments or modifications to those plans, maps, permits, assessments and entitlements. The term Development Approvals does not include rules, regulations, policies, and other enactments of general application within the City.

1.25 Development Plan. “Development Plan” means the Existing Development Approvals, Future Development Approvals, Existing Land Use Regulations, and Schedule of Performance.

1.26 Disposition and Development Agreement (“DDA”). “Disposition and Development Agreement” or “DDA” means the agreement between the Agency and EDCO or previously negotiated regarding the Agency Parcel for development and operation of the MRF/TF.

1.27 EDCO. “EDCO” means EDCO Transport Services, LLC, a California limited liability company.

1.28 EDCO’s Costs. “EDCO’s Costs” means EDCO’s obligation to pay for all costs identified in this Agreement and the Reimbursement Agreement, including but not limited to: all Project development and construction costs, all costs of the environmental review, all costs for entitlement, all Host Fees, all operational costs and all other costs identified herein as the responsibility of EDCO.

1.29 EDCO Parcel. “EDCO Parcel” means that certain approximately 3.57-acre parcel previously owned in fee by the Lee Family Trust, the Cockriel Family Trust and Philesp, LLC and currently owned by EDCO or an affiliate of EDCO for the construction and operation of the Project and which is shown and more specifically described in Exhibit “A”.

1.30 Effective Date. Generally, the term “Effective Date” means the date that this Agreement has been fully executed, as written above.

1.31 Exaction. “Exaction” means dedications of land, payment of development fees and/or construction of public infrastructure by EDCO as part of the development.

1.32 Existing Development Approvals. “Existing Development Approvals” means the Development Approvals which have been previously granted or are granted concurrent herewith, or will be granted pursuant hereto, and include all of the Agreements, and are included in the description of the Project attached in the Scope of Development, at Exhibit “B”). The term “Existing Development Approvals” shall specifically include all those Permits and agency approvals listed in Exhibit “B.” . Regardless of when the Permits and approvals listed in Exhibit “B” actually take effect, the Parties acknowledge and agree that such Permits and approvals shall be deemed pre-existing to this Agreement. Immediately upon taking effect, the Permits and approvals listed in Exhibit “B” shall be deemed Existing Development Approvals for purposes of this Agreement.

1.33 Existing Land Use Regulations. “Existing Land Use Regulations” means those certain Land Use Regulations applicable to the Property and in effect on or before the Effective Date. The term “Existing Land Use Regulations” shall also include all Agreements identified in Recital L hereto. Immediately upon taking effect, the Agreements shall be deemed Existing Land Use Regulations for purposes of this Agreement.

1.34 Facility or MRF/TS. “Facility” and “MRF/TS” mean the material recovery facility/transfer station proposed to be or already constructed by EDCO and the subject of this Agreement, including site improvements, utility interconnections, the scale house, buy-back recycling center, household hazardous waste facility, a building for transfer and materials recovery and processing areas, and a visitors education center, together with administrative offices, parking areas, materials storage areas and ancillary support facilities, furnishings and equipment and any and all other physical structures and improvements to the Site or offsite improvements, and which is further described in the Scope of Development at Exhibit “B”.

1.35 Facility Throughput Guarantee. “Facility Throughput Guarantee” bears the meaning ascribed to it in Section 7.5 of this Agreement.

1.36 Future Development Approvals. “Future Development Approvals” means those Development Approvals applicable to the Property approved by the City after the Effective Date.

1.37 Future Land Use Regulations. “Future Land Use Regulations” means Land Use Regulations enacted after the Effective Date of this Agreement.

1.38 Host Fees. “Host Fees” mean payments by EDCO to City for hosting a MRF/TS within City’s limits.

1.39 Land Use Regulations. “Land Use Regulations” means those ordinances, laws, statutes, rules, regulations, initiatives, policies, requirements, guidelines, constraints, codes or other actions of City which affect, govern, or apply to the Site or the implementation of the Development Plan. Land Use Regulations include the ordinances and regulations adopted by the City which govern permitted uses of land, density and intensity of use and the design of buildings, as applicable to the Site, including but not limited to: the general plan, specific plans, zoning ordinances, development moratoria implementing growth management and phased development programs, ordinances establishing development exactions, subdivision and park codes, any other similar or related codes, building and improvement standards, mitigation measures required in

order to lessen or compensate for the adverse impacts of a project on the environment and other public interests and concerns or similar matters. The term Land Use Regulations does not include, however: regulations relating to the conduct of business, professions, and occupations generally; taxes and assessments; regulations for the control and abatement of nuisances; building, health and safety codes; licenses, encroachments and other permits and the conveyances of rights and interests which provide for the use of or entry upon public property; any exercise of the power of eminent domain; the general regulation of municipal affairs or the exercise of the City's police power, or any power of City pursuant to its Charter except as specifically stated in the preceding sentence.

1.40 Lee Lease. "Lee Lease" means the previous lease between the Lee Family Trust, the Cockriel Family Trust and Philesp, LLC as Lessor and EDCO or EDCO's affiliate as Lessee for the EDCO Parcel.

1.41 Lease. "Lease" means the prior lease agreement between Agency as Lessor and EDCO as Lessee of the Agency Parcel, which Lease included an option for EDCO to purchase the Agency Parcel.

1.42 Local Enforcement Agency or LEA. "Local Enforcement Agency" or "LEA" means the entity designated by the City and certified by the CIWMB to enforce federal and state laws and regulations for the safe and proper handling of solid waste at the Facility. Initially, the City has designated the County of Los Angeles as the LEA. The LEA performs routine and monthly investigations of the Facility, investigates complaints of illegal disposal of solid waste and administers a permitting and inspection program to ensure the Facility's regulatory compliance.

1.43 Mixed Municipal Waste or Refuse. "Mixed Municipal Waste" or "MMW" and "Refuse" mean all municipal solid waste including putrescible and non-putrescible solid, semi-solid, and liquid wastes, including garbage, trash, refuse, paper, rubbish, ashes, industrial wastes, street sweepings, recyclables and catch basin residue.

1.44 MOU. "MOU" means the Memorandum of Understanding between City, Agency, and EDCO relating to agreements for a solid waste materials recovery facility/transfer station.

1.45 Oil Surface Rights. "Oil Surface Rights" means the existing easements and leases providing rights to use the surface of the Site or portions thereof to operate certain oil wells, tanks, pipelines and appurtenant facilities for the extraction, pumping and removal of oil. EDCO is responsible for either causing the release of such Oil Surface Rights or as may be required to develop the Facility or design the Facility to operate concurrently with the Oil Surface Rights and appurtenant oil-related operations that cannot be removed.

1.46 Operating Agreement. "Operating Agreement" means the agreement approved by the City to permit and regulate EDCO's use of the MRF/TS.

1.47 Operational Year. "Operational Year" means each 12 months following the Commencement of Operations Date and shall begin and end on the anniversary of the Commencement of Operations Date.

1.48 Operational Revenue. “Operational Revenue” means all revenues received from all operations at the MRF/TS of any nature whatsoever received during an Operational Year.

1.49 Planning Director. “Planning Director” means the Director of Planning and Community Development or similar officer of City.

1.50 Project. “Project” means the process to issue permits to entitle the development; the construction of the Facility; the operation of the Facility; and the negotiation of and carrying out of this Agreement and the related Agreements.

1.51 Reasonable Business Efforts. “Reasonable Business Efforts” means those efforts a reasonably prudent business Person would expend under the same or similar circumstances in the exercise of such Person’s business judgment, intending in good faith to take steps calculated to satisfy the obligation which such Person has undertaken to satisfy.

1.52 Reimbursement Agreement. “Reimbursement Agreement” means that existing contract between City and EDCO under which EDCO is obligated to reimburse or advance funds to City for all development costs associated with the Project, including but not limited to conducting environmental reviews under CEQA, processing and negotiating permits, entitlements and conditions, and legal costs.

1.53 Reservations of Authority. “Reservation of Authority” shall have the meaning set forth in Article 11 of this Agreement.

1.54 Schedule of Performance. “Schedule of Performance” means the timeline of performance of the Project utilized for the Initial Development Agreement and set forth in Exhibit “C” of the Initial Development Agreement.

1.55 Scope of Development. “Scope of Development” means the components of, and the documents controlling, the development of the Project and is set forth in Exhibit “B”.

1.56 Trash Hauling Contract. “Trash Hauling Contract” means the contract approved by the City to provide for the collection of mixed municipal waste and recycling from property within the City to the MRF/TS for collection, processing and disposal.

1.57 Site. “Site” means the real property, including the EDCO Parcel and the Agency Parcel (collectively the “Parcels”), which Site and Parcels are generally shown in the “Site Map” and are specifically described in Exhibit “A”.

1.58 Term. “Term” means that period of time during which this Development Agreement shall be in effect and bind the Parties, as defined in Section 3.1.

ARTICLE 2.0 EXHIBITS

The following are the Exhibits to this Agreement which are attached hereto and incorporated herein:

- Exhibit A: Map of the Site
- Exhibit B: Scope of Development/Existing Development Approvals
- Exhibit C: Estoppel Certificate

ARTICLE 3.0 TERM

3.1 Term. The Term of this Agreement shall commence on the Effective Date and shall continue until August 31, 2069 (“Term”), unless earlier terminated as provided herein.

3.2 MRF/TS Rights. The scope of EDCO’s rights with regard to operating the MRF/TS are defined herein. The provisions herein shall be interpreted consistent with State and Federal law and are severable from this Agreement to the extent they contravene any laws. EDCO will agree, so long as it retains the right to operate a MRF/TS within the City, not to open, utilize, or operate a competing facility within thirteen (13) miles of the Facility except that, within Orange County, the distance limit shall be ten (10) miles. Notwithstanding the foregoing, nothing herein shall prevent EDCO from acquiring an integrated waste disposal business which as its assets currently owns such a competing facility within the foregoing geographical limits and then continuing to operate such competing facility.

ARTICLE 4.0 DEVELOPMENT OF THE PROJECT

4.1 Right to Develop. During the Term, EDCO shall continue to have a vested right to develop the Project to the full extent permitted by this Agreement. Except as provided within this Agreement, the Development Plan shall exclusively control the development of the Project (including the uses of the Project, the Project scope, the density or intensity of use, the maximum height and size of proposed buildings, the provisions for reservation or dedication of land for public purposes and the design, improvement and construction standards and specifications applicable to the Project).

4.2 Scope of Development. The Project and its components are described in Exhibit “B” along with the Existing Development Approvals.

4.3 Project Components. EDCO proposes to construct, or has constructed, the Project on the Site. The proposed improvements may or currently consist of the following proposed uses and approximate square footage to be developed in multiple phases pursuant to the Schedule of Performance:

Project Components:	
Transfer Station	
Material Recovery Facility	
Office/Employee Facility <ul style="list-style-type: none"> • First Floor • Second Floor 	
Household Hazardous Waste Facility	
Maintenance/Shop	
Buy-Back	
Scale House	

Total Developed Area	69,000 s.f. ± 20%
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4.4 Project Function/Process. The Site Plan is included with the Scope of Development in Exhibit “B”. All buildings will conform to the City’s Design Guidelines and incorporate the environmental control systems and performance standards described in Article 6.0, below and including all mitigation measures recommended through the CEQA review process. EDCO will size the MRF/TS to handle up to 2,500 tons per day that will have the following proposed multiple functions and processes:

(a) Transfer Station. The Facility’s transfer station component for refuse collection and transfer may include a below grade load-out area to allow for the transfer vehicles to be top-loaded through load-out ports at the tipping floor. A portion of the transfer station shall also be dedicated for self-haul use.

(b) Material Recovery Facility. The transfer station shall include facilities for diversion of recyclable products from commercial and residential customers. The recyclable products shall be baled within the building and transferred to recyclable load out vehicles at the exterior recyclable load out dock. Residue from the diversion process shall be conveyed to the adjacent transfer station for load out.

(c) Buyback Operation. A buyback operation allowing the public to drop off recyclables and receive compensation (certified CA redemption center).

(d) Green Waste Area. A green waste area would accommodate collection of green waste. The green waste shall be transferred to outgoing delivery vehicles.

(e) E-Waste. The MRF/TS shall provide a location for Signal Hill residents to dispose of e-waste free of charge.

(f) Household Hazard Waste. EDCO will endeavor to establish a permitted Household Hazardous Waste (“HHW”) disposal facility on-site which will be contingent on funding through the County of Los Angeles.

(g) Construction Debris Area. A construction debris area would be utilized for collection, sorting and recyclable load out of construction material debris. The incoming material shall be screened, sorted and diverted to containers. The containers shall be transferred to outgoing recyclable load out vehicles.

(h) Administrative Offices and Public Education. An office area will be dedicated for administrative support for the Facility. This area shall include an area suitable for educating local students and members of the public about solid waste and recycling management, and demonstrating the activities of the Facility. Areas used for public education shall include an observational gallery and a location suitable for audio/visual or multimedia presentations and suitable technical equipment therefor. EDCO shall implement a public education program to include some or all of (i) visitor presentations on source reduction, recycling and solid waste management (ii) tours of the Facility; (iii) visual presentations on the role of recycling and evolving developments in the business of solid waste management; (iv) dialogue on, and direct interaction

with, the evolving practices of solid waste management; and (v) distribution of educational and promotional materials.

(i) Employee Areas. Employee areas will include restrooms, a break area and offices. The upper level control area will be used to accommodate the operational control functions of the facility. The employee area/control area will be linked to the office area via an upper level observation gallery.

(j) Maintenance Building. A separate maintenance building shall include two service bays and an adjacent office/parts area.

(k) Accessory Operations. Site improvements will include fueling operations, a truck wash area, truck scale and scale house, load out ramps, truck loading docks, driveways, employee and operation vehicle parking, and landscaping.

4.5 MRF/TS Construction. EDCO anticipates that the majority of the MRF/TS will be, or currently is, steel framed to accommodate the large clear spans required for the operation. The steel frames would be clad on the exterior with a variety of materials consistent with City's Design Guidelines. The MRF/TS will incorporate design features as necessary to comply with the City's design guidelines. The entire MRF/TS will incorporate a buffer of screen walls, fencing and landscaping around the Site. The design of the Facility will utilize the elevations included in the Scope of Development (Exhibit "B") and in the Development Approvals.

4.6 Offsite Improvements. EDCO shall construct all offsite improvements as required by the Development Approvals and as indicated in Article 5.

4.7 Upgrades. EDCO is required to improve or upgrade the MRF/TS to incorporate the latest technology available to control environmental impacts of the Project; provided that EDCO shall not be required to perform any substantial improvement or upgrade relative to the original cost of the MRF/TS, unless a reasonable period of time is available under this Agreement to recover such investment. EDCO must disclose all costs, revenues and return on investment in such negotiation.

ARTICLE 5.0 **SCHEDULE FOR PROCESSING AND DEVELOPMENT OF THE PROJECT AND PUBLIC IMPROVEMENTS**

5.1 Schedule of Performance. EDCO will process, or has processed, the Project and commenced and completed construction of the Project in accordance with the Schedule of Performance.

5.2 Processing. Upon satisfactory completion by EDCO of all required preliminary actions, meetings, submittal of required information and payment of appropriate processing fees, if any, City shall promptly commence and diligently proceed to process all required Development Approvals in accordance with this Agreement, if City has not already done so. In this regard, EDCO, in a timely manner which will allow development of the Project in accordance with the Schedule of Performance, will provide, or has provided, City with all documents, applications, plans and other information necessary for City to carry out its obligations hereunder and will cause, or has caused, EDCO's planners, engineers and all other consultants to submit in a timely manner

all required materials and documents therefor. It is the express intent of this Agreement that the Parties cooperate and diligently work to implement any zoning or other land use, site plan, subdivision, grading, building or other approvals for development of the Project in accordance with the Existing Development Approvals and the Schedule of Performance. Notwithstanding the foregoing, nothing contained herein shall be construed to require City to process EDCO's applications ahead of other projects in process in the City and City's obligations hereunder shall be subject to the City's workload and staffing at any given time. If EDCO elects, in its sole discretion, to request City to incur overtime or additional consulting services to receive expedited processing by City, EDCO shall pay all such overtime costs, charges or fees incurred by City for such expedited processing.

5.3 Other Governmental Permits. EDCO shall apply in a timely manner for such other permits and approvals as may be required from other governmental or quasi-governmental agencies having jurisdiction over the Project as may be required for the development of, or provision of services to, the Project in accordance with the requirements set forth herein. The City shall cooperate with EDCO in its efforts to obtain such permits and approvals. The City and EDCO shall cooperate and use reasonable efforts in coordinating the implementation of the Development Plan with other public agencies, if any, having jurisdiction over the Property or the Project.

5.4 Critical Time Commitments. The Project will be, or has been, undertaken consistent with the following timing constraints, each subject to extension for the period of time of any actual delay resulting from the occurrence of any of the events set forth in Section 12.9 or the consent of the City as set forth in the Schedule of Performance:

(a) EDCO will complete, or has already completed, physical Site remediation within three (3) months after the effective date of the initial Development Agreement. On-Site testing and evaluation work is not deemed commencement of remediation herein. EDCO shall give City written notice of actual commencement of remediation and within thirty (30) days thereafter City shall inform EDCO as to whether it concurs as to the establishment of the date of commencement.

(b) Well abandonment will be implemented, or has been implemented, within the time periods required by law and/or as required by the well abandonment plan and the California Department of Conservation, Division of Oil, Gas & Geothermal Resources ("DOGGR") and/or any other applicable governmental entity or agency.

(c) EDCO will complete, or has completed, rough grading of the Site within six (6) months after the effective date of the initial Development Agreement .

(d) EDCO will complete, or has completed, grading and construction of the Project within twenty-four (24) months after the effective date of the initial Development Agreement.

(e) EDCO will submit, or has submitted, Applications necessary to grade and construct the Project, including plans, drawings and specifications necessary to obtain building permits, grading, landscape and street improvements plans, in a timely manner in accordance with

Section 5.2 to allow compliance with the timing constraints set forth in the subsections above and the Schedule of Performance.

(f) EDCO's completion of construction of the Project shall not be deemed to preclude EDCO from subsequently reconstructing any structures or buildings in accordance with the Development Approvals during the Term of this Agreement.

(g) The timing constraints for construction of the Project Public Improvements shall be as provided in Section 5.5.

(h) Any construction which is commenced shall be completed in accordance with the terms of any permit which is issued in accordance with the Existing Land Use Regulations and this Agreement.

5.5 Public Improvement Obligations of the Project. The Project is being constructed in an area which lacks important public infrastructure necessary for the development of the Project. EDCO will construct, or has constructed, such public infrastructure, some of which will primarily benefit the Project (the "Project Improvements"), and some improvements are of an area-wide nature which will benefit all development in the general area (the "Area Improvements"). All such public improvements to be constructed, or already constructed, by EDCO are identified and categorized in Exhibit "D" of the Initial Development Agreement. EDCO shall construct, or has constructed, all Project Improvements and Area Improvements in accordance with the Existing Development Approvals and the Schedule of Performance. In consideration of the foregoing, notwithstanding any provision herein to the contrary, with respect to the timing of construction of the public infrastructure, City shall retain the right to condition any Future Development Approvals upon EDCO's dedicating necessary land for public improvements, paying the Developer Fees and Processing Fees, and/or constructing the required public infrastructure at such time as City shall determine, so long as the timing of the dedication, payment or construction is reasonably phased to be completed commensurate with the logical progression of the Project development as well as the reasonable usage needs of the public existing from time to time.

5.6 Standards of Public Improvement Construction. When EDCO is required by this Agreement and/or the Development Plan to construct any public improvements which will be dedicated to City or any other public agency upon completion, and if required by applicable laws to do so, EDCO shall perform such work in the same manner and subject to the same construction standards as would be applicable to the City or such other public agency should it have undertaken such construction work. In addition EDCO is aware of the laws of the State governing the payment of prevailing wages on public projects and will comply with same and will indemnify City in the event EDCO fails to do so.

5.7 Moratorium. Except as expressly provided in this Article 5, no subsequent City-imposed moratorium, ordinance, resolution, or other Land Use Regulation or limitation on the conditioning, rate, timing and sequencing of the development of the Project shall apply to or govern the development of the Project during the Term hereof, whether affecting parcel or subdivision maps (whether tentative, vesting tentative, or final), building permits, occupancy permits or other entitlements to use issued or granted by City. In the event of any such subsequent action by City, EDCO shall continue to be entitled to apply for and receive Development

Approvals in accordance with the Existing Land Use Regulations, subject only to the exercise of the reservation of authority set forth in Article 11.

ARTICLE 6.0 OPERATIONAL CRITERIA AND PERFORMANCE STANDARDS

6.1 Community Benefit Package. The MRF/TS will provide, or will continue to provide, the following services of special benefit to the community and the City:

(a) Rate Freeze. The collection component of the trash haul contract rates for residents, including for multi-family units, was frozen for three (3) years.

(b) Community-Wide Clean Up. EDCO shall cooperate with City in holding four (4) community-wide clean up days per year when all municipal waste collected from Signal Hill residents may be disposed of at the Facility without charge. Two (2) days will be curbside and two (2) days for bulky items on-call, such days to be scheduled so as to provide a total of four (4) separate dates for community-wide clean up.

(c) Disposal and Recycling of City Refuse. All Refuse gathered from City facilities or from City operations may be deposited in the Facility without charge and shall be recycled to the fullest extent possible pursuant to the Act.

(d) Redevelopment of Blighted Land Use. The Site has been undeveloped for decades and is in a blighted condition due to past oil field operations with former sumps, pipelines, abandoned and active oil wells, and environmental contamination. The Project will beneficially redevelop the Site by replacing blighted conditions with a state-of-the-art facility equipped with emission control systems that will protect the residents of the City from environmental impacts including, but not limited to, traffic congestion, noise, vectors, odor, and dust.

6.2 Performance Standards.

(a) Air Quality and Odor Violations. EDCO shall construct and operate the MRF/TS in compliance with all requirements, recommendations, and best management practices (“BMPs”) for minimization and mitigation of air quality and odor impacts as detailed in Section 3.5 of the EIR, including but not limited to, compliance with all California Air Resources Board (“CARB”) and SCAQMD standards, rules, and regulations as described in that Section; implementation of the construction BMPs listed in Table 3.5-6 of the EIR including but not limited to pre-watering of soil prior to soil disturbances, use of dust suppressants to stabilize stockpiles, pre-watering of material prior to truck loading, and limitation of truck speeds and roadway cleaning, as described therein; implementation of the odor mitigation BMPs listed in Section 3.5.3.2 of the EIR, including but not limited to preparation of an Odor Management Plan for MRF/TSs, limitation of building openings to between 2 and 5 percent of the building walls, installation of a building misting system and fan system to control odors, and all of the other BMPs described therein. To minimize odors, EDCO will direct all Facility users to discharge waste and will conduct all recovery and processing inside the buildings so designated. EDCO will load all MMW having potential for causing odor into transfer trailers promptly after receipt. EDCO will not allow any waste to remain on Site for more than 48 hours. EDCO will make dust masks available to employees, customers and members of the public while they are inside the MRF/TS during extant dust conditions.

(b) Hazardous Materials Violations. EDCO shall operate the MRF/TS in compliance with all requirements, recommendations, and BMPs for minimization and mitigation of hazards and hazardous materials impacts as detailed in Section 3.6 of the EIR, including but not limited to, the methods for controlling vectors described in Section 3.6.3.2 of the EIR. EDCO shall comply with all mandatory project requirements and mitigation measures listed in Section 3.6.4 of the EIR, including but not limited to, abandonment of oil wells on the Site in conformance with the Oil Well Abandonment Procedures outlined in the City's Project Development Guide, preparation of a soil management plan, ceasing work until clearance from City if previously unknown wells or pipelines are discovered, preparation of a methane assessment within 30 days of completion of rough grading, review of previously abandoned oil wells to determine whether they comply with current abandonment regulations and re-abandonment of same in conformance with current regulations, performance of a Human Health Risk Assessment of soil collected during the limited soil investigation, completing a plan check from the County of Los Angeles before removal of any previously unknown underground storage tanks, obtaining a "Dig Alert" identification number two working days prior to commencement of excavation activities.

(c) Biological Resources Violations. EDCO shall implement the mitigation measure listed in Section 3.8.4 of the EIR to minimize impacts to biological resources, including avoiding impacts to active migratory bird nests and hiring of a biologist as required by the mitigation measure.

(d) Cultural Resources Violations. EDCO shall implement the mitigation measures listed in Section 3.9.4 of the EIR to minimize impacts to cultural resources, including but not limited to, hiring of an archaeologist and paleontologist to establish procedures to be taken if cultural or paleontological resources are encountered, stoppage of work and notification of City if such resources are encountered, and stoppage of work and notification of the County Coroner if human remains are encountered.

(e) Water Quality Violations. EDCO shall construct and operate the MRF/TS in compliance with all requirements, recommendations, and BMPs for minimization and mitigation of water quality impacts as detailed in Section 3.10 of the EIR. Specifically, EDCO shall comply with all provisions of Section 3.10.3.1 of the EIR, including but not limited to, compliance with all requirements of the most recent State Construction Activity General Permit ("NPDES") for storm water discharges associated with construction activity, submission of a Notice of Intent ("NOI") and fee payment to the Los Angeles Regional Water Quality Control Board ("LARWQCB") prior to commencement of construction activities, development of an acceptable Storm Water Pollution Prevention Program ("SWPPP") that implements controls to reduce pollutants in storm water discharges from the Project Site to the BAT/BCT performance standard, compliance with local regulations associated with the Regional Board's Municipal Storm Water Permit issued to Los Angeles County and co-permittees under NPDES No. CAS004001 and Waste Discharge Requirements Order No. 01-182, including the Standard Urban Storm Water Mitigation Plan ("SUSMP") and all implementing local ordinances and regulations for the control of storm water pollution from new development and redevelopment. EDCO shall implement the BMPs listed in Section 3.10.3.2 of the EIR, including but not limited to, preparation of a SWPPP and Monitoring and Reporting Program, installation and implementation of silt fences, check dams, storm drain inlet protection, designated construction access points, concrete washout pits, on-site dust control, street sweeping, and all other requirements in that section. EDCO shall

implement the treatment control BMPs, the source control BMPs, and the long-term BMP operations and maintenance requirements as described in EIR Section 3.10.3.3.

(f) Noise Violations. EDCO shall comply with existing City noise standards during construction and operation of the MRF/TS. Pursuant to Chapter 9.16 of the City Municipal Code, noise levels generated at the Facility shall not exceed seventy five (75) dB as measured at adjacent property lines. If the City receives more than one complaint that noise levels exceed such limit, the City may hire a certified acoustical engineer to measure Facility-related noise levels. EDCO shall be responsible to suspend or mitigate non-compliant noise if a violation is documented and reimburse the City for acoustical engineering costs. EDCO will cooperate with the Planning Director to address other substantiated noise complaints which can be mitigated through Reasonable Business Efforts. EDCO shall further use Reasonable Business Efforts to muffle all on-Site vehicles (including forklifts and loaders) operated by EDCO outside the confines of the building(s) on the Site.

(g) Litter and Pest Vector Standards. EDCO shall maintain the Facility and Site in a neat and orderly condition, unfavorable to rodents and insects, including cleanup of litter and debris on Site and along roads near the Site, at a minimum, daily, or as frequently as necessary to comply with this Article. EDCO will develop and implement a rodent and insect management program, including contracting with a professional pest control company to inspect the Facility on a periodic basis, no less often than once per month. In the event of apparent pest vector activity, within twenty-four (24) hours of City direction, EDCO shall implement vector control measures sufficient to remedy the vector nuisance.

6.3 Trucks and Traffic Performance Standards.

(a) Traffic Violations. Internal traffic circulation and ingress and egress from the MRF/TS shall comply with the Site Circulation Plan in Figure 3.3-3 of the EIR. Trucks en route to and departing from the MRF/TS shall follow the Off-Site Circulation routes shown in Figures 3.3-4 and 3.3-5 of the EIR. Employee shifts shall be scheduled so that employees do not arrive or depart during peak traffic hours, as detailed in Table 3.3-4 of the EIR.

(b) Access Corridors. EDCO shall enforce measures to ensure that the designated access corridors are utilized in connection with the operation of the MRF/TS. EDCO shall implement daily litter pick-up on Site, along adjacent properties, adjacent streets and along the designated transportation corridors, such that any litter resulting from EDCO's operation (including EDCO's customers delivering waste to the Site) will be removed. EDCO's obligation to cleanup debris in public right-of-ways and/or transportation corridors shall apply regardless of whether such debris was inadvertently spilled or intentionally dumped. The transportation corridors (with those designated for litter control) are as follows:

Willow Street — City limit to City limit

Spring Street — City limit to City limit (Litter Control Cherry to Atlantic)

Cherry Avenue — City limit to City limit

California Avenue — Willow Street to Spring Street (Litter Control)

Orange Avenue — Spring Street to 32nd Street (Litter Control)

Pacific Coast Highway — City limit to City limit.

(c) Traffic Queuing on City Streets. EDCO shall provide a level of services at the Facility such that City streets surrounding the Site shall be free of any queuing of vehicles entering or leaving the Facility other than occasional queuing and intermittent stoppages on 28th Street west of California Street which do not interfere with through traffic. EDCO shall manage vehicular queuing on 28th Street such that queue spillback shall not reach California Avenue. EDCO shall staff the Facility as needed to meet this performance standard and prevent interference with traffic circulation on all streets other than that portion of 28th Street immediately adjacent to the Site. EDCO will make Reasonable Business Efforts to ensure that each waste collection and delivery vehicle utilizing the MRF/TS is able to complete unloading at the Facility after no more than sixty (60) minutes, absent vehicle breakdown or driver negligence.

(d) Enclosure of Trucks. All EDCO waste collection vehicles to and from the MRF/TS will be adequately covered to eliminate spillage.

6.4 Additional Operational Criteria.

(a) Rotation of Refuse. Refuse will be moved off-site within 48 hours of delivery.

(b) Lighting. All Site lighting shall be shielded to avoid off-site glare.

(c) Reclaimed Water. The MRF/TS shall be developed for and shall use reclaimed water when available.

(d) Green Building. In addition to the dust, odor and noise mitigations, EDCO intends to also utilize “green building” design concepts, including the use of recycled construction products, energy efficient environmental control systems and natural day lighting. EDCO shall work with Southern California Edison to obtain grants for solar power systems, variable speed motors and other energy efficiency measures. Additional mitigation measures derived from the CEQA process undertaken while entitling the Project will be included in the Agreements.

6.5 Remedies for Failure to Observe Performance Standards and Nuisance Violations. The failure to observe any above-stated performance standards or regulatory agency requirements, or the provision of poor public service, or the production of any nuisance condition will subject EDCO to administrative procedures, potential liquidated damages and, ultimately, termination, for severe and repeated violations.

(a) Complaints Received by City. Complaints received by the City regarding MRF/TS operations and EDCO performance will be transmitted by the Planning Director to EDCO via telephone, email or facsimile. EDCO shall investigate each complaint reasonably made, take corrective action and respond to the complaining party to the extent deemed necessary, and subsequently report any such action to the City by email. EDCO shall maintain a log of complaints received and corrective actions implemented in accordance with the requirements of the Facility’s

Solid Waste Facility Permit as enforced by a Local Enforcement Agency, which log shall be available for City inspection at the Facility during normal business hours.

(b) Complaints Received Directly by EDCO. EDCO shall also take corrective action on any public complaints reasonably made that are directly received by EDCO. Complaints received by EDCO and EDCO's corrective actions thereon shall also be entered into the log described in Subsection (a) above.

(c) City Investigation. In the absence of public complaint, the City may also initiate its own investigation of the Facility. If the City, based on its own observations or investigations, discovers any conditions violating the terms of this Agreement (including but not limited to failure to observe any above-stated performance standards or regulatory agency requirements, or the provision of poor public service, or the production of any nuisance condition), City shall include a written description of the violation to EDCO with a time to cure. EDCO shall investigate all problems so identified by the City and take corrective timely action thereon and include such complaints and corrective actions in the log and the email report to the City as described in Subsection (a) above.

(d) Nuisance Conditions. Repeated, substantiated complaints of, or continued conditions of, poor service quality, failure to observe above-stated performance standards, regulatory agency requirements, and/or nuisance conditions may be handled in the manner prescribed below. For purposes of this Section, the term "nuisance conditions" shall include, but is not limited to, the following:

(1) Traffic queuing on City streets (other than minimal queuing on 28th Street) and/or recurrent failures to meet standards for vehicular circulation onto, through and away from the Site as required by Section 6.3;

(2) Debris and litter attributable to EDCO's operations and customers found in the immediate surrounding area near the Facility and along immediate access routes, traffic corridors and public rights-of-way as required by Section 6.3;

(3) Poor maintenance of EDCO trucks;

(4) Violations of safety standards required under Applicable Law or by the Agreements;

(5) Use of unqualified or incompetent employees by EDCO;

(6) Failure to operate a "visitor education program" as required by the Operations Agreement;

(7) Odors exceeding those limits stated in the conditions of approval applicable to the Project, Section 6.2(a) hereof, and/or the EIR;

(8) Violations of the City's noise ordinance and other noise-related requirements found in the conditions of approval applicable to the Project, Section 6.2(f) hereof, the EIR or Applicable Law;

(9) Any failure to maintain landscaping at the Site in an attractive and professional manner;

(10) Any failure to repair, reconstruct or repaint any structure(s) which have been damaged or have deteriorated, regardless of whether such deterioration is due to poor maintenance or through the course of normal wear and tear;

(11) Any similar recurrent violation of the performance standards or operational obligations stated in the Operations Agreement;

(12) Failure to operate centers for HHW processing (contingent on available governmental funding therefor), a Buyback/Recycling Center, or otherwise comply with the scope of operations and receiving hours described in the Operations Agreement and the Scope of Development at Exhibit B hereto;

(13) Any enforcement action taken by a Local Enforcement Agency that requires closure of the Facility for any 24-hour period and/or requires a judicial or administrative remedy prior to re-opening the Facility;

(14) Knowingly accepting waste that is not permitted at the Facility in contravention of Applicable Law, EDCO's permits or the Agreements;

(15) Closure of the Facility in violation of this and other Agreements;

(16) Misconduct with respect to scale operations, knowingly misrepresenting measurements or persistent violations of Applicable Laws governing weights and measures;

(e) Notice of Violation. The Parties acknowledge that the above-listed violations are further defined in the Operations Agreement. Violations listed in Section 6.5(d) above, as items (1) through (11) shall be deemed "minor" in nature, while violations in categories (12) through (16) shall be considered "major." Repeated violations in any minor category may become major violations for purposes of this Agreement. Initially, when the Planning Director or a designated enforcement officer observes a violation, a verbal warning shall be given to the EDCO official or employee managing Facility operations. If the violation is thereafter repeated and, in the opinion of the City's Planning Director or designated enforcement officer, EDCO has not taken timely, effective action to correct the violation and prevent its repetition, then the Planning Director or designated enforcement officer may issue a written notice of violation (the "Notice of Violation") describing the violation, the period in which EDCO is required to cure the violation and a warning that continued violations can be subject to liquidated damages.

(f) EDCO's Right To Contest. Within five (5) business days after receiving the Notice of Violation, EDCO may submit a written response (the "Response") to the Notice of Violation to the Planning Director. The Planning Director shall review EDCO's Response and may further investigate the Facility. The Planning Director shall make a final determination regarding the Notice of Violation and the Planning Director shall deliver to EDCO a written conclusion concerning the Notice of Violation. Additionally, at the election of either Party, the Parties may meet to develop a written corrective action plan ("Correction Plan") to prevent further occurrence

of the problematic conditions established in the Notice of Violation. The Correction Plan shall be finally prepared by the City (or, at the election of the City, by EDCO) within ten (10) business days after the meeting between the Planning Director and/or City Manager designee and EDCO. The Correction Plan may include additional procedures, as deemed necessary by the Planning Director and/or City Manager designee, to assure that in the future the Facility will be operated in compliance with this Agreement.

(g) Liquidated Damages. If a second Notice of Violation is issued for any minor violation after an initial verbal warning and thereafter the issuance of a written Notice of Violation that is not withdrawn pursuant to Subsections (e) or (f) above, then liquidated damages may thereafter be assessed against EDCO (as liquidated damages and not a penalty) by the Planning Director and/or City Manager designee in the amount of \$250 for every day the condition persists. Further, if the minor violation for which liquidated damages were assessed recurs on three (3) or more days within a 60-day period following any assessment of liquidated damages, then starting on the fourth (4th) day that such violation either persists or recurs the amount of liquidated damages shall increase to \$500 per day; minor violations subject to this escalation must be of the same type or category in order for enhanced liquidated damages to apply. In the event of a major violation, damages shall not be ascertained in an amount of \$250, but rather the sum assessed shall be \$500 per occurrence from the initial major violation.

(h) Basis for Liquidated Damages. The Parties further recognize that if EDCO continues to fail to observe its Performance Standards, fails to prevent and remediate nuisance conditions, or fails to cooperatively undertake the procedures required by this Section 6.5 in a timely manner, the City and its residents will suffer damages and that it is and will be impractical and extremely difficult to ascertain and determine the exact amount of damages which City and its citizens will suffer. Therefore, the Parties agree that the liquidated damages established herein represent a reasonable estimate of the amount of such damages for such specific violations, considering all of the circumstances existing on the date of this Agreement, including the relationship of the sums to the range of harm to City that reasonably could be anticipated and the anticipation that proof of actual damages would be costly or impractical. In placing their initials at the places provided, each Party specifically confirms the accuracy of the statements made above and the fact that each Party has had ample opportunity to consult with legal counsel and obtain an explanation of these liquidated damage provisions prior to entering this Agreement.

EDCO Initials _____ City Initials _____

The provisions of this Section 6.5 correspond to the Operations Agreement, Section 5.5. The commencement of remedial procedures under either this Section 6.5 or Operations Agreement Section 5.5 will be coterminous with the commencement of the same procedures under the other agreement, such that there will be no duplication of remedial procedures between the two agreements.

(i) Further Remedies For Severe Or Persistent Violations. The provisions of Subsections (g) and (h) above are intended to give the Parties a remedy under this Agreement short of termination or default; however, should EDCO's violations be severe and repetitive or otherwise not reasonably subject to correction through liquidated damages, the Planning Director may, in his sole discretion, institute the procedures set forth in Article 12 hereof

6.6 No Waiver Of City's Police Powers Or Legal Rights. Nothing in this Agreement is intended to limit the power and ability of the City or any Local Enforcement Agency to initiate administrative and/or judicial proceedings for the abatement of nuisance conditions or violations of any applicable law. Nothing herein shall waive or limit any other legal rights or recourses the City may have in response to EDCO's repeated, material violations of performance standards or failure to mitigate nuisance conditions.

6.7 Governance and Rate Setting. EDCO shall be permitted to set its own rates for various classes of customers of the MRF/TS in a manner which makes usage of the MRF/TS competitively attractive. EDCO shall set equal rates for equal service for all existing and future haulers operating within the City under an agreement granted by the City.

ARTICLE 7.0 HOST FEES

7.1 Advance of Host Fees. Upon the effective date of the initial Development Agreement, EDCO deposited into City's bank account a deposit of One Million Dollars (\$1,000,000), which was a prepayment of Host Fees ("Host Fee Deposit"). After the first year of operations and in subsequent years thereafter, the Host Fee was drawn down against the Advance until the Advance balance was depleted.

7.2 Host Fees Calculations. The Facility will process up to 2,500 tons per day at an annual rate up to 912,500 tons. Upon the Effective Date of this Agreement, and every operating year thereafter until the termination or expiration of the Agreements, EDCO shall pay a Host Fee to the City based on the inbound tonnage of all solid waste of any nature whatsoever received and processed at the Facility based on a maximum capacity up to 2,500 tons per day, at the following rates: (i) Two (2%) percent of all the Operational Revenue for processing a minimum of 100,000 tons; (ii) Two (2%) percent of all the Operational Revenue for processing between 100,001 and 150,000 tons; (iii) Three (3%) percent of all the Operational Revenue for processing between 150,001 and 300,000 tons; and (iv) Five (5%) percent of all the Operational Revenue between 300,001 and 547,500 tons; and (v) Five (5%) percent of all the Operational Revenue for processing between 547,501 tons and 912,500 tons. Payments shall be made quarterly in arrears.

7.3 Time of Determination and Payment. Within thirty (30) days following each quarter of any Operational Year, EDCO shall provide City with a Quarterly Statement with the following: (i) a certified statement of tonnage processed in the quarter; (ii) a certified statement of revenue received in the quarter, (iii) a certified Statement of Host Fees earned by City; (iv) an Annual Statement showing the aggregate Host Fees earned for the Operational Year; (v) a comparison with the prior Operational Year by quarters; and (vi) payment of the Host Fees earned during the prior quarter. A separate annual statement shall be submitted concurrently with the last quarterly statement (except that City may coordinate the annual statement with its fiscal budget year). City may audit any of the foregoing statements per Section 8.4.

7.4 Most Favored Nation Provision. It is the intent of the Parties that, for so long as EDCO retains the right to operate a MRF/TS within the City, Host Fees shall be periodically reviewed and kept comparable to the highest prevailing Host Fees for comparable facilities within the market area, which shall be referred to as the "Most Favored Nation Provision," to include: (i)

a geographical market area within thirteen (13) miles of the MRF/TS except within Orange County where the geographical area shall be limited to within ten (10) miles of the MRF/TS; (ii) the facilities used as a basis of comparison must be determined by agreement of the Parties or through an independent study to be compelling; (iii) the review would occur in the 10th year and every five (5) years thereafter; (iv) no adjustment shall be made unless the discrepancy as compared to the highest rate is more than ten (10) percent; and (v) the adjustment shall be made to be equal to the highest rate identified during the period of review.

7.5 Facility Throughput Guaranty. Once it has received the Occupancy Permit and during the Term hereof so long as the Facility is operational, EDCO will use Reasonable Business Efforts to accept MMW in a quantity equating to at least One Hundred Thousand Dollars (\$100,000) in Host Fees payable to the City each Operational Year (the “Facility Throughput Guaranty”). This Facility Throughput Guaranty shall be in effect during any applicable period that Host Fees are paid to the City in the form of a draw-down on the \$1 million Host Fee Deposit, such that the Facility Throughput Guaranty shall be measured as a minimum One Hundred Thousand Dollars (\$100,000) draw-down from the Deposit each Operational Year commencing with the second Operational Year. The \$100,000 threshold of the Facility Throughput Guarantee shall be adjusted by an 8% increase once every five (5) years during the Term.

7.6 Shortfalls In Facility Throughput. If EDCO fails to meet the Facility Throughput Guaranty during an Operational Year, EDCO shall cure such shortfall by paying the City the difference between any Host Fee that was paid during the Operational Year and \$100,000. Any such shortfall paid to the City shall be deducted from Host Fees otherwise payable in subsequent Operational Years in excess of the Facility Throughput Guaranty. For example, if an Operational Year yields \$75,000.00 in Host Fees to the City, EDCO shall, at the end of such Operational Year, pay the City \$25,000.00 to make up the shortfall in the Facility Throughput Guaranty, and shall deduct \$25,000 from the next Host Fees in excess of the Facility Throughput Guaranty otherwise payable to the City.

ARTICLE 8.0 REPORTS AND MONITORING

8.1 Reports During Development. To the extent applicable, EDCO will prepare quarterly written progress reports in a form approved by City describing commenced, on-going, and completed development of Project activities and compare such progress to the Schedule of Performance.

8.2 Transfer and Processing Report. Consistent with CIWMB guidelines, a Transfer and Processing Report (“TPR”) shall be developed and maintained on the Site. This shall include operating procedures for odor reduction, formulated and tested for effectiveness by first-hand experience at EDCO’s existing facilities, and will be in place from and followed from the first day of operation.

8.3 Records Retention. EDCO shall use every Reasonable Business Effort to maintain those operational, weighing and business records that are regularly kept in the course of business according to industry practice. Such records shall be retained for a period of not less than one year, or in accordance with Applicable Law, whichever period is longer. Records shall be maintained in

an organized and efficient fashion such that they are readily available upon City request pursuant to this Article.

(a) Host Fee Records. EDCO shall keep daily accurate and complete records of Facility operations with respect to vehicular weight and inbound MMW tonnage of any nature whatsoever. Such records shall be in paper, electronic, magnetic or other media in sufficient detail to allow the EDCO to calculate, and City to corroborate, the Host Fee, any damages and other amounts hereunder and to determine compliance with the provisions of this Agreement. All computations, records, files and reports, relating to Host Fee calculations possessed by EDCO shall be made available to the City for inspection and copying upon City request therefor or in connection with a "Periodic Financial Audit" or "Annual Monitoring Review." EDCO shall furnish such records and other materials to the City no later than ten days after request therefor. EDCO shall preserve its records and other materials for a period of five years; provided, it shall keep videotapes for a period no less than one year.

(b) Errors in Host Fee Payments. Should the Host Fee records described in Subdivision (a) above indicate that EDCO has underpaid any Host Fee to the City, the City shall send a written notice to EDCO describing such underpayment and, within seven (7) business days EDCO shall pay the shortfall in Host Fee plus a late fee equaling the amount of the shortfall.

8.4 Annual Monitoring Review. In addition to any provisions contained elsewhere in this Agreement or any other specific term herein providing for City investigations of the Site, the City may in good faith review EDCO's performance under this Agreement at least once during each twelve (12) month period from the Effective Date or any other date that the Parties mutually agree upon in writing to determine whether, on the basis of substantial evidence, EDCO has complied in good faith with terms or conditions of this Agreement. In the absence of such good faith compliance, the local agency may initiate the termination or modification of the Agreement, pursuant to the procedures set forth in Section 6.5 and/or Article 12.

(a) Cost of Review. The reasonable cost of the annual monitoring review shall be borne by EDCO and EDCO shall deposit such amount as shall be reasonably required by City to pay for such review within fourteen (14) business days after written notice from the City detailing the costs of review. Prior to each monitoring review, EDCO shall deliver to City such information reasonably requested by City demonstrating EDCO's good faith compliance with the terms of this Agreement and as required by the Existing Land Use Regulations.

(b) Conduct and Result of Review. The Planning Director may conduct the review administratively, or may cause the review to be conducted. If the Planning Director finds that EDCO has substantially complied with the terms and conditions of this Agreement, the review shall be concluded. If said Director finds and determines that EDCO has not substantially complied with the terms and conditions of this Agreement for the period under review, the Director may either (i) pursue the administrative remedies pursuant to Sections 6.5 and 6.6, or (ii) declare a default by EDCO in accordance with Article 12.

(c) Certificate of Compliance. If at the conclusion of a periodic review the City finds that EDCO is in substantial compliance with this Agreement, the City shall, upon request by EDCO, issue an Estoppel Certificate to EDCO in the form shown on Exhibit "C."

(d) Failure to Conduct Annual Review. The failure of the City to conduct the Annual Review shall not be an EDCO Default.

8.5 Periodic Financial Audits. City may also audit the tonnage, revenues and payments to the City at any time or may perform an additional audit based on the request of complainants, in its sole discretion. If City requests such an audit in addition to the annual audit provided by EDCO with payment of the Host Fees, City will pay for the cost of the tonnage audit unless the audit reflects a discrepancy (negative) greater than three percent (3%) of the Host Fees due to the City, in which case EDCO shall pay for such audit; provided that any such audit conducted in accordance with any Enhanced Performance Review shall be a part of the Enhanced Performance Review and paid for thereunder. In addition, in the event of an audit generated by complaints, if any violations or significant issues are identified, EDCO shall reimburse the City for any costs incurred in performing the audit; City recognizes that said financial data is confidential and proprietary to EDCO and, to the extent allowed by law, agrees to work cooperatively to ensure that such information will not be publicly disclosed.

8.6 Enhanced Performance Review. City may conduct one (1) Enhanced Performance Review in every five (5) year period following the Effective Date of this Agreement. EDCO will make a deposit to pay the total cost of the Annual and Enhanced Performance Review, and pay the actual cost therefore. EDCO shall fully cooperate with the Planning Director and his staff and consultants conducting the reviews. An Enhanced Performance Review may consider, at minimum, the following:

(a) Any bona fide complaints received by the City about the approved operations, activities and events; and

(b) Any negative impacts to the City, as identified by City staff, which have not been resolved with EDCO. Negative impacts may also include impacts upon municipal revenue(s); and

(c) Violations of any of the performance standards under Article 6; and

(d) Performance of a periodic audit per Section 8.4.

An Enhanced Performance Review may be undertaken administratively by the Planning Director, or by the City Council or such other authority as the City Council may direct. The Enhanced Performance Review will incorporate the same procedures and remedies outlined in Section 8.3(c) and (d).

8.7 City Inspection. In addition, the City shall have the right, but not the obligation, to informally observe and inspect Facility operations at any time. In connection therewith, City and its representatives authorized by the City Manager shall have the right to enter the Facility at any time and speak to the designated Facility manager or other person then in actual managerial control of the Site; such City representatives shall have access to the Facility at all times, provided that they shall comply with the EDCO's reasonable safety and security rules and shall not interfere with the work of EDCO or its subcontractors. Upon City request, EDCO shall make specified personnel available to accompany City employees on inspections. EDCO shall ensure that its employees cooperate with the City and respond to the City's inquiries. EDCO shall make

operational, weighing and business records available to the City during Facility receiving hours upon City request; EDCO shall provide City copies thereof at City's request.

8.8 Public Records Act. EDCO acknowledges and agrees that information submitted to the City pursuant to this Agreement may be subject to compulsory disclosure by the City upon request from a member of the public under the California Public Records Act, Government Code Section 7920.000, et seq. The City acknowledges and agrees that certain information which may be disclosed by EDCO or which EDCO may be required to submit pursuant to the Agreement may be considered as confidential, proprietary, or a trade secret by EDCO. The City agrees to protect the confidentiality of materials submitted to it to the extent permitted by Applicable Law including the Public Records Act. EDCO shall specifically and clearly designate all materials as "CONFIDENTIAL" which it wishes the City to treat in confidence and withhold from public disclosure to the extent permitted by Applicable Law, including the Public Records Act. The City agrees not to voluntarily disclose any materials so designated to persons other than officers, attorneys, employees and consultants of the City involved in financing, overseeing and operating the Facility.

(a) If the City receives a request from a third party to review and/or copy material designated as "CONFIDENTIAL" it will inform EDCO and will permit EDCO to present arguments and facts to the City in support of the position that the material is entitled to an exemption from disclosure under the Public Records Act and should not be released. EDCO acknowledges that City has ten (10) days to respond to any public records request and that any such argument and facts in support of EDCO's assertion of an exemption must be delivered to the City early enough to be considered by the City and incorporated by the City in its response to the party requesting documents.

(b) If the City determines that the material is not entitled to an exemption and that it must be released, the City will advise EDCO of such determination prior to releasing the material so that EDCO may seek a court order enjoining its release. If the City determines that the material is entitled to an exemption, and the person who requested the information files a legal action seeking its release, the City will advise EDCO and will not oppose a motion by EDCO to intervene in the action. Further, in such situation EDCO shall intervene in the action and indemnify and hold City harmless from all legal expenses incurred in defending the action as well as any attorneys' fees which may be awarded to such third party, and the City shall tender its defense to EDCO.

(c) Notwithstanding the foregoing, City shall have no liability for damages to EDCO due to the disclosure of any information which EDCO believes to be confidential or a trade secret.

ARTICLE 9.0 TRANSFER

9.1 Definition of Transfer. As used in this Section, the term "Transfer" shall include any hypothecation, mortgage, pledge, or encumbrance of this Agreement or the Project by EDCO, subject to the exceptions set forth in Section 9.3 below. A Transfer shall also include the transfer to any person or group of persons acting in concert of more than thirty percent (30%) of the present equity ownership and/or more than thirty percent (30%) of the voting control of EDCO (jointly

and severally referred to herein as the “Trigger Percentages”), taking all transfers into account on a cumulative basis, except transfers of such ownership or control interest to an affiliate owned or controlled by the present beneficial owners of EDCO or members of their immediate family, or between members of the same immediate family, or transfers to a trust, testamentary or otherwise, in which the beneficiaries are limited to members of the transferor’s immediate family. A transfer of interests (on a cumulative basis) in the equity ownership and/or voting control of EDCO in amounts less than Trigger Percentages shall not constitute a Transfer subject to the restrictions set forth herein. In the event EDCO or its successor is a corporation or trust, such Transfer shall refer to the transfer of the issued and outstanding capital stock of EDCO, or of beneficial interests of such trust; in the event that EDCO or any general partner comprising EDCO is a limited or general partnership or a limited liability company, such Transfer shall refer to the transfer of more than the Trigger Percentages in the limited or general partnership or limited liability company interest; in the event that EDCO or any general partner is a joint venture, such Transfer shall refer to the transfer of more than the Trigger Percentages of such joint venture partner, taking all transfers into account on a cumulative basis.

9.2 Transfers Require Approval. EDCO shall not Transfer this Agreement or any of EDCO’s rights hereunder, or any interest in the Site or in the improvements thereon, directly or indirectly, voluntarily or by operation of law, except as provided below, without the prior written approval of City, and if so purported to be transferred, the same shall be null and void. EDCO will submit its request for City consent to the City together with documents, including but not limited to: (i) the transferee’s audited financial statements for at least the immediately preceding three (3) operating years; (ii) proof that the proposed transferee has municipal solid waste management experience on a scale equal to or exceeding the scale of operations conducted by EDCO; (iii) proof that in the last five (5) years, the proposed transferee has not suffered any citations or other censure from any federal, state, or local agency having jurisdiction over its waste management operations due to any significant failure to comply with federal, state, or local waste management law and that the transferee has provided the City with a complete list of such citations and censures; (iv) proof that the proposed transferee has at all times conducted its operations in an environmentally safe and conscientious fashion; (v) proof that the proposed transferee conducts its municipal solid waste management practices in accordance with sound waste management practices in full compliance with all federal, state, and local laws regulating the collection and disposal of waste, including hazardous waste; (v) proof that the transferee’s officers or directors have no criminal convictions constituting a default under Operations Agreement Article 8; and (vi) any other information required by the City to ensure the proposed transferee can fulfill the terms of the Agreements, including the payment of indemnities and damages and provision of bonds and/or performance standards, in a timely, safe, and effective manner.

9.3 Exceptions. The requirement to obtain City approval for a Transfer shall not apply to any of the following:

- (a) Any mortgage, deed of trust, sale/lease-back, or other form of conveyance for financing and any resulting foreclosure therefrom.
- (b) The granting of easements or dedications to any appropriate governmental City or utility or permits to facilitate the development of the Site.

(c) A sale or transfer resulting from or in connection with a reorganization as contemplated by the provisions of the Internal Revenue Code of 1986, as amended or otherwise, in which the ownership interests of a corporation are assigned directly or by operation of law to a person or persons, firm or corporation which acquires the control of the voting capital stock of such corporation or all or substantially all of the assets of such corporation.

(d) A sale or transfer to an affiliate of EDCO owned or controlled by the present beneficial owners of EDCO or members of their immediate family, or between members of the same immediate family, or transfers to a trust, testamentary or otherwise, in which the beneficiaries are limited to members of the transferor's immediate family.

9.4 Assumption of Obligations. No attempted Transfer of any of EDCO's obligations hereunder shall be effective unless and until the successor party executes and delivers to City an assumption agreement in a form approved by the City assuming such obligations. Following any such assignment or Transfer of any of the rights and interests of EDCO under this Agreement, the exercise, use and enjoyment shall continue to be subject to the terms of this Agreement to the same extent as if the assignee or transferee were EDCO.

9.5 Release of EDCO. City's consent to a Transfer shall not be deemed to release EDCO of liability for performance under this Agreement unless such release is specific and in writing executed by City, which release shall not be unreasonably withheld. Upon the written consent of City to the complete assignment of this Agreement and the express written assumption of the assigned obligations of EDCO under this Agreement by the assignee, EDCO shall be relieved of its legal duty from the assigned obligations under this Agreement, except to the extent EDCO is in default under the terms of this Agreement prior to said Transfer.

9.6 EDCO to Pay Transfer Costs. EDCO will pay City its reasonable expenses for attorneys' fees and investigation costs necessary to investigate the suitability of any proposed transferee or assignee, and to review and finalize any documentation required as a condition for approving any such Transfer.

ARTICLE 10.0 AMENDMENT OF DEVELOPMENT AGREEMENT

10.1 Initiation of Amendment. Either Party may propose an amendment to this Agreement.

10.2 Procedure. Except as set forth in Section 10.4 below, the procedure for proposing and adopting an amendment to this Agreement shall be the same as the procedure required for entering into this Agreement in the first instance.

10.3 Consent. Except as expressly provided in this Agreement, no amendment to all or any provision of this Agreement shall be effective unless set forth in writing and signed by duly authorized representatives of each of the Parties hereto and recorded in the Official Records of Los Angeles County.

10.4 Minor Modifications.

(a) Implementation of the Project may require minor modifications of the details of the Development Plan and performance of the Parties under this Agreement. The Parties desire to retain a certain degree of flexibility with respect to those items covered in general terms under this Agreement. Therefore, non-substantive and procedural modifications of the Development Plan shall not require modification of this Agreement.

(b) A modification will be deemed non-substantive and/or procedural if it does not result in a material change in fees, intensity of use, permitted uses, the maximum height and size of buildings, the reservation or dedication of land for public purposes, or the improvement and construction standards and specifications for the Project.

(c) Notwithstanding the foregoing, City will process any change to this Agreement consistent with state law and will hold public hearings therein if so required by State law and the Parties expressly agree nothing herein is intended to deprive any party or Person of due process of law.

10.5 Effect of Amendment to this Agreement. The Parties agree that except as expressly set forth in any such amendment, an amendment to this Agreement will not alter, affect, impair, modify, waive, or otherwise impact any other rights, duties, or obligations of either Party under this Agreement.

10.6 Right to Revise This Agreement Before Effective Date Based On Other Agreements. The Parties expressly acknowledge that this Agreement is tied to the execution of the other Agreements such that this and other Agreements will address various phases and overlapping issues with regard to the Project. The Parties accordingly acknowledge that the terms of this Agreement may be amended at any time up to the Effective Date in order to achieve consistency between this Agreement and later-enacted Agreements. To the extent any later-negotiated Agreements contain terms on a particular subject matter that are more specific or more detailed with respect to that subject than generalized provisions contained herein, the more specific provisions shall prevail and be controlling.

ARTICLE 11.0 LIMITATIONS ON AND RESERVATIONS OF AUTHORITY, INCLUDING FEES AND COSTS

11.1 Later Enacted Measures. This Agreement is a legally binding contract which will supersede any statute, ordinance, or other limitation enacted after the Effective Date, except as provided in Section 11.2. Any such enactment which affects, restricts, impairs, delays, conditions, or otherwise impacts the implementation of the Development Plan (including the issuance of any Future Development Approvals or permits otherwise applicable to the Project) in any way contrary to the terms and intent of this Agreement shall not apply to the Project unless otherwise provided by State law.

11.2 Limitations, Reservations and Exceptions. Only the following Land Use Regulations adopted by City hereafter shall apply to and govern the development of the Site (“Reservation of Authority”):

- (a) Existing Land Use Regulations and Existing Development Approvals.

(b) Future Regulations. Future Land Use Regulations which (i) are not in conflict with the Existing Land Use Regulations, or (ii) are in conflict with the Existing Land Use Regulations but the application of which to the development of the Site has been consented to in writing by EDCO.

(c) State and Federal Laws and Regulations. Where state or federal laws or regulations enacted after the Effective Date prevent or preclude compliance with one or more provisions of this Agreement, those Agreement provisions shall be modified, through revision or suspension, to the extent necessary to comply with such state or federal laws or regulations.

(d) Regulation of Integrated Waste Facilities. Any Future Land Use Regulation permitted by the Act or any successor statute which is a BMP and would reduce Project impacts on users and surrounding land uses.

(e) Public Health and Safety/Uniform Codes. Including the following:

(1) Adoption Automatic Regarding Uniform Codes. Future Land Use Regulations or amendments to Existing Regulations adopted by the City which are uniform codes and are based on recommendations of a multi-state professional organization and become applicable throughout City, such as, but not limited to, the Uniform Building, Electrical, Plumbing, Mechanical, or Fire Codes.

(2) Adoption Regarding Public Health and Safety/Uniform Codes. Future Land Use Regulations adopted by the City respecting public health and safety which are applicable throughout City, which are applicable to a significant number of businesses in the City, which are not directed exclusively or even primarily against EDCO, which result from findings by City that failure to adopt such Future Land Use Regulations would result in a serious condition injurious or detrimental to the public health and safety and that such Future General Regulations are reasonably necessary and limited to correct or avoid such injurious or detrimental conditions and/or correct conditions of nuisance or public complaint.

(3) Adoption Automatic Regarding State and Regional Programs. Future Land Use Regulations or amendments to Existing Land Use Regulations adopted by the City which are regional codes and are based on recommendations of a state, county or regional organization and become applicable throughout the region.

11.3 Regulation by Other Public Agencies. It is acknowledged by the Parties that other public agencies not within the control of City possess authority to regulate aspects of the development of the Site separately from or jointly with City and this Agreement does not limit the authority of such other public agencies nor does it in any form create a responsibility for City.

11.4 Limitation. City shall not, without the prior written consent of EDCO, impose any additional fees, taxes or assessments on all or any portion of the Project, whether as a condition to a Future Development Approval or otherwise, except such fees, taxes and assessments as are described in or required by this Agreement and/or the Development Plan. This Agreement shall not prohibit the application of fees, taxes or assessments as follows:

(a) EDCO shall be obligated to pay those fees, taxes or assessments which exist as of the Effective Date and any increases or decreases in same as adopted by the City Council and imposed on a City-wide basis.

(b) EDCO shall be obligated to pay any fees or taxes imposed on a City-wide basis which are not related to construction or development activities, such as business license fees or taxes and utility taxes which are not directed exclusively or even primarily against EDCO; for purposes of this Subsection (b), a tax will be deemed as “directed exclusively or even primarily against EDCO” where EDCO’s tax payments account for at least 50% of the total pool of tax funds for that particular tax.

(c) EDCO shall be obligated to pay all fees applicable to a permit application as charged by the City at the time such application is filed by EDCO.

(d) EDCO shall be obligated to pay any fees, taxes or assessments which are imposed on a City-wide basis or area-wide basis such as a utility tax, landscape or lighting assessment, or a community services assessment so long as the tax, fee or assessment was not directed exclusively or even primarily against owners, lessees, businesses, residents or occupants of the Project and which is also applicable to other businesses on a uniform basis in the City.

(e) EDCO shall be obligated to pay any fees as imposed pursuant to any assessment district established within the Project; and consented to by EDCO, or pursuant to any other agreement entered into by EDCO or otherwise proposed or consented to by EDCO.

(f) EDCO shall be obligated to pay any fees taxes or assessments which were imposed as a condition of the Existing Approvals, including this Agreement.

11.5 Payment of Costs of Agreement. As part of EDCO’s Costs, EDCO shall be responsible for City’s costs of preparing, processing and publishing this Agreement pursuant to the terms of the Reimbursement Agreement.

ARTICLE 12.0 ENFORCEMENT: CONSTRUCTION DEFAULT, REMEDIES AND TERMINATION

12.1 Rights of Nondefaulting Party after Default. The Parties acknowledge that both Parties shall have hereunder all legal and equitable remedies as provided by law following the occurrence of a default (as defined in Section 12.2 below) or to enforce any covenant or agreement herein. Before this Agreement may be terminated or action may be taken to obtain judicial relief the Party seeking relief for a default (“Nondefaulting Party”) shall comply with the notice and cure provisions of Section 12.2.

12.2 Notice of Default and Opportunity to Cure. A Nondefaulting Party in its discretion may elect to declare a default under this Agreement in accordance with the procedures hereinafter set forth for any failure or breach of the other Party (“Defaulting Party”) in its performance of a material duty or obligation of said Defaulting Party under the terms of this Agreement. However, the Nondefaulting Party must provide written notice to the Defaulting Party setting forth the nature of the breach or failure and the actions, if any, required by Defaulting Party to cure such breach or failure (“Default Notice”). The Defaulting Party shall be deemed in “default” under this

Agreement, where: (i) said breach or failure can be cured, but the Defaulting Party has failed to fully cure within thirty (30) days after the date of the Default Notice (subject to the provisions below), or (ii) a monetary default remains uncured for ten (10) days (or such lesser time as may be specifically provided in this Agreement).

(a) Non-Monetary Defaults; Longer Cure Period. The Defaulting Party on a non-monetary default shall not be deemed in breach of this Agreement, and such default shall be waived, if such non-monetary default cannot reasonably be cured within the above-prescribed thirty-day period, and as long as the Defaulting Party does each of the following:

(1) Notifies the Nondefaulting Party in writing with a reasonable explanation as to the reasons the asserted default is not curable within the thirty (30) day period;

(2) Notifies the Nondefaulting Party of the Defaulting Party's proposed cause of action to cure the default;

(3) Promptly commences to cure the default within the thirty (30) day period;

(4) Makes periodic reports to the Nondefaulting Party as to the progress of the program of cure; and

(5) Diligently prosecutes such cure to completion.

(b) Termination Upon Default. Upon receiving a Default Notice, should the Defaulting Party fail to timely cure any default, or fail to diligently pursue such cure as prescribed above, the Nondefaulting Party may, in its discretion, provide the Defaulting Party with a written notice of intent to terminate this Agreement and other Agreements ("Termination Notice"). The Termination Notice shall state that the Nondefaulting Party will elect to terminate the Agreement and such other Agreements as the Nondefaulting Party elects to terminate within thirty (30) days and state the reasons therefor (including a copy of any specific charges of default) and a description of the evidence upon which the decision to terminate is based. The Agreements to be terminated may include, without limitation, the DDA, Operations Agreement, and development approvals, excepting that a default or termination of this Agreement shall under no circumstances warrant a termination of the Trash Hauling Contract. Once the Termination Notice has been issued, the Nondefaulting Party's election to terminate Agreements will only be waived if (i) the Defaulting Party fully and completely cures all defaults prior to the date of termination, or (ii) pursuant to Section 12.5, below.

(c) EDCO Hearing Opportunity Prior to Termination. If EDCO is the Defaulting Party pursuant to Section 12.2(b), above, then the City's Termination Notice to EDCO shall additionally specify that EDCO has the right to a hearing prior to the City's termination of any Agreements ("Termination Hearing"). The Termination Hearing shall be scheduled as an open public hearing item at a regularly-scheduled City Council meeting within thirty (30) days of the Termination Notice, subject to any legal requirements including but not limited to the Ralph M. Brown Act, Government Code Sections 54950-54963. At said Termination Hearing, EDCO shall have the right to present evidence to demonstrate that it is not in default and to rebut any evidence

presented in favor of termination. Based upon substantial evidence presented at the Termination Hearing, the Council may, by adopted resolution, act as follows:

(1) Decide to terminate this Agreement and all other Agreements, except the Trash Hauling Contract; or

(2) Determine that EDCO is innocent of a default and, accordingly, dismiss the Termination Notice and any charges of default; or

(3) Impose conditions on a finding of default and a time for cure, such that EDCO's fulfillment of said conditions will waive or cure any default.

Findings of a default or a conditional default must be based upon substantial evidence supporting the following two findings: (i) that a default in fact occurred and has continued to exist without timely cure, and (ii) that such default has, or will, cause a material breach of this Agreement and/or a substantial negative impact upon public health, safety and welfare, the environment, the City or the financial terms established in the Agreements, Facility operations, or such other interests that the City and public may have in the Facility.

12.3 Waivers. Failure by a Party to insist upon the strict performance of any of the provisions of this Agreement by the other Party, or the failure by a Party to exercise its rights upon the default of the other Party, shall not constitute a waiver of such Party's right to insist and demand strict compliance by the other Party with the terms of this Agreement thereafter. Once the City and EDCO have approved all of the Agreements and Development Approvals, EDCO shall be deemed to have waived any claim that any condition of the Development Approvals is improper or that the approval constitutes a breach of the provisions of this Agreement.

12.4 Construction of Development Agreement. The language of this Agreement shall be construed as a whole and given its fair meaning. The captions of the sections and subsections are for convenience only and shall not influence construction. This Agreement shall be governed by the laws of the State of California. This Agreement shall not be deemed to constitute the surrender or abrogation of the City's governmental powers over the Site.

12.5 Severability. If any provision of this Agreement is adjudged invalid, void or unenforceable, that provision shall not affect, impair, or invalidate any other provision, unless such judgment affects a material part of this Agreement in which case the parties shall comply with the procedures set forth in Section 13.3(b).

12.6 Venue. In the event of any legal proceeding arising from the terms of this Agreement, venue shall be the State of California, in the County of Los Angeles.

12.7 Attorney's Fees. If either Party to this Agreement is required to initiate or defend a court action or proceeding brought by the other Party, the prevailing Party in such action or proceeding, in addition to any other relief which may be granted, whether legal or equitable, shall be entitled to reasonable attorney's fees. Attorney's fees shall include attorney's fees on any appeal, and in addition a Party entitled to attorney's fees shall be entitled to all other reasonable costs for investigating such action, taking depositions and discovery and all other necessary costs the court allows which are incurred in such litigation. All such fees shall be deemed to have accrued

on commencement of such action and shall be enforceable whether or not such action is prosecuted.

12.8 Time of Essence. Time is of the essence in the performance of the provisions of this Development Agreement as to which time is an element; and the resolution of any dispute which may arise concerning the obligations of EDCO and City as set forth in this Agreement.

12.9 Force Majeure. The time within which EDCO or the City shall be required to perform any act under this Development Agreement shall be extended by a period of time equal to the number of days during which performance of such act is delayed due to war, insurrection, strikes, lock-outs, riots, floods, earthquakes, fires, casualties, natural disasters, Acts of God, acts of the public enemy, epidemics, quarantine restrictions, freight embargoes, governmental action, inaction or restriction, initiative or referendum, moratoria, processing with governmental agencies other than City, unusually severe weather, or any other similar causes beyond the control or without the fault of the Party claiming an extension of time to perform. An extension of time for any such cause shall be for the period of the enforced delay and shall commence to run from the time of the commencement of the cause, if written notice by the Party claiming such extension is sent to the other Party within thirty (30) days of knowledge of the commencement of the cause. Any act or failure to act on the part of a Party shall not excuse performance by that Party.

12.10 Notice.

(a) To EDCO. Any notice required or permitted to be given by the City to EDCO under this Agreement shall be in writing and (i) delivered personally to EDCO or (ii) mailed with postage fully prepaid, registered or certified mail, return receipt requested, or (iii) deposited with a recognized overnight courier service, addressed as follows:

President
EDCO Transport Services, LLC
6670 Federal Blvd.
Lemon Grove, CA 91945

or such other address as EDCO may designate in writing to the City.

(b) To the City. Any notice required or permitted to be given by EDCO to City under this Agreement shall be in writing and (i) delivered personally to the City Manager, (ii) mailed with postage fully prepaid, registered or certified mail, return receipt requested, or (iii) deposited with a recognized overnight courier service, addressed as follows:

City Manager
City of Signal Hill
2175 Cherry Avenue
Signal Hill, CA 90755-3799

Copy to: Best Best & Krieger, LLP.
18101 Von Karman Avenue, Suite 1000
Irvine, CA 92612

Attn: Matthew Richardson, City Attorney or such other address as the City may designate in writing to EDCO.

Notices provided pursuant to this Section shall be deemed received at the date of delivery as shown on the affidavit of personal service or the Postal Service or overnight courier receipt.

12.11 Interest on Monetary Default. In the event EDCO fails to perform any monetary obligation under this Agreement, EDCO shall pay interest thereon at the rate of ten percent (10%) per annum from and after the due date of said monetary obligation until payment is actually received by City.

12.12 Rights and Duties Following Termination. Upon the termination of this Agreement, no Party shall have any further right or obligation hereunder and neither Party shall be entitled to damages arising from the breach or default of this Agreement or the termination hereof, except as follows:

(a) Prior to the Issuance of Building Permits. If this Agreement is terminated at any time prior to the issuance of building permits (excluding grading permits) for the Facility due to (i) EDCO's discretionary determination of financial infeasibility, or (ii) due to City's uncured default, then the City may recover all the costs that have been paid to it under the Reimbursement Agreement, including but not limited to all funds paid to it pursuant to Section 2 of the Reimbursement Agreement (the "Developer Deposit"), but EDCO will be entitled to all unexpended funds from the Developer Deposit as well as any Host Fee advancement which has been paid to the City pursuant to Section 7.1 hereof. If, however, this Agreement is terminated pursuant to EDCO's uncured default prior to issuance of building permits (excluding grading permits) for the Facility, then City shall be entitled to retain all unexpended Developer Deposit paid to the City and retain the Advance.

(b) Termination After Issuance of Building Permits, But Before Commencement of Operations. If this Agreement is terminated for any reason after the issuance of building permits (excluding grading permits) for the Facility, the following shall apply: (i) in the event of a default by EDCO, the City shall retain the Developer Deposit and the Advance, and (ii) in the event of a default by City, EDCO shall be entitled to recover all unexpended portions of the Developer Deposit and all portions of the Advance that have not been drawn-down against Host Fees earned by the City pursuant to Section 7.1 hereof.

(c) Remainder of Term. If this Agreement is terminated for any reason, the City shall remain entitled to retain or collect (i) all the costs identified in Sections 12.12(a) and 12.12(b), above, as well as (ii) any Host Fees due and owing to the City as of the date of termination, plus (iii) any Host Fees accruing from operations of the Facility after the date of termination so long as the Facility is in operation, and (iv) any amount of Host Fee Advance that has not been drawn-down (unless the City is the Party in default).

(d) Liquidated Damages & Costs Established in DDA, Operating Agreement or Trash Hauling Contract. After termination of this Agreement, both Parties shall remain liable for all costs, reimbursements and damages that may be applicable through the DDA, Operating Agreement, or Trash Hauling Contract, as well as any liquidated damages that have accrued

pursuant to Section 6.5 of this Agreement; nothing herein is intended to waive or limit the remedies available to either Party upon breach, termination or default of those Agreements.

(e) Survival. All indemnity obligations set forth herein shall survive termination of this Agreement.

12.13 Crossdefault. In the event that the City Council, following a hearing on an EDCO default pursuant to Section 12.2(c) hereof, determines to terminate this Agreement as a remedy for such default, such determination shall concurrently cause termination of the DDA, and the Operations Agreement, except as the City Council shall otherwise direct by resolution.

ARTICLE 13.0 INDEMNITY AND ENVIRONMENTAL LIABILITY

13.1 Indemnity Obligations. EDCO will be required to protect, defend, indemnify and hold harmless City, Agency and their elected officials, officers, employees, volunteers and agents (“Indemnified Parties”) from and against any and all Claims or Litigation, in addition to EDCO’s indemnity obligations with regard to Hazardous Material set forth in Section 13.2(c). Such indemnification shall not cover any Claim or Litigation due to the extent of the negligence or willful acts of the Indemnified Parties or the Indemnified Parties have received compensation from an insurance carrier for the full amount of such Claim. Such indemnification shall be limited to Claims or Litigation resulting directly from EDCO’s services and obligations under the terms of the Agreements and will survive the termination of the Agreements.

13.2 Condition of Site and Site Operations.

(a) Disclaimer of Warranties Concerning the Site including the Agency Parcel. EDCO understands and agrees that the Site including the Agency Parcel is in an “AS-IS” condition and that EDCO shall be responsible for addressing at its expense the physical, environmental and geotechnical condition of the Site, and the existence of any contamination, Hazardous Materials, debris, or other structures located on, under or about the Site or Agency Parcel to the extent necessary to develop and operate the Facility without giving rise to significant negative environmental impacts or public safety hazards. On EDCO’s behalf, the City has entered into an agreement with the State Office of Environmental Health Hazards (“OEHHA”) to conduct an environmental health risk assessment of the entire Site, not just the Agency Parcel, which assessment is being conducted by Dr. Susan Mearns, and which assessment is being paid for by EDCO through the Reimbursement Agreement. As a result of the retention of Dr. Mearns on EDCO’s behalf for the Site’s environmental health risk assessment, EDCO agrees to the following: (i) to protect, defend, indemnify and hold harmless City, Agency and Indemnified Parties from and against any and all Claims and Litigation arising out of or resulting in any way from Dr. Mearns’ performance of the environmental health risk assessment, regardless of whether such Claims or Litigation arise from, or are related to, bodily or psychological injury, property damage, monetary devaluation, environmental and geotechnical conditions, or the existence of any contamination, Hazardous Materials, debris, or other structures located on, under or about the Site or Agency Parcel; and (ii) to grant Dr. Mearns and or OEHHA agents acting on her behalf a temporary license to enter the EDCO Parcel for all purposes of duly conducting the environmental health risk assessment. All actual remediation work will be performed by EDCO as a part of the Project. City makes no representation or warranty concerning (i) the physical, environmental,

geotechnical or other condition of the Site, or of the Agency Parcel, (ii) the suitability of the Site or Agency Parcel for the Project, or for the proposal use of the Site or Agency Parcel; (iii) that OEHHA will issue any approval concerning the Project or (iv) that any report or approval issued by OEHHA will insulate EDCO from future environmental liability. The City is simply acting as a facilitator for the Project, and will share all documentation with EDCO, but EDCO must employ appropriate consultants and conduct its own due diligence. City specifically disclaims all representations or warranties of any nature concerning the Site or Agency Parcel made by it, City or its employees, agents and representatives. The foregoing disclaimer includes, without limitation, topography, climate air, water rights, utilities, present and future zoning, soil, subsoil, existence of Hazardous Materials or similar substances, the purpose for which the Site is suited, or drainage. City makes no representation or warranty concerning the compaction of soil, nor of the suitability of the soil for construction.

(b) Hazardous Materials. EDCO understands and agrees that in the event EDCO incurs any loss or liability concerning Hazardous Materials (as hereinafter defined) and/or oil wells and/or underground storage tanks and/or pipelines whether attributable to events occurring prior to or following the Effective Date of this Agreement, then EDCO may look to current or prior owners of the Site, but under no circumstances shall EDCO look to City or Agency for any liability or indemnification regarding Hazardous Materials and/or oil wells and/or underground storage tanks and/or pipelines. EDCO, and each of the entities constituting EDCO, if any, hereby waives, releases, remises, acquits and forever discharges and its officers, employees, and agents of and from any and all Environmental Claims, Environmental Cleanup Liability and Environmental Compliance Costs, as those terms are defined below, and from any and all actions, suits, legal or administrative orders or proceedings, demands, actual damages, punitive damages, loss, costs, liabilities and expenses, which concern or in any way relate to the physical or environmental conditions of the Site, the existence of any Hazardous Material thereon, or the release or threatened release of Hazardous Materials therefrom, whether existing prior to, at or after the Certificate of Completion. It is the intention of the Parties pursuant to this release that any and all responsibilities and obligations of City or Agency and any and all rights, claims, rights of action, causes of action, demands or legal rights of any kind of EDCO, its successors, assigns or any affiliated entity of EDCO, arising by virtue of the physical or environmental condition of the Site, the existence of any Hazardous Materials thereon, or any release or threatened release of Hazardous Material therefrom, are by this Release provision declared null and void and of no present or future force and effect as to the Parties. In connection therewith, EDCO and each of the entities constituting EDCO, expressly agree to waive any and all rights which said Party may have under Section 1542 of the California Civil Code which provides as follows:

“A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.”

EDCO Initials _____ City Initials _____

(c) Indemnity. In addition to its indemnity obligations in Section 13.1, EDCO shall indemnify, protect, defend, and hold harmless the Indemnified Parties from and against any

and all Environmental Claims, Environmental Cleanup Liability, Environmental Compliance Costs, and any other claims, actions, suits, legal or administrative orders or proceedings, demands or other liabilities resulting at any time from the release or threatened release of any Hazardous Materials of any kind whatsoever, in, on or under the Site at any time after construction of Site improvements and whether arising due to construction or thereafter, due to Facility operations, and including, but not limited to, all foreseeable and unforeseeable damages, fees, costs, losses and expenses, including any and all attorneys' fees and environmental consultant fees and investigation costs and expenses, directly or indirectly arising therefrom, and including fines and penalties of any nature whatsoever, assessed, levied or asserted against any Indemnified Parties to the extent that the fines and/or penalties are the result of a violation or an alleged violation of any Environmental Law. EDCO further agrees that in the event it obtains, from former or present owners of the Site or any other persons or entities, releases from liability, indemnities, or other forms of hold harmless relating to the subject matter of this Section, EDCO shall use its diligent efforts to obtain for City the same releases, indemnities and other comparable provisions.

(d) Definitions. For purposes of this Section 13.2, the following terms shall have the following meanings.

(1) "Environmental Claim" means any claim for personal injury, death and/or property damage made, asserted or prosecuted by or on behalf of any third party, including, without limitation, any governmental entity, relating to the Site or its operations and arising or alleged to arise under any Environmental Law.

(2) "Environmental Cleanup Liability" means any cost or expense of any nature whatsoever incurred to contain, remove, remedy, clean up, or abate any contamination or any Hazardous Materials on or under all or any part of the Site, including the ground water thereunder, including, without limitation, (i) any direct costs or expenses for investigation, study, assessment, legal representation, cost recovery by governmental agencies, or ongoing monitoring in connection therewith and (ii) any cost, expense, loss or damage incurred with respect to the Site or its operation as a result of actions or measures necessary to implement or effectuate any such containment, removal, remediation, treatment, cleanup or abatement.

(3) "Environmental Compliance Cost" means any cost or expense of any nature whatsoever necessary to enable the Site to comply with all applicable Environmental Laws in effect. "Environmental Compliance Cost" shall include all costs necessary to demonstrate that the Site is capable of such compliance.

(4) "Environmental Law" means any federal, state or local statute, ordinance, rule, regulation, order, consent decree, judgment or common-law doctrine, and provisions and conditions of permits, licenses and other operating authorizations relating to (i) pollution or protection of the environment, including natural resources, (ii) exposure of persons, including employees, to Hazardous Materials or other products, raw materials, chemicals or other substances, (iii) protection of the public health or welfare from the effects of by-products, wastes, emissions, discharges or releases of chemical substances from industrial or commercial activities, or (iv) regulation of the manufacture, use or introduction into commerce of chemical substances, including, without limitation, their manufacture, formulation, labeling, distribution, transportation, handling, storage and disposal.

(5) “Hazardous Material” is defined to include any hazardous or toxic substance, material or waste which is or becomes regulated by any local governmental authority, the State of California, or the United States Government. The term “Hazardous Material” includes, without limitation, any material or substance which is: (i) petroleum or oil or gas or any direct or derivate product or byproduct thereof; (ii) defined as a “hazardous waste,” “extremely hazardous waste” or “restricted hazardous waste” under Sections 25115, 25117 or 25122.7, or listed pursuant to Section 25140, of the California Health and Safety Code, Division 20, Chapter 6.5 (Hazardous Waste Control Law); (iii) defined as a “hazardous substance” under Section 25316 of the California Health and Safety Code, Division 20, Chapter 6.8 (Carpenter-Presley-Tanner Hazardous Substance Account Act); (iv) defined as a “hazardous material,” “hazardous substance,” or “hazardous waste” under Sections 25501(j) and (k) and 25501.1 of the California Health and Safety Code, Division 20, Chapter 6.95 (Hazardous Materials Release Response Plans and Inventory); (v) defined as a “hazardous substance” under Section 25281 of the California Health and Safety Code, Division 20, Chapter 6.7 (Underground Storage of Hazardous Substances); (vi) “used oil” as defined under Section 25250.1 of the California Health and Safety Code; (vii) asbestos; (viii) listed under Chapter 11 of Division 4.5 of Title 22 of the California Code of Regulations, or defined as hazardous or extremely hazardous pursuant to Chapter 10 of Division 4.5 of Title 22 of the California Code of Regulations; (ix) defined as waste or a hazardous substance pursuant to the Porter-Cologne Act, Section 13050 of the California Water Code; (x) designated as a “toxic pollutant” pursuant to the Federal Water Pollution Control Act, 33 U.S.C. Section 1317; (xi) defined as a “hazardous waste” pursuant to the Federal Resource Conservation and Recovery Act, 42 U.S.C. Section 6901, et seq. (42 U.S.C. § 6903); (xii) defined as a “hazardous substance” pursuant to the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. Section 9601, et seq. (42 U.S.C. § 9601); (xiii) defined as “Hazardous Material” pursuant to the Hazardous Materials Transportation Act, 49 U.S.C. Section 5101, et seq.; or (xiv) defined as such or regulated by any “Superfund” or “Superlien” law, or any other federal, state or local law, statute, ordinance, code, rule, regulation, order or decree regulating, relating to, or imposing liability or standards of conduct concerning Hazardous Materials and/or oil wells and/or underground storage tanks and/or pipelines, as now, or at any time hereafter, in effect.

13.3 Third-Party Litigation.

(a) Non-liability of City. As set forth above, City has determined that this Agreement is consistent with the General Plan and that the General Plan meets all of the legal requirements of state law. The Parties acknowledge that:

(1) In the future there may be challenges to legality, validity and adequacy of the General Plan; and

(2) If successful, such challenges could delay or prevent the performance of this Agreement and the development of the Property.

In addition to the other provisions of this Agreement, including, without limitation, the provisions of this Article 13, City shall have no liability under this Agreement for any failure of City to perform under this Agreement or the inability of EDCO to develop the Project as contemplated by the Development Plan or this Agreement as the result of a judicial determination

that on the Effective Date, or at any time thereafter, the General Plan, the Land Use Regulations, this Agreement, or portions thereof, are invalid or inadequate or not in compliance with law.

(b) Revision of Land Use Restrictions. If for any reason the General Plan, Land Use Regulations, this Agreement or any part thereof is hereafter judicially determined as provided above to be not in compliance with the State or Federal Constitutions, laws or regulations and if such noncompliance can be cured by an appropriate amendment thereof otherwise conforming to the provisions of this Agreement, then this Agreement shall remain in full force and effect to the extent permitted by law. The Development Plan and this Agreement shall be amended, as necessary, in order to comply with such judicial decision.

(c) Participation in Litigation; Indemnity. EDCO agrees to indemnify City and its elected boards, commissions, officers, agents and employees and will hold and save them and each of them harmless from any and all actions, suits, claims, liabilities, losses, damages, penalties, obligations and expenses (including but not limited to attorneys' fees and costs) against the City and/or Agency for any Claims or Litigation which arise during the Term of this Agreement arising from EDCO's occupancy of or activities on the Parcels. City shall promptly provide EDCO with notice of the pendency of any such Claims or Litigation for which EDCO has responsibility under this Article 13, and request that EDCO defend the same. If City fails promptly to notify EDCO of any such Claims or Litigation or fails to cooperate fully in the defense thereof, EDCO shall not, thereafter, be responsible to defend, indemnify, or hold harmless City. EDCO may utilize the City Attorney's office or use legal counsel of EDCO's choosing, but shall reimburse City for any necessary legal cost incurred by City. If EDCO fails to do so, City may defend the Claims or Litigation and EDCO shall pay the cost thereof, but if City chooses not to defend the Claims or Litigation, it shall have no liability to EDCO. EDCO's obligation to pay the defense cost shall extend until judgment and thereafter through any appeals. In the event of an appeal, or a settlement offer, the Parties will confer in good faith as to how to proceed and the resolution of any such appeal and the Parties' response to any such settlement offer shall require the consent of both Parties, which consent shall not be unreasonably withheld. Notwithstanding the foregoing however, City shall have the unilateral right to settle such Claims or Litigation brought against it in its sole and absolute discretion at any time after the elapse of two (2) years from the filing of a court action on any Claims or Litigation and EDCO shall remain liable hereunder for the Claims and Litigation provided that (i) if the settlement would reduce the density or intensity of the Project by thirty-three percent (33%) or more, and (ii) EDCO opposes the settlement, then if City still unilaterally determines to settle such Claims or Litigation, then City shall be responsible for its own litigation expense and shall promptly reimburse Developer for reasonable litigation costs actually paid by EDCO (with the burden on EDCO to document and prove such costs) but shall bear no other liability to EDCO.

13.4 Survival of Indemnity Objections. Notwithstanding any other provision of this Agreement, EDCO's release and indemnification as set forth in the provisions of this Article 13, shall survive the termination of this Agreement and shall continue in perpetuity.

ARTICLE 14.0 **BODILY INJURY, PROPERTY DAMAGE, AND WORKERS' COMPENSATION INSURANCE**

14.1 Types of Insurance. Prior to the entry of EDCO on the Site and the commencement of any construction by or on behalf of EDCO, EDCO shall procure and maintain (or cause to be procured and maintained), at its sole cost and expense, in a form and content reasonably satisfactory to City, during the entire term of such entry or construction, the following policies of insurance:

(a) Garage Liability or Commercial General Liability Insurance (collectively “CGL”). EDCO shall keep or cause to be kept in force for the mutual benefit of City and EDCO CGL insurance against claims and liability for personal injury or death arising from the use, occupancy, disuse or condition of the Site, improvements or adjoining areas or ways, affected by such use of the Site or for property damage, providing protection of at least Five Million Dollars (\$5,000,000.00) for bodily injury or death to any one person, at least Five Million Dollars (\$5,000,000.00) for any one accident or occurrence, and at least One Million Dollars (\$1,000,000.00) for property damage.

(b) Builder’s Risk Insurance. EDCO shall procure, or has procured during construction, and shall maintain (or cause to be procured and maintained) in force “all risks” builder’s risk insurance including vandalism and malicious mischief, covering improvements in place and all material and equipment at the job site furnished under contract, but excluding contractor’s, subcontractor’s, and construction manager’s tools and equipment and property owned by contractor’s or subcontractor’s employees, with limits in accordance with subsection (a) above.

(c) Workers’ Compensation. EDCO shall also furnish or cause to be furnished to City evidence reasonably satisfactory to it that any contractor with whom EDCO has contracted for the performance of any work for which EDCO is responsible hereunder carries workers’ compensation insurance as required by law.

(d) Other Insurance. EDCO may procure and maintain any insurance not required by this Agreement.

14.2 Insurance Policy Form, Content and Insurer. All insurance required by express provisions hereof shall be carried only by insurance companies authorized to do business by California, rated “A-” or better in the most recent edition of Best Rating Guide, and only if they are of a financial category Class VIII or better, unless such insurance is not available from companies meeting such standards at a commercially reasonable price and City agrees in writing to different standards. All such property policies shall contain language, to the extent obtainable, to the effect that (i) any loss shall be payable notwithstanding any act of negligence of City or EDCO that might otherwise result in the forfeiture of the insurance; (ii) EDCO waives the right of subrogation against City and against City’s agents and representatives; (iii) the policies are primary and noncontributing with any insurance that may be carried by City; and (iv) the policies cannot be canceled or materially changed except after thirty (30) days’ written notice by the insurer to City or City’s designated representative. EDCO shall furnish City with certificates evidencing the insurance. City shall be named as additional insured on all policies of insurance required to be procured by the terms of this Agreement other than workers’ compensation insurance.

14.3 Failure to Maintain Insurance and Proof of Compliance. EDCO shall deliver to City, in the manner required for notices, copies of certificates of all insurance policies required

hereunder within the following time limits: (a) for insurance required above, prior to entry of EDCO on the Site and the commencement of any construction by or on behalf of EDCO; and (b) for any renewal or replacement of a policy already in existence, simultaneously with the expiration or termination of the existing policy. If EDCO fails or refuses to procure or maintain insurance as required hereby or fails or refuses to furnish City with required proof that the insurance has been procured and is in force, such failure shall be a default hereunder, subject to the applicable cure period.

ARTICLE 15.0 EFFECT OF AGREEMENT ON TITLE; ESTOPPEL

15.1 Binding on Successors. All of the provisions, agreements, rights, powers, standards, terms, covenants and obligations contained in this Agreement shall be binding upon the Parties and their respective heirs, successors (by merger, consolidation, or otherwise) and assigns, devisees, administrators, representatives, lessees, and all other persons acquiring any rights or interests in EDCO's Property, or any portion thereof, whether by operation of laws or in any manner whatsoever and shall inure to the benefit of the Parties and their respective heirs, successors (by merger, consolidation or otherwise) and assigns.

15.2 Enforceability as Covenants. All of the provisions of this Agreement shall be enforceable as equitable servitudes and constitute covenants running with the land pursuant to Applicable Law. Appropriate Covenants, Conditions and Restrictions shall be recorded against all EDCO's interests in the Site and shall incorporate all provisions of this Agreement by reference.

15.3 Covenants Run with the Land. Each covenant to do or refrain from doing some act on the Site hereunder (i) is for the benefit of and is a burden upon every portion of the Site, and mutually burdens and benefits the EDCO Parcel and Agency Parcel, (ii) runs with such lands, and (iii) is binding upon each Party and each successive owner during its ownership of such properties or any portion thereof, and each person having any interest therein derived in any manner through any owner of such lands, or any portion thereof, and each other person succeeding to an interest in such lands.

15.4 Estoppel Certificates. Either Party may at any time deliver written Notice to the other Party requesting an estoppel certificate (the "Estoppel Certificate") stating:

- (a) The Agreement is in full force and effect and is a binding obligation of the Parties; and
- (b) The Agreement has not been amended or modified either orally or in writing or, if so amended, identifying the amendments; and
- (c) That no enforcement actions are outstanding or if so the status thereof.

15.5 A Party receiving a request for an Estoppel Certificate shall provide a signed certificate to the requesting Party within thirty (30) days after receipt of the request. The Estoppel Certificate shall be substantially in the same form as Exhibit "C" EDCO shall pay all City's cost incurred in issuing such Estoppel Certificate.

ARTICLE 16.0 CITY OFFICERS AND EMPLOYEES: NON-DISCRIMINATION

16.1 Non-liability of City Officers and Employees. No official, agent, contractor, or employee of City shall be personally liable to EDCO, or any successor in interest, in the event of any default or breach by City or for any amount which may become due to EDCO or to its successor, or for breach of any obligation of the terms of this Agreement.

16.2 Conflict of Interest. No officer or employee of City shall have any financial interest, direct or indirect, in this Agreement nor shall any such officer or employee participate in any decision to the Agreement which affects the financial interest of any corporation, partnership or association in which he is, directly or indirectly, interested, in violation of any state statute or regulation.

16.3 Covenant Against Discrimination. EDCO covenants that, by and for itself, its heirs, executors, assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of race, color, creed, religion, sex, marital status, sexual orientation, national origin, or ancestry in the performance of this Development Agreement. EDCO shall take affirmative action to insure that employees are treated during employment without regard to their race, color, creed religion, sex, marital status, sexual orientation, national origin or ancestry.

ARTICLE 17.0 GENERAL

17.1 No Third Party Beneficiaries. The only parties to this Agreement are EDCO and City. There are no third party beneficiaries, and this Agreement is not intended, and shall not be construed, to benefit or be enforceable by any other person whatsoever.

17.2 Mutual Covenants. The covenants contained herein are mutual covenants and also constitute conditions to the concurrent or subsequent performance by the Party benefited thereby of the covenants to be performed hereunder by such benefited Party.

17.3 Relationship of Parties. It is specifically understood and agreed by and between the Parties that the Project is a private development, that neither Party is acting as the agent of the other in any respect hereunder, and that such Party is an independent contracting entity with respect to the terms, covenants, and conditions contained in this Agreement. The only relationship between City and EDCO is that of a government entity regulating the development of private property and the owner of such private property.

17.4 Entire Agreement. Except as this Agreement may be implemented through the other Agreements, this Agreement constitutes the entire agreement between the Parties with respect to the subject matter of this Agreement, and this Agreement supersedes all previous negotiations, discussions, and agreements between the Parties. No parole evidence of any prior or other agreement shall be permitted to contradict or vary the terms of this Agreement.

17.5 Further Actions and Instruments. Each of the Parties shall cooperate with and provide reasonable assistance to the other to the extent necessary to implement this Agreement. Upon the request of either Party at any time, the other Party shall promptly execute, with acknowledgment or affidavit if reasonably required, and file or record such required instruments and writings and take any actions as may be reasonably necessary to implement this Agreement or to evidence or consummate the transactions contemplated by this Agreement.

17.6 Counterparts. This Agreement may be executed by the Parties in counterparts which counterparts shall be construed together and have the same effect as if all of the Parties had executed the same instrument.

17.7 Recording. The City Clerk shall cause a copy of this Agreement or a Memorandum of Agreement to be executed by City and recorded in the Official Records of Los Angeles County no later than thirty (30) days after the Effective Date. The recordation of this Agreement is deemed a ministerial act and the failure of City to record the Agreement as required by this Section and the Agreement Statute does not make this Agreement void or ineffective.

17.8 Authority to Execute. The Persons executing this Agreement on behalf of the Parties hereto warrant that (i) such Party is duly organized and existing, (ii) they are duly authorized to execute and deliver this Development Agreement on behalf of said Party, (iii) by so executing this Agreement, such Party is formally bound to the provisions of this Agreement, (iv) the entering into of this Agreement does not violate any provision of any other Agreement to which said Party is bound and (v) there is no litigation or legal proceeding which would prevent the Parties from entering into this Agreement.

IN WITNESS WHEREOF, City and EDCO have executed this Agreement on the date first above written.

EDCO

EDCO Transport Services, LLC a California
Limited Liability Company

By: Steve South
Title: President

By: John Snyder
Title: Vice President

CITY OF SIGNAL HILL

By: _____
Lori Woods, Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:

BEST BEST & KRIEGER LLP

Matthew Richardson, City Attorney

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA
COUNTY OF _____

On _____, 20__ before me, _____, Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature: _____ (Seal)

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA
COUNTY OF SAN BERNARDINO

On _____, 20__ before me, _____, Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature: _____ (Seal)

EXHIBIT “A”

MAP OF SITE

[On following pages]



EXHIBIT A-2

2020

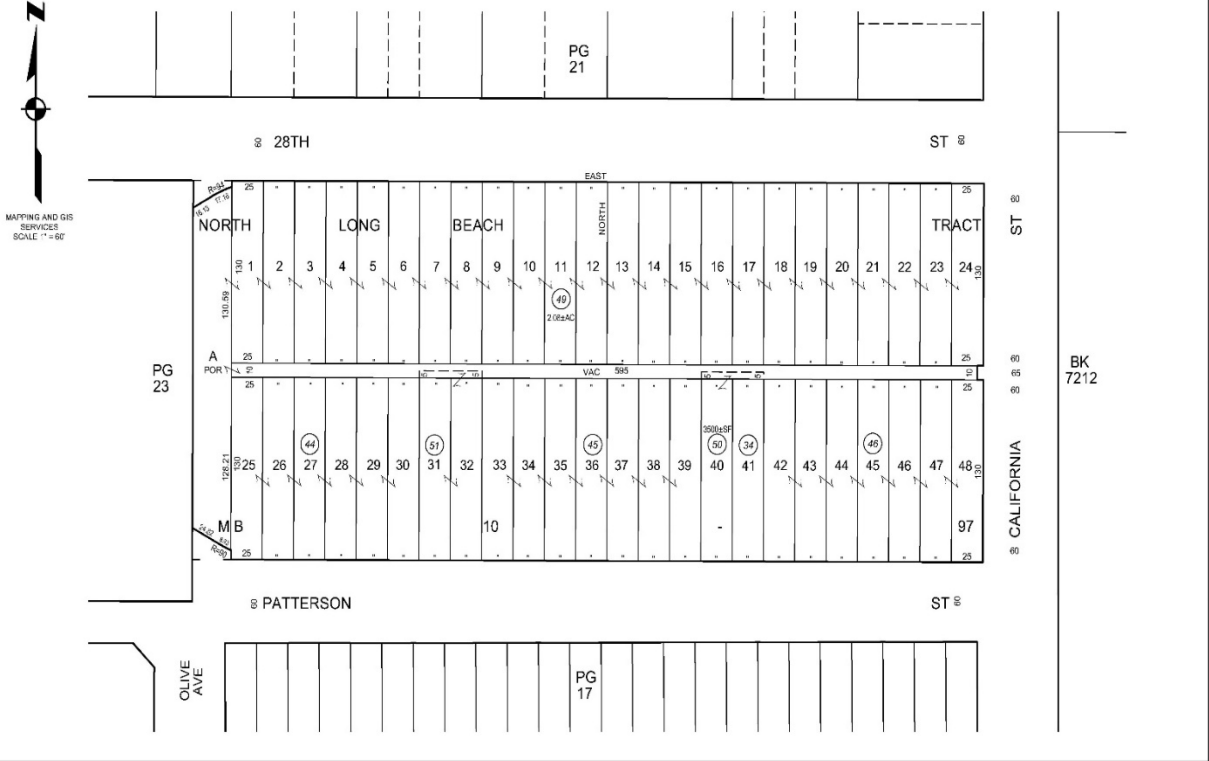


EXHIBIT “B”

SCOPE OF DEVELOPMENT

A. **SCOPE OF DEVELOPMENT**. The Project scope includes the development of a ±69,000 square foot recycling and transfer facility on a 3.87-acre site in the City. The Facility will serve as a point to accept, process, recover, and transfer MMW and residue with subsequent diversion activities to an appropriate permitted disposal facility. The MRF/TS will be composed of the following areas:

- Office and administration area
- Employee area
- Operations, material recovery facility, transfer/self haul/load out area
- Green waste area
- HHW area
- Construction debris area
- Maintenance area

The Project will conform to the City of Signal Hill Site Plan and Design Review Guidelines. The facility will be sized to handle up to 2,500 tons per day, although the actual amount processed per day may be less than this maximum.

B. **COMPONENTS**. The facility will have the following multiple components:

1. **Transfer Station**. The Facility’s transfer station component for refuse collection and transfer may include a below grade loadout area to allow for the transfer vehicles to be top-loaded through loadout ports at the tipping floor. A portion of the transfer station shall also be dedicated for self-haul use.

2. **Material Recovery Facility**. The transfer station may include facilities for diversion of recyclable products from commercial and residential customers. The recyclable products shall be baled within the building and transferred to recyclable load out vehicles at the exterior recyclable load out dock. Residue from the diversion process shall be conveyed to the adjacent transfer station for loadout.

3. **Buyback Operation**. A buyback operation allowing the public to drop off recyclables and receive compensation (certified CA redemption center).

4. **Green Waste Area**. A green waste area would accommodate collection of green waste. The green waste shall be transferred to outgoing delivery vehicles.

5. **E-Waste**. The MRF/TS shall provide a location for Signal Hill residents to dispose of e-waste free of charge.

6. **Household Hazard Waste**. EDCO will endeavor to establish a permitted Household Hazardous Waste disposal facility on-site which will be contingent on funding through the County of Los Angeles.

7. Construction Debris Area. A construction debris area would be utilized for collection, sorting and recyclable load out of construction material debris. The incoming material shall be screened, sorted and diverted to containers. The containers shall be transferred to outgoing recyclable load out vehicles.

8. Administrative Offices and Public Education. An office area will be dedicated for administrative support for the Facility. This area shall include an area suitable for educating local students and members of the public about solid waste and recycling management, and demonstrating the activities of the Facility. Areas used for public education may include an observational gallery and a location suitable for audio/visual or multimedia presentations and suitable technical equipment therefor. EDCO may implement a public education program to include some or all of (i) visitor presentations on source reduction, recycling and solid waste management; (ii) tours of the Facility; (iii) visual presentations on the role of recycling and evolving developments in the business of solid waste management; (iv) dialogue on, and direct interaction with, the evolving practices of solid waste management; and (v) distribution of educational and promotional materials.

9. Employee Areas. Employee areas will include restrooms, a break area and offices. The upper level control area will be used to accommodate the operational control functions of the facility. The employee area/control area will be linked to the office area via an upper level observation gallery.

10. Maintenance Building. A separate maintenance building shall include two service bays and an adjacent office/parts area.

11. Accessory Operations. Site improvements will include fueling operations, a truck wash area, truck scale and scale house, load out ramps, truck loading docks, driveways, employee and operation vehicle parking, and landscaping.

12. Roadway Improvements. Certain roadway improvements to 28th Street between California Avenue and Olive Avenue in order to provide site circulation. The Project will also include parkway improvements along all street frontages.

C. EXISTING DEVELOPMENT APPROVALS. Existing Development Approvals that have been previously granted concurrent with this Agreement, or will be granted in the future and deemed concurrent herewith, including the following:

1. Memorandum of Understanding between the City, Agency and EDCO;
2. Certification of CEQA EIR and adoption of Addendum to EIR;
3. Zoning Ordinance Amendment amending the General Industrial Specific Plan (Specific Plan 19);
4. Zoning Ordinance Amendment to add a new planning area, Planning Area 3 (Recycling and Transfer Station) to Specific Plan 19 on the Official Zoning Map;
5. Conditional Use Permit, Site Plan and Design Review;

6. Vacation of an unimproved alley right-of-way between California and Olive Avenue;
7. Vacation of Olive Avenue right-of-way between Patterson and 28th Streets;
8. Grading Permit/Proof of Compliance with NPDES requirements (SWPPP and SUSMP);
9. Amendment to Non-Disposal Facility Element;
10. Amendment to County Solid Waste Management Plan;
11. Right-of-way encroachment permit;
12. DDA with Agency for Agency Parcel;
13. Operating Agreement for the MRF/TS.

EXHIBIT “C”

ESTOPPEL CERTIFICATE

Date Requested: _____

Date of Certificate: _____

On _____, 2024, the City of Signal Hill approved the Development Agreement between EDCO Transport Services, LLC, a California limited liability company, and the City of Signal Hill (the “Development Agreement”).

This Estoppel Certificate certifies that, as of the Date of Certificate set forth above:

[CHECK WHERE APPLICABLE]

- 1. The Development Agreement remains binding and effective.
- 2. The Development has not been amended.
- 3. The Development Agreement has been amended in the following aspects:

- 4. To the best of our knowledge, neither EDCO nor any of its successors is in default under the Development Agreement.
- 5. The following defaults exist under the Development Agreement:

This Estoppel Certificate may be relied upon by a person or entity of any interest in the property which is the subject of the Development Agreement.

CITY OF SIGNAL HILL

BY: _____
PLANNING DIRECTOR

