

EXCLUSIVE NEGOTIATING AGREEMENT

THIS EXCLUSIVE NEGOTIATING AGREEMENT (“ENA”) is entered into this _____ day of _____, 2011 (“Effective Date”), by and between the **CITY OF LANCASTER**, a municipal corporation and charter city (the “City”), and **OEC – LANCASTER, LLC**, a California limited liability company doing business as **ECOLUTION** (“OEC”), on the terms and provisions set forth below.

CITY AND OEC HEREBY AGREE AS FOLLOWS:

Section 1. Good Faith Negotiations.

City and OEC agree for a period of ninety (90) days from the Effective Date (“Negotiation Period”) to negotiate diligently and in good faith to prepare a Disposition and Development Agreement (“DDA”) or other appropriate agreement(s) to be considered for execution between City and OEC, in the manner set forth herein, with respect to the purchase and development of certain real property (“Site”), which shall be located within the boundaries of the City of Lancaster (“Lancaster”), as a materials recovery and conversion facility (“Plant”).

Except as provided below, OEC agrees, during the Negotiation Period, as hereinafter defined, and provided that this ENA remains in effect, not to enter into negotiations and/or an agreement with any other public entity, including but not limited to a city, county, special district or joint powers authority, for the development, construction and/or operation of a materials recovery and conversion facility.

Except as provided below, City agrees, during the Negotiation Period, as hereinafter defined, and provided that this ENA remains in effect, not to enter into an agreement to construct a waste-to-energy facility within Lancaster that does not include the participation and consent of OEC; provided, that the foregoing shall not be deemed to prevent City from furnishing to anyone public records if and to the extent required by applicable law. Notwithstanding the foregoing, OEC acknowledges that its rights hereunder are subject to City’s obligations under State law, including, but not limited to the conduct or disposition of any proceedings which require notice and public hearing, the California Environmental Quality Act, and the requirements for OEC and/or City to obtain certain approvals from other public entities. The obligation to negotiate in good faith requires that OEC communicate with City with respect to those issues for which agreement has not been reached, and in such communication to follow reasonable negotiation procedures including meetings, telephone conversations and correspondence.

It is understood by the parties that final accord on those issues may not be reached.

Section 2. Required Actions. The parties agree to take the following action during the Negotiation Period:

(1) OEC agrees to and shall search diligently and in good faith for a Site that is suitable, sufficient and adequate to operate the Plant. The parties agree that the Site shall be located within Lancaster and shall be approximately forty (40) acres in size. City agrees to and shall use reasonable efforts to assist OEC in its search for the Site as set forth herein; provided, however, that the cost and expense of OEC’s search for the Site shall be borne solely by OEC.

(2) If and to the extent OEC identifies a Site that City, in its sole and absolute discretion, determines is suitable, sufficient and adequate to operate the Plant, City and OEC agree to diligently and in good faith negotiate the terms of a DDA whereby the Site, if and to the extent acquired by City, shall be conveyed to OEC and OEC shall construct and operate the Plant thereon; provided, however, that neither party shall be obligated to execute a DDA. Any DDA resulting from the negotiations hereunder shall become effective only after and if the DDA has been considered and approved by City in the manner required by law. OEC acknowledges and agrees that the DDA shall provide that upon closing, City shall sell and convey to OEC and OEC shall accept the Site "as is, where is" with all faults and defects.

(3) If and to the extent OEC identifies a Site that is suitable, sufficient and adequate to operate the Plant, City agrees to and shall diligently and in good faith seek to acquire the Site from the record owner(s) on a voluntary basis. City shall seek to acquire the Site only if City agrees that the Site is suitable, sufficient and adequate to operate the Plant. City shall have no obligation to acquire the Site unless the record owner(s) of the Site agree(s) to sell the Site to City on a voluntary basis, the terms of such sale are acceptable to City (in its sole and absolute discretion) and a DDA has been executed by and between City and OEC.

(4) OEC agrees to and shall diligently and in good faith seek to secure long-term waste collection and/or disposal agreements with counties and cities throughout the State of California. City agrees to and shall use reasonable efforts to assist OEC in securing long-term waste and/or disposal agreements as set forth herein, which shall include (upon OEC's request) City providing a staff representative to attend meetings between OEC and any other county or city considering a long-term waste and/or disposal agreement with OEC; provided, however, that the cost and expense of OEC seeking to secure long-term waste collection and/or disposal agreements shall be borne solely by OEC.

(5) If and to the extent OEC identifies a Site, City is successful in negotiating the acquisition of the Site and the parties hereto enter into a DDA, OEC agrees to and shall diligently and in good faith seek to secure all licenses, permits and other governmental and/or regulatory approvals necessary in order to operate the Plant. City agrees to and shall use reasonable efforts to assist OEC in securing such required licenses, permits and other governmental and/or regulatory approvals; provided, however, that the cost and expense of any required license, permit and/or other governmental and/or regulatory approval shall be borne solely by OEC.

Section 3. Default and Termination.

In the event that this ENA is terminated by City for a reason other than the failure of OEC to negotiate in good faith, and/or OEC submits a written request to cease negotiations and OEC is not currently in default of this ENA, neither party shall have any further rights against or liability to the other under this ENA. In the event OEC has not continued to negotiate diligently and in good faith, or has failed to timely discharge its responsibilities pursuant to this ENA, City shall give written notice thereof to OEC who shall then have fifteen (15) business days to commence negotiating diligently and in good faith. Following the receipt of such notice and the failure of OEC to thereafter commence negotiating in good faith within such fifteen (15) business days, this ENA may be terminated by City.

In the event City fails to negotiate diligently and in good faith, OEC shall give written notice thereof to City which shall then have fifteen (15) business days to commence negotiating in good

faith. Following the receipt of such notice and the failure of City to thereafter commence negotiating diligently and in good faith within such fifteen (15) business days, this ENA may be terminated by OEC. In the event of such termination by OEC, neither party shall have any further rights against or liability to the other under this ENA.

Upon automatic termination of this ENA at the expiration of the Negotiation Period or such extension thereof as may be hereafter approved in writing by the parties, or upon execution by City and OEC of a DDA; neither party shall have any further rights against or liability to the other under this ENA. If a DDA has been executed by City and OEC, the DDA shall thereafter govern the rights and obligations of the parties with respect to the development of the Site.

Section 4. Assignment. This ENA shall not be assigned by OEC without prior written approval of City, which City shall grant or refuse at its sole discretion.

Section 5. Full Disclosure. OEC is required to make full disclosure to City of its principals, officers, major stockholders, major partners, joint ventures, key managerial employees and other associates, and all other material information concerning OEC and its associates. Any significant change in the principals, associates, partners, joint venturers, negotiators, development manager, consultants, professionals and directly-involved managerial employees of OEC is subject to the approval of City.

Section 6. OEC's Financial Capacity. Prior to execution of the DDA, OEC shall submit to City satisfactory evidence of its ability to meet its responsibilities relative to financing the purchase of the Site and construction/operation of the Plant.

If applicable, OEC's proposed method of obtaining construction financing for the development of the Site and construction of the Plant shall be submitted to City concurrently with the execution and delivery by OEC of the DDA to City for approval.

OEC's proposed method of obtaining long-term development financing for the purchase of the property and any improvement of the Site and construction/operation of the Plant shall be submitted to City concurrently with execution and delivery by OEC of a DDA to City for approval.

OEC will be required to make and maintain full disclosure to City of its methods of financing to be used in the development of the Site and construction/operation of the Plant.

Section 7. [Intentionally omitted.]

Section 8. Warranty of Signatories. The signatories to this ENA represent and warrant that they have the authority to execute this ENA on behalf of the principles they purport to represent.

Section 9. Broker's Fee. City represents to OEC and OEC represents to City that no broker has been engaged in connection with this transaction and no fee shall be paid in connection herewith.

Section 10. Attorneys' Fees. In any action between the parties to interpret, enforce, award, modify, rescind, or otherwise in connection with any of the terms or provisions of this ENA, the prevailing party in the action shall be entitled, in addition to damages, injunctive relief, or any other relief to which it might be entitled, to reasonable costs and expenses including, without limitation, litigation costs, reasonable attorneys' fees and expert witness fees.

Section 11. Notices. All notices under this ENA shall be given in writing by personal delivery, or by certified mail or registered United States Mail, return receipt requested, postage prepaid, or by facsimile and shall be deemed communicated when received if given by personal delivery or upon receipt or rejection if mailed as provided above or upon receipt by facsimile on a business day during business hours in the location where received, and if not then on the next business day, as the case may be. Mailed notices shall be addressed as set forth below, but either party may change its address by giving written notice thereof to the other in accordance with the provisions of this section.

City: City of Lancaster
Lancaster City Hall
44933 North Fern Avenue
Lancaster, California 93534
Attn.: Mark Bozigian, City Manager

OEC: OEC – Lancaster, LLC
1130 Auto Mall Drive
Lancaster, CA 93534
Attn: Timothy H. Fuller, President/CEO

Section 12. Limitations of ENA.

By its execution of this ENA, City is not committing itself to or agreeing to undertake: (a) disposition of land to OEC; or (b) any other acts or activities requiring the subsequent independent exercise of discretion by City.

This ENA does not constitute a disposition of property or exercise of control over property by City and does not require a public hearing. Execution of this ENA by City is merely an agreement to enter into a period of negotiations according to the terms hereof, reserving final discretion and approval by City as to any Disposition and Development Agreement and all proceedings and decisions in connection therewith.

IN WITNESS WHEREOF, the parties hereto have executed this ENA as of the date first set forth in this ENA.

OEC:

OEC – LANCASTER, LLC, a California limited liability company doing business as **ECOLUTION**

By: _____

Its: _____

CITY:

CITY OF LANCASTER, a municipal corporation and charter city

By: _____

Its: _____