

NON-DISCLOSURE AGREEMENT

THIS NON-DISCLOSURE AGREEMENT ("NDA") is entered into this ___ day of _____, 2013 ("Effective Date"), by and between the **CITY OF LANCASTER**, a California municipal corporation and charter city ("City"), and **OEC - LANCASTER, LLC**, a California limited liability company doing business as **ECOLUTION ("OEC")**, on the terms and provisions set forth below.

R E C I T A L S

WHEREAS, the City is required pursuant to Chapter 13.16 of the Lancaster Municipal Code to provide for the collection and disposal of Refuse (the term "Refuse" is defined in Section 13.16.020 of the Lancaster Municipal Code) within the City's jurisdictional limits; and

WHEREAS, OEC is an advanced municipal refuse separation and renewable energy development company that specializes in maximizing the recovery and diversion of recyclables from landfill-bound municipal Refuse and the conversion of lower value wet and dry organic materials into renewable fuel and energy, sending only residual materials to a landfill; and

WHEREAS, on February 14, 2011, the parties entered into an Exclusive Negotiating Agreement and a Material Recovery and Conversion Agreement for the purpose of negotiating the conceptual design and development of a Materials Recovery and Conversion Facility ("MRF") in the City of Lancaster; and

WHEREAS, the parties now desire to enter into this NDA for the purpose of discussing and disclosing detailed information regarding the design, scientific or technical information, operations, marketing strategies, and/or other information, data, or plans specifying the feasibility of OEC's proposal for the construction and operation of a MRF; and

WHEREAS, during these discussions OEC may disclose certain proprietary information to the City. The parties desire to assure and maintain the confidential status of such proprietary information; and

WHEREAS, the Parties desire to enter into this NDA for the period of ninety (90) days from the Effective Date ("Disclosure Period"), subject to an option for a ninety (90) day extension if, in the opinion of the City, substantial progress has been achieved,

NOW THEREFORE, the City and OEC hereby agree as follows:

1. Cooperation.

1.1. City and OEC agree to cooperate fully and to work together in good faith with each other during the Disclosure Period in order to best prepare a conceptual plan to design, build, and operate a MRF. The obligation to cooperate in good faith requires that OEC communicate with the 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

1.2. OEC agrees to not 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 MRF during the Disclosure Period and while this NDA remains in effect.

1.3. City agrees to hold and use Confidential Information only for the purposes stated in this NDA and shall restrict disclosure of such Confidential Information to its employees with a need to know and will hold the Confidential Information or any part thereof in strict confidence and will not permit any disclosure thereof to any person or persons outside its organization and not use or derive any direct or indirect benefit from the Confidential Information or any part thereof without the prior written consent of OEC. For purposes of this NDA, "Confidential Information" shall mean any and all information disclosed to or received by City regarding OEC's construction and/or operation of the MRF, including without limitation, information regarding OEC's business and operations, employees and contractual relationships.

1.3.1. The obligations of City under this NDA shall not apply to information which:

- (a) was in the public domain at the time of disclosure or comes into the public domain without breach of this NDA; or
- (b) was known by City at the time of disclosure from a source other than OEC which was not under a confidentiality obligation with respect to such information; or
- (c) was disclosed or contained within a public record, the disclosure of which is required pursuant to the California Public Records Act (Cal. Gov't Code § 6250 *et seq.*); or

1.4. Except as provided below, City agrees, during the Disclosure Period, and provided that this NDA remains in effect, not to enter into an agreement to construct a MRF within its jurisdictional boundaries that does not include the participation and/or consent of OEC.

1.5. It is understood that City has received unsolicited proposals for waste conversion technologies and that during the Disclosure Period City may receive other unsolicited proposals. City may continue to accept unsolicited proposals during the Disclosure Period, may review such proposals and request additional information about such proposals during the Disclosure Period without being in violation of this Agreement.

1.6. It is understood the City maintains ownership over the solid waste, green waste, or recyclable materials collected within the City boundaries and may direct the waste hauler, after giving the waste hauler a six month notice, to deliver such waste materials to any particular facility for processing. If an agreement is ultimately reached for OEC to build and operate a MRF within the City's jurisdictional boundaries, the City would direct that Refuse be delivered to such MRF. The Lancaster 2012 Franchise Hauler Diversion Summary Report stated the total residential tonnage for all types of waste collected was 58,567 tons from residential customers, 39,289 tons from commercial customers and 17,043 tons from industrial customers.

1.7. It is understood that OEC may explore the option of acquiring Refuse from sources outside the City and may expect to utilize such other sources in the design and operation of a MRF in the City.

1.8. It is understood by the parties that final accord may not be reached and that OEC may not construct and operate a MRF in the City.

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

2.1. OEC agrees to provide the City with design specifications, scientific or technical facts, operational procedures, marketing strategies, data, plans, or any information necessary to assure the City, to the City's satisfaction, of the feasibility and profitability of a MRF within the City and with the resources currently available to the City. The viability of the MRF shall be totally and solely based upon available Refuse currently existing and controlled by the City and not be reliant upon any third-party refuse commitment. OEC agrees to answer all questions and concerns to the best of OEC's ability regarding the technical aspects of the MRF or other questions presented by the City concerning the capabilities of OEC in performing the proposed operations and the sustainability of the project.

2.2. City agrees to cooperate fully with OEC in disclosing relevant information requested by OEC for establishing the feasibility of the MRF, subject to the City's obligations under State law, and to in good faith consider OEC's proposals. The City agrees to promptly respond to OEC's requests and to provide feedback on OEC's proposals in a timely manner.

3. Default and Termination. In the event this NDA is terminated by the City for any reason during the Disclosure Period, other than the failure of OEC to provide convincing assurances of the feasibility of the project as solely determined by the City, and/or OEC submits a written request to cease cooperation and OEC is not currently in default of this NDA, neither party shall have any further rights against or liability to the other under this NDA. In the event OEC has not continued to cooperate diligently and in good faith during the Disclosure Period, or has failed to timely discharge its responsibilities pursuant to this NDA, the City shall give written notice thereof to OEC who shall then have fifteen (15) business days or until the end of the Disclosure Period, whichever comes first, 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 NDA may be terminated by the City. In the event the City fails to negotiate diligently and in good faith, OEC shall give written notice thereof to the City which shall then have fifteen (15) business days or until the end of the Disclosure Period, whichever comes first, to commence negotiating in good faith. Following the receipt of such notice and the failure of the City to thereafter commence negotiating diligently and in good faith within such fifteen (15) business days, this NDA 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 NDA.

Upon automatic termination of this NDA at the expiration of the Disclosure Period, or such extension thereof as may be hereafter approved in writing by the parties, or upon

execution by the City and OEC of a succeeding agreement, neither party shall have any further rights against or liability to the other under this NDA.

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

5. Full Disclosure. OEC is required to make full disclosure to the 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 ventures, negotiators, development manager, consultants, professionals and directly-involved managerial employees of OEC is subject to the approval by the City.

6. OEC's Financial Capacity. Prior to execution of any further agreements, OEC shall submit to the City satisfactory evidence of its ability to meet its responsibilities relative to financing the purchase of a site and construction/operation of the MRF. OEC's proposed method of obtaining construction financing for the development of a site and construction of the MRF shall be submitted to the City concurrently. OEC's proposed method of obtaining long-term development financing for the purchase of the property and any site improvements and/or the construction/operation of the MRF shall be submitted to the City. OEC will be required to make and maintain full disclosure to the City of its methods of financing to be used in the development of a site and construction/operation of the MRF.

7. Warranty of Signatory. The signatories to this NDA represent and warrant that they have the authority to execute this NDA on behalf of the principles they purport to represent.

8. No Brokers. The City represents to OEC and OEC represents to the City that no broker has been engaged in connection with this transaction and no fee shall be paid in connection herewith.

9. 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 NDA, 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.

10. Notices. All notices under this NDA shall be given in writing by personal delivery, or by certified mail or registered United States Mail, return receipt requested, postage prepaid, and shall be deemed communicated when received if given by personal delivery or upon receipt or rejection if mailed as provided above. 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

OEC:
OEC - Lancaster, LLC
1130 Auto Mall Drive
Lancaster, California 93534

Attn.: Mark Bozigian, City Manager

Attn: Timothy H. Fuller,
President/CEO

11. Limitations of NDA.

11.1. By its execution of this NDA, the 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 the City.

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

[Signatures begin on the next page]

IN WITNESS WHEREOF, City and OEC have executed this NDA as of the date and year first set forth in the first paragraph.

OEC-LANCASTER, LLC, a California limited liability company

By: _____
Timothy H. Fuller, President/CEO

CITY OF LANCASTER, a California municipal corporation and charter city

By: _____
Mark V. Bozigian, City Manager

ATTEST:

Geri K. Bryan, CMC, City Clerk

APPROVED AS TO FORM:

City Attorney