



AGENDA REPORT

CITY OF SAN CLEMENTE

City Council Meeting

910 Calle Negocio
2nd Floor
San Clemente, California
www.san-clemente.org

Meeting Date: 1/17/2023

Agenda Item: 6I.

Department: Utilities

Prepared By: David Rebensdorf, Utilities Director

Subject:

RECEIVE AND FILE UPDATE ON CONTRACT NEGOTIATIONS WITH CR&R

Fiscal Impact:

There is available funding for negotiations in the amount of \$40,000 in account number 058-518-43690.

Summary:

Negotiations with CR&R are in progress; staff estimates presenting a contract for Council consideration at the end of February or early March.

Background:

On September 6, 2022, City Council authorized staff to send a letter to CR&R ending its automatic Franchise Agreement renewal beginning on July 1, 2024. Based on an analysis by MSW Consultants (MSW) regarding other solid waste and recycling services within Orange County (Attachment 1 of Attachment 1), MSW recommended negotiating with CR&R for up to four months, including the provision of Street Sweeping services or revenue to perform the services as part of the contract. If negotiations were unsuccessful within four months, then a Request for Proposal for solid waste and recycling services would be prepared.

Discussion:

City staff, MSW and the City Attorney have been diligently working to finalize a revised contract for City Council review. Unfortunately, due to the complexities and scope to prepare a new detailed contract, four months was an aggressive timeline (including holidays). Staff anticipates City Council review of a proposed contract at a regularly scheduled meeting late February or early March.

Plan and Policy Consistency:

The approval is consistent with the following General Plan Goals and Policies:

- Goal: Continue to implement a cost-effective solid waste management program (consisting of source reduction, collection, recycling and disposal that meets or exceeds State and Federal waste diversion and recycling standards.
- Policy PSFU-8.01 Coordination. We coordinate with contractors and other public agencies to identify and implement cost-effective solid waste and recycling strategies.

Council Strategy:

The approval is consistent with Council Strategy 2 - Grow resident confidence and value in City

services and operations - in that the City is evaluating its contractual services to make improvements and continue to meet changing environmental regulatory requirements.

Recommended Actions:

Staff Recommendation

Staff recommends that the City Council receive and file this administrative status report.

Attachment:

1. September 6, 2022 Agenda Report with attachments.

Notification:

None.



AGENDA REPORT

CITY OF SAN CLEMENTE

City Council Meeting

Meeting Date: 9/6/2022

Agenda Item: 10B

Department: Utilities

Prepared By: David Rebensdorf, Utilities Director

Subject:

REVIEW OF THE CITY'S CR&R SOLID WASTE AND RECYCLING AGREEMENT BY MSW CONSULTANTS.

Fiscal Impact:

Yes, there is available funding for the proposed \$40,000 expenditure in account number 058-518-43690.

Summary:

MSW Consultants reviewed and analyzed the City's Franchise Agreement with CR&R, Inc. (CR&R), neighboring agencies' Solid Waste and Recycling Contracts, and current market conditions and made recommendations as outlined in the "Recommendation Regarding the City's Solid Waste Franchise Agreement with CR&R" (Attachment 1).

Background:

The City has a Franchise Agreement with CR&R for solid waste and recycling handling and hauling services from residential and commercial properties in the City. The City is mandated by the State to provide for CalRecycle requirements as to waste handling and hauling in the City. The Franchise Agreement with CR&R has been amended several times over the years to provide additional services to meet mandates. The Fiscal Year 2021-22 budget included funding for the City to hire a specialty consultant to assist staff with review of the existing agreement with CR&R as to the City's compliance with current State mandates, competitiveness of City's services as to rates charged by CR&R and the franchise fee paid to the City, and to identify service improvements that may be implemented.

To facilitate an analysis, City staff solicited a Request for Proposals (RFP) from qualified consultants through PlanetBids and the City Manager approved a contract with MSW Consultants in the amount of \$25,000 to evaluate the City's Franchise Agreement with CR&R.

Discussion:

MSW Consultants prepared a report titled "Recommendation Regarding the City's Solid Waste and Franchise Agreement with CR&R" (Attachment 1) which provides information related to trends within the industry, information about the current market, a list of companies currently providing solid waste and recycling services within Orange County, an overview of the franchise agreements, and recommendations for the City. In addition, the report compares the risks and benefits of issuing CR&R a notice to terminate the automatic contract extension. Based on the City's existing Franchise Agreement, if the City does not issue a notice prior to July 1, the Franchise Agreement automatically renews for three years starting July 1. If notice is given, the Franchise Agreement will terminate in

two years beginning on July 1, 2024, which allows the City time to potentially acquire a new hauler or modify its existing Franchise Agreement. Due to scheduling challenges, CR&R has extended the July 1 deadline to September 30, 2022.

Based on the report by MSW Consultants, the recommendation is to issue CR&R a notice to terminate service prior to June 30, 2022 and negotiate with CR&R for up to six months from June 30, 2022. CR&R is interested in negotiating a new contract with the City and has provided a proposal to the City (Attachment 2) outlining proposed changes to the Franchise Agreement. In the event a revised Franchise Agreement cannot be finalized within the next four months, the recommendation is to conduct an RFP, which will provide the City approximately 18 months to complete the RFP process and bring on a new hauler if one is chosen by the City Council.

As part of the negotiation, staff is recommending including Street Sweeping or a mechanism for collecting fees for Street Sweeping as part of the Solid Waste and Recycling Franchise Agreement. Revenue for Street Sweeping was previously included as part of the Clean Ocean Fee which requires voter approval for funding. This is an opportunity to establish a consistent revenue source to clean trash and debris from public City streets. The current Street Sweeping program requires approximately \$300,000 in revenue with a total program cost of approximately \$600,000 annually with \$300,000 from violations.

To facilitate an evaluation of proposed rates by CR&R, preparation of a revised Franchise Agreement and negotiations, staff is recommending a First Amendment to the Professional Services Agreement with MSW Consultants. As part of MSW Consultants proposal from January 24, 2022, there was a scope of work for negotiating in the amount of \$40,000 and conducting a competitive bid process for \$110,000. Based on CR&R's willingness to fast track the negotiation given their initial proposal to the City, it is anticipated less than \$40,000 will be required, the First Amendment contract work will be billed on actual expenses not-to-exceed \$40,000.

Plan and Policy Consistency:

The approval is consistent with the following General Plan Goals and Policies:

- Goal: Continue to implement a cost-effective solid waste management program (consisting of source reduction, collection, recycling and disposal that meets or exceeds State and Federal waste diversion and recycling standards.
- Policy PSFU-8.01 Coordination. We coordinate with contractors and other public agencies to identify and implement cost-effective solid waste and recycling strategies.
- Policy PSFU-8.08. Collection. We provide solid waste collection for commercial, industrial, and residential uses and developments, in accordance with State law.

Council Strategy:

The approval is consistent with Council Strategy 2 - Grow resident confidence and value in City services and operations - in that the City is evaluating its contractual services to make improvements and continue to meet changing environmental regulatory requirements.

Recommended Actions:

Staff Recommends That the City Council:

1. Authorize the City Manager to issue CR&R a notice of termination of the automatic

renewal of the Franchise Agreement prior to September 30, 2022. This will result in the Franchise Agreement termination on June 30, 2024;

2. Direct City staff to:
 - a. Enter into negotiations with CR&R for a period not to exceed four months; and,
 - b. If an agreement is not reached within four months, issue a Request for Proposals and solicit firms for a new solid waste and recycling Franchise Agreement;
3. Include an analysis for Street Sweeping services or revenue as part of recommended action number two; and
4. Approve and authorize the City Manager to execute, Amendment No. 1 to Contract AC-1046, by and between the City of San Clemente and MSW Consultants, providing for solid waste and recycling negotiations. This Amendment increases the contract from \$25,000 to an amount not to exceed \$65,000 (an increase of \$40,000).

Attachments:

1. Recommendations Regarding the City's Solid Waste and Franchise Agreement with CR&R prepared by MSW Consultants.
2. CR&R Solid Waste Management System Proposal to the City of San Clemente dated 8/16/2022.
3. City of San Clemente Franchise Agreement with CR&R.
4. Professional Services Agreement with MSW Consultants.
5. First Amendment to the Professional Services Agreement with MSW Consultants.
6. Presentation from MSW Consultants titled "Solid Waste Agreement: Negotiate or RFP."

Notification:

None.



**Recommendation Regarding
the City's Solid Waste Franchise Agreement with CR&R**

Prepared by



**Solid Waste Consultants
to Local Government**

June 7, 2022

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1 Executive Summary

In March 2022, the City retained our firm to provide a recommendation to the City whether it should either:

- Enter into sole-source negotiations for a new solid waste franchise agreement with its current waste hauler, CR&R Incorporated (CR&R) or;
- Issue an RFP and solicit competitive proposals a new agreement.

In developing our recommendation, we:

1. Considered recent trends in the solid waste industry.
2. Surveyed the solid waste market in Orange County.
3. Reviewed the City's current solid waste agreement.
4. Outlined the general pros and cons of conducting sole-source negotiations vs. issuing an RFP.
5. Analyzed those pros and cons in relation to the City's current agreement.

Based on our review and analysis, we recommend that the City:

- Enter into negotiations now with CR&R, for a period not to exceed six (6) months.
- In addition, prior to June 30, 2022, give CR&R a notice of termination of the automatic renewal of the term of the current franchise agreement. As a result of this action, the term of the current agreement will be set to end on June 30, 2024. If the City does not give notice of automatic termination on or before June 30, 2022, due to provisions in the agreement, the term of the current agreement will automatically be extended for an additional year to June 30, 2025.
- If the City and CR&R are not able to successfully negotiate a new agreement within six (6) months, conduct a competitive procurement process by developing and issuing an RFP to other qualified firms.

2 Recent Trends in the Solid Waste Industry

The two most significant trends today in the solid waste industry in California are the implementation of SB 1383, and a combination of economic factors that are creating upward pressure on solid waste collection and recycling operating costs.

2.1 SB 1383 – Short-lived Climate Pollutants

In 2016, the State adopted SB 1383, the most significant change to solid waste handling regulations in 30 years. SB 1383 requires cities to implement programs to significantly reduce the amount of organic waste and recoverable edible food sent to landfills. The goals of SB 1383 are to reduce by 75% the amount of organic waste going to landfills by 2025, and reduce by 20% the amount of recoverable edible food that is currently landfilled.

While this new law was adopted in 2016, the final regulations that implemented the law were not finalized until November of 2020, and it did not become effective until January 2022. Although waste and recycling companies will perform many of the tasks of SB 1383, the regulatory requirements of this new law are placed squarely on the backs of local governments. SB 1383 requires local jurisdictions to:

- Amend their municipal codes to enforce the requirement that essentially all waste generators recycle their organics, including dry organics (cardboard, paper, etc.).
- Ensure that their waste haulers provide organics collection service.
- Estimate the amount of organic waste and recoverable edible food generated within their boundaries and provide that information to their county for facility planning purposes.
- Enhance existing edible food recovery programs to reduce the amount of recoverable edible food sent to landfills.
- Ensure that all newly constructed buildings have readily accessible space for recycling.
- Ensure that all new construction be designed with water efficient landscape.
- Develop inspection and compliance review programs to ensure that waste generators fulfill the requirements of SB 1383 and the jurisdiction's municipal code.

- Conduct periodic education and outreach to all waste generators, and specifically, generators of edible recoverable food.
- Ensure that the City's hauler performs annual route inspections to minimize contamination.
- Procure a minimum quantity of recovered organic waste products.
- Prepare and submit annual compliance reports to CalRecycle.

While SB 1383 is a major driver of the recent increase in solid waste customer rates across the State, there are several other economic factors that are contributing to this trend.

2.2 Factors Creating Upward Pressure on Operating Costs

In addition to SB 1383, a significant trend in the solid waste industry today is the conflation of economic factors that are creating upward pressure on waste hauler's operating costs, and thereby, causing increases in customer rates. These economic trends include:

- A shift in tonnage volume per unit from the commercial sector to the residential sector
- Continuing shortage of qualified truck drivers
- Continuing impact of China virtually banning the import of recyclables (China Sword)
- Supply chain constraints
- Steel prices
- Increased fuel costs
- General Inflation

3 Solid Waste Market in Orange County

Our survey of the solid waste market in South County is comprised of: 1) an overview of hauler market share and major waste facilities, 2) a description of recent events and circumstances, and, 3) a comparison of current rates.

3.1 Hauler Market Share and Major Solid Waste Facilities

Chart 1 below shows the current market share of waste haulers in Orange County, as well as major waste facilities. This chart shows that one hauler (Republic) has most of the market in North County, and that two haulers, CR&R and Waste Management (WM), have all the market in South County. Chart 1 also shows that, of the three haulers with the most market share, CR&R's facility of the Ortega Highway (and its planned facility near the Prima Desheca Landfill) are the closest to the City of San Clemente of the three haulers with the most market share.

Chart 1 – Waste Hauler Market Share and Major Facilities (Draft)

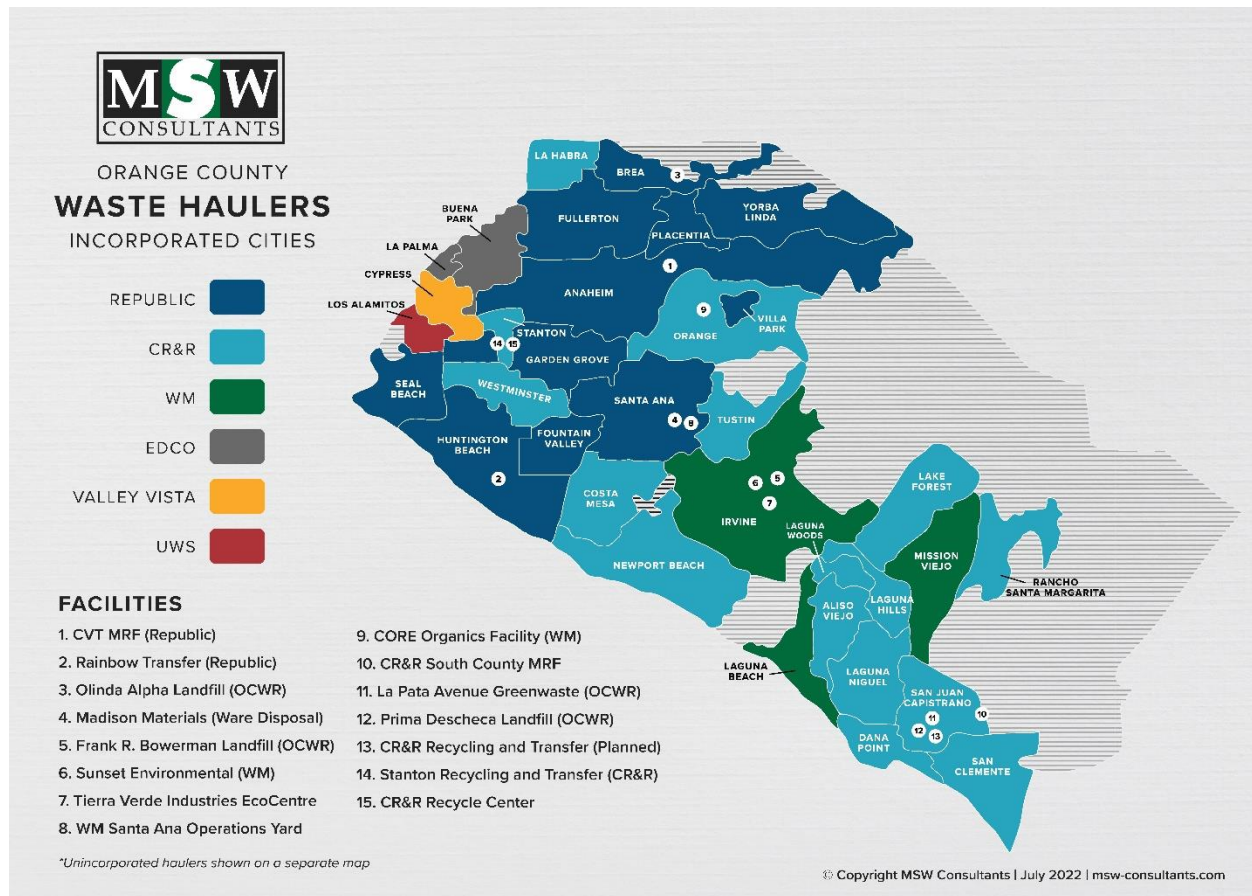


Table 1 below lists the operating facilities of the major waste haulers that are able to serve South County along with the distance of each facility from the City of San Clemente. This list shows that CR&R currently has the closest facility to the City (9 miles), and that its planned facility near the Prima Desheca Landfill will result in CR&R’s operating facility being only 4 miles away from the City.

Table 1 – Operating Facilities of Major Waste Haulers

Facility Name	Hauler	Location	Distance from San Clemente
CVT MRF	Republic Services	In Anaheim near intersection of 57 and 91 Freeways	38
CR&R South County MRF	CR&R	Ortega Highway off of Gibby Road	9
CR&R Recycling and Transfer (Planned for 2024)	CR&R	La Pata Avenue near the Prima Desheca Landfill	4
Sunset Environmental	WM	Near the intersection of Barranca and Jamboree Rd. in Irvine	28
Madison Resource Recovery	WARE Disposal	In Santa Ana on Fourth St. between downtown and the I-5 Freeway	30

3.2 Recent Events and Circumstances

Table 2 the following page describes some recent events and circumstances cities in South County related to solid waste franchise agreements. Chart 2 on the following page compares the solid waste contract expiration dates of each of the cities in South County.

Table 2 – Recent Events and Circumstances in Orange County

City	Event
Aliso Viejo	CR&R has served the city since 2005. On November 2021 the city negotiated Amended and Restated the Franchise Agreement with CR&R. The current term of the city’s agreement is set to end in October 2027.
Dana Point	CR&R had served the city since 1996, when it acquired Solag Disposal. In 2019, the city amended its agreement with CR&R. As a result, the current term of the city’s agreement is set to end in June 2024. The city is currently in the process of negotiating amended and extended agreement; likely by 5 years.
Irvine	WM has the exclusive right (and obligation) to serve only the single-family residential sector. Several haulers openly compete for customers in the commercial and multi-family sector. WM has served the residential sector in the city for several decades. The current term of the city’s agreement is set to end in August 2026. The city is currently in negotiations with WM.
Laguna Beach	WM has served the city since 1993. The current term of the city’s agreement is set to end in June 2023. In May 2021, the city Council decided to begin a competitive procurement process. The city is now developing an RFP.
Laguna Hills	The current term of the city’ agreement with CR&R is set to end in June 2024. Lake Forest and Laguna Hills are now collaboratively conducting a single competitive procurement process.
Laguna Niguel	CR&R has served the city since 1996, when it acquired Solag Disposal. In 2018, the city negotiated a new agreement with CR&R. As a result, the current term of the city’s agreement is set to end in December 2028.
Laguna Woods	In April 2021, with less than two years remaining on its contract, and a potential option to extend its term by 5 years, WM notified the city that it would not object if the city issued an RFP. In July 2021, the City issued an RFP, and received two (2) proposals; from WM and CR&R. The city awarded the contract to CR&R in October 2021. The term of the new contract extends to 2032.
Lake Forest	The current term of the city’s agreement with CR&R is set to end in December 2028. Lake Forest and Laguna Hills are now collaboratively conducting a single competitive procurement process.
Mission Viejo	Mission Viejo’s city code requires the city to competitively procure waste collection every 10 years. The city issued an RFP in July 2019. City received proposals from CR&R, Republic Services, and WM. CR&R and WM were shortlisted. In December 2019, city awarded an eight-year agreement to WM. As a result, the current term of the city’s agreement is set to end in December 2028.
Rancho Santa Margarita	CR&R had served the city since 2004, when it was awarded the contract via a competitive procurement. In October 2021, city negotiated a 5-year Amended and Restated the Franchise Agreement with CR&R. As a result, the current term of the city’s agreement is set to end in June 2024.
San Juan Capistrano	CR&R has served the city since 1996, when it acquired Solag Disposal. In May 2019, the city conducted a limited RFI (request for information) process. Three haulers submitted responses: CR&R, Republic, and WM. CR&R was selected. The new agreement has 10-year term with two options to extend the term by 5 years.

Chart 2 – Current South County Solid Waste Contract Expiration Dates

City	2022			2023			2024			2025			2026			2027			2028			2029			2030			2031			2032			2033			2034			2035		
	Mar	Jun	Sep	Dec	Mar	Jun	Sep	Dec	Mar	Jun	Sep	Dec	Mar	Jun	Sep	Dec	Mar	Jun	Sep	Dec	Mar	Jun	Sep	Dec	Mar	Jun	Sep	Dec	Mar	Jun	Sep	Dec	Mar	Jun	Sep	Dec	Mar	Jun	Sep	Dec	Mar	Jun
Aliso Viejo	Automatically extended by two years beginning on October 31, 2025. Remaining term is 2-years until further notice.																																									
Dana Point	City of Dana Point is currently negotiating with CR&R.																																									
Irvine	City of Irvine is currently negotiating with WM.																																									
Laguna Beach	City of Laguna Beach is currently undertaking an RFP process.																																									
Laguna Hills	City of Laguna Hills is currently undertaking an RFP process in concert with Lake Forest.																																									
Laguna Niguel																																										
Laguna Woods	City of Laguna Woods has option to extend by 5-years beginning on February 28, 2032																																									
Lake Forest	City of Lake Fores is currently undertaking an RFP process in concert with Laguna Hills.																																									
Mission Viejo	City of Mission Viejo completed an RFP process in 2019.																																									
Rancho Santa Margarita	City of Rancho Santa Margarita negotiated new agreement in 2021.																																									
San Clemente	Automatic Extension																																									
San Juan Capistrano	City of San Juan Capistrano negotiated a new agreement in 2020.																																									

3.3 Rate Comparison

A comparison of customer rates for the most common levels of residential and commercial service are shown below in Chart 3 and Chart 4, respectively. The top portion of each bar in these charts reflects the portion of the rate that is retained by the city or attributable to street sweeping. The bottom portion reflects the portion that is retained by the hauler for solid waste collection service. The amounts shown in Chart 3 and Chart 4 are listed in Table 3 and Table 4 on the following page.

Chart 3 – Monthly Single-family Solid Waste Rates in South County

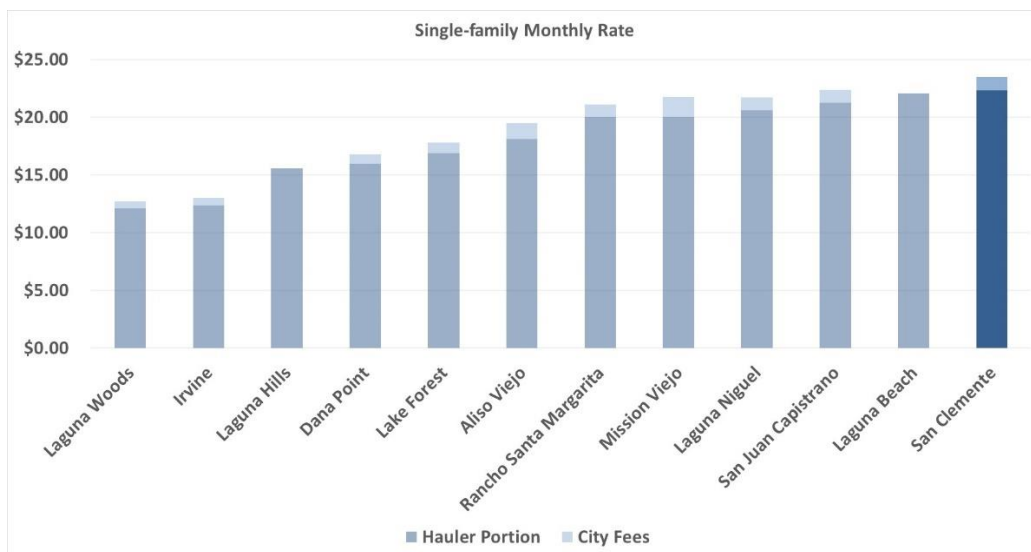


Chart 4 – Monthly Commercial Solid Waste Rates in South County

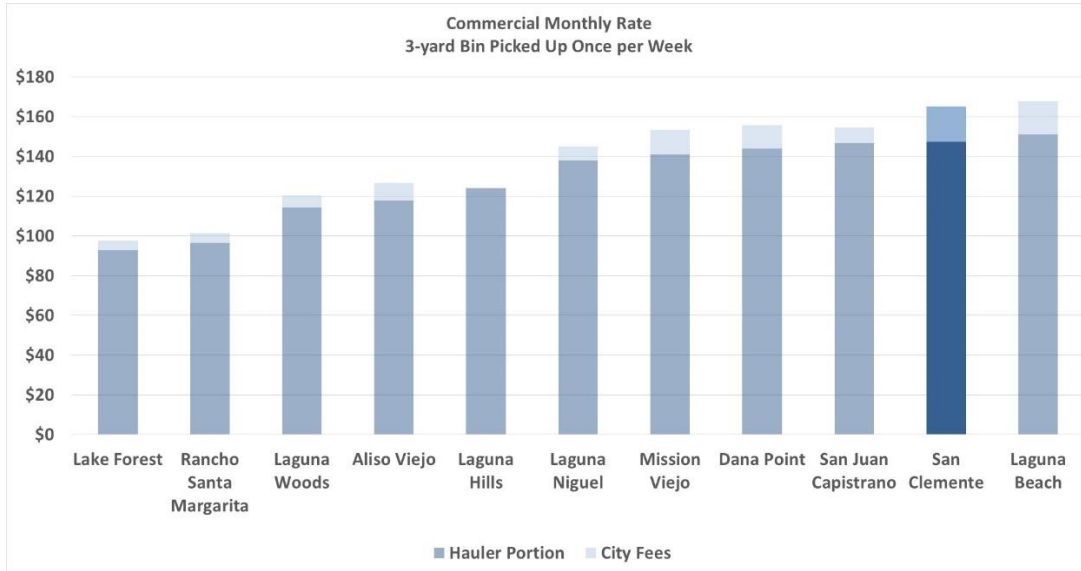


Table 3 – Monthly Single-family Solid Waste Rates in South County

City	Monthly Rate		
	Customer Rate	City Fees	Hauler Portion
Laguna Woods	\$12.73	\$0.64	\$12.09
Irvine	\$13.01	\$0.65	\$12.36
Laguna Hills	\$15.55	\$0.00	\$15.55
Dana Point	\$16.79	\$0.84	\$15.95
Lake Forest	\$17.79	\$0.89	\$16.90
Aliso Viejo	\$19.48	\$1.39	\$18.09
Rancho Santa Margarita	\$21.09	\$1.05	\$20.04
Mission Viejo	\$21.78	\$1.74	\$20.04
Laguna Niguel	\$21.69	\$1.08	\$20.61
San Juan Capistrano	\$22.36	\$1.12	\$21.24
Laguna Beach	\$22.05	\$0.00	\$22.05
San Clemente	\$23.51	\$1.18	\$22.33

Table 4 – Monthly Commercial Solid Waste Rates in South County

City	Monthly Rate		
	Customer Rate	City Fees	Hauler Portion
Lake Forest	\$97.70	\$4.89	\$92.82
Rancho Santa Margarita	\$101.42	\$5.07	\$96.35
Laguna Woods	\$120.39	\$6.02	\$114.37
Aliso Viejo	\$126.81	\$9.07	\$117.74
Laguna Hills	\$124.10	\$0.00	\$124.10
Laguna Niguel	\$145.20	\$7.26	\$137.94
Mission Viejo	\$153.34	\$12.27	\$141.07
Dana Point	\$155.74	\$11.68	\$144.06
San Juan Capistrano	\$154.53	\$7.73	\$146.80
San Clemente	\$165.11	\$17.75	\$147.36
Laguna Beach	\$167.86	\$16.79	\$151.07

4 San Clemente's Agreement with CR&R

4.1 2010 Franchise Agreement

Under the terms of the current franchise agreement, CR&R has the exclusive right and obligation to provide waste and recyclables collection service to all of the City's single-family, multi-family, and commercial customers. CR&R's relationship with the City dates back to 1996 when CR&R acquired the City's then long-time hauler, Solag Disposal.

Term of the 2010 Agreement

The City's current Agreement with CR&R was negotiated in 2010. The initial term of the current Agreement was for an eleven and one half (11 ½) year term through June 30, 2022. The Agreement provides that, beginning on July 1, 2020, the term of the Agreement is to be automatically extended each year on July 1st for an additional year. The term of the Agreement will continue to be extended each year unless either the City or CR&R notifies the other party prior to June 30th of any year of its intent to end the term of the Agreement.

As a result, if neither party notifies the other, the Agreement will continually have a remaining term of between two and three years. As of the date of this letter, the remaining term of the Agreement extends to June 30, 2024. If neither the City or CR&R notifies the other party of its intent to end the term by June 30, 2022, the term of the Agreement will automatically extend for another year to June 30, 2025.

The 2016 Amendment

Also in 2016, the City amended its Agreement with CR&R to direct the company to transport organic waste collected in the City to CR&R's anaerobic digestion facility (AD facility) in the City of Perris. As a result of redirecting its organic waste away from landfills and to CR&R's AD facility, the City's organic waste collection program is in compliance with SB 1383.

The 2021 Amendment

Although 2016 amendment to the Agreement enabled the City to comply with much of SB 1383, the SB 1383 regulations that were promulgated in November 2020 included some requirements that are not addressed in the City's current Agreement with CR&R. These additional requirements include waste characterizations, route reviews, and edible food recovery programs.

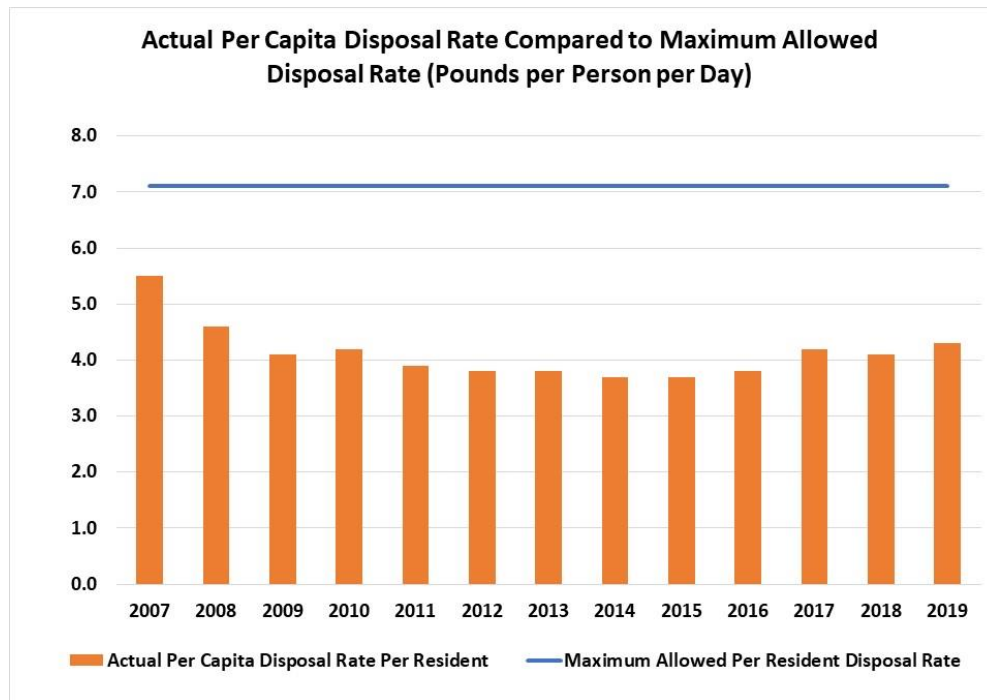
Favorable Diversion Rates Compared to CalRecycle Targets

During CR&R's tenure, the City has met its AB 939 waste diversion requirements. AB 939 requires that cities implement waste reduction and recycling programs such that the amount of

landfilled waste originating in the city does not exceed a certain maximum allowable amount. The actual and maximum allowable amounts are expressed in the average disposal per person per day.

From 2007 through 2019 (the most recent year that disposal data is available), the City's average actual disposal per person per day has been below the maximum allowable amount set by CalRecycle. This is shown below in Chart 5.

Chart 5 – Actual Per Capital Disposal Compared to Maximum Allowed Rate



Recent Service Issues

According to City staff, CR&R has a history of providing high quality service. However, in the last two years, the City has received many more complaints about CR&R's service than in previous years. These complaints have been primarily about spillage, missed pickups, and improperly commingling recyclables in the same truck as regular trash (which defeats the purpose recycling). The City is in frequent communication with CR&R about service complaints, and CR&R has represented that it is working to improve service and significantly reduce the number of complaints.

Based on City staff conversations with other cities that have other waste haulers, the increase in complaints do not seem to be unique to the City of San Clemente. City staff expects that CR&R will be able to improve service quality to what it was in the past.

5 Basis for Recommendation

To develop our recommendation, we: 1) considered the general pros and cons of sole source negotiation versus a competitive procurement, 2) applied these general pros and cons to the specific circumstances of the City of San Clemente, and, 3) considered the advantages and disadvantages of providing CR&R with notice to terminate the automatic extension.

5.1 General Pros and Cons of Negotiating vs. Issuing an RFP

Table 4 below lists the advantages of negotiating vs. the advantages of soliciting competitive proposals that would generally apply to any jurisdiction.

Table 5 – Solid Waste Agreement Negotiate vs. Competitive Procurement

Advantages of Negotiating with Incumbent Hauler	Advantages of Soliciting Competitive Proposals from Several Haulers
<ul style="list-style-type: none"> ▪ If there is adequate time remaining on the current contract term, allows the City to subsequently issue an RFP if the negotiations are not successful. ▪ Avoids the risk of problems arising from the transition to a new service provider (e.g., changed pickup days, a new hauler will not be familiar with the City’s unique service requirements, etc.). ▪ Avoids the problems that may occur if the City receives a ‘low-ball’ bid; avoids the risk of creating a high-profile and controversial contractor selection process. ▪ Allows the City to achieve much of the same assurances that it has obtained a fair deal by comparing its rates, services and terms to those in nearby jurisdictions. ▪ May require less City Council and staff time. 	<ul style="list-style-type: none"> ▪ Provides more assurance that City has obtained the greatest value. ▪ Provides more assurance to the public that contractor was selected in a fair manner. ▪ City benefits from the technical creativity of several firms in identifying a menu of program and service options to achieve the waste diversion requirements. ▪ Allows the City to choose from several haulers. ▪ Allows the City to ‘mix ‘n match’ features from multiple proposals. ▪ May require more City Council and staff time. ▪ Provides opportunity for Council members to learn about solid waste issues.
<p>Bottom line: More appropriate when City is already meeting its solid waste program objectives:</p> <ul style="list-style-type: none"> ▪ Hauler provides high quality, reliable service; and, ▪ Rates are reasonable; and, ▪ City meeting diversion mandates; and, ▪ Scope of services will not change. 	<p>Bottom line: More appropriate when City is not meeting its solid waste program objectives:</p> <ul style="list-style-type: none"> ▪ City is less satisfied with hauler, or ▪ Rates are higher than nearby, comparable jurisdictions; or, ▪ City not meeting diversion goals; or, ▪ City intends to make significant changes to the scope of services.

5.2 Application of General Pros and Cons to the City of San Clemente

Reasons to renegotiate with CR&R:

- According to City staff, CR&R has a history of providing high-quality service. Although CR&R has had some recent services issues, these appear to be related to COVID-19 and other challenging industry trends. Based on staff discussions with other jurisdictions, other solid waste haulers in other cities have experienced similar service issues. CR&R's history of providing high-quality service (and CR&R's professed intention to regain its reputation for delivering high-quality service) helps to justify entering into negotiations with CR&R for a new agreement.
- The City does not intend to make significant changes to the scope of services. The 2016 amendment provided for the organics collection services needed to comply with SB 1383, and the 2021 amendment to CR&R's agreement addressed many of the scope requirements of SB 1383. As a result, the City does not need to make any significant changes to the scope of the agreement.
- The City is meeting its diversion mandates. As shown above in Chart 5, the City has been meeting its waste diversion targets. CalRecycle has recently requested the City to prepare a Formal Plan due to low participation rates among its commercial businesses. However, this is primarily due to businesses in the City electing to not recycle.

Reason to conduct a competitive procurement:

- The City's rates are higher than other cities in South County.

5.3 Consideration of Pros and Cons of Giving Notice to End Automatic Extension

Reasons to not give notice:

- There is some risk to the City of terminating the automatic extension and setting in motion a negotiation/procurement process. If the City and CR&R are not able to negotiate an agreement, and the City issues an RFP, the City may undertake certain risks. Other haulers may perceive that CR&R (as the incumbent and with facilities that are closest to the City) has a competitive advantage. There may be a risk that the City does not receive adequate competitive proposals in response to the RFP. There is a risk that other haulers may not offer competitive rates due to their relatively higher operating costs due to their distance from the City. There is also a risk that the rates bid by CR&R in response to an RFP might be higher than those that the City might otherwise be able to negotiate.

- If the City does not give notice (and assuming that CR&R does not give notice to the City), the City would be able to enjoy continued uninterrupted service at stable (although relatively higher) rates over time.

Reasons to give notice:

- With a firm contract expiration date, both parties will be more earnest in negotiations. If the City does not give notice, both parties would have less incentive to hurry, and the process may be prolonged.
- Due to its location in the southern-most part of the County, and its relative distance from the operating yards of other competing waste haulers, the City has less negotiating leverage for waste services than other cities to its north. Due to the current negotiations and procurements of these other nearby cities, this negotiating leverage may diminish even more in the next two years as these cities renegotiate or reprocure their waste agreements. The City of San Clemente may have more negotiation leverage with CR&R now than in the next two years.
- There is a risk that WM may exit the waste market in Orange County. As shown below in Table 6, twenty years ago, WM was the exclusive provider in eight cities in Orange County. This year (with the transfer of the City of Santa Ana to Republic Services), WM will be the exclusive provider in only three Orange County cities.

Table 6 – WM Decrease in Orange County Market Share

OC Contracts Held by WM in 2002	OC Contracts Held by WM July 2022
Irvine	Irvine
La Habra	
Laguna Beach	Laguna Beach
Lake Forest	
Mission Viejo	Mission Viejo
Orange	
Santa Ana	
Tustin	

One of these three cities is the difficult-to-serve City of Laguna Beach, which is currently in the RFP process. Another is the City of Lake Forest in which WM has the exclusive obligation to service all residential customers at some of the lowest rates in the County, while it openly competes with other haulers in the more lucrative commercial sector. WM’s other city is the City of Mission Viejo, which selected WM in an RFP process in 2019. As a result, WM has far fewer customers

over which to spread its fixed costs than it did twenty years ago, and its remaining cities may not provide the company with high profit margins.

If WM were to retain Laguna Beach, and acquire Lake Forest and Laguna Niguel, it would be less likely that it would exit the waste market in Orange County. However, these outcomes may not be as likely given the lack of competitiveness WM demonstrated in Laguna Woods.

If another waste company were to offer to purchase WM's contracts in Orange County, it may be more economic for WM to sell these contracts than to continue to operate at thin margins. Moreover, due to CR&R's presence in South County, at some purchase price, WM's current contracts in Irvine and Mission Viejo may be more valuable to CR&R than they are to WM. For all these reasons, there is a risk that WM may exit the waste market in Orange County. If this were to happen, the City of San Clemente would have even less negotiating leverage.

6 Summary of Recommendations

The reasons to initially negotiate with CR&R are summarized below in Table 7. The reasons to issue a notice to terminate the automatic extension are summarized below in Table 8.

Table 7– Reasons to Initially Negotiate with CR&R

Key Reasons Why San Clemente Should Initially Conduct Negotiations with CR&R
<ul style="list-style-type: none">▪ CR&R has the infrastructure in place (Perris AD facility) to process the City’s organics in compliance with SB 1383.▪ The City’s current agreement with CR&R includes all the services the City needs to comply with SB 1383▪ Due to its market share and facilities in South County, CR&R has the ability to bring economies of scale, and thereby, more competitive rates to the City of San Clemente.▪ The City may be able to negotiate more favorable rates.▪ If the City and CR&R are not able to successfully negotiate a new agreement within six months, the City will still have adequate time to conduct a competitive procurement.

Table 8– Reasons to Issue a Notice to Terminate the Automatic Extension

Key Reasons to Issue a Notice to Terminate
<ul style="list-style-type: none">▪ Both parties will be more earnest, and an agreement would be negotiated more quickly.▪ The City has less negotiating leverage for waste services than other cities to its north, and this negotiating leverage may diminish more over time due to other contracts becoming finalized in the next two years.▪ There is a risk that WM may exit the waste market in Orange County in the not-too-distant future resulting in even less negotiating leverage for the City.

Solid Waste Management System
Proposal to the
City of San Clemente



August 16, 2022

By



C R & R



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August 16, 2022

Executive Summary

CR&R Incorporated (“CR&R”) is honored to submit this Proposal to retain its existing exclusive Franchise Agreement for Solid Waste Handling Services for the City of San Clemente. Over the course of the past several months, City staff and CR&R have communicated regarding a solution for the City of San Clemente considering its present solid waste management system in relation to current legislation from the State of California. Both staff and CR&R understand the needs to revise the current franchise Agreement as amended and review services and rates to be certain that the residents and businesses in the City of San Clemente maintain the highest quality of services at the most competitive rates available. The summary herein is the most beneficial for all parties concerned.

The City has a very detailed report for MSW recently that identified the City’s strengths and weaknesses of the current Agreement. In addition, that report identified the City’s pros and cons of requesting various proposals or negotiating with the Current contractor for new and revised services. This Proposal suggests that the City negotiate with CR&R for the next four to six months and come up with a Revised Agreement that meets all the needs of the City and at the most competitive rates.

Goals of this Proposal:

1. Customer Rate restructuring, equitable charges for services and Stabilization for the future.
2. Emphasis on Citywide Recycling.
3. Support CR&R’s local new operating facility for South Orange County.
4. Replacing all collection vehicles with new, watertight, and clean fuel vehicles.
5. Support City procurement with RNG fueling.
6. SB1383 Full compliance
7. Monitoring Customer Waste Streams
8. Continued support for local charities and community activities.

With your review, CR&R is available to discuss and alter this Proposal to suit the needs of the San Clemente community and we thank you for allowing us this opportunity.

Sincerely,

Dean A. Ruffridge
Senior Vice President
CR&R Incorporated
11292 Western Ave
Stanton, CA 90680
(714) 890-6300

Current Market Environment

Opportunity

The City of San Clemente is in a unique position to benefit from recent neighboring communities that have either renegotiated with their hauler or bid contracts thereby providing the City with a comprehensive overview of current market rates for direct comparison. This allows for review and consideration of like services without the additional cost (financial and political), time, and effort of a procurement process.

Renegotiating today allows immediate changes in lieu of waiting to the end of 2024.

SB 1383- Short-Lived Climate Pollutants

The two most significant trends today in the solid waste industry are increased operating costs and the implementation of services to comply with Senate Bill 1383.

CR&R operates the largest and most advanced anaerobic digester in the world - a one-hundred million-dollar, state-of-the-art facility in Perris, California. CR&R's fully automated anaerobic digester processes food and green waste from residences and businesses across Southern California and converts it into a steady supply of the cleanest transportation fuel available – renewable natural gas – as well as a high-grade organic compost for gardens and other agricultural uses.

In 2016, the City of San Clemente amended its Agreement with CR&R to direct the company to transport organic waste collected to CR&R's Anaerobic Digestion facility (AD facility) in the City of Perris. As a result, the City's organic waste collection program complies with SB 1383 with the following omissions:

- Organics (food & green waste) collection for every multifamily residential complex.
- Eliminate mixed waste processing of multi-family waste and provide organics participation through source separated programs required under SB 1383. Focus on multi-family roll out areas having space constraints and illegal dumping issues.
- Impose mandatory compliance requirements through existing ordinance and code enforcement. Cal Recycle has recently requested the City to prepare a Formal Plan due to low participation rates among its commercial businesses. However, this is primarily due to businesses in the City electing to not recycle, and not having a rate structure that would encourage onsite recycling.
- Support with organics procurement compliance assigned by Cal Recycle under SB 1383.



CR&R values the opportunity to continue to work together to further enhance the city-wide recycling program that is customer friendly, promotes source separation, increases diversion from the landfill, and complies with current State mandates.

Operating Costs

CR&R's has a proven history of providing high-quality service and have continued to perform during some very challenging industry trends. As stated previously, the implementation of SB 1383 and a combination of economic factors are creating upward pressure on solid waste collection and recycling operating costs. State requirements for solid waste and recycling have evolved extensively since CR&R began providing services for the City of San Clemente.

Industry Financial Impacts

- China virtually banning the import of recyclables (China Sword) and the loss of revenue used to offset the cost of a recycling program has had a significant impact on the solid waste industry's ability to operate traditional recycling and processing programs. Recycling costs now exceed disposal costs.
- Recycling commodity values and stringent contamination requirements create additional challenges with mixed waste processing programs including increasing processing costs, higher residual levels, and less diversion.
- Supply Chain constraints.
- Steel Prices.
- Costs associated with the waste collection industry have far outpaced the CPI adjustments. This includes insurance benefits, equipment, and labor costs tied to the collective bargaining agreement (CBA) with the Teamsters.
- A national qualified driver shortage; as well as mechanics and customer service personnel.



environmental services
the face of a greener generation

Comparison Rate Survey

	San Clemente	Dana Point	Laguna Niguel	San Juan Capistrano	Quad City Average
Residential Net to Hauler					
Low Generator	\$ 22.38	\$ 20.26	\$ 20.52	\$ 21.05	\$ 21.05
Base Service	\$ 23.13	\$ 22.33	\$ 23.93	\$ 24.05	\$ 23.36

	San Clemente	Dana Point	Laguna Niguel	San Juan Capistrano	Quad City Average
Commercial Bin Service					
3 Yard x1/week	\$152.16	\$149.54	\$147.47	\$ 152.43	\$150.40
3 Yard x2/week	\$188.02	\$245.60	\$227.85	\$ 251.94	\$228.35
3 Yard x3/week	\$248.77	\$314.18	\$308.28	\$ 342.77	\$303.50
3 Yard x4/week	\$309.13	\$410.26	\$388.63	\$ 449.37	\$389.34
3 Yard x5/week	\$369.50	\$451.38	\$469.05	\$ 546.23	\$459.04
3 Yard x6/week	\$429.90	\$533.73	\$549.46	\$ 640.57	\$538.41

 Indicates Lowest of the Quad Cities

Maintain Competitive Rate Structure

- Pricing review of surrounding city rates and services provided including any additional items such as street sweeping and city fees. (Refer to table.)
- Balance rate structure to ensure rates maintain competitive pricing with rate survey findings.

Balance Cost Structure for Services Provided

- Reset rates for all service levels with charges applicable for services provided.
- Incorporate current no charge service costs into rate structure.
- Any added costs to be distributed as needed across the customer base.
- Balance the rate structure to continue to offer rate incentives for source separated collection programs to encourage participation (recycling and organics) and cover true program costs across the commercial rate base.



Proposed Rate Structure

- Rates will be based on the average net rate (customer rate less franchise/city fees) in the Quad Cities. (San Clemente, Laguna Niguel, Dana Point and San Juan Capistrano).
- Rates will include a component for the cost to provide city services. It will occur only if City services exceed what is provided in the other Quad Cities.
- The Low Generator Residential Curbside Rate will be reduced impacting 2,700 customers.
- All Multi-family rates will be reduced to the commercial bin rate. This will reduce rates on 223 bins.
- The one-time per week bin rate will be reduced. This will reduce rates on 208 bins.
- Commercial Recycling, Green Waste and Organics rates will be set at 85% of Commercial MSW rates.

**AMENDED AND RESTATED AGREEMENT
BETWEEN THE
CITY OF SAN CLEMENTE
AND
CR&R INCORPORATED
FOR SOLID WASTE HANDLING SERVICES
EFFECTIVE JANUARY 1, 2011**

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AGREEMENT

This Exclusive Franchise Agreement (“Agreement”) is entered into to be effective as of the 1st day of January, 2011, by and between the City of San Clemente (“City”) and CR&R Incorporated (“Contractor”) (collectively, the “Parties”) to provide an exclusive franchise for Solid Waste Handling Services within the City.

R E C I T A L S:

A. The Legislature of the State of California, by enactment of the California Integrated Waste Management Act of 1989 (“AB 939”), has declared that it is in the public interest to authorize and require local agencies to make adequate provision for the disposal of all Solid Waste within their jurisdictions.

B. Pursuant to California Public Resources Code Section 40059(a)(1), the City Council of the City of San Clemente has determined that the public health, safety, and welfare require that an exclusive franchise agreement be awarded to a qualified solid waste enterprise for Solid Waste Handling Services within the City Limits.

C. City previously entered a franchise agreement for Solid Waste Handling Services with Contractor dated August 6, 1997 (the “Prior Agreement”). The Prior Agreement has been amended three (3) times previously. It is the desire of the parties by entering this Amended and Restated Agreement to restate existing obligations in a single document, and, with respect to specific newly adopted provisions supersede the Prior Agreement, as more fully set forth herein.

D. City and Contractor are mindful of the provisions of the laws governing the safe collection, transport, recycling, and disposal of Solid Waste, including AB 939, the Resource Conservation and Recovery Act (“RCRA”), and the Comprehensive Environmental Response, Compensation and Liability Act (“CERCLA”). City and Contractor desire to leave no doubts as to their respective roles, and to memorialize that by entering into this Agreement. City is not thereby becoming an “arranger” or a “generator” as those terms are used in CERCLA, and that it is Contractor, not City, who is “arranging for” the collection, transport for disposal, composting, and recycling of municipal Solid Waste in the City which may contain hazardous substances. City and Contractor understand and agree that it is Contractor, and not City, who will arrange to collect Solid Waste, that City has not, and, by this Agreement does not, instruct Contractor on its collection methods, nor supervise the collection process, nor do the Parties intend to place title to such Solid Waste in City, but rather intend that whatever, if any, title in and to such Solid Waste that otherwise might exist in or with City in the absence of this Agreement is hereby transferred to Contractor; and further that if Contractor gains title to such Solid Waste it is by operation of law and agreement with its Customers and is not the result of this Agreement. By entering this Agreement City and Contractor further desire to confirm that Contractor has agreed to indemnify the City in connection with any claims relating to the inadvertent or intentional collection, transportation and/or disposal of hazardous materials that may occur in connection with Contractor’s performance under this Agreement.

E. Contractor has agreed, as part of this Agreement, to provide such services as are necessary or desirable to ensure City complies with the requirements of AB 939 and Public Resources Code Section 40000, *et seq.*

F. City desires, among other things, to ensure adequate landfills remain available to meet the public's need for the safe handling and disposal of Solid Waste, and further desires to ensure its citizens do not incur undue costs in safely disposing of Solid Waste they generate, and has thus entered into the County Agreement (as defined herein.) Contractor has agreed, as part of this Agreement, to provide such services and take such actions as are necessary or desirable to ensure City complies with its obligations pursuant to the County Agreement.

C O V E N A N T S:

Based upon the foregoing Recitals and for good and valuable consideration, the receipt and sufficiency of which is acknowledged by each of the Parties, City and Contractor hereby agree as follows:

1. RECITALS.

The Parties acknowledge the above recitals are true and correct and incorporate them herein as if they were fully restated.

2. DEFINITIONS.

Whenever any term used in this Agreement has been defined by the California Public Resources Code, the definition of such term set forth therein shall apply unless the term is otherwise defined in this Agreement.

A. AB 939.

"AB 939" shall mean the California Integrated Waste Management Act of 1989, currently codified as California Public Resources Code Section 40000 *et seq.* as it may be amended from time to time.

B. Affiliate.

"Affiliate" means a business in which Contractor owns a direct or indirect ownership interest, a business (including corporations, limited and general partnerships and sole proprietorships) which has a direct or indirect ownership interest in Contractor and/or a business which is also owned, controlled or managed by any business or individual which has a direct or indirect ownership interest in Contractor. For purposes of determining whether an indirect ownership interest exists, the constructive ownership provisions of Section 318(a) of the Internal Revenue Code of 1986, as in effect on the date of this Agreement, shall apply; provided, however, that (i) "ten percent (10%)" shall be substituted for "fifty percent (50%)" in Section 318(a)(2)(C) and in Section 318(a)(3)(C) thereof; and (ii) Section 318(a)(5)(C) shall be disregarded. For purposes of determining ownership under this paragraph and constructive or

indirect ownership under Section 318(a), ownership interest of less than ten percent (10%) shall be disregarded and percentage interests shall be determined on the basis of the percentage of voting interest or value which the ownership interest represents, whichever is greater.

C. Animal Waste.

“Animal Waste” shall mean animal carcasses, dead animals, and/or parts or portions of dead animals. Animal Waste shall not include manure.

D. Bins.

“Bins” shall mean a metal or plastic Container, including dumpsters, compactors, and any similar such devices with a capacity of under ten (10) cubic yards.

E. Board.

“Board” shall refer to CalRecycle, the agency currently charged with enforcing and implementing regulations related to AB 939, the successor to the former California Integrated Waste Management Board, and any successor agency.

F. Bulky Items.

“Bulky Items” means Solid Waste that cannot and/or would not typically be accommodated within a Cart including specifically: furniture (including chairs, sofas, mattresses, and rugs); appliances (including refrigerators with and without Freon, ranges, washers, dryers, water heaters, dishwashers, plumbing, small household appliances and other similar items, commonly known as “white goods”); Residential wastes (including wood waste, tree branches, scrap wood, in the aggregate not exceeding one cubic yard per Collection); and clothing. For purposes of this Agreement, and notwithstanding any provision hereof to the contrary, Bulky Items shall specifically include items commonly known in the waste industry as “brown goods,” “e-waste” and “universal waste” (including, without limitation all types of electronic waste, stereos, televisions, computers and monitors, cellular phones, VCRs, microwaves and other similar type of equipment and products), batteries, and fluorescent light tubes. Bulky Items do not include car bodies, Construction and Demolition Debris or (with the exception of appliances/white goods described above) items that cannot reasonably be moved with equipment of the type which, pursuant to industry standards would normally be carried in a truck Collecting Bulky Items. In the event a question arises as to whether a specific item, or category of items meets the definition of Bulky Items, the City Manager shall be responsible to determine whether said definition shall apply, which determination shall be final and binding on the Parties.

G. Cart.

“Cart” means a plastic Container with a hinged lid and wheels serviced by an automated or semi-automated process, as opposed to a manual process of lifting and dumping.

H. City.

“City” shall mean the City of San Clemente, a municipal corporation, located in Orange County, California.

I. City Limits.

“City Limits” shall mean the territorial boundaries of the City together with all amendments and changes thereto, which boundaries are depicted on maps, incorporated herein by reference, that are kept on file in the office of the City Clerk of the City of San Clemente, and which are from time to time amended to reflect changes.

J. City Manager.

“City Manager” shall mean the City Manager of the City of San Clemente or his or her designee.

K. Collect/Collection.

“Collect” or “Collection” shall mean to take physical possession of, transport, and remove Solid Waste from a premises.

L. Commercial Premises.

“Commercial Premises” means Premises upon which business activity is conducted, including but not limited to retail sales, services, wholesale operations, manufacturing and industrial operations, but excluding Residential Premises upon which business activities are conducted when such activities are permitted under applicable zoning regulations and are not the primary use of the property. Notwithstanding any provision to the contrary herein, in the Municipal Code, or otherwise, for purposes of this Agreement, Premises upon which hotels and motels are operated shall be deemed to be Commercial Premises.

M. Container.

“Container” means any and all types of Solid Waste receptacles, including Carts and Bins.

N. Contractor.

“Contractor” shall mean CR&R Incorporated, the entity granted the franchise pursuant to this Agreement, or any party permitted pursuant to the terms hereof to become the successor or assignee thereof.

O. County Agreement.

“County Agreement” shall mean that certain waste disposal agreement entered between various Orange County cities, including specifically the City of San Clemente, and the County of Orange relating to the use of County landfills for the disposal of Solid Waste collected in such

cities, and which is on file in the office of City's City Clerk, as the same may be amended from time to time.

P. Customer.

"Customer" shall mean any person receiving Solid Waste Handling Services from Contractor within the Franchise Area.

Q. Dwelling Unit.

"Dwelling Unit" shall mean one or more rooms designed for occupancy by one family for living and sleeping purposes and containing kitchen facilities or an area designed for the preparation of food for use solely by one family.

R. Effective Date.

"Effective Date" shall mean January 1, 2011.

S. Environmental Laws.

"Environmental Laws" means all federal and state statutes, county, local and City ordinances concerning public health, safety and the environment including, by way of example and not limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 USC §9601 *et seq.*; the Resource Conservation and Recovery Act, 42 USC §6901 *et seq.*; the Federal Clean Water Act, 33 USC §1251 *et seq.*; the Toxic Substances Control Act, 15 USC §2601 *et seq.*; the Occupational Safety and Health Act, 29 USC §651 *et seq.*; the California Hazardous Waste Control Act, California Health and Safety Code §25100 *et seq.*; the Carpenter-Presley-Tanner Hazardous Substance Account Act, California Health and Safety Code §25300 *et seq.*; the Porter-Cologne Water Quality Control Act, California Water Code §13000 *et seq.*; the Safe Drinking Water and Toxic Enforcement Act, California Health and Safety Code §25249.5 *et seq.*; as currently in force or as hereafter amended, and all rules and regulations promulgated thereunder.

T. Franchise Area.

"Franchise Area" shall mean all Premises within the City Limits, including Premises which may be annexed and thereby added to the City Limits following the Effective Date.

U. Franchise Fee.

"Franchise Fee" shall mean the franchise fee set forth and more fully defined in Section 9 hereof.

V. Gross Receipts.

"Gross Receipts" shall mean and include all monies, fees, charges, consideration, and revenue received, charged or imputed to Contractor and any Affiliate of Contractor, in connection with, arising from, or in any way attributable to the Solid Waste Handling Services

carried out by or on behalf of Contractor pursuant to this Agreement. Gross Receipts includes, without limitation, monthly Customer charges for the Collection of Solid Waste and any other materials Collected hereunder, any franchise fees or other fees imposed and collected pursuant to this Agreement, sums collected in connection with Temporary Services, and tipping and/or disposal fees charged to and collected from Customers. Notwithstanding any provision to the contrary herein, Gross Receipts shall not include revenues received by Contractor from the sale of Recyclable Materials.

W. Hazardous Substance.

“Hazardous Substance” shall mean any of the following: (a) any substances defined, regulated or listed (directly or by reference) as “Hazardous Substances,” “hazardous materials,” “Hazardous Wastes,” “toxic waste,” “pollutant” or “toxic substances” or similarly identified as hazardous to human health or the environment, in or pursuant to (i) the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 USC §9601 *et seq.* (CERCLA); (ii) the Hazardous Materials Transportation Act, 49 USC §5101, *et seq.*; (iii) the Resource Conservation and Recovery Act, 42 USC §6901 *et seq.*; (iv) the Clean Water Act, 33 USC §1251 *et seq.*; (v) California Health and Safety Code §§25115-25117, 25249.8, 25281, and 25316; (vi) the Clean Air Act, 42 USC §7401 *et seq.*; and (vii) California Water Code §13050; (b) any amendments, rules or regulations promulgated thereunder to such enumerated statutes or acts currently existing or hereafter enacted; and (c) any other hazardous or toxic substance, material, chemical, waste or pollutant identified as hazardous or toxic or regulated under any other applicable federal, state or local laws or regulations, including any of the Environmental Laws, currently existing or hereinafter enacted, including, without limitation, friable asbestos, polychlorinated biphenyl’s (“PCBs”), petroleum, natural gas and synthetic fuel products, and by-products.

X. Hazardous Waste.

“Hazardous Waste” means all substances defined as Hazardous Waste, acutely Hazardous Waste, or extremely Hazardous Waste by the State of California in Health and Safety Code §25110.02, §25115, and §25117 or in the future amendments to or recodifications of such statutes or identified and listed as Hazardous Waste by the US Environmental Protection Agency (EPA), pursuant to the Federal Resource Conservation and Recovery Act (42 USC §6901 *et seq.*), all future amendments thereto, and all rules and regulations promulgated thereunder.

Y. Household Special Wastes.

“Household Special Wastes” means the following waste materials when they are used at and discarded from a Residential Premises, but does not include any of the following waste if generated in the course of operating a business concern at a Residential Premises: (i) “Household Pharmaceutical Waste” meaning unused or expired prescription and non-prescription human medications, veterinary drugs, and diagnostic agents, nutritional supplements and personal care products such as fragrances, cosmetics, and sun-screen agents [but excluding controlled substances and medical waste not specifically described herein]; (ii) Sharps as defined in Section 117671 of Title 22 of the California Code of Regulations, including hypodermic needles, pen needles, intravenous needles, lancets, and other devices that are used to penetrate the skin for the

delivery of medications; (iii) Universal Waste as defined in Section 66261.9 of Title 22 of the California Code of Regulations, including but not limited to: fluorescent bulbs and tubes; household batteries (e.g. D, C, AA, button-type, etc.); non-empty aerosol cans; electronic devices (e.g. televisions, computer monitors, cell phones, radios, video cassette recorders, etc.); and mercury containing devices (e.g. thermometers, thermostats, gauges, etc.); and (iv) "Household Hazardous Waste" meaning any Hazardous Waste generated at a Residential Premises including but not limited to: automotive maintenance and repair products (e.g. motor oil, oil filters, antifreeze; lead-acid batteries, brake fluid, etc.); lawn and garden chemicals (e.g. pesticides, herbicides, fungicides, etc.); cleaning products (e.g. bathroom cleaners, drain cleaners, chlorine bleach, solvents, oven cleaners, etc.); and home improvement supplies (e.g. stains, paints, varnish, paint thinners, chemical strippers, glue, pool chemicals, etc.).

Z. Multi-Family Dwelling.

"Multi-Family Dwelling" means any Residential Premise containing more than one Dwelling Unit at which Contractor determines (and City agrees) the Dwelling Units must receive Solid Waste Handling Services through the use of Bins rather than Carts. Generally speaking, this will occur when: (i) a City approved enclosure for a Bin(s) exists; and (ii) there is sufficient space on the Customer's property to provide safe access for Contractor's collection equipment; and (ii) either, (a) the Customer's property is comprised of four or more dwelling units on a single assessor's parcel or (b) the Customer's property is comprised of three or less dwelling units on a single assessor's parcel and Contractor obtains City's approval to use Bin service in place of Carts. Any ambiguity or dispute as to whether a Customer's Premises qualifies for purposes of this Agreement as a Single Family Dwelling, which may be serviced using Carts, or Multi-Family Dwelling, which may be serviced using Bins, shall be resolved by the City Manager whose decision shall be final.

AA. Municipal Code.

"Municipal Code" shall mean City's Municipal Code.

BB. Person.

"Person" shall mean any individual, firm, association, organization, partnership, corporation, business trust, joint venture, the United States, the State of California, the County of Orange, towns, cities, and special purpose districts.

CC. Premises.

"Premises" shall mean any land, building, and/or structure within the City Limits where Solid Waste is generated or accumulated.

DD. Recyclable Material.

"Recyclable Material" or "Recyclables" shall mean that Solid Waste discarded within the Franchise Area which is capable of being recycled.

EE. Residential Premises.

“Residential Premises” shall mean all premises upon which Dwelling Units exist. Notwithstanding any provision to the contrary herein, in the Municipal Code, or otherwise, for purposes of this Agreement, Premises upon which hotels and motels exist shall be deemed to be Commercial Premises.

FF. Rolloff Box.

“Rolloff Box” means Solid Waste Collection Containers of ten (10) yards or larger, including compactors.

GG. Single Family Dwelling.

“Single Family Dwelling” means a building or lot containing one Dwelling Unit, and for purposes of this Agreement includes buildings and lots with more than one Dwelling Unit where such Dwelling Units are determined by the City to be reasonably able to receive individualized Solid Waste Handling Service by the automated process utilizing Carts contemplated herein. It is generally assumed by the Parties, although not required by this Agreement, that any Residential Premises upon which between one (1) and three (3) or Dwelling Units exists will be deemed to be a Single Family Dwelling and receive services utilizing Carts rather than Bins. Any ambiguity or dispute as to whether a Customer’s Premises qualifies as a Single Family Dwelling or Multi-Family Dwelling shall be resolved by City.

HH. Solid Waste.

“Solid Waste” shall mean and include all discarded putrescible and nonputrescible solid, semisolid, and liquid wastes, including garbage, trash, Refuse, rubbish, construction waste, industrial waste, commercial Solid Waste, Bulky Items, and any other discarded solid, semisolid, and liquid waste permitted to be disposed of at a Class III landfill and which are included within the definition of “Nonhazardous Solid Waste” set forth in the California Code of Regulations, as it may be amended from time to time. Solid Waste does not include hazardous (Class I) waste, low-level radioactive waste, untreated medical waste, or Special Wastes as defined herein.

II. Solid Waste Handling Services.

“Solid Waste Handling Services” means the Collection, transfer, transport, recycling, processing, and disposal of Solid Waste.

JJ. Special Wastes.

“Special Wastes” shall mean wastes other than Solid Waste including sewage, sludge, industrial sludge, asbestos, auto bodies, tires, used motor oil, hazardous waste, Animal Waste, explosive substances, radioactive materials, sharps, pharmaceutical waste, universal waste, household hazardous waste, and other materials which may not be disposed of at a Class III landfill or which require special handling.

KK. Temporary Service.

“Temporary Service” shall mean Solid Waste Handling Services provided by Contractor on an as-needed and temporary basis to any Premises within the City in conjunction with construction, demolition, cleanup or other projects, and by use of temporarily placed Bins or Rolloff Boxes.

LL. Term.

“Term” shall have the meaning ascribed in Section 5 of this Agreement.

3. GRANT OF EXCLUSIVE FRANCHISE FOR SOLID WASTE HANDLING SERVICES FROM ALL RESIDENTIAL AND COMMERCIAL PREMISES, AND FOR PROVIDING TEMPORARY SOLID WASTE HANDLING SERVICE

A. Scope of Franchise.

Except as hereinafter expressly set forth, City hereby grants to Contractor and Contractor hereby accepts from City, for the Term hereof, the exclusive contract, right, and privilege to Collect, transport, and dispose of all Solid Waste generated or accumulated within the Franchise Area. The exclusive franchise, right and privilege to provide Solid Waste Handling Services within City granted to Contractor by this Agreement shall be interpreted to be consistent with all applicable state and federal laws, now in effect and adopted during the term of this Agreement, and the scope of this Agreement shall be limited by all applicable current and developing laws and regulations. In the event that future interpretations of current law or future enactments limit the ability of City to lawfully grant Contractor the scope of services as specifically set forth herein, Contractor agrees that the scope of this Agreement will be limited to those services and materials which may be lawfully provided, and that City shall not be responsible for any lost profits claimed by Contractor as a result thereof.

B. Matters Excluded From Scope of Franchise.

Notwithstanding any other provisions set forth in this Agreement to the contrary, the exclusive franchise granted herein shall exclude:

(1) the collection, transportation, recycling, and disposal of any Solid Waste otherwise within the scope of this Agreement which is transported to an appropriate disposal facility by an occupant of the premises upon which the Solid Waste was generated (but not including any agent, representative, or contractor of such occupant);

(2) the collection, transportation, recycling, and disposal of any Solid Waste otherwise within the scope of this Agreement which is transported to an appropriate disposal facility by an officer or full time permanent employee of the commercial, construction, or industrial enterprise that generated the Solid Waste (but not including any independent contractor, non-employee agent, or representative, or other contractor of such enterprise);

(3) the sale or donation of Recyclable Material by the person or entity that generated such Recyclable Material (the “Generator”) to any person or entity other than

Contractor; provided, however, to the extent permitted by law, if the Generator is required to pay monetary or non-monetary consideration for the Collection, transportation, transfer, or processing of Recyclable Material to any person or entity other than Contractor, the fact that the Generator receives a reduction or discount in price (or in other terms of the consideration the Generator is required to pay) shall not be considered a sale or donation;

(4) any Solid Waste otherwise within the scope of this Agreement which is Collected or transported to a disposal or recycling facility by City employees in the course and scope of their employment with City;

(5) the Collection, transportation, or disposal of Hazardous Waste; Universal Waste; E-Waste; biohazardous waste; untreated medical waste; infectious waste; Animal Waste; used cooking fats, oils, grease and similar waste; or other materials which do not constitute Solid Waste;

(6) the Collection, transportation, and disposal of Construction and Demolition Waste by a contractor, handyman, repairman, or other similar service provider, using its own equipment, as an incidental part of the services provided to its Customers, rather than as a hauling service, provided that such waste is not Collected or transported by a third party hired for the primary purpose of Collecting and transporting said materials;

(7) the Collection, transportation, and disposal of green waste and related Solid Waste by a gardener, or landscaper, as an incidental part of the gardening or landscaping services provided to its customers, rather than as a hauling service provided that such Solid Waste is not collected or transported by a third party hired for the primary purpose of Collecting and transporting said materials;

(8) Solid Waste Handling Services provided by any Person having a legal right to continue doing so, pursuant to Public Resources Code Section 49520, et. seq., or otherwise, as long as and to the extent such legal right continues to exist, except that to the degree any territory in which Contractor has a franchise granted by another governmental entity is annexed into City during the Term, Contractor agrees the provisions of this Agreement shall apply to such territory and further acknowledges that this Agreement constitutes any notice required by the Public Resources Code in connection therewith.

C. Enforcement of Exclusivity.

Contractor shall be responsible for enforcing the exclusivity of this Agreement. City shall have the right to enforce the exclusivity provisions hereof if, in its absolute and sole discretion, it chooses to do so, but shall have no obligation to do so for the benefit of Contractor or otherwise. City additionally shall have the right, but not the obligation, to request that Contractor enforce the exclusivity provisions hereof. Contractor shall have an affirmative obligation to enforce such exclusivity provisions when requested to do so by City.

4. ACCEPTANCE; WAIVER

Contractor agrees to be bound by and comply with all the requirements of this Agreement. Contractor waives Contractor's right to change the terms of this Agreement under

Federal, State, or local law, or administrative regulation. Contractor waives any right or claim to serve the City or any part of the City under any prior grant of franchise, contract, license, or permit issued or granted by any governmental entity including any right under Section 49520 of the Public Resources Code. Additionally, by and upon the execution of this Agreement, Contractor agrees to the termination of the Prior Agreement as of the Effective Date, agrees to waive any and all rights under the Prior Agreement, and agrees to release and hold the City harmless from any of the City's obligations thereunder (excepting, however, the right to compensation for services provided at the rates approved by City as of the Effective Date); provided, however, nothing contained in this provision is intended to or shall relieve Contractor from any obligation existing under the Prior Agreement pertaining to insurance, indemnification, or other legal obligations to City or Customers (as opposed to obligations to provide service pursuant to the terms thereof), or from any obligation set forth in the Prior Agreement which are called out as surviving the termination thereof, and all such obligations, including specifically those indemnification obligations relating to Environmental Laws, general liability, and AB 939 shall survive the termination of the Prior Agreement.

5. TERM

The term of this Agreement (the "Term") shall be for the period of time commencing on January 1, 2011, and ending July 1, 2022, unless this Agreement is terminated sooner pursuant to Section 15 hereof, or otherwise. On July 1, 2020, and on July 1 of each subsequent year unless a Party has provided a notice of nonrenewal as provided below, the Term of the Agreement shall be extended (without further action by the Parties) for an additional year (the "Automatic Renewal") so that the remaining term of the Agreement shall be two (2) years. Either Party may give notice of termination of the Automatic Renewal on or before midnight on June 30, 2020, or on or before midnight on June 30 of each subsequent year. Once notice of the termination of the Automatic Renewal is given by either Party no further Automatic Renewals shall occur, and this Agreement shall remain in effect only for its then remaining two-year term.

6. SERVICES PROVIDED BY CONTRACTOR

A. General.

Contractor shall furnish all labor, supervision, materials, supplies, and equipment necessary to provide for all services required by the terms of this Agreement; and shall comply with all of the following provisions:

(1) Performance Standards

Contractor shall perform Solid Waste Handling Services as required hereunder in a workmanlike manner consistent with good housekeeping standards and all relevant provisions of the Municipal Code. Contractor's equipment shall be maintained so as to both: (1) meet the highest industry standards with regards to efforts to prevent liquid from leaking and to the degree possible be "watertight" and "leak-proof" and, (2) at all times comply with the provisions of all laws and regulations, including any applicable National Pollution Discharge Elimination Systems ("NPDES") permit, with regards to leaking of materials. Contractor shall immediately clean up any spills from its equipment of which it becomes or is made aware.

(2) Noise and Disruption

Contractor shall perform Solid Waste Handling Services as required hereunder in such a manner as to minimize noise and other disruptive impacts including, without limitation, those upon traffic. Contractor shall use its best efforts to coordinate its Collection schedules such that street sweeping on any given street shall occur the business day following Collection of Solid Waste by Contractor.

(3) Collection Times

Contractor shall not commence Solid Waste Handling Services for Customers at Commercial Premises until 6:00 a.m. and for Customers at Residential Premises until 7:00 a.m., nor shall such activities occur after 7:00 p.m. for Customers at Commercial Premises and 7:00 p.m. for Customers at Residential Premises. The City Manager may require Contractor to comply with time frames applicable to Residential Premises in connection with Solid Waste Handling Services for Customers at Commercial Premises whose premises are in close proximity to Residential Premises. Bulky Item Collection may occur on Saturdays. No Solid Waste Handling Services shall occur on Sundays at Residential Premises, except in exceptional circumstances for which specific approval is given by the City Manager. Solid Waste Handling Services may occur at Commercial Premises on Sundays; provided, however, no such service shall occur on Sundays in connection with any Premises at which the City Manager determines such service would be contrary to the public interest.

(4) Collection Schedule

Contractor shall establish Collection routes and a Collection schedule which shall be approved by the City Manager such that Customers at all Residential and Commercial Premises within the City will have not less than one established Collection day each week. Contractor shall provide notice to each Customer of its established Collection day(s), and shall provide at least one week's notice to Customers of any change in their established Collection day(s). Notwithstanding any provision herein to the contrary, should any established Collection date fall on a legal holiday, or on any other holiday which is observed by either a landfill or other lawful disposal site to which Solid Waste is taken for disposal, or a recycling facility to which Recyclable Material is taken, Contractor shall provide for Collection one (1) day later during the pick-up week, and the regular pick-up schedule shall be resumed the following week. A pick-up week shall be defined as Monday through Saturday. Contractor may not change its established Collection schedules without obtaining the prior written consent of the City Manager.

(5) Commingling of Routes

Contractor shall not during its Collection process commingle Solid Waste Collected hereunder with Solid Waste Collected in any other City, or on behalf of any other entity operating or existing within City that is not subject to this Agreement, and is specifically prohibited from combining Collection routes related to services provided pursuant to this Agreement with Collection routes for other jurisdictions it may service. Notwithstanding the forgoing, if Contractor desires to commingle routes with and Solid Waste Collected from other jurisdictions, it may present a proposal for doing so to the City Manager. Such proposal shall

include an explanation for the reason to commingle routes/Solid Waste as well as the methodology proposed to properly allocate Solid Waste generated in the City. The City Manager may approve any such proposal in his discretion, or, alternatively, the City Manager may, in his discretion, refer any such proposal to the City Council for its consideration. Any proposal approved pursuant to this Section may be revoked by the City Manager, at any time, if in his discretion he determines it is not in the City's best interest.

(6) Replacement of Containers

Contractor shall, whenever possible, place Carts in the street gutter, adjacent to the curb upon completing Collection. Contractor shall replace all Bins in the location upon the property of each Customer utilizing Bins designated for storage of Bins, and shall secure gates, doors, and/or enclosures when applicable.

(7) Contractor's Containers

a. Contractor shall be responsible to maintain and replace, as necessary, all of its Containers.

b. All Contractor's Containers shall comply with the specifications set forth in Exhibit B, and shall be maintained by Contractor in good repair with any question as to the meaning of this standard to be resolved by the City Manager.

c. All Carts and Bins shall be maintained by Contractor in a watertight condition.

d. Contractor shall replace any damaged Carts at no charge to Customers, provided, however, Contractor shall be entitled to charge Customers for the replacement of any Cart that has been damaged by a Customer, ordinary wear and tear excepted, with such charges being subject to City's approval.

e. Contractor shall replace any lost or stolen Carts within three business days, at no cost to Customers. Contractor shall only be obligated to replace a lost or stolen Cart for a Customer at no charge two times. For each replacement of a lost or stolen Cart thereafter, Contractor shall be entitled to charge Customers provided the rates charged by Contractor shall be subject to City's approval, and shall not exceed Contractor's actual costs.

f. Contractor shall at Customer's request annually refurbish, replace, and steam clean as necessary all Bins and Rolloff Boxes at no charge to Customers; provided, however, City may require the steam cleaning or replacement of Bins utilized at restaurants, bars and grocery stores/markets more frequently if it determines such action is needed to protect public health and safety. Additional steam cleaning shall be provided to any Customers who request it at a charge not to exceed the maximum rate set forth in Exhibit A hereto, or alternatively Contractor shall provide a replacement Bin/Rolloff Box to Customers at no charge.

g. Contractor shall remove any graffiti that appears on its Containers within twenty-four (24) hours after becoming aware of it.

h. All Bins and Rolloff Boxes shall be kept freshly painted in a uniform fashion and shall be identified with Contractor's name and phone number in letters not less than three inches high on its exterior so as to be visible when the Container is placed for use.

i. At a Customer's request, Contractor shall provide Bins with locking lids and locks and may charge rates to Customers for locking Bins which do not exceed the maximum rates set forth on Exhibit A.

(8) Missed Pick-ups

In case of a missed pick-up called in by a Customer, Contractor shall Collect Solid Waste and Recyclable Material from such Customer no later than the next day of the pick-up week following the date of the call. Records of the addresses of all missed pick-ups shall be maintained by Contractor, and shall be reported to City upon request. If Contractor demonstrates to the satisfaction of the City Manager a pattern of ongoing late "set-outs" by a given Customer, missed pick-ups resulting from late set-outs by that Customer shall not be counted as missed pick-ups in evaluating Contractor's performance hereunder. The Customer service phone system required by Section 23 hereof is intended, among other things, to serve as a "hotline" for Customers to call in the event Solid Waste placed for Collection is not Collected by Contractor and to facilitate having such Solid Waste Collected as soon as reasonably possible, and in no event later than as required by the provisions hereof.

(9) Record of Non-collection

As more fully set forth herein, Contractor shall Collect all Solid Waste placed for Collection by Customers, excepting materials that are specifically called out herein (such as hazardous materials.) Whenever Contractor determines not to Collect any Solid Waste deposited for Collection, Contractor shall leave a tag at least 2" by 6" in size, indicating the reason for Contractor's refusal to do so. This information may be either handwritten or left by means of a check system (i.e., checking off boxes on a preprinted form). The tag shall provide Contractor's business name and its local telephone number and shall be securely fastened to the Container or the article refused. Contractor shall maintain a record of all such taggings at its place of business. Such record shall contain the date of such notice, street address, reason for non-collection, and a summary of any communications between Contractor and the Customer involved. Such notice shall be retained so that it may be conveniently inspected by representatives of City upon request.

(10) Waste Required to be Collected

Contractor shall only be required to collect Solid Waste and Recyclable Material which has been placed, kept, or accumulated and completely enclosed in Carts or Bins, and is only required to do so with respect to those Carts or Bins that are placed at curbside or other designated pick-up locations pre-approved by City and Contractor prior to Contractor's normal Collection time.

B. Residential Solid Waste Handling Service.

(1) Single Family Dwellings – Automated Collection.

Contractor shall provide each Customer at a Single Family Dwelling with the Customer's choice of either one (1) thirty-five (35) gallon or one (1) sixty-seven (67) gallon Cart designated for the Collection of mixed Solid Waste (a "Refuse Cart"). Contractor shall Collect all Solid Waste placed out for Collection in Refuse Carts by each Customer at a Single Family Dwelling not less than once per week using an automated Collection system at rates that do not exceed the maximum rates set forth in Exhibit A. Upon request from any Customer at a Single Family Dwelling, Contractor shall provide such Customer with one or more additional Refuse Carts, and shall Collect all Solid Waste placed for Collection in such additional Refuse Carts at rates which do not exceed the maximum rates set forth in Exhibit A. Wherever feasible, Customers shall be directed by Contractor to place Carts for Collection either in the street gutter, against the curb, in front of their Premises, or adjacent to their Premises in the alley or easement in the rear of their Premises. If a Customer and Contractor cannot agree upon a Collection location, or if City determines the selected location may cause safety or other concerns, City may make the final determination of the Collection location.

(2) Walk-Out Service.

Contractor shall provide eligible Single Family Dwelling or Multi-Family Dwelling Customers with "walk-out service" as set forth in this paragraph at no additional charge. This service shall require Contractor to use its own forces to bring a Customer's Carts from a Customer's backyard, side yard, or such other location at which the Customer's Containers are regularly stored, to Contractor's Collection Vehicle; and, after disposal of the contents thereof, returning said Containers to the location where they are regularly stored. To be eligible for this service a Customer shall have a DMV issued disabled person placard/license plates, or be a person who provides a physician's letter as described herein. Each Customer desiring walk-out service shall cause a letter to be submitted to Contractor from a physician confirming the Customer is unable to move his/her Carts to the curb, and that to the best of his knowledge there is no other capable persons living in the Customer's household to provide this service. Contractor may require each eligible Customer to provide a new letter from a physician on an annual basis in order to maintain eligibility for walk-out service. In order to receive walk-out service, a Customer will be required to sign a standardized agreement, the terms of which shall be subject to City's approval, that authorizes entry onto the Customer's property and holds Contractor harmless for any liability (including specifically liability related to pets escaping) associated with Contractor providing the service. Any dispute regarding a Customer's eligibility for walk-out service shall be resolved by the City Manager. Single Family Dwelling or Multi-Family Dwelling Customers who do not qualify for "free" walk-out service may contract with Contractor for such services at rates not exceeding those set forth on the attached Exhibit A.

(3) Use of Bins for Single Family Dwelling Customers Prohibited.

Contractor may not supply Single Family Dwelling Customers with Bins in place of Carts, or otherwise use Bins for Single Family Dwelling Solid Waste Handling Services,

excepting, however, Temporary Bin/Rolloff Services provided to Single Family Dwelling Customers in the manner authorized herein.

(4) Recycling Program for Single Family Dwellings.

Contractor shall provide each Customer at a Single Family Dwelling to whom it provides a Refuse Cart with the Customer's choice of either one (1) thirty-five (35) gallon or one (1) sixty-seven (67) gallon Cart designated for the Collection of Recyclables (a "Recycling Cart") at no additional charge. Upon request from any Customer at a Single Family Dwelling, Contractor shall provide such Customer with one (1) additional Recycling Cart at no additional charge. Contractor shall Collect Recyclable Material placed in Recycling Carts for Collection from each Customer at a Single Family Dwelling on the same day as such Customer's Refuse Cart is Collected, utilizing an automated Collection process. Customers shall be directed to place Recycling Carts in the same location for Collection as Refuse Carts. At a minimum the following materials shall be allowed to be deposited by Customers for Collection in Recycling Carts: aluminum cans; glass jars and bottles; bi-metal, and tin cans; empty aerosol containers; polyethylene terephthalate plastic ("PET"); high density polyethylene plastic ("HDPE"); plastics types 3 – 7; plastic bags, shrink wrap, plastic toys and tools, and other plastic materials (if readily identifiable as being recyclable); juice boxes and milk cartons (aseptic packaging, Tetra Pak© and waxed cardboard); coat hangers and metal foil; newspaper; mixed paper (e.g., ledger, computer, junk mail, magazines, paperback books cereal boxes, envelopes, paper shopping bags and non-metallic wrapping paper); corrugated cardboard; and telephone books.

(5) Green Waste Program for Single Family Dwellings.

Contractor shall provide each Customer at a Single Family Dwelling to whom it provides a Refuse Cart with the Customer's choice of either one (1) thirty-five (35) gallon or one (1) sixty-seven (67) gallon Cart designated for the Collection of commingled green waste (a "Green Waste Cart") at no additional charge. Upon request from any Customer at a Single Family Dwelling, Contractor shall provide such Customer with one (1) additional Green Waste Cart at no additional charge. Contractor shall Collect green waste placed in Green Waste Carts for Collection from each Customer on the same day as such Customers' Refuse Cart is Collected, using an automated collection process. Customers shall be directed to place Green Waste Carts in the same location for Collection as Refuse Carts. Contractor shall identify, to City's satisfaction, neighborhoods in the City where Green Waste Carts will not be provided due to lack of Green Waste generation. Customers in those neighborhoods shall receive only Solid Waste and Recycling Carts and the maximum rates applicable to such Customers shall not exceed the rates designated as "Set of 2 Carts" as set forth on the attached Exhibit A.

(6) Use of Bins for Multi-Family Residential Customers.

Contractor shall supply Customers at Multi-Family Dwellings with Bins for Solid Waste Handling Services ("Refuse Bins"). Contractor shall provide a number of Bins reasonably needed for Solid Waste Collection at each Premises at which Multi-Family Dwellings exist bearing in mind both the number of Dwellings Units and space limitations. Contractor shall endeavor to provide at least one (1) Refuse Bin for every ten (10) Dwelling Units located at each Multi-Family Dwelling. The size of Refuse Bins utilized, and the frequency of their Collection,

shall be mutually agreed upon by Contractor and its Customers, except that Collection shall occur not less than one time per week and City shall have the right to impose minimum requirements for Bin sizes and more frequent Collection should it determine such action is needed to protect public health, safety and welfare. In the event of any dispute as to the adequacy of the number of Bins at any given Multi-Family Dwelling, the City Manager shall have the ability to approve the number of Refuse Bins used at such location. Contractor may charge rates for each Bin provided to a Multi-Family Dwelling that do not exceed the maximum rates set forth in Exhibit A. All Solid Waste Collected by Contractor from Refuse Bins at Multi-Family Dwellings shall be taken for processing to a properly permitted, large volume transfer processing facility, meeting the requirements of the County Agreement, and all such Solid Waste shall be processed (not merely transferred to a landfill) in order to recover Recyclable Materials.

(7) Bulky Items.

a. Residential Bulky Item Service.

Contractor shall provide unlimited Bulky Item Collection services to all Customers at Residential Premises on an on-call basis for a rate not exceeding the maximum flat rate set forth in Exhibit A. Each Customer at a Residential Premises shall be entitled to up to four (4) Bulky Item pick-ups per year at no cost (“No Charge Pick-ups”). One No Charge Pick-up will be deemed to have occurred each time Contractor Collects up to four (4) Bulky Items at the same time. Thus, for instance, if Contractor is required to Collect between five and eight Bulky Items at the same time, two No Charge Pick-ups shall be deemed to have occurred. On-call Bulky Item Collection service, whether for a fee or a No Charge Pick-up, shall be responded to within a reasonable time but not longer than seven (7) days from the date of the Customer’s call for service, or the next scheduled Collection day excluding Saturdays, whichever shall occur sooner. Contractor shall produce, keep current, and provide public information specifically outlining the Bulky Item pick-up service.

b. Bulky Item Diversion.

Bulky Items Collected pursuant to this Agreement may not be disposed of in a landfill until the following hierarchy of diversion efforts has been followed by Contractor:

- (i) Reuse as is (if energy efficient);
- (ii) Disassemble for reuse or Recycling;
- (iii) Recycle, Transformation, other means of diversion; and
- (iv) Disposal.

c. Proper Handling of Bulky Items.

Contractor shall properly handle all materials required to be collected as Bulky Items, including specifically items that require special handling pursuant to the Environmental Laws, such as materials that constitute “universal waste” and/or “e-waste.”

(8) Household Special Wastes.

a. Program Description.

A general description of the Household Special Waste Collection service to be provided is set forth in the accompanying Exhibit C. If and to the degree any discrepancies, ambiguities, or conflicts exist between Exhibit C and the terms of this Agreement, the terms of this Agreement shall control.

b. Household Special Waste Collection Service.

Each Customer at a Residential Premises shall be entitled to up to four (4) Collections per calendar year, on an on-call basis, of Household Special Wastes at no cost ("No Charge Collections"). On-call Household Special Waste Collection service shall be responded to within a reasonable time but not longer than seven (7) days from the date of the Customer's call for service, or the next scheduled Collection day excluding Saturdays, whichever shall occur sooner. To the degree Household Special Waste Collection service described in this Section is duplicative in any way of the Bulky Item Collection services set forth herein (i.e., such as with regards to certain electronic waste which meets the definitions of both Bulky Waste and Household Universal Waste), the services set forth in this Section are intended to be in addition to such Bulky Item service, and hence Customers shall be entitled to both including the No Charge aspects of both. Contractor shall produce, keep current, and provide public information specifically outlining its Household Special Waste Collection service.

c. Implementation of Household Pharmaceutical Waste Container Collection.

As of the Effective Date, Contractor does not have the requisite regulatory approvals to Collect Household Pharmaceutical Waste. Contractor shall diligently pursue such approvals and implement a program at the earliest time possible to provide for the Collection of this waste in a manner consistent with the terms set forth herein, as well as the program concepts set forth in Exhibit C. Once necessary approvals have been secured, Contractor shall provide a detailed program description to City, and the final program to be implemented shall be subject to the approval of the City Manager.

(9) Additional Collection Services.

Contractor may provide special pickup procedures or additional services in addition to the services described herein for Customers who request such services at rates agreed upon by Contractor and such Customers. All such rates must be reasonable as determined by the City Manager, and shall be subject to City Manager approval

C. Commercial Solid Waste Handling Services.

(1) Commercial Bins and Rolloff Boxes.

a. Contractor shall provide all Customers at Commercial Premises ("Commercial Customers") with at least one Bin and/or Rolloff Box for Collection of mixed

Solid Waste, and shall Collect all Solid Waste placed therein for Collection not less than once per week, at rates that do not exceed the maximum rates set forth in Exhibit A. Contractor shall provide additional Containers to Customers and shall provide additional Collections upon request, or as may be required by City's Municipal Code, health and safety requirements, or by the City Manager, and may charge rates for such services which do not exceed the maximum rates set forth in Exhibit A. Bins and Rolloff Boxes shall be Collected by Contractor from the location upon each Customer's property designated for their storage, and replaced to that location with gates and/or doors secured, as applicable, after Collection is completed, unless different arrangements are agreed upon by the Customer and Contractor. It is the parties intent that all Rolloff Boxes (including compactors) provided to Commercial Customers for service pursuant to this section will be taken for processing to a properly permitted, large volume transfer processing facility, meeting the requirements of the County Agreement, and all such Solid Waste shall be processed (not merely transferred to a landfill) in order to recover Recyclable Materials. Nevertheless, the parties recognize that the content of waste generated by certain Commercial Customers may not be appropriate for processing, and Contractor shall have the discretion in such cases to transport Rolloff Boxes to the County Landfill, with any dispute regarding such decision being resolved by the City Manager's in his discretion. Contractor may charge Commercial Customers utilizing Rolloff Boxes an amount not exceeding the "contractor component" set forth in Exhibit A for such services plus an amount equal to the actual tonnage disposed of multiplied by the processing component or disposal component as applicable, depending upon whether the Solid Waste in question is taken to a processing facility or landfilled.

(2) Commercial Carts.

As an alternative to the requirements of the preceding Section, Contractor shall offer Collection in Refuse and Recycling Carts to Commercial Customers that do not have space for, or do not generate enough Solid Waste to require the use of Bins for Collection. Rates for Customers receiving such service shall not exceed the maximum rates set forth on Exhibit A. All Commercial Customers that are provided Refuse Carts shall also be provided a Recycling Cart, and such Customers shall have a choice between a set of sixty seven (67) gallon Carts or a set of ninety (90) gallon Carts. Upon request from any Commercial Customer using Carts rather than Bins for Collection service, Contractor shall provide such Customer with one or more additional Refuse or Recycling Carts at rates which do not exceed the maximum rates set forth in Exhibit A. If Contractor and a Commercial Customer have a disagreement as to whether use of Carts rather than Bins for Collection service is appropriate, or if City determines Collection for such a Customer using Carts causes health and safety or other concerns, City shall make the final determination as to whether Collection utilizing Carts may occur.

(3) Commercial Bulky Item Service.

Contractor shall provide unlimited Bulky Item Collection services to Commercial Customers on an on-call basis. Contractor may charge rates for such services which shall not exceed the maximum rates set forth in the attached Exhibit A. Bulky Item Collection service calls shall be responded to within a reasonable time but not longer than seven (7) days from the date of the Customer's call for service. Contractor shall produce, keep current, and provide public information specifically outlining the Bulky Item pick-up service. Bulky Items Collected

pursuant to this Section are subject to the diversion and handling requirements set forth in Sections 6.B(7)(b) and 6.B(7)(c).

(4) Additional Collection Services.

Contractor may provide special pickup procedures or additional services, in addition to the services described herein for Customers who request such services at rates agreed upon by Contractor and such Customers. All such rates must be reasonable as determined by the City Manager, and shall be subject to City Manager approval

(5) Commercial Recycling.

Contractor shall conduct an annual waste audit of all Commercial Customers utilizing Bins for Collection service to determine their Recyclable Material content. The purpose of such audits is to determine whether individual Customers are discarding Recyclable Material of a quantity that is sufficient to warrant such Customer's participation in recycling programs. The process used to conduct this waste audit shall be shared with City, to ensure compliance and acceptance, and shall be subject to City Manager approval. Upon completion of such audit, and upon approval by City, those Customers whose waste stream is found to contain a significant Recyclable Material content shall be provided a Recycling Cart or Bin ("Recycling Bin") for Recyclable Material. Contractor shall Collect all Recyclable Material placed in Recycling Carts or Bins at least once per week, and more often as may be agreed upon with its Commercial Customers. Contractor may charge Commercial Customers who are provided with Recycling Carts or Recycling Bins rates for such service not exceeding the maximum rates set forth in the attached Exhibit A. In addition, any Commercial Customer who so desires, may be provided with Rolloff Boxes for clean, source separated loads of greenwaste, dirt, concrete, asphalt, wood, metal, and paper/cardboard, with the maximum rates set forth in the following section related to Temporary Services being applicable to such services.

D. Temporary Services.

Contractor shall provide Temporary Services on an on call basis to any Customer requesting such service, pursuant to the following conditions:

(1) Temporary Bins: Three (3) cubic yard Bins that meet the standards set forth in the accompanying Exhibit B may be used for Temporary Service; provided, however, Bins used for such service shall not remain at the same address for a period that exceeds four consecutive weeks. Contractor shall charge Customers a flat rate for Temporary Services utilizing Bins, which rate shall not exceed that set out in Exhibit A, and may charge Customers such rate in advance of providing Temporary Service. No contractor or processing component is associated with said flat rate and Customers may be required to pay the full flat rate charged by Contractor without regard to actual processing fees incurred.

(2) Temporary Rolloff Boxes:

a. Temporarily placed Rolloff Boxes, and specifically either forty (40) cubic yard drop off boxes ("Drop Off Boxes") or ten (10) cubic yard lowboy containers ("Lowboy Containers"), that meet the standards of the attached Exhibit B may be used for larger

projects such as construction and demolition or the collection of dirt and concrete; provided, however, Rolloff Boxes used for such service shall not be placed in any public rights-of-way so as to create a safety hazard or so as to block any rights-of-way to a degree that it is not reasonably usable; moreover, they shall not remain in any public rights-of-way for a period exceeding two consecutive weeks.

b. It is the parties intent that all Rolloff Boxes used in connection with Temporary Service shall be delivered by Contractor for processing to a properly permitted facility, which complies with the County Agreement, that is specifically designed to process for recycling purposes, as appropriate: construction and demolition waste; dirt, concrete or asphalt; or, greenwaste. Nevertheless, the parties recognize that the content of waste generated by certain Customers may not be appropriate for processing, and Contractor shall have the discretion in such cases to transport Rolloff Boxes to the County Landfill, with any dispute regarding such decision being resolved by the City Manager's in his discretion.

c. Contractor may charge Customers utilizing Rolloff Boxes for Temporary Service an amount not exceeding the "contractor component" set forth in Exhibit A for such services plus an amount equal to the actual tonnage disposed of multiplied by the processing component or disposal component as applicable, depending upon whether the Solid Waste in question is taken to a processing facility or landfilled. To encourage recycling a discounted maximum rate applicable to the processing component for clean, source separated 40 cubic yard Drop Off Box loads of greenwaste is set forth on Exhibit A; and, further, a maximum flat rate is set forth on Exhibit A as the "contractor component" (to which no processing or disposal component applies) for both clean, source separated 10 cubic yard Lowboy Container loads of dirt, concrete, asphalt, and clean, source separated 40 cubic yard Drop Off Box loads of wood, metal, and paper/cardboard. For purposes of this section, a "clean, source separated load" shall mean a Solid Waste separated into a separate container at its point of generation that contains not less than 90% of the designated materials.

d. Contractor may charge Customers in advance of providing Temporary Services utilizing Rolloff Boxes, by charging an amount not exceeding the contractor component set forth in Exhibit A for such services and a deposit calculated by multiplying the actual tipping fee Contractor will incur by 11 tons (i.e., on the Effective Date \$50.53/ton x 11 tons for processed Solid Waste or \$29.95/ton for landfilled Solid Waste.) After Contractor disposes of Solid Waste collected in temporarily placed Rolloff Boxes, it shall refund Customers utilizing such Temporary Service all amounts exceeding the actual per ton tipping fee incurred by Contractor. If the Rolloff Box is filled in excess of 11 tons by a Customer, Contractor may bill for and collect from such Customer any actual tipping fee Contractor incurs in excess of the above noted deposit.

(3) Placement of Temporary Bins and Rolloff Boxes.

The placement of Temporary Bins and Rolloff Boxes in the public right-of-way, and maximum duration of such placement, shall be in accordance with the Municipal Code. In the event of any conflict between this Agreement and the Municipal Code, the Municipal Code shall govern.

E. Recycling Obligations and Public Education Program.

(1) Minimum Requirements for Recyclable Materials.

Contractor shall utilize a truck dedicated for the purpose of Collecting green waste from Customers, such that green waste which has been separated prior to Collection, once Collected, is not commingled with other Solid Waste (including Recyclable Material). Similarly, Contractor shall utilize a truck dedicated for the purpose of Collecting Recyclable Materials, such that Recyclable Material Collected in Recycling Carts, once Collected, is not commingled with other Solid Waste (including green waste). All material Collected by Contractor in Recycling Carts pursuant to this Agreement shall be delivered to a properly permitted facility for recycling and reuse purposes. All green waste separated prior to Collection and thereafter Collected by Contractor pursuant to this Agreement (including specifically materials Collected in Green Waste Carts or Customer provided Containers as well as Holiday Trees) shall be delivered to a properly permitted facility for recycling, mulching, composting, or alternative uses for which diversion credit is provided as may be approved by the Board.

(2) Extent of Applicable Franchise Rights.

Nothing in this Agreement shall be construed as giving Contractor the right to Collect Recyclable Material which has not been discarded and placed for Collection by Contractor in the location designated for that purpose.

(3) AB 939 Obligations, Guarantee, and Indemnification.

a. Warranties and Representations.

Contractor warrants and represents that it is aware of and familiar with City's Source Reduction and Recycling Element (the "SRRE"), that it is familiar with City's waste stream, and that it has the ability to and will provide sufficient programs and services to ensure City will meet or exceed the diversion requirements (including, without limitation, amounts of Solid Waste to be diverted, time frames for diversion, and any other requirements) set forth in AB 939, and all amendments thereto, and that it shall do so without imposing any costs or fees other than those set forth on the attached Exhibit A (including if new programs are implemented which are not called out herein).

b. Mutual Cooperation.

City and Contractor shall reasonably cooperate in good faith with all efforts by each other to meet City's diversion and other compliance requirements. imposed by AB 939. In this regard, City's obligations shall include, without limitation, making such petitions and applications as may be reasonably requested by Contractor for time extensions in meeting diversion goals, or other exceptions from the terms of AB 939.

c. Waste Reduction and Program Implementation.

Contractor shall implement the programs identified in the Source Reduction and Recycling Element (SRRE) and Household Hazardous Wastes Element (HHWE) of the City's

General Plan immediately upon the Effective Date hereof, and will implement any programs required by any amendments or modifications thereto. In meeting this obligation Contractor shall be mindful of and comply with all requirements of the County Agreement, including specifically, without limitation, the requirements thereof generally relating to (i) the delivery of Solid Waste only to transfer stations that provide quarterly certifications of Solid Waste delivered, and (ii) the disposal of residual Solid Waste that remains after recycling processes have been completed. Contractor shall provide City with monthly, quarterly and annual written reports in a form adequate to meet City's AB 939 related filing and reporting requirements to the Board and to the County of Orange throughout the Term of this Agreement wherein City's performance under the above programs shall be set forth in detail. Contractor shall be responsible to prepare, or assist City with the preparation of, all reports and other information as may be required by any agency, including specifically, the State of California, in order to comply with AB 939.

d. Public Education Fund.

Contractor shall continually maintain a "Public Education Fund" for the sole purpose of supplying public education and information about source reduction, recycling, and composting. The Fund shall be comprised sums to be set aside by Contractor from its charges to Residential Customers for collection services, in an amount equaling \$.09 per month per Residential Customer. The public Education Fund shall be held in an interest bearing bank account, separate from other funds utilized by Contractor, and shall be made available for audit review upon request of the City. All interest earned in this fund shall remain as part of the fund. Contractor may only use sums in this Fund for the purposes set forth in this provision, unless other uses are approved in writing by the City Manager. Any amounts in this fund upon expiration of the Term or earlier termination of this Agreement shall be delivered to the City.

e. Guarantee and Indemnification.

Contractor warrants and guaranties that it will carry out its obligations under this Agreement such that: (i) both it and City will at all times be in compliance with the requirements of AB 939, and (ii) the City will meet or exceed the diversion requirements (including, without limitation, amounts of Solid Waste to be diverted, time frames for diversion, and any other requirements) set forth in AB 939, and all amendments thereto. In this regard Contractor agrees that it will, in addition to any other requirement contained herein, at its sole cost and expense:

(i) to the extent legally permitted, defend, with counsel approved by City, indemnify, and hold harmless City and City's officials, employees, and agents from and against all fines and/or penalties and other liabilities which may be imposed by the Board or any other regulatory agency if: (1) Contractor fails or refuses to timely provide information relating to its operations which is required pursuant to this Agreement or AB 939 and such failure or refusal prevents or delays City from submitting reports required by AB 939 in a timely manner.; or (2) the source reduction and recycling goals, diversion goals, program implementation requirements, or any other requirements of AB 939 are not met with respect to the waste stream Collected under this Agreement;

(ii) assist City in responding to inquires from the Board;

(iii) assist City in preparing for, and participating in, the Board's biannual review of City's SRRE pursuant to Public Resources Code Section 41825;

(iv) assist City in applying for any extension, including under Public Resources Code Section 41820, if so directed by City;

(v) assist City in any hearing conducted by the Board relating to City's compliance with AB 939;

(vi) assist City with the development of and implement a public awareness and education program that is consistent with the City's SRRE and Household Hazardous Waste Element, as well as any related requirements of AB 939;

(vii) provide City with recycling, source reduction, and other AB 939 related technical assistance;

(viii) defend, with counsel acceptable to City, City and City's officials, employees, and agents against the imposition of fines and/or penalties, or any other liabilities, issued by the Board pursuant to AB 939;

(ix) be responsible for and pay, any fees, penalties or other costs imposed against the City by the Board, and indemnify and hold harmless City from and against any fines, penalties, or other liabilities, levied against it for violation of AB 939's diversion requirements, or violation of any other provision of AB 939, arising from or in any way related to Contractor's performance of its obligations under this Agreement.

(4) Waste Generation/Characterization Studies.

Contractor acknowledges that City must perform Solid Waste generation and Disposal characterization studies periodically to comply with the requirements of AB 939. Contractor agrees to participate and cooperate with City and its agents and to accomplish studies and data collection and prepare reports, as needed and directed by City, to determine weights and volumes of Solid Waste Collected and characterize Solid Waste generated, disposed, transformed, diverted or otherwise handled/processed to satisfy the requirements of AB 939.

(5) Implementation of Additional Diversion Services.

In the event City does not meet the current diversion goal of 50% imposed by AB 939 with respect to all waste generated in City, City may direct Contractor to perform additional services (including the implementation of new diversion programs) or modify the manner in which it performs existing services, and Contractor agrees to do so at no additional charge. Pilot programs and innovative services which may entail new Collection methods, and use of new or alternative waste processing and disposal technologies are included among the kinds of changes which City may direct. In the event that the State increases the minimum diversion goal to greater than the current 50% goal imposed by AB 939, City may direct Contractor to perform pilot programs, at Contractor's expense, to provide additional services or implement new diversion programs. City and Contractor shall negotiate rates for any new permanent programs or services needed, after the conclusion of the pilot programs, to meet increased minimum diversion goals.

F. Additional Services.

As part of the consideration for entering this Agreement, Contractor shall provide the following additional services at no charge, and Contractor shall not be entitled to adjust the Maximum Rates set forth in Exhibit A attached hereto to offset costs incurred in providing any of the following services:

(1) Contractor shall provide Bins to any qualified or certified non-profit group, e.g. Boy Scouts, Boys' and Girls' Clubs, churches, Earth Clubs, etc. The rates charged by Contractor to such groups shall not exceed the actual transportation costs incurred by Contractor in dropping off and picking up the Bins; and, Contractor shall impose no such charge for this service unless the non-profit group in question receives a monetary payment from recycling any materials collected in the Bins and such proceeds exceed Contractor's actual transportation costs. Contractor shall appropriately dispose of or divert for recycling pursuant to the terms hereof any Solid Waste or Recyclable Material collected in Bins it provides pursuant to this paragraph, and shall pay non-profit organizations the prevailing market rate for any Recyclable Material collected in Bins provided by Contractor pursuant to this paragraph.

(2) Contractor shall, free of charge, assist and cooperate with City in organizing City cleanup days. Contractor shall provide annually a total of up to forty Bins at no charge to City for organized cleanup days or otherwise, at least twenty (20) of which shall be not less than 36 cubic yard Bins. City shall pay all tipping fees associated with such Bins, and Contractor shall pay all other costs, including without limitation labor and transportation costs.

(3) Contractor shall, free of charge, clean out any overflowing Bins or Bin enclosures within the Franchise Area within twenty-four (24) hours of notification by City. Contractor shall work with the City Manager in identifying continual problems in Customer Bins or Bin enclosures. Contractor shall create a specific work order in response to each call received from City departments and shall provide City with a annual "Summary of clean out Item Work Orders Completed." Said summary shall include, but not be limited to the date, time, hours spent, and type of items collected.

(4) Contractor shall respond to calls from City's Maintenance and Code Enforcement Divisions and from authorized representatives of the Orange County Sheriff's Department and Orange County Fire Authority ("OCFA") to dispose of Bulky Items and other Solid Waste as a result of illegal or unauthorized dumping occurring within the City Limits, and shall provide Solid Waste handling services in connection with such Solid Waste. Contractor shall respond to up to twenty (20) such calls each month, and provide Solid Waste handling services in connection therewith, free of charge. Contractor may charge City for Solid Waste handling services associated with calls in excess of the above noted twenty (20) per month at rates not exceeding the maximum rates set forth in the attached Exhibit A relating to Residential Bulky Item collection service, as such maximum rates may be adjusted from time to time pursuant to the terms hereof. Contractor shall create a specific work order in response to each call and/or written request received from City departments and Sheriff's Department and OCFA representatives and shall provide City with a quarterly summary thereof. Said summary shall

include but not be limited to the date, time, hours spent, type of items collected, and what, if any, charge was incurred by City.

(5) Contractor shall assist persons designated by City (whether City employees or private individuals) who are responsible to coordinate special events or events in large venues (such as concerts or sporting events) in the implementation of recycling programs. Contractor shall be responsible to prepare and submit to City a “waste reduction and recycling plan” prior to such events, and within 30 days following each such event shall submit a “waste characterization report” listing the amount of each material collected for disposal and recycling at the event.

(6) Contractor shall, free of charge, pickup all Holiday trees on the first two regularly scheduled pickup days for each Customer after Christmas Day. The trees shall be diverted from the landfill if possible, either by deposit at a composting facility or grinding operation.

(7) Contractor shall, free of charge, supply City with a total of ten (10) Earthquake/Catastrophe Preparedness Containers (not including contents). Each Earthquake/Catastrophe Preparedness Container shall be a fully enclosed storage container, at least 30 cubic yards in volume, weather resistant and lockable. The location and contents of each Earthquake/Catastrophic Preparedness Container shall be approved by City before distribution. Additionally, free of charge, and upon request by City, Contractor shall provide transport trucks to move, service, and/or exchange Earthquake/Catastrophe Preparedness Containers.

(8) Contractor shall provide Bins and Containers, in quantities requested by City, as well as Solid Waste handling, including specifically collection of Solid Waste and Recyclable Material, for seven (7) special events per year, selected by City, i.e., parades, carnivals, run/walk races, etc., at no charge to City, the event organizer, or otherwise.

(9) Contractor shall, free of charge, collect, transport and process the City’s street sweeping debris.

(10) Contractor shall provide, free of charge, enforcement of the City’s solid waste container Ordinance which provides certain requirements on the timing and duration Containers may be left on the street for Collection, as more fully set forth and described in the accompanying Exhibit D.

G. Special Services.

Contractor may provide special pickup procedures or services in addition to the services described herein for Customers who request or require such services at reasonable rates established by Contractor, which rates are subject to approval by the City Manager. Contractor shall notify the City Manager of any such services prior to such time as they are provided in order to allow the City an opportunity to conduct necessary inspections, review the proposed rate, and impose appropriate regulations.

7. MINIMUM STANDARDS FOR COLLECTION VEHICLES

A. General.

Contractor shall provide vehicles for the Collection of Solid Waste ("Collection Vehicles") that are sufficient in number and capacity to efficiently perform the work required by this Agreement in strict accordance with its terms. Contractor is expressly obligated to provide such Collection Vehicles and routes as are required to meet the service standards set forth herein. Contractor shall have available on Collection days sufficient back-up vehicles for each type of Collection Vehicle used to respond to complaints and emergencies. Upon request by City, Contractor shall provide City with copies of all reports relating to its California Highway Patrol's Bi-annual Inspection of Terminal (so called "BIT Inspection Reports").

B. Air Quality/Fuel Requirements.

Contractor's Collection Vehicles shall comply with all rules and regulations of the South Coast Air Quality Management District, the Air Resource Board, and any other regulatory body that may be in effect during the term of this Agreement, as well as other Federal, State and local laws and regulations that may be enacted during the term of this Agreement. Contractor's Collection Vehicles shall meet or exceed such air quality standards as may be adopted by the forgoing regulatory bodies during the Term.

C. Specific Requirements.

Each Collection Vehicle utilized by Contractor in the performance of this Agreement shall meet the following minimum standards:

(1) Each Collection Vehicle shall be registered with the California Department of Motor Vehicles.

(2) Each Collection Vehicle shall be inspected regularly by Contractor to ensure it meets the requirements of the California Vehicle Code and the California Highway Patrol. Contractor shall provide copies of its Biannual Inspection of Terminal ("BIT") inspection reports and shall make available all records related to its vehicles, including Contractor's maintenance records, to City upon request by the City Manager.

(3) Each Collection Vehicle shall be equipped with devices capable of covering every open section of the vehicle in which Solid Waste may be placed and, while operating upon the public rights-of-way, shall be covered so as to prevent any Solid Waste from falling or being blown or otherwise dislodged from the vehicle.

(4) Each Collection Vehicle shall be continuously maintained so as to both: (1) meet the highest industry standards with regards to efforts to prevent liquid from leaking and to the degree possible ensure each Collection Vehicle is "watertight" and "leak-proof" and, (2) at all times comply with the provisions of all laws and regulations including the Vehicle Code and any applicable NPDES permit, with regard to materials leaking from Collection Vehicles. Contractor shall be responsible to promptly clean any spillage or Solid Waste that leaks or otherwise escapes the vehicle.

(5) Each Collection Vehicle shall be painted periodically, which shall include all necessary body work, and shall be regularly cleaned, so that such vehicles do not become unsightly, as determined by the City Manager;. Each vehicle shall be painted with Contractor's colors and identifying information as required herein.

(6) Contractor's name, local or toll free telephone number, and a vehicle number shall be visibly printed or painted in letters not less than three (3) inches in height on both sides of each Collection Vehicle.

(7) Each Collection Vehicle shall be maintained in a clean and sanitary condition both inside and out and shall be washed at least once every seven (7) calendar days and steam cleaned on a regular basis.

(8) Each Collection Vehicle shall carry a broom, shovel, and operable fire extinguisher, and shall be equipped with a communication device sufficient to allow the driver to communicate directly with Contractor's dispatcher and/or main office.

(9) Each Collection Vehicle shall be kept in good repair and working order, and shall be equipped with appropriate safety equipment, including any new safety related technologies that become standard in the waste industry, and at a minimum shall have a video monitor based back-up system, or its equivalent. Contractor shall keep a sufficient supply of replacement parts and equipment on hand to ensure adequate vehicle maintenance and timely and continuous performance of the services contemplated by this Agreement.

(10) Contractor shall inspect each Collection Vehicle daily to ensure that all equipment is operating properly. Collection Vehicles which are not operating properly shall be removed from service until repaired and operating properly. Contractor shall perform all scheduled maintenance functions upon Collection Vehicles in accordance with the manufacturer's specifications and schedule. Contractor shall repair, or arrange for the repair of, all of its vehicles and equipment for which repairs are needed because of accident, breakdown or any other cause so as to maintain all equipment in a safe and operable condition. Contractor shall keep accurate records of all Collection Vehicle maintenance and repair, recorded according to date and mileage, including signed verifications that repairs and maintenance has been properly performed, and shall make such records available to City upon request.

(11) No Collection Vehicle shall be utilized if it is leaking brake, hydraulic, or other fluids, and Contractor shall clean up any leaks or spills from their vehicles per the NPDES permit in effect at the time. No fluids shall be washed into storm drains at any time. All NPDES dry-cleaning measures shall be complied with. All Collection Vehicles must be equipped with absorbent for such cleanup efforts.

(12) Upon request, Contractor shall furnish City a written inventory of all equipment, including Collection Vehicles, used in providing service pursuant to this Agreement. This inventory shall list all equipment by manufacturer, ID number, date of acquisition, type and capacity.

(13) Contractor shall utilize Collection Vehicles of a size, weight, nature, and type so as to not be unreasonably intrusive on the community with respect to noise, emissions,

maneuverability, safety, and other factors and to avoid or minimize pavement damage and wear and tear of the street or adjacent properties, as approved by the City Manager.

(14) Contractor shall not load Collection Vehicles in excess of the manufacturer's recommendations or limitations imposed by state or local laws or regulations. Noise levels of equipment used for Collection shall not exceed 75db (seventy-five decibels) when measured at a distance of twenty-five (25) feet from the vehicle, five (5) feet from the ground.

(15) Any Collection Vehicle that the City Manager deems inappropriate for use in City for any reason (including its appearance) shall be removed from service in City, until such time as (and if) the City Manager determines his concern regarding said Collection Vehicle are corrected.

D. Costs of Operation and Damages.

Contractor shall be responsible for any costs incurred in connection with ensuring all Collection Vehicles comply with all applicable laws and regulations, including without limitation any such laws and regulations that may now exist or hereinafter be adopted relating to noise, fuels, emission standards, or weight limits.

E. City Inspection.

City may cause or require any Collection Vehicle used in performance of this Agreement to be inspected and tested at any time and in such manner as may be appropriate to determine that the vehicle is being maintained in compliance with the provisions of this Agreement.

F. Correction of Defects and Removal of Vehicles from Use within City.

Contractor agrees to immediately remove from service, and replace or repair, to the City's satisfaction, any Collection Vehicle which City determines to be of unsightly appearance, unsafe, unsanitary, leaking, out of compliance with any law or regulation or this Agreement, or otherwise in an unsatisfactory operating condition; and any such vehicle shall not be returned to service until the City Manager gives his written consent for its return..

8. CONTRACTOR'S PERSONNEL

A. Uniforms.

Each of Contractor's Collection employees shall wear a clean uniform bearing the Contractor's name.

B. Identification of Employees.

Contractor shall provide identification badges, cards or similar devices, for all of its employees, and all authorized subcontractors, who may make personal contact with residents of the City. City may require Contractor to notify Customers yearly of the form of said identification.

C. Employee List.

Contractor shall provide a list of current employees and authorized subcontractors to City upon request.

D. Driver's License.

Each employee operating a vehicle as part of his duties shall, at all times, carry a valid operator's license for the type of vehicle he or she is operating. All employees who may have contact with Customers in the course of performing their duties shall be able to speak English.

E. Screening of Field Employees.

Contractor shall make reasonable efforts to determine if its employees working in the field (i.e., drivers of Collection Vehicles, and employees otherwise involved in Collection at Customer Premises) have been convicted of a felony, and shall identify any such employees known to it to City. City shall have the ability to require that any employee so identified by Contractor not work in the field within City.

F. Discontinued Use of Unsatisfactory Employees.

No employee shall continue to have any involvement whatsoever with regard to any work in anyway relating to or arising from this Agreement if City gives notice to Contractor that such employee is determined by City to be discourteous, disorderly, inefficient, or otherwise objectionable (provided the term "otherwise objectionable" shall not permit City to "ban" an employee for reasons that violate public policy; and, further, City shall give a reason for requesting the "ban" of any employee from engaging in work related to this Agreement).

G. Training and Legal Compliance.

Contractor shall provide operating and safety training that meet minimum OSHA standards for all personnel, and shall comply with all laws and regulations applicable to its employees and personnel.

H. Hiring of Undocumented Workers Prohibited.

Contractor shall not hire or employ any person to perform work within the City of San Clemente or allow any person to perform work required under this Agreement unless such person is a United States citizen or is properly documented and legally entitled to be employed within the United States, and Contractor shall verify, through E-Verify, or any other similar method approved by the Federal Government, that all persons employed by Contractor to perform work required under this Agreement are legally entitled to be employed within the United States.

9. CONTRACTOR'S CONSIDERATION

In addition to any other consideration set forth herein, as part of its consideration for the extension of the Original Agreement, and for the exclusive right to provide Solid Waste handling

services and Temporary Bin/Rolloff Services within the Franchise Area, Contractor shall provide the following:

A. Franchise Fee.

Contractor shall pay to City, in lawful money of the United States, a franchise fee equal to five percent (5%) of Contractor's annual Gross Receipts during the entire Term of this Agreement (the "Franchise Fee.") Said Franchise Fee shall be due to City in four (4) quarterly payments, which shall be due on or before the fifteenth (15th) day after the end of each calendar quarter (i.e., on or before April 15, July 15, October 15, and January 15). The amount of each such payment shall be equal to five percent (5%) of Contractor's Gross Receipts in the preceding calendar quarter. Franchise Fee payments shall be accompanied by a statement certified by an officer of Contractor attesting to the accuracy of the amounts paid, and setting forth the basis for their calculation in a manner acceptable to City. The Franchise Fee due hereunder shall apply to Gross Receipts of Contractor collected after the expiration of the Term hereof relating to Contractor's performance during the Term hereof.

B. Services at City Facilities

Contractor shall provide Collection services at all Premises owned and/or operated by the City (including without limitation all public buildings, parks, beaches, and bus stops), at no cost to City and shall provide Containers for such service as City deems appropriate for each of its various Premises (i.e., Carts, Bins or Rolloff Boxes). Such services shall be provided for all existing City facilities, as they may be expanded from time to time, as well as all new or additional facilities acquired/constructed during the Term hereof. Contractor shall carry out its obligations pursuant to this provision in a manner, and to a degree, approved by the City Manager

C. Public Refuse Fund.

(1) Contractor shall create and continually fund a "Public Refuse Fund" for the purpose of funding refuse related projects and programs as may be created and implemented by City.

(2) Contractor shall make payments into the Public Refuse Fund on or before the 15th day of each month during the Term hereof. Monthly payments shall be in a sum equal to \$9.49 multiplied by the number of Refuse Bin's used for weekly Solid Waste handling services at Commercial Premises or Multi-Family Dwellings in the preceding month (i.e., this would not include Recycling Bins or Bins used for Temporary Services.) The Public Refuse Fund shall be held in an interest bearing bank account at an institution of City's choosing, and shall not be accessible to Contractor. All interest earned in the Public Refuse Fund shall remain as part of the Fund. City may withdraw funds from the Public Refuse Fund for the purpose of funding refuse related projects and programs, or for such other purposes as it may deem appropriate (including without limitation any purposes for which General Fund expenditures could occur).

10. ADDITIONAL CHARGES AND INTEREST FOR LATE PAYMENTS

In the event Contractor fails to timely make any of the payments to City that are provided for in this Agreement, Contractor shall pay to City, as additional consideration both of the following amounts:

A. A sum of money equal to five percent (5%) of the amount due. This amount is required in order to defray those additional expenses and costs incurred by City by reason of the delinquent payment including, but not limited to, the cost of administering, accounting for, and collecting said delinquent payment and the cost to City of postponing services and projects necessitated by the delay in receiving the revenue.

B. A sum of money equal to the lesser of (i) two percent (2%) of the amount due per month or (ii) interest on the delinquent sum (excluding the late payment charge referred to in clause A) at the maximum legal rate, with said sum to be applied as interest for loss of use of the money due.

11. FAITHFUL PERFORMANCE

A. Contemporaneously with execution of this Agreement, as security for Contractor's faithful performance of all obligations of this Agreement, Contractor shall provide a surety mechanism (the "Surety") as more fully defined below in the amount of One Hundred Thousand Dollars (\$100,000.00). The Surety may be comprised of either a performance bond or an irrevocable letter of credit, or a combination of both. If a letter of credit utilized to satisfy some or all of the Surety requirement shall be drawn upon a financial institution with an office within one hundred (100) miles of City, and otherwise in a form acceptable to the City Attorney. The performance bond, if any, shall be issued by a duly authorized corporate surety company authorized to do business in California, and in a form acceptable to the City Attorney. The cost of the Surety shall be the sole responsibility of Contractor. The Surety shall be released within thirty (30) days after both (i) the expiration of the Term of this Agreement; and (ii) Contractor's satisfactory performance of all obligations hereunder.

B. In the event Contractor shall for any reason become unable to, or fail in any way to, perform as required by this Agreement, City may declare a portion or all of the Surety, as may be necessary to recompense and make whole the City, forfeited to the City. Upon partial or full forfeiture of the Surety, Contractor shall restore the Surety to its original amount within thirty (30) days of the City's notice to do so. Failure to restore the Surety to its full amount within thirty (30) days shall be a material breach of this Agreement.

C. Notwithstanding any provision hereof to the contrary, thirty (30) days following City providing Contractor with written notice of its failure to pay City any amount owing under this Agreement, either the letter of credit or performance bond comprising the Surety may be utilized by City for purposes including, but not limited to:

(1) Payment of sums due under the terms of this Agreement which Contractor has failed to timely pay to City, including specifically liquidated damages.

(2) Reimbursement of costs borne by City to correct violations of this Agreement not corrected by Contractor.

D. City may draw upon the entire letter of credit (if any) utilized to meet Contractor's obligations pertaining to the Surety, and convert it to a cash deposit, if Contractor fails to cause the letter of credit to be extended or replaced with another satisfactory letter of credit no later than sixty (60) days prior to its expiration.

12. INSURANCE COVERAGE

Contractor shall procure and maintain during the entire Term of this Agreement insurance against claims for death or injuries to persons, damages to property, and economic loss which may arise from or in connection with Contractor's performance hereunder or the actions or inactions of Contractor's officers, agents, representative, employees, or subcontractors in connection with Contractor's performance. The insurance requirements hereunder in no way limit Contractor's various indemnification obligations set forth herein.

A. Scope of Insurance Coverage.

Contractor shall procure and maintain during the entire Term of this Agreement, the following insurance coverages:

(1) Worker's Compensation Insurance.

Worker's Compensation insurance to cover Contractor's employees as required by the California Labor Code. Prior to City execution of this Agreement, but not later than ten (10) business days following Council approval of the contract, unless a waiver of this timing requirement is granted by City, Contractor shall file with City a signed Worker's Compensation Insurance Certification in substantially the following form:

"I am aware of, and will comply with Divisions 4 and 5 of the California Labor Code by securing, paying for, and maintaining in full force and effect for the duration of this Agreement, complete worker's compensation insurance, and shall furnish a certificate of insurance to the City before commencement of work under this Agreement."

(2) Comprehensive General Liability Insurance.

Comprehensive General Liability insurance covering death and personal injury and property damage liability, automobile liability (both owned and leased) contractual liability, and independent contractor's liability, with minimum aggregate coverage of Ten Million (\$10,000,000) and combined minimum liability limits of Three Million (\$3,000,000) per occurrence, and a combined single limit of Three Million (\$3,000,000) for automobile liability.

a. Each such Policy of Insurance shall:

(i) Be issued by a company that holds a current policy holder's alphabetic and financial size category rating of not less than A VIII, according to the current Best's Key Rating Guide or a company of equal financial stability that is approved by City's Human Resources/Risk Manager for all coverages except surety.

(ii) Cover the operations of Contractor pursuant to the terms of the Agreement.

(iii) Be written on an occurrence and not a claims-made basis.

b. The general liability and automobile liability policies required hereunder shall contain, or be endorsed to contain, the following provisions:

(i) City, its employees, agents, contractors, officials, volunteers, and officers are to be covered as named insureds as respects: liability arising out of activities performed by or on behalf of Contractor; products and completed operations of Contractor; premises owned, occupied, or used by Contractor; and automobiles owned, leased, hired or borrowed by Contractor. The coverage shall contain no special limitations on the scope of protection afforded to City or its officials, employees, agents, contractors, and volunteers.

(ii) This policy shall be considered primary insurance as respects City, its officials, employees, agents, contractors and volunteers. Any insurance or self-insurance maintained by City and its officials, employees, agents, contractors, and volunteers shall be excess of Contractor's insurance and shall not contribute with it.

(iii) Any failure to comply with reporting provisions of the policies shall not affect coverage provided to City or its officials, employees, agents, contractors, or volunteers.

(iv) Contractor's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

(v) Thirty (30) days prior written notice by certified mail, return receipt requested, shall be given to City prior to any suspension, cancellation, reduction in scope or limits of coverage, or non-renewal of this policy, for any reason whatsoever, becoming effective. Such notice shall be sent to the City Clerk.

B. Environmental Pollution Control Insurance.

Contractor maintain either an endorsement to its general liability policy, or a separate policy of insurance covering environmental pollution and contamination, that specifically covers Contractor's activities in connection with the Household Special Waste Collection services provided hereunder, and naming the City as an additional insured. Said coverage shall be in the amounts set forth in the preceding sub-section A with regard to Contractor's general liability insurance coverage, and shall substantially comply with all other provisions set forth in the preceding sub-section A.

C. Adjustments to Coverage.

The types of coverage, limits of coverage, and insurance companies shall be subject to review and approval by City's Human Resources Manager every year. City may require that the coverage types or amounts, or companies of insurance, be increased or changed at that time such that they are at least equal to the quality, types, and amounts of coverage provided by City's own liability insurance, or any self-insurance or risk sharing pool City may have or participate in.

D. Deductibles and Self-Insured Retention.

Any deductible or self-insured retention amount must be declared to and approved by City. At the option of City, Contractor shall either:

(1) have the insurer reduce or eliminate such deductible or self-insured retention as respects City, its officials, employees, agents, contractors, and volunteers; or

(2) provide to City a bond or irrevocable letter of credit in an amount and form acceptable to the City Manager to guarantee payment of losses and related investigations, claims administration, and defense expenses which would otherwise be paid from Contractor's deductible or SIR.

E. Verification of Coverage.

Contractor shall furnish City with certificates of insurance and original endorsements effecting coverage required by this section prior to commencement of services provided hereunder. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to issue binding coverage on its behalf. The certificates and endorsements are to be on forms approved by City. All certificates, letters, and endorsements are to be received and approved by City before work commences. City reserves the right to require complete, certified copies of all required insurance policies, at any time.

F. Subcontractors.

In the event City provides its written consent for the use of subcontractors, Contractor shall include any such permitted subcontractors as insured under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverage for subcontractors shall be subject to all of the requirements stated herein.

G. Loss or Reduction in Insurance.

In the event that Contractor fails to retain or maintain insurance with the scope and amounts of coverage required hereunder, City shall have the right, but not the obligation to either terminate this Agreement, or to obtain insurance coverage as required herein on behalf of Contractor and utilize funds from either the Cash Deposit or Performance Bond to pay the cost of providing such coverage.

13. ASSIGNMENT, SUBLETTING, AND TRANSFER; REQUIREMENTS AND LIMITATIONS

A. The franchise granted by this Agreement shall not be sold, hypothecated, sublet, assigned, or otherwise transferred, nor shall any of the rights or privileges herein be hypothecated, leased, assigned, sold, or otherwise transferred, either in whole or in part, nor shall title thereto, either legal or equitable, or any right, interest, or property therein, pass to or vest in any person, except Contractor, either by action or inaction of Contractor or by operation of law, (collectively referred to as an "Assignment") without the prior approval by the City Council of the City. Any such Assignment made without the approval by the City Council of the City shall be void and the attempted Assignment shall constitute a material breach of this Agreement, and shall give rise to City's right, but not obligation, to terminate this Agreement.

B. For purposes of this Section the term "Assignment" shall be given the broadest possible interpretation, and (without limiting the preceding subsection in any way) shall include, but not be limited to: (i) a sale, exchange or other transfer of substantially all of the Contractor's assets dedicated to service under this Agreement to a third party; (ii) a sale, exchange or other transfer of any membership interest of Contractor to a third party; (iii) any dissolution, reorganization, consolidation, merger, re-capitalization, stock issuance or re-issuance, voting trust, pooling agreement, escrow arrangement, liquidation or other transaction which results in a change of ownership or control of Contractor or any Affiliate or any "parent entity" that owns or controls Contractor; (iv) any assignment by operation of law, including those resulting from mergers or acquisitions by or of Contractor of any of its Affiliates, insolvency or bankruptcy, making assignment for the benefit of creditors, writ of attachment for an execution being levied against this Agreement, appointment of a receiver taking possession of Contractor's property, or transfer occurring in the event of a probate proceeding; and (v) any combination of the foregoing (whether or not in related or contemporaneous transactions) which has the effect of any such transfer or change of ownership, or change of control of Contractor. Any "change in control" of Contractor shall specifically be treated as an Assignment of this Agreement. Change in control of Contractor shall include any actual sale, transfer, or acquisition of Contractor; Contractor's grant of a management contract to any person or entity which is applicable to any aspect of Contractor's performance pursuant to this Agreement; or transfer of the beneficial interest of the cumulative amount of thirty percent (30%) or more of Contractor's voting stock to a person, entity, or group of persons acting in concert who, as of the effective date hereof, own less than 30% of such voting stock (except that a transfer of stock in trust to immediate family members of persons currently holding stock in Contractor shall not be considered in determining if a change in control is occurring so long as Contractor notifies City of such transfer, in writing, prior to its occurrence.)

C. Contractor acknowledges that this Agreement involves rendering a vital service to City's residents and businesses, and that City has selected Contractor to perform the services specified herein based on (1) Contractor's experience, skill and reputation for conducting its Solid Waste Handling Services in a safe, effective and responsible fashion, at all times in keeping with applicable Environmental Laws, regulations and best Solid Waste management practices, and (2) Contractor's financial resources to maintain the required equipment and to support its indemnity obligations to City under this Agreement. City has relied on each of these

factors, among others, in choosing Contractor to perform the services to be rendered by Contractor under this Agreement.

D. City may impose conditions for its approval of any Assignment of this Agreement including, but not limited, to conditions requiring acceptance of amendments to this Agreement and payment of a transfer fee to be determined in the sole discretion of the City Council.

E. City may transfer its rights and obligations set forth in this Agreement to a joint powers authority for the management of Solid Waste and Recyclable Material within any area that includes the Franchise Area.

14. FRANCHISE TRANSFER; FEES AND SECURITY

A. Any request for approval of a franchise assignment or transfer or change in control of Contractor shall be made by an application presented in a manner prescribed by the City Manager. The application shall include a non refundable deposit in an amount to be determined by the City Manager to be applied to a transfer fee in an amount to be set by a Resolution of the City Council. The precise transfer fee, and deposit therefore, shall be determined at such time during the course of processing the application as the City Manager deems appropriate, and no transfer shall be effective until the transfer fee has been paid in full.

B. These franchise transfer fees are in addition to and not in lieu of any franchise fees specified in this Agreement.

15. CITY'S REMEDIES; DEFAULT AND TERMINATION

A. Notice of Default.

If the City Manager determines that Contractor has defaulted in the performance of any obligation hereunder, or that Contractor's performance pursuant to this Agreement with respect to such matters has not been in conformity with reasonable industry standards which are obtained in similar cities in Southern California, the provisions of this Agreement, the requirements of the Municipal Code, the requirements of the Board, including, but not limited to, requirements for source reduction and recycling or any other applicable Federal, State, or local law or regulation, including but not limited to the laws governing transfer, storage, or disposal of special wastes, or hazardous wastes, the City Manager may provide written notice to Contractor of such default. The City Manager may, in such written notice, set a reasonable time within which correction of such default shall be made. Unless a longer or shorter time is otherwise specified by the City Manager, a reasonable time for correction shall be thirty (30) days from the date such written notice is given.

B. Failure to Cure.

If Contractor fails to correct, to the satisfaction of the City Manager, all deficiencies contained in the written notice thereof within the specified time, or if it is not reasonably possible to correct such deficiencies within the specified time, and Contractor fails to commence to correct or remedy such deficiencies within the specified time and diligently effect such

correction or remedy thereafter, then the City Manager may refer the matter to the City Council for review, or review the matter himself.

C. Review by City Manager.

If the City Manager reviews the matter and determines that Contractor has failed to properly or adequately cure any default set forth above, the City Manager, in the exercise of his discretion, may terminate this Agreement, or take such other action as he deems appropriate to pursue any remedy available to City. A decision or order of the City Manager shall be final and binding on Contractor unless Contractor files a "Notice of Appeal" with the City Clerk within five (5) business days of the date the notice of the City Manager's decision is given. The City Manager shall schedule any appeal for consideration by the City Council at the earliest feasible City Council Meeting following the date a Notice of Appeal is given to City.

D. City Council Review.

In the event an appeal of a decision of the City Manager is filed, or if the City Manager refers the matter to the City Council without rendering a decision, the City Council shall set the matter for consideration before the City Council as a regular agenda item. In reviewing the matter the City Council may consider any information reported by the City Manager regarding the deficiencies, and shall give Contractor, or its representatives and any other interested person, a reasonable opportunity to be heard. The Council shall determine whether Contractor has failed to properly or adequately perform as set forth above, and if so whether to terminate the Agreement, or to pursue any other remedy available to City.

E. Performance During Reviews.

Contractor's performance under this Agreement is not excused during any period of time when its performance is under review as set forth above, including at any time prior to a final decision as to whether such performance is deficient.

F. Termination without Right to Cure.

The above right of termination as a result of Contractor's failure to timely cure any deficiency is in addition to City's right to terminate this Agreement without affording Contractor an opportunity to cure in circumstances where Contractor is determined by City to have materially breached this Agreement. City shall thus be afforded the right to terminate this Agreement in the event of any material breach hereof by Contractor without affording Contractor the right to cure as a result of any action, inaction or circumstance which is a legally defined material breach, or is defined herein as a material breach, and/or under any of the following circumstances which are hereby specifically defined as material breaches:

- (1) If Contractor practices, or attempts to practice, any fraud upon City.
- (2) If Contractor becomes insolvent, unable, or unwilling to pay its debts, or upon listing of an order for relief in favor of Contractor in a bankruptcy proceeding.

(3) If Contractor willfully violates any orders or rulings of any regulatory body having jurisdiction over Contractor relative to this Agreement. So long as City's rights are not prejudiced during the pendency of any challenge to such orders or rulings by Contractor, Contractor may contest any such orders or rulings by appropriate proceedings conducted in good faith, in which case no material breach of this Agreement shall be deemed to have occurred until a final ruling has been rendered.

(4) If Contractor ceases to provide Solid Waste Handling Services, including Collection of Solid Waste and/or Recyclable Material, as required under this Agreement over all or any portion of the Franchise Area for a period of seven (7) days or more, for any reason not specified as a force majeure event hereunder.

(5) If Contractor fails to materially comply with any insurance or indemnification requirement set forth in this Agreement.

(6) If City is required to pay any fine or penalty, which is not paid on its behalf by Contractor or which Contractor fails, refuses, neglects or is unable to pay or indemnify City against, relating to any diversion or other requirement of AB 939.

(7) If Contractor, or any management level employee of Contractor is convicted of a crime that the City Council determines, in its discretion, is material to a decision as to whether to permit Contractor continue to hold the rights granted by this Agreement (examples of which may include, but are not limited to, offenses related to its financial dealings with other public entities and/or offenses related to public corruption such as bribery, conflicts of interest, and/or vote selling.)

16. CONTRACTOR'S REMEDIES; ADMINISTRATIVE HEARING

A. Administrative Hearing.

Should Contractor contend that City is in breach of any aspect of this Agreement, it shall give notice to the City Manager requesting an administrative hearing on the allegation. The hearing shall occur as soon as reasonably possible, or on such date as mutually agreed by the parties, and shall be held before an impartial hearing officer to be determined by the City Manager. The hearing officer shall make an advisory ruling on Contractor's allegations, and suggest a remedy if a breach by City is determined to exist. The hearing officer's ruling and recommendations shall become final and binding if the parties so agree in writing within 30 days of the date notice of the decision is given to both parties. Otherwise, the hearing officer's ruling shall have no further force or effect.

B. Other Remedies; Claims.

Contractor shall be entitled to all available remedies in law or equity for City's breach of this Agreement; provided, however, Contractor shall not file or otherwise commence any action against City, in law or equity, in any court, until after an administrative hearing as set forth above has been completed, and the above noted 30 day period to accept the hearing officer's decision has passed, or either City or Contractor has given timely written notice to the other that it will not accept the hearing officer's decision.

C. Actions for Damages.

As a prerequisite to the filing and maintenance of any action for damages by Contractor against City arising out of this Agreement, Contractor shall present a claim to City, as required by Government Code section 910 *et seq.*, within 30 days of the date of the occurrence giving rise to the claim for damages.

17. CITY'S ADDITIONAL REMEDIES

In addition to any other remedies set forth herein, City shall be entitled to any or all of the following rights and remedies in the event of a breach of this Agreement by Contractor:

A. The right to use Contractor's equipment for the purpose of Collecting, transporting, and/or disposing of Solid Waste, including Recyclable Material, for a period not to exceed six (6) months. In the case of equipment not owned by Contractor, Contractor shall assign to City, to the extent Contractor is permitted to do so under the instruments pursuant to which Contractor possesses such equipment, the right to use and possess the equipment. If City exercises its rights under this Section, City shall pay to Contractor the reasonable rental value of the equipment for the period of City's possession thereof (although payment may, if appropriate, occur in the form of a setoff against damages otherwise owed by Contractor pursuant to the terms hereof);

B. The right to license others to perform the services otherwise to be performed by Contractor hereunder, or to perform such services itself; and

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

18. RIGHTS OF CITY TO PERFORM DURING EMERGENCY

A. Provision of Service.

Should Contractor, for any reason whatsoever, refuse or be unable to provide Solid Waste Handling Services for a period of more than seventy-two (72) hours, and if as a result thereof, Solid Waste should accumulate in City to such an extent or in such a manner that the City Manager finds that such accumulation endangers or menaces the public health, safety, or welfare, City shall have the right, upon twenty-four (24) hours prior written notice to Contractor, during the period of such emergency, to temporarily take possession of any or all equipment and facilities of Contractor previously used in providing Collection, transportation, and disposal of Solid Waste and provide, through its own forces or otherwise, Solid Waste Handling Services which Contractor otherwise would be obligated to provide pursuant to this Agreement. Contractor agrees that in such event it shall fully cooperate with City to affect such a transfer of possession for City's use.

B. Possession of Equipment.

Contractor agrees, that in the event of circumstances described in Section 18A above, City may take temporary possession of and use all of said equipment and facilities without paying Contractor any rental or other charge. Upon Contractor giving City notice that it is able to resume its normal responsibilities under this Agreement City shall either relinquish possession of all of the above mentioned property to Contractor.

C. Exclusions from Right to Possession of Equipment without Compensation.

Specifically excluded from the circumstances in which City may possess and utilize Contractor's equipment without compensation are circumstances in which Contractor fails or refuses to provide Solid Waste Handling Services hereunder for any reason which is not a force majeure event as defined herein. In such circumstances City's right to utilize and possess Contractor's equipment shall be subject to the provisions of the above Section 17.

19. PRIVACY

Contractor shall strictly observe and protect the privacy rights of Customers. Information identifying individual Customers or the composition or contents of a Customer's Solid Waste stream, or any of the billing information pertaining to any Customers, shall not be revealed to any person, governmental unit, private agency, or company, unless upon the authority of a court of law, by statute, ordinance, or regulation of a governmental agency having jurisdiction, or upon valid authorization of the Customer. This provision shall not be construed to preclude Contractor from preparing, participating in, or assisting in the preparation of waste characterization studies or waste audits which may be required by AB 939 or this Agreement. Contractor shall not market or distribute, outside the normal course of its business, mailing lists with the names and addresses of Customers. The rights afforded Customers pursuant to this Section shall be in addition to any other privacy right afforded Customers pursuant to federal or state law.

20. REPORTS AND ADVERSE INFORMATION

A. Annual Reports.

On or before June 30 of each year during the Term of this Agreement and within fifteen (15) days prior to the end of the Term, Contractor shall submit a written annual report, at its sole expense, in a form approved by City, which includes, but is not limited to, the following information:

(1) A summary of the previous year's activities including, but not limited to, services begun or discontinued during the reporting year, and the number of Customers broken down on a monthly basis;

(2) A summary of the total tons of Solid Waste Collected in City in the preceding year as well as a summary of the total tonnage diverted from the State's landfill systems during that time frame;

(3) Information and reports required by City to meet its reporting obligations imposed by AB 939 and the regulations implementing AB 939, in a form and content approved by the City Manager;

(4) A revenue statement, certified by the chief financial officer of Contractor, setting forth Franchise Fees and other fees paid or deposited pursuant to the terms hereof, and the basis for the calculation thereof, including specifically a breakdown of sources of revenue included in Gross Receipts and the amount of revenue derived from each such source comprising Gross Receipts;

(5) A list of Contractor's officers and the members of its Board of Directors. (if any), as well as a list identifying all Persons holding a membership interest in Contractor; and

(6) A list of stockholders or other equity investors holding five percent (5%) or more of the interest in Contractor.

B. Adverse Information.

Contractor shall provide City two copies of all reports and other material adversely affecting the Agreement, submitted by Contractor to the United States Environmental Protection Agency, the Board, the California Regional Water Quality Control Board, and any other federal, state, regional, or local regulatory agency. Copies shall be submitted to City simultaneously with Contractor's filing of such matters with said agencies. Contractor's routine correspondence to said agencies need not be automatically submitted to City, but shall be made available to City upon written request.

(1) Contractor shall submit to City copies of all pleadings, applications, notifications, communications, and documents of any kind submitted by Contractor to, as well as copies of all decisions, correspondence, and actions by, any federal, state, and local courts, regulatory agencies, and other government bodies relating in any manner to Contractor's performance of services pursuant to this Agreement. To the degree authorized by law, any confidential data exempt from public disclosure shall be retained in confidence by City and its authorized agents and shall not be made available for public inspection.

(2) Contractor shall submit to City such other information or reports in such forms and at such times as City may reasonably request or require.

(3) All reports and records required under this or any other section shall be furnished at the sole expense of Contractor.

(4) A copy of each of Contractor's annual and other periodic financial reports and those of its parent, subsidiary, and affiliated corporations and other entities, as City requests, shall be submitted to City within thirty (30) days after giving notice to Contractor of such a request.

C. Tonnage Report.

No later than twenty (20) days after the end of each calendar quarter during the Term of this Agreement, Contractor shall submit to the City Manager quarterly reports setting forth the amount of tonnage of Solid Waste collected from within the City Limits and disposed of pursuant to this Agreement for the previous quarter and setting forth the cumulative year-to-date total amount of tonnage of such Solid Waste. Said reports shall be based upon the tonnage receipts provided to Contractor by any Solid Waste Facility. Contractor shall, upon demand by City provide true and accurate copies of the tonnage receipts in order to enable City to verify Contractor's quarterly reports.

D. Failure to Report.

The refusal, failure, or neglect of Contractor to file any of the reports required, or the inclusion of any materially false or misleading statement or representation made knowingly by Contractor in such report shall be deemed a material breach of the Agreement, and shall subject Contractor to all remedies, legal or equitable, which are available to City under this Agreement or otherwise.

21. COMPENSATION

A. Contractor's Rates.

Contractor shall provide services to Customers pursuant to this Agreement at rates it sets, charges to, and collects from Customers, which rates shall not exceed those set forth in the attached Exhibit A, which sets out the maximum rates that may be charged by Contractor, as such maximum rates may be adjusted from time to time pursuant to the terms hereof. It is intended that the maximum rates set forth in Exhibit A will apply at the commencement of this Agreement but nevertheless may be increased or decreased based on the provisions herein addressing maximum rate adjustments. The maximum rates set forth in Exhibit A for Solid Waste handling services are inclusive of all services to be provided, including transportation, disposal, Container and Bin costs (including the cost of providing standard Bins with or without lids or wheels), and costs associated with moving Bins from standard enclosures such distance as is reasonably necessary to dump them (but not including costs associated with moving Bins beyond such distance in unusual circumstances or due to special requests by Customers), and no other charges shall be imposed by Contractor for such services unless approved by the City Manager.

B. Annual Producer Price Index Adjustments to Contractor Component and Processing Component.

Commencing on July 1, 2011, the "contractor component" and the "processing component" associated with any of the maximum rates set forth on Exhibit A shall be adjusted,¹ and such components of said rates shall be adjusted annually thereafter on July 1 during the Term hereof (the "Adjustment Dates"), by a percentage equal to the percentage change in the

¹ Notwithstanding any other provision herein to the contrary, maximum rates related to Rolloff Boxes shall not be adjusted until July 1, 2012.

Orange County area Producer Price Index (“PPI”) for the twelve-month period commencing fifteen (15) months prior to the applicable Adjustment Date and ending three (3) months prior to the applicable Adjustment Date. Notwithstanding the above, no annual adjustment in which the forging items would otherwise increase shall occur if either: (a) the City Manager determines that Contractor did not fully comply with all terms of this Agreement in the 12 month period preceding the increase, including without limitation, provisions hereof relating to reporting, diversion, and Customer service standards; or (b) Contractor is delinquent in the payment of any Franchise Fee to the City. At least fifteen (15) days prior to charging Customers any rate increased due to an increase in the PPI as set forth herein, Contractor shall notify the City Manager of its intent to do so, and receive the City Manager’s approval therefor, which approval shall not be withheld unless it conflicts with the provisions hereof.

C. Annual Adjustments to Disposal Component.

It is the intention of the parties that the “disposal component” associated with any of the maximum rates as set forth in Exhibit A shall be adjusted no more often than annually on each Adjustment Date such that they reflect each Customers pro-rata share of any increase or decrease in the actual landfill tipping fees incurred by Contractor for disposal of Solid Waste Collected pursuant to this Agreement. To arrive at an appropriate adjustment formula to satisfy this intent, the parties have agreed that the “Disposal Component Tonnage Basis” set forth in Exhibit A is a fair estimate of the amount of Solid Waste generated and ultimately disposed of by each applicable Customer and/or service type. The initial maximum rate associated with the disposal component for various services set forth in Exhibit A has been arrived at by multiplying the Disposal Component Tonnage Basis for each applicable Customer and/or service type by \$29.95 which is the per ton tipping fee charged by the Orange County Landfill System (where as of the Effective Date Solid Waste must be delivered for disposal per the County Agreement). The Disposal Component Tonnage Basis is premised upon historical data of the actual tonnage of Solid Waste generated by each Customer type. The Parties may annually evaluate the actual disposal tonnage data related to each Customer type and, if approved by the City Manager, the Disposal Component Tonnage Basis may be adjusted upward or downward, as appropriate, effective upon any Adjustment Date. If upon any Adjustment Date a change becomes effective in the tipping fees charged to Contractor at the Orange County Landfill system, pursuant to the County Agreement, the disposal component associated with any of the maximum rates set forth in Exhibit A shall be adjusted as of the Adjustment Date by similarly multiplying the Disposal Component Tonnage Basis for each applicable Customer and/or service type by the per ton tipping fee then in effect. In the event an increase becomes effective in applicable tipping fees at a time other than an annual Adjustment Date, Contractor may request an adjustment to the maximum rates applicable to the Disposal Component set forth on Exhibit A pursuant to Section 21D hereof.

D. Discretionary Adjustments.

Contractor may request an adjustment to the maximum rates set forth in Exhibit A at reasonable times for unusual changes in the cost of providing service under this Agreement, or as a result of changes in the cost for processing Solid Waste. For each request for an adjustment to the maximum rates brought pursuant to this Section Contractor shall prepare a schedule documenting the extraordinary costs. Such request shall be prepared in a form acceptable to City

with support for assumptions made by Contractor in preparing the estimate. City shall review the Contractor's request and, in the City Council's sole judgment and absolute, unfettered discretion, make the final determination as to whether an adjustment to the maximum rates will be made, and, if an adjustment is permitted, the appropriate amount of the adjustment. Notwithstanding, and without limiting the forgoing, it is anticipated that increases to the processing component will occur based upon changes to the PPI in a manner similar to that set forth and without City may consider increases or decreases in the Contractor's total revenues and total cost of services when reviewing an extraordinary rate adjustment request.

E. Resolution of Disputes Regarding Rate Adjustments.

Any dispute regarding an adjustment to the maximum rates Contractor may charge, or the computation thereof, shall be decided by the City Manager. The rates in effect at the time such dispute is submitted to the City Manager shall remain in effect pending resolution of such dispute. The effective date of the adjusted maximum rate following the resolution of any such dispute, whether retroactive or prospective, shall be determined by the City Manager.

F. Billing and Payment.

Contractor shall provide itemized bills, distinctly showing charges for all classifications of services, including charges for late payments. Contractor acknowledges that it, and not Customers, is to pay a franchise fee to City as consideration for this Agreement. Accordingly, Contractor's bills shall not include separate itemization of a "franchise fee" or other similar designation. Billings may be made monthly or quarterly and in advance for Commercial and Multi-Family Customers utilizing 3 yard Bins for weekly Solid Waste handling service, and may be made quarterly in advance for residential Customers. Billings shall be made in arrears on a monthly or quarterly basis for Customers utilizing Rolloff Boxes or compactors for weekly Solid Waste handling services. Retroactive adjustments shall be made on the basis of addresses of premises added and the date added. Premises ordering service after the first of the month shall be charged on a prorated daily basis.

G. Delinquent Accounts.

Contractor may discontinue service to any Customer as set forth in this Section. Customers who have not remitted required payments within thirty (30) days after the date of billing shall be notified on forms approved by City. Said forms shall contain a statement that services may be discontinued fifteen (15) days from the date of notice if payment is not made before that time. Upon payment of delinquent fees in an amount not in excess of the amount specified in Exhibit A, Contractor shall resume collection on the next regularly scheduled collection day.

H. Refunds.

Contractor shall refund to each Customer, on a pro rata basis, any advance service payments made by such Customer for service not provided when service is discontinued by the Customer.

I. Recyclable Material Revenue.

Subject to the provisions of this Agreement, Contractor shall have the right to retain any benefit, revenue, or profit resulting from its right to retain, dispose of, or use Recyclable Material which it collects, and any such revenue shall not be considered as part of the Gross Receipts hereunder to which the Franchise Fee applies.

J. Additional Charges.

Contractor shall include any additional charges as may be approved by the City Manager on the billings.

22. IDENTIFICATION OF CONTRACTOR

Contractor has agreed to use the name "CR&R Incorporated" to identify itself to the public as the specific organization that shall provide all of the services under this Agreement. This name shall be used for all correspondence, billing statements, directory listings, references, signs, and vehicle, Container, and Bin identification.

23. PUBLIC ACCESS TO CONTRACTOR

A. Office Hours.

Contractor's office hours shall be, at a minimum, from 8:00 A.M. to 5:00 P.M. daily, and 8:00 A.M. to 12:00 P.M. on Saturdays, on all collection days. A representative of Contractor shall be available during office hours for communication with the public at Contractor's principal office. During normal office hours Contractor shall maintain either a local or toll free telephone number for calls within the City Limits. Contractor shall also maintain a local or toll free after-hours telephone number for use during other than normal business hours. Contractor shall have a representative or answering service available at said after-hours telephone number during all hours other than normal office hours.

B. Service Complaints.

Contractor shall address and manage all complaints in the following manner:

(1) All Customer complaints shall be directed to Contractor. Contractor shall maintain records listing the date of Customer complaints, the Customer's name, address and telephone number, description and nature of the complaint or request, and when and what action was taken by Contractor to resolve the complaint. All such records shall be maintained and shall be available for inspection by City, as described in Section 27, below. Contractor shall prepare monthly summaries of Customer complaints. The summaries shall be available and delivered monthly to the City Manager. Contractor agrees to use its best efforts to resolve all complaints by close of business of the second business (waste collection) day following the date on which such complaint is received. Service complaints may be investigated by the City Manager.

C. Government Liaison Person.

Contractor shall designate a "government liaison person" who shall be responsible for working with the City Manager to resolve Customer complaints.

24. RESOLUTION OF DISPUTED CUSTOMER COMPLAINTS

A. Notification of Arbitration Procedure.

Contractor shall notify all Customers of the complaint arbitration procedures set forth in this Section at the time Customers apply for or are provided service, and on or before every June 30 thereafter, as well as in connection with any complaint not immediately resolved in a manner apparently satisfactory to the Customer.

B. Customer Requests for Review; Time Limits.

A Customer dissatisfied with Contractor's decision regarding a complaint may ask the City Manager to review the complaint. To obtain this review, the Customer must request City review within 30 days of receipt of Contractor's response to the Complaint, or within 45 days of submitting the complaint to Contractor, if Contractor has failed to respond to the complaint. City may extend the time for good cause.

C. Referral of Complaints to Contractor.

Before reviewing the complaint, the City Manager shall refer it to Contractor. If Contractor fails to cure the complaint within ten (10) days, the City Manager shall review the Customer's complaint and determine if further action is warranted. The City Manager may request written statements from Contractor and the Customer and/or oral presentations.

D. City Manager Review of Complaints.

The City Manager shall determine if the Customer's complaint is justified, and if so, what remedy, if any, shall be imposed.

E. Records of Complaints.

Contractor shall maintain all records relating to Customer complaints for a period not less than one (1) year.

25. FLOW CONTROL; COUNTY AGREEMENT.

A. City shall have the option to direct and/or approve which transformation facility, recycling facility, material recovery facility, landfill, or other facility Contractor shall use to retain, recycle, process, and dispose of Solid Waste and construction materials generated within the Franchise Area as required to enable City to comply with the County Agreement. Contractor expressly consents to City's ability to direct the location for disposal of Solid Waste hereunder, and waives any and all rights to challenge City's ability to do so, including without limitation any rights under the Commerce Clause of the United States Constitution.

B. Contractor expressly acknowledges its awareness of the County Agreement which has been adopted and entered into by City. Moreover, Contractor acknowledges that it has had an opportunity to review the County Agreement, and is aware of the provisions thereof that require all Solid Waste collected in the City Limits to be disposed of in the Orange County landfill system. Contractor further acknowledges that the County of Orange is an intended third party beneficiary of Contractor's obligations relating in any way to the disposal of Solid Waste pursuant to this Agreement and the County Agreement. Contractor hereby adopts as its obligations hereunder such provisions of the County Agreement that require action or inaction by it as City's Solid Waste franchisee. Contractor represents and warrants that it can and will perform its duties in connection with this Agreement in such a manner as to ensure that City does not breach the terms of the County Agreement as a result of Contractor's actions or inactions.

C. Upon the effective date of this Agreement City is deemed to have exercised its flow control option set forth hereinabove as to Solid Waste required to be delivered to the Orange County landfill system pursuant to the County Agreement, by virtue of the fact City has entered the County Agreement; and, further, City is deemed to have exercised such option in a manner consistent with its obligations pursuant to the County Agreement. At any time during the Term of this Agreement the City Manager may notify Contractor in writing that City no longer desires to exercise its flow control option hereunder. In the event City so notifies Contractor of its desire to cease exercising its flow control option, Contractor shall have the absolute discretion to utilize any transformation facility, recycling facility, material recovery facility, landfill, or other facility of its choosing to retain, recycle, process, and dispose of Solid Waste and construction materials generated within the Franchise Area, provided such facility meets all other requirements of this Agreement.

26. INDEMNIFICATION

A. General.

(1) Contractor hereby agrees to and shall indemnify and hold harmless City, its elected and appointed boards, commissions, officers, employees, and agents (collectively the indemnities) from and against any and all loss, liability, penalty, forfeiture, claim, demand, action, proceeding or suit in law or equity of any and every kind and description including, but not limited to, injury to and death of any Person and damage to property, or for contribution or indemnity claimed by third parties) arising out of, resulting from, and/or in any way connected with this Agreement including: (1) the negligence or willful misconduct of Contractor, its officers, employees, agents, Companies and/or subcontractors in performing services under this Agreement; (2) the failure of Contractor, its officers, employees, agents, Companies and/or subcontractors to comply in all respects with the provisions of this Agreement (including without limitation Contractor's obligation to ensure City complies with the requirements of the County Agreement), applicable laws (including, without limitation, the Environmental Laws), ordinances and regulations, and/or applicable permits and licenses; (3) the acts of Contractor, its officers, employees, agents, Companies and/or subcontractors in performing services under this Agreement for which strict liability is imposed by law (including, without limitation, the Environmental Laws); and (4) any challenge to the award of, or any provisions of this Agreement (including any claim that the application of any provision hereof violates any provision of the California Constitution). The foregoing indemnity and hold harmless provisions

shall apply regardless of whether such loss, liability, penalty, forfeiture, claim, demand, action, proceeding, suit, injury, death or damage is also caused in part by any of the indemnities negligence, but shall not extend to matters resulting from the indemnities sole negligence, or willful misconduct. Contractor further agrees to and shall, upon demand of City, at Contractor's sole cost and expense, defend (with attorneys acceptable to City) City, its elected and appointed boards and commissions, officers, employees, and agents against any claims, actions, suits in law or equity or other proceedings, whether judicial, quasi-judicial or administrative in nature, arising or resulting from any of the aforementioned events, and to reimburse the City for any and all costs and expenses City incurs in providing any such defense, either before, during or after the time Contractor elects to provide such defense, including any and all costs incurred in overseeing any defense to be provided herein by Contractor.

(2) Contractor, upon demand of the City, made by and through the City Attorney, shall protect City and appear in and defend the City and its elected officials, officers, employees and agents, in any claims or actions by third parties, whether judicial, administrative or otherwise, including, but not limited to disputes and litigation over the definitions of "Solid Waste" or "Recyclable Material," the scope of the rights granted herein, conflicts between the rights granted herein and rights asserted by other Persons, or the limits of City's authority with respect to the grant of licenses, or agreements, exclusive or otherwise, asserting rights under the Dormant Commerce Clause or any other federal or state laws to provide Solid Waste Handling Services in the City.

(3) The provisions of this Section shall not terminate or expire, shall be given the broadest possible interpretation and shall survive the expiration or earlier termination of this Agreement.

B. Hazardous Substances Indemnification.

(1) Without regard to any insurance coverage or requirements, and without limiting the above general indemnification obligation in any way, Contractor specifically agrees to and shall, to the maximum extent permitted by law, defend (with counsel acceptable to City) reimburse, indemnify, and hold City and its past and present officers, council members, employees, consultants and agents (hereinafter "Indemnified Parties") harmless from and against any and all claims, actions, liabilities, damages, demands, judgments, losses, costs, liens, expenses, suits, actions, attorneys' fees, consultant fees, penalties and any and all other losses, damages, fees and expenses of whatever kind or nature ("Claims") (including but not limited to response costs, investigative costs, assessment costs, monitoring costs, treatment costs, cleanup costs, removal costs, remediation costs, and similar costs, damages and expenses) that arise out of or are alleged to arise out of or in any way relate to any action, inaction or omission of Contractor that:

a. results in any demand, claim, notice, order, or lawsuit, asserting that any Indemnified Party is liable, responsible or in any way obligated to investigate, assess, monitor, study, test, treat, remove, remediate, or otherwise cleanup, any Hazardous Contaminant (as defined herein); or

b. relates to material collected, transported, recycled, processed, treated or disposed of by Contractor.

(2) Contractor's obligations pursuant to this Section shall apply, without limitation, to:

a. any Claims brought pursuant to or based on the provisions of the Environmental Laws, including without limitation the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. § 9601 *et seq.*, the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. § 6901 *et seq.*, the Carpenter-Presley-Tanner Hazardous Substances Account Act (California Health & Safety Code Sections 25300 *et seq.*), the California Hazardous Waste Control Laws (California Health and Safety Code Sections 25100 *et seq.*), the California Porter-Cologne Act (California Water Code Section 13000 *et seq.*), and any and all amendments and regulations thereto, and any other Federal, State, regional or local environmental statutory or regulatory provision;

b. any Claims based on or arising out of or alleged to be arising out of the ownership, use, lease, sale, design, construction, maintenance or operation by Contractor of any facility;

c. any Claims based on or arising out of or alleged to be arising out of the marketing, sale, distribution, storage, transportation, disposal, processing or use of any materials recovered by Contractor;

d. any Claims based on or arising out of or alleged to be arising out of any breach of any express or implied warranty, representation or covenant arising out of or in connection with this Agreement.

(3) The foregoing indemnity and defense obligations shall apply irrespective of the negligence or willful misconduct of Contractor or any Affiliate of Contractor.

(4) For purposes of this Agreement, the term "Hazardous Contaminant" shall mean any "hazardous material," as that term is defined under California Health & Safety Code Section 25501(o); any "hazardous substance," as that term is defined herein or under California Health & Safety Code Sections 25281(h), 25501(p), 25501.1 and under Title 42, Section 9601(14) of the United States Code; any "hazardous waste," as that term is defined herein and under Title 42, Section 6903(5) of the United States Code and under California Health & Safety Code Section 25501(q); any chemical which the Governor has identified as a chemical known to the State to cause cancer or reproductive toxicity pursuant to California Health & Safety Code Section 25249.8; any crude oil or refined or unrefined petroleum product or any fraction or derivative thereof; and any asbestos or asbestos-containing material. The term "Hazardous Contaminant" shall also include any and all amendments to the above-referenced statutory and regulatory provisions made before or after the date of execution of this Agreement.

(5) The provisions of this Section shall not terminate or expire, shall be given the broadest possible interpretation and shall survive the expiration or earlier termination of this Agreement.

27. CONTRACTOR'S BOOKS AND RECORDS; AUDITS

A. Maintenance and Inspection of Records.

Contractor shall maintain all records relating to the services provided hereunder, including but not limited to Customer lists, billing records, accounts payable records, maps, AB 939 compliance records, records reflecting the number of refuse, recycling and green waste routes and route hours by service category (such as residential, multi-family, commercial, roll-off, and special services), records demonstrating facilities, equipment and personnel used to perform services, records reflecting the number of refuse, recycling and green waste containers in service by frequency of collection for each customer group (such as single family, multi-family, commercial, roll-off); records reflecting the number of roll-off box pulls, and such other documents and materials which reasonably relate to Contractor's compliance with the provisions of this Agreement (the "Records"), for the full Term of this Agreement, and an additional period thereafter of not less than three (3) years, or any longer period required by law. City shall have the right, upon five (5) business days advance notice, to inspect the Records. Such Records shall be made available to City at Contractor's regular place of business, but in no event outside the County of Orange.

B. CERCLA Defense Records.

City views the ability to defend against the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) and related litigation as a matter of great importance. For this reason, the City regards the ability to prove where Solid Waste Collected in the City was taken for Disposal, as well as where it was not taken, to be matters of concern. Contractor shall maintain data retention and preservation systems which can establish where Solid Waste Collected in the City was landfilled (and therefore establish where it was not landfilled) for not less than five (5) years following the termination of this Agreement, and agrees to notify City's Risk Manager, City Clerk and City Attorney before destroying such records thereafter. At any time, including after the expiration of the Term hereof, Contractor shall provide copies of such records to City. The requirements of this Section shall survive the expiration of the Term of this Agreement.

28. TRANSITION OBLIGATIONS

At the end of the Term, or in the event this Agreement is terminated for cause prior to the end of the Term, Contractor shall cooperate fully with City and any subsequent solid waste enterprise it designates to assure a smooth transition of services. Contractor's cooperation shall include, but not be limited to, providing route lists, billing information and other operating records needed to service all premises covered by this Agreement. The failure to cooperate with City following termination shall be conclusively presumed to be grounds for specific performance of this covenant and/or other equitable relief necessary to enforce this covenant.

Contractor shall provide any new solid waste enterprise with all keys, security codes and remote controls used to access garages, gates and bin enclosures. Contractor shall be responsible for coordinating transfer immediately after its final collection activities, so as to not disrupt services. Contractor shall provide City with detailed route sheets containing service names and

addresses, billing names and addresses, monthly rate and service levels (number and size of containers and pickup days) at least 90 days prior to the transition date, provide an updated list two weeks before the transition, and a final updated list with any changes the day before the transition. Contractor shall provide means of access to the new solid waste enterprise at least one full business day prior to its first day of collection, and within sufficient time so as to not impede in any way the new solid waste enterprise from easily servicing all containers.

29. GENERAL PROVISIONS

A. Force Majeure.

Contractor shall not be in default under this Agreement in the event that its ability to provide Solid Waste Handling Services or Temporary Services, in compliance with its obligation to do so hereunder, is temporarily interrupted or discontinued for any of the following reasons: riots, wars, sabotage, civil disturbances, insurrections, explosion, natural disasters such as floods, earthquakes, landslides, fires, strikes, lockouts, and other labor disturbances or "other catastrophic events" which are beyond the reasonable control of Contractor. The term "other catastrophic events" does not include: (i) the financial inability of Contractor to perform; (ii) failure of Contractor to obtain any necessary permits or licenses from other governmental agencies; (iii) the failure to obtain the right, or the loss of the right, to use the facilities of any public utility where such failure is due in substantial part to the acts or omissions of Contractor. In the event a labor disturbance interrupts Solid Waste handling and/or Temporary Services by Contractor as required pursuant to this Agreement, City may elect to exercise its rights under 18 of this Agreement for the duration of such dispute.

B. Independent Contractor.

Contractor is an independent contractor and not an officer, agent, servant, or employee of City. Contractor is solely responsible for the acts and omissions of its officers, agents, employees, and subcontractors, if any. Nothing in this Agreement shall be construed as creating a partnership or joint venture between City and Contractor. Neither Contractor nor its officers, employees, agents, or subcontractors shall obtain any rights to retirement or other benefits which accrue to City employees.

C. Pavement Damage.

Contractor shall be responsible for the cost of repair of any extraordinary damage to the City's public streets, alleys, and parking lots resulting from negligence that can be directly attributable to providing Solid Waste Handling Services or Temporary Services.

D. Property Damage.

Any physical damage caused by the negligent or willful acts or omissions of employees, agents, or subcontractors of Contractor to private or public property shall be promptly repaired or replaced by Contractor.

E. Right of Entry.

Contractor shall not have the right, until Contractor receives permission from the property owner, to enter or drive on any private street, court, place, easement, or other private property for the purpose of providing Temporary Services and/or Solid Waste Handling Services pursuant to this Agreement.

F. City's Authorized Agent.

Notwithstanding anything contained herein to the contrary, and excepting amendments hereto and such actions set forth herein specifically calling for City Council action or approval, the City Manager is designated as the City's authorized agent to take any action with regard to any matter, or enforce any right, set forth herein requiring action by the City.

G. Law to Govern; Venue.

The laws of the State of California shall govern this Agreement. In the event of litigation between the parties, venue shall lie exclusively in the Superior Court of the State of California, in the County of Orange.

H. Amendment.

No amendment of this Agreement shall be valid unless in writing duly executed by the parties.

I. Notices.

All notices required or permitted to be given under this Agreement shall be in writing and shall be personally delivered, or sent by e-mail or fax, or United States first class mail, postage prepaid, and addressed as follows:

To City: City of San Clemente
Attn: City Manager
100 Avenida Presidio
San Clemente, California 92672
Phone: (949) 361-8322
Fax: (949) 361-8283

To Contractor: CR&R Incorporated
P. O. Box 125
Stanton, California 90680
Phone: (877) 728-0446
Fax: (714) 890-6347

or to such other address as either party may from time to time designate by notice to the other given in accordance with this Section. Notice shall be deemed given when personally served or delivered by email or fax, or three (3) business days from the date such notice is deposited in the United States mail.

J. Savings Clause.

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

K. Exhibits Incorporated.

Exhibits A through D are attached to and incorporated in this Agreement by reference.

L. Joint Drafting.

This Agreement shall be interpreted as if it were drafted jointly by the parties to the Agreement.

M. Attorneys' Fees and Litigation Costs.

In the event either party brings any action or proceeding to enforce or interpret the terms or provisions of this Agreement, the prevailing party in any such action or proceeding shall be entitled to recover its reasonable attorneys' fees and other litigation costs and expenses, including without limitation expert witness fees, consultant fees and costs. Without limiting its scope in any way, this provision is expressly intended to, and shall, apply to fees and costs incurred in any appeal.

N. Corporate Resolution.

Concurrent with the execution of this Agreement, Contractor shall provide City with a corporate resolution of its Board of Directors demonstrating the authority for the undersigned to enter and lawfully bind Contractor to this Agreement.

O. Integration.

This Agreement contains the entire integrated agreement and understanding concerning the subject matter herein and supersedes and replaces any prior negotiations, promises, proposals, and agreements between the Parties, whether written or oral. The Parties acknowledges this document has been executed with the consent and upon the advice of counsel. Each of the Parties acknowledges that no party or agent or attorney of any other party has made any promise, representation, or warranty, express or implied, not contained in this Agreement, to induce the other party to execute this instrument.

P. Section Headings.

The section headings in this Agreement are for convenience of reference only and are not intended to be used in the construction of this Agreement nor to alter or affect any of its provisions.

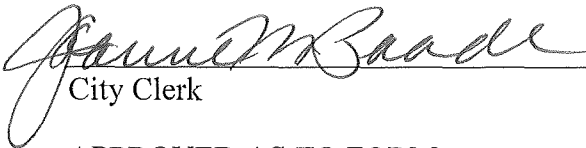
Q. Compliance with Law.

In providing the services required under this Agreement, Contractor shall at all times, at its sole cost, comply with all applicable laws and regulations of the United States, the State of California, the provisions of the Municipal Code, and any federal, state, regional or local administrative and regulatory agencies, now in force and as they may be enacted, issued or amended.

CITY OF SAN CLEMENTE

By: 
Mayor

ATTEST:


City Clerk

APPROVED AS TO FORM:

/s/ Patrick Munoz
City Attorney

CR&R Incorporated

By: 

Title: Senior Vice President.

DEAN. A. RUFFRIDGE

EXHIBIT A

Rate Schedule

EXHIBIT "A"
CITY OF SAN CLEMENTE
MAXIMUM RATES FOR SOLID WASTE HANDLING SERVICES
January 1, 2011

Residential	Contractor Component	Disposal Component Tonnage Basis	Disposal Component	Total Maximum Rate (monthly)
Set of 2 Carts: 35 Gallon	\$13.39	0.0727	\$2.18	\$15.57
Standard 3 Carts: 35 Gallon	\$14.18	0.0727	\$2.18	\$16.36
Set of 2 Carts: 67 Gallon	\$13.86	0.0770	\$2.31	\$16.17
Standard 3 Carts: 67 Gallon	\$14.66	0.0770	\$2.31	\$16.97
Additional 35 Gallon Refuse Cart	\$3.73	0.0123	\$0.37	\$4.10
Additional 67 Gallon Refuse Cart	\$3.91	0.0130	\$0.39	\$4.30

Multi-Family Bin Service	Contractor Component	Processing Component	Total Maximum Rate (monthly)
3 Yard x1/week	\$113.91	\$47.84	\$161.75
3 Yard x2/week	\$121.15	\$95.67	\$216.82
3 Yard x3/week	\$149.33	\$143.51	\$292.84
3 Yard x4/week	\$177.18	\$191.33	\$368.52
3 Yard x5/week	\$205.02	\$239.17	\$444.20
3 Yard x6/week	\$232.89	\$287.01	\$519.90
4 Yard x1/week	\$151.88	\$63.79	\$215.67
4 Yard x2/week	\$160.26	\$127.56	\$287.82
4 Yard x3/week	\$199.12	\$191.33	\$390.45
4 Yard x4/week	\$236.25	\$255.12	\$491.37
4 Yard x5/week	\$273.38	\$318.89	\$592.27
4 Yard x6/week	\$310.58	\$382.68	\$693.26

Commercial Bin Service	Contractor Component	Disposal Component Tonnage Basis	Disposal Component	Total Maximum Rate (monthly)
3 Yard x1/week	\$112.32	0.7936	\$23.77	\$136.88
3 Yard x2/week	\$117.97	1.5872	\$47.54	\$167.10
3 Yard x3/week	\$144.56	2.3808	\$71.31	\$218.25
3 Yard x4/week	\$170.82	3.1744	\$95.08	\$269.08
3 Yard x5/week	\$197.07	3.9680	\$118.85	\$319.89
3 Yard x6/week	\$223.35	4.7616	\$142.62	\$370.73
4 Yard x1/week	\$149.76	1.0581	\$31.69	\$182.51
4 Yard x2/week	\$156.02	2.1162	\$63.39	\$221.52
4 Yard x3/week	\$192.76	3.1743	\$95.08	\$291.01
4 Yard x4/week	\$227.77	4.2324	\$126.77	\$358.77
4 Yard x5/week	\$262.78	5.2905	\$158.46	\$426.53
4 Yard x6/week	\$297.86	6.3486	\$190.16	\$494.36

Commercial Cart Service	Contractor Component	Disposal Component Tonnage Basis	Disposal Component	Total Maximum Rate (monthly)
67 Gallon Set	\$19.97	0.1546	\$4.63	\$24.60
90 Gallon Set	\$20.64	0.2300	\$6.89	\$27.53
Extra 67 Trash	\$9.24	0.1546	\$4.63	\$13.87
Extra 90 Trash	\$9.26	0.2300	\$6.89	\$16.15
Extra 67 Recycle	\$8.66			\$8.66
Extra 90 Recycle	\$8.88			\$8.88

Recycling Bins Accompanying Commercial Bin Service	Total Maximum Rate (monthly regular Bin)
3 Yard x1/week	\$60.95
3 Yard x2/week	\$97.52
3 Yard x3/week	\$146.28
3 Yard x4/week	\$195.04
3 Yard x5/week	\$243.80
3 Yard x6/week	\$292.56
4 Yard x1/week	\$79.23
4 Yard x2/week	\$126.78
4 Yard x3/week	\$190.16
4 Yard x4/week	\$253.55
4 Yard x5/week	\$316.93
4 Yard x6/week	\$380.32

EXHIBIT "A"
CITY OF SAN CLEMENTE
MAXIMUM RATES FOR SOLID WASTE HANDLING SERVICES
January 1, 2011

	<u>Total Maximum Rate</u> (monthly)
Recycling Carts Accompanying Commercial Bin Service	
67 or 90 Gallon x1/week	\$18.28
67 or 90 Gallon x2/week	\$36.57
67 or 90 Gallon x3/week	\$54.85
67 or 90 Gallon x4/week	\$73.14
67 or 90 Gallon x5/week	\$91.42
67 or 90 Gallon x6/week	\$109.71

<u>Roll-off (Commercial and Temporary Service)</u>	<u>Contractor Component</u>	<u>Processing Component</u>	<u>Disposal Component</u>
Roll off Boxes (except compactors)	\$176.02	\$50.53/ton	\$31.53/ton
Compactors	\$206.64	\$50.53/ton	\$31.53/ton
Clean, Source Separated loads:			
Dirt/Asphalt/Concrete (10 yd Lowboy)	\$355.21	n/a	n/a
Wood, Metal, Paper/Cardboard (40 yd Drop Off Box)	\$285.21	n/a	n/a
Greenwaste (40 yd Drop Off Box)	\$176.02	\$28.42	

<u>Bulky Item Collection</u>	<u>Maximum Rate</u>
Residential (up to 4 items)	\$14.37
Commercial (up to 4 items)	\$50.26
Each Additional Commercial Bulky Item	\$19.41

<u>Temporary Service:</u>	<u>Maximum Flat Rate</u>
Bins (weekly flat rate)	\$93.45

<u>Service Fees</u>	
Walk-Out Residential Service (in addition to monthly service rates)	\$22.28
Additional Residential Pick Up	\$17.77 per pick up
Bin Cleaning Fee (in excess of one time per year)	\$31.50 per bin
Convert Standard Bin to Locking	\$25.00 one time charge
Bin Roll-out Charges (25' -50')	\$9.89 per month
Bin Roll-out Charges (50' - 75')	\$19.71 per month
Additional Bin Pickup	\$77.15
Bin Overflow Charge	\$40.45
Locking Bin monthly Charge (Recycle or Refuse Bin)	\$14.56

<u>Delinquency Fees</u>		
Residential	After 90 days	1.5% of balance, minimum balance of \$15.00, charged quarterly
Commercial	After 60 days	1.5% of balance, minimum balance of \$15.00, charged monthly
Temporary Service	After 60 days	1.5% of balance, minimum balance of \$15.00, charged monthly

<u>Administrative Fees</u>	
Stop Service	\$15.00
Refund Processing Fee	\$1.50
Container Replacement Charge (per Container)	\$50.00

EXHIBIT B

Minimum Bin and Container Specifications

Carts:

1. Contractor shall only use Carts approved by the City Manager.
2. Carts used by Contractor shall contain a small inscription plainly labeled as follows:
 - a. Carts designated for Solid Waste shall be labeled: "REFUSE ONLY".
 - b. Carts designated for Recyclable Material shall be labeled: "RECYCLABLES ONLY".
 - c. Carts designated for Green Waste Shall be labeled: "GREEN WASTE ONLY".
3. Each Cart provided for Residential or Commercial Solid Waste handling services shall have a capacity of ninety (90), sixty-seven (67) or thirty-five (35) gallons and be constructed of rigid, durable, and Recyclable Material with a minimum ten (10) year life expectancy warranted by the manufacturer. Contractor shall be responsible for the replacement of Cart wheels, lids, hinges, axles, and handles.
4. Each Cart provided for Residential Solid Waste handling services shall be labeled by Contractor in a manner approved by the City Manager to provide notice of City's rules and regulations pertaining to the time limitations applicable to placing Carts out for collection by Contractor.

Bins/Rolloff Boxes:

1. Contractor shall only use Bins and Rolloff Boxes approved by the City Manager. The following generic types of Bins and Rolloff Boxes are approved for use hereunder, subject to the City Manager's approval of the specific models of each type to be used:
 - a. 3 cubic yard Bins
 - b. 40 cubic yard Rolloff Boxes (also called Drop Off Boxes)
 - c. 10 cubic yard Rolloff Boxes (also called Lowboys)
 - d. Commercial compactors minimum size: 36 cubic yards
2. The three cubic yard Bins used by Contractor shall be constructed of steel or plastic, and shall have plastic lids.

EXHIBIT C

Specifications for Household Special Waste Collection Services

Overview

The purpose of this program is to improve collection of universal, pharmaceutical, sharps and household hazardous waste items and to help the City meet the State's landfill diversion mandate. The program consists of door-to-door collection of these wastes for single family and multi-family residential customers. This program will be handled as an on-call and on-collection day basis similar to the bulky-item collection program. Customers call CR&R to schedule a special waste pickup once they have collected a minimum quantity of waste. CR&R will then be responsible for proper collection, transport, disposal or recycling of the waste materials.

Wastes accepted

- Wastes identified as universal wastes in Section 66261.9 of Title 22 of the California Code of Regulations, generated by a single family or multifamily residence, including but not necessarily limited to:
 - Fluorescent bulbs and tubes (not longer than 4 feet), and other mercury-containing lamps, including high intensity discharge (HID), metal halide, sodium, and neon bulbs;
 - Common household batteries (e.g. D, C, AA, AAA, button-type, etc.);
 - Non-empty aerosol cans;
 - Electronic devices (e.g. televisions; computers, monitors, keyboards, mice, printers, desk copiers, scanners and multi-function machines; VCR's and DVD/CD/Tape players; cell phones; microwaves, toasters, irons, stereos, speakers, and cables); and
 - Mercury containing devices (e.g. lamps, thermometers, thermostats, gauges, electronic switches, etc.).
- Waste identified as home generated sharps waste in Section 117671 of Title 22 of the California Code of Regulations, generated by a single family or multifamily residence, including but not necessarily limited to:
 - Syringes; hypodermic needles, pen needles, intravenous needles, lancets, and other devices that are used to penetrate the skin for the delivery of medications.
- Pharmaceutical and personal care product waste, generated by a single family or multifamily residence, including but not necessarily limited to the following:
 - Prescription and over-the-counter human drugs, veterinary drugs, diagnostic agents (not including controlled substances);

- Nutritional supplements; and
- Consumer products such as fragrances, cosmetics, and sun-screen agents.
- This aspect of the program will not begin until all regulatory approvals are obtained, and CR&R shall diligently pursue obtaining such approvals.
- Household hazardous waste, generated by a single family or multifamily residence, including but not necessarily limited to:
 - Automotive maintenance and repair products (e.g. motor oil, oil filters, antifreeze; lead-acid batteries, brake fluid, etc.);
 - Lawn and garden chemicals (e.g. pesticides, herbicides, fungicides, etc.);
 - Cleaning products (e.g. bathroom cleaners, drain cleaners, chlorine bleach, solvents, oven cleaners, etc.); and
 - Home improvement supplies (e.g. stains, paints, varnish, paint thinners, chemical strippers, glue, pool chemicals, etc.).

Wastes Not Accepted

- Any waste generated in the course of operating a business concern at a residence, or other business-generated waste.
- Any waste that does not fall within the categories described above.

Notification and Outreach

- CR&R to provide initial and ongoing notification to all residential accounts about the program via special flyer inserts in the quarterly solid waste bill, as well as information in the Quarterly Recycle Newsletter, with such materials to be approved by City.
- Information provided shall include but not necessarily be limited to:
 - The toll-free number that customers will call to arrange for collection of accumulated wastes.
 - How handle these wastes, store them until there is a quantity suitable for collection, and place them in a container (such as a cardboard box) for collection by CR&R crews.
 - Thresholds for minimum quantities required for a pickup request, and also maximum quantities per pickup (to prevent abuse).
 - Special assistance available for seniors and disabled persons.

Basic Program Operation

1. Resident calls CR&R's toll-free number to schedule a pickup. At this time CR&R's Customer Service Representative (CSR) and resident will determine mutually, a safe and convenient location on their property for placement of the accumulated materials. The CSR will provide information on how to properly store and package accumulated materials, and when to place materials at the agreed upon location.
2. The pickup will generally be on the resident's normally-scheduled solid waste collection day. Any alternative collection day can only be established with written approval by the City.
3. On the scheduled day, the resident places packaged waste materials in the previously agreed upon location on their property for collection.
4. On the scheduled day, a CR&R crew arrives and inspects the materials, and collects acceptable materials to the collection vehicle.
5. The materials are then sorted by hazard class and placed into proper containers within the collection vehicle.
6. If residents leave unacceptable materials, the unacceptable materials will be carefully re-packaged (when safe to do so) inside a new bag, and an information card will be placed with the unacceptable materials informing the resident on proper disposal options or to call for further instructions.
7. Before leaving, the CR&R crew will leave a receipt to document the time and date of collection, as well as the type and quantity of materials that were collected.
8. CR&R will ensure that the collected materials are properly transported to final recycling or disposal facilities.

Operations

- CR&R will use cube-type, two-axle vans for this collection service. The minimum standards for collection vehicles per Section 8 of this Agreement shall apply.
- CR&R will use a separate property apart from any existing solid waste site for the consolidation and packaging of these materials for proper recycling or disposal.
- CR&R shall strive to maximize recycling of collected wastes.
- For non-program calls received by CR&R, CR&R shall refer these to the City's hotline number (949-366-1553) if appropriate.
- CR&R shall maintain Environmental Pollution Control Insurance coverage, naming the City as an additional insured.

- Wastes collected within the City of San Clemente shall not be commingled with loads from other cities, unless CR&R provides a means acceptable to the City to accurately identify and report the waste collected from both outside and within City limits.
- CR&R shall maintain registration as a registered hazardous waste transporter in good standing with the State of California.
- Vehicle drivers must have a Department of Motor Vehicle issued HAZMAT endorsement on the operator's license.
- Collection personnel must have 8-hour of HAZWOPER training and current certifications.
- Prior to transport, collected materials must be separated and secured to avoid contact with incompatible substances. All materials must be packaged and transported in compliance with applicable local, State and Federal regulations.
- CR&R Customer Services Representatives will have listings of accepted wastes and required minimum and maximum per pickup thresholds. Storage of wastes until a minimum quantity is generated at a household will be part of a CSR's training and ability to explain to a customer.
- Sharps collections will only be via special "one-way" containers.
- Materials must be weighed or counted as appropriate at the time of pickup to ensure accurate reporting of data. Estimated weights or quantities may be accepted subject to review and approval by City of CR&R estimation procedures.

Reporting and Documentation

- CR&R to provide postage paid survey cards (mailed back to the City), create monthly reports, provide bi-annual comprehensive reports and analysis, provide documentation of each collection, and provide proof of consolidation and ultimate disposal.
- Reports shall detail all materials collected, pounds or quantities per home, and other relevant details as may be required by the City.

Pickup Thresholds

- CR&R to provide a listing, for review and approval by the City, of minimum and maximum material pickup quantities, and also to designate maximum pickup frequencies to be reviewed and approved by the City.
- Pickups under this program will be in addition to and separate from the bulky item Collection Service required by this Agreement.

EXHIBIT D

Specifications for Solid Waste Container Ordinance Assistance

CR&R will provide assistance to the City of San Clemente at no added charges, in enforcing the provisions of the applicable portions of the City's Municipal Code which prescribes requirements and allowable durations for placement of containers for collection by CR&R.

CR&R shall:

1. Provide daily inspections of the service areas. This service will be provided daily between 7:00 AM and 7:00 PM on an agreed schedule for maximum effectiveness.
2. Place warning or violation tags, furnished by the City, on containers found to be in non-compliance. Take digital photo(s) of containers found not to be in compliance. Make note of serial number(s) of all containers found not to be in compliance.
3. Send duplicate notice (along with digital photos and container serial numbers) in a timely manner to the City so that City can notify residents of violations.
4. Provide vehicle and personnel to perform this service and who can communicate with residents if questions arise in the field.
5. Assist to resolve disputes with residents and City.

AMENDMENT NO. 1

TO AGREEMENT BETWEEN THE

CITY OF SAN CLEMENTE

AND

CR&R INCORPORATED

FOR SOLID WASTE HANDLING SERVICES

**AMENDMENT NO. 1 TO AGREEMENT
BETWEEN THE CITY OF SAN CLEMENTE AND CR&R INCORPORATED
FOR SOLID WASTE HANDLING SERVICES**

This AMENDMENT NO. 1 TO AGREEMENT BETWEEN THE CITY OF SAN CLEMENTE AND CR&R INCORPORATED FOR SOLID WASTE HANDLING SERVICES (“Amendment No. 1”) is made this 13TH day of June, 2016 (“Effective Date”) by and between CITY OF SAN CLEMENTE, a California municipal corporation (hereinafter “City”) and CR&R INCORPORATED, a California corporation (hereinafter “Contractor”).

RECITALS

- A. The Legislature of the State of California, by enactment of the California Integrated Waste Management Act of 1989 (“AB 939”), has declared that it is in the public interest to authorize and require local agencies to make adequate provision for the disposal of all Solid Waste within their jurisdictions.
- B. Pursuant to California Public Resources Code Section 40059(a)(1), the City Council of the City of San Clemente has determined that the public health, safety, and welfare require that an exclusive franchise agreement be awarded to a qualified solid waste enterprise for Solid Waste Handling Services within the City Limits.
- C. The City and Contractor entered into an Amended and Restated Agreement for Solid Waste Handling Services dated January 1, 2011 (the “Agreement”).
- D. City and Contractor are mindful of the provisions of the laws governing the safe collection, transport, recycling, and disposal of Solid Waste, including AB 939, the Resource Conservation and Recovery Act (“RCRA”), and the Comprehensive Environmental Response, Compensation and Liability Act (“CERCLA”). City and Contractor desire to leave no doubts as to their respective roles, and to memorialize that by entering into this Amendment No. 1 to the Agreement. City is not thereby becoming an “arranger” or a “generator” as those terms are used in CERCLA, and that it is Contractor, not City, who is “arranging for” the collection, transport for disposal, composting, and recycling of municipal Solid Waste in the City which may contain hazardous substances. City and Contractor understand and agree that it is Contractor, and not City, who will arrange to collect Solid Waste, that City has not, and, by this Agreement does not, instruct Contractor on its collection methods, nor supervise the collection process, nor do the Parties intend to place title to such Solid Waste in City, but rather intend that whatever, if any, title in and to such Solid Waste that otherwise might exist in or with City in the absence of this Agreement is hereby transferred to Contractor, and further that if Contractor gains title to such Solid Waste it is by operation of law and agreement with its Customers and is not the result of this Agreement. By entering this Amendment No. 1 to the Agreement City and Contractor further desire to confirm that Contractor has agreed to indemnify the City in connection with any claims relating to the inadvertent or intentional collection, transportation and/or disposal of hazardous materials that may occur in connection with Contractor’s performance under the Agreement.

- E. Contractor has agreed, as part of the Agreement, to provide such services as are necessary or desirable to ensure City complies with the requirements of AB 939, AB 341, AB 1826 and AB 1594 and Public Resources Code Section 40000, et seq.
- F. City desires, among other things, to ensure adequate landfills remain available to meet the public's need for the safe handling and disposal of Solid Waste, and further desires to ensure its citizens do not incur undue costs in safely disposing of Solid Waste they generate, and has thus entered into the County Agreement (as defined in the Agreement) Contractor has agreed, as part of this Amendment No. 1 to provide such services and take such actions as are necessary or desirable to ensure City complies with its obligations pursuant to the County Agreement.
- G. Subsequent to the start of the Exclusive Agreement, AB 341 (Mandatory Commercial Recycling), AB 1826 (Organics Collection), and AB 1594 (elimination of green waste diversion for cover at landfills) have been enacted by the California State Legislature requiring the City and Contractor to revise and add programs to meet additional solid waste compliance requirements of each bill.
- H. City and Contractor now desire to amend the Agreement as more fully set forth herein. Except as otherwise specifically set forth in this Amendment No. 1, the remaining provisions of the Agreement shall remain in full force and effect.

COVENANTS

Based upon the foregoing Recitals, which are true and correct and incorporated in this Amendment, and for good and valuable consideration, the receipt and sufficiency of which is acknowledged by both parties, City and Contractor hereby agree to the following revisions to the Agreement:

1. Section 2. Definitions.

The following Item MM is added for definition of "Organic Waste" to read as:

"Organic Waste" shall mean Solid Waste composed of food waste, green waste, landscape and pruning waste, nonhazardous wood waste and soiled paper waste that is mixed in with food waste. Organic Waste does not include waste types specified as "Special Wastes".

2. Section 6.A(7)(b). Contractor's Containers.

Replace Section 6.A(7)(b) in its entirety to read as follows:

- b. All Contractor's Containers shall comply with the specifications set forth in Exhibit B, and shall be maintained by Contractor in good repair with any question as to the meaning of this standard to be resolved by the City Manager. Contractor shall provide three sizes of Carts (small, medium and large) having capacities of approximately 35 gallons, 67 gallons and 90 gallons. Notwithstanding the foregoing, the City and

Contractor recognize that different vendors provide Carts of slightly different dimensions, and hence the capacity of each of the three Cart sizes Contractor is to provide (i.e. small, medium and large) may vary slightly, but in no case by more than 10% of the capacities noted above.

3. Section 6.B(5). Green Waste Program for Single Family Dwellings.

Replace Section 6.B(5) in its entirety to read as follows:

Section 6.B(5) Organic Waste Program for Single Family Dwellings.

Contractor shall provide each Customer at a Single Family Dwelling to whom it provides a Refuse Cart with the Customer's choice of either one (1) thirty-five (35) gallon or one (1) sixty-seven (67) gallon Cart designated for the Collection of commingled Organic Wastes (an "Organics or Green Waste Cart") at no additional charge. Upon request from any Customer at a Single Family Dwelling, Contractor shall provide such Customer with one (1) additional Organics Cart at no additional charge. Contractor shall collect Organic Wastes placed in Organics and/or Green Waste Carts for Collection from each Customer on the same day as such Customers' Refuse Cart is collected, using an automated collection process. Customers shall be directed to place Organics and Green Waste Carts in the same location for Collection as Refuse Carts. Contractor shall identify, to City's satisfaction, neighborhoods in the City where Green Waste Carts will not be provided due to lack of Green Waste generation. Customers in those neighborhoods shall be offered an Organics Cart for recycling of other Organic Waste in addition to Solid Waste and Recycling Carts.

On or before July 1, 2016, Contractor shall implement an Organic Wastes collection program citywide for all service users with and without existing green waste carts. Said program shall include applicable public outreach as approved by the City to encourage users to include all types of Organic Waste within the existing green waste cart program. Said education shall be, but not limited to, Organics stickers applied to the lids of green waste carts, cart tags, and education fliers sent to every household. Any users not included in the existing green waste collection cart program shall be provided Organic Carts for other types of Organic Wastes. All new or replaced carts shall depict the Organic Wastes allowed in the Organic Waste Collection program.

4. Section 6.C(5). Commercial Recycling.

Replace Section 6.C(5) in its entirety to read as follows:

Section 6.C(5) Commercial Recycling and Organic Waste.

- a. Contractor shall conduct an annual waste audit of all Commercial Customers utilizing Bins for Collection service to determine their

Recyclable Material content. The purpose of such audits is to determine whether individual Customers are discarding Recyclable Material of a quantity that is sufficient to warrant such Customer's participation in recycling programs. The process used to conduct this waste audit shall be shared with City, to ensure compliance and acceptance, and shall be subject to City Manager approval. Upon completion of such audit, and upon approval by City, those Customers whose waste stream is found to contain a significant Recyclable Material content shall be provided a Recycling Cart or Bin ("Recycling Bin") for Recyclable Material. Contractor shall Collect all Recyclable Material placed in Recycling Carts or Bins at least once per week, and more often as may be agreed upon with its Commercial Customers. Contractor may charge Commercial Customers who are provided with Recycling Carts or Recycling Bins rates for such service not exceeding the maximum rates set forth in the attached Exhibit A. In addition, any Commercial Customer who so desires, may be provided with Rolloff Boxes for clean, source separated loads of greenwaste, dirt, concrete, asphalt, wood, metal, and paper/cardboard, with the maximum rates set forth in the following section related to Temporary Services being applicable to such services.

- b. Mandatory Commercial Recycling and Organic Waste Diversion. Contractor shall implement recycling and Organic Waste diversion programs for commercial entities in accordance with the requirements of AB 341 (Mandatory Commercial Recycling), AB 1826 (Organic Waste), and all applicable law. Contractor shall use its best efforts to bring commercial entities that meet the criteria of AB 341 and AB 1826 in compliance with State law. Contractor shall conduct a waste audit of all contracted commercial and multi-family accounts to determine their recyclable content, prior to services being rendered. The process used to conduct this waste audit shall be shared with the City of San Clemente to ensure permit compliance and acceptance. Those accounts that contain a significant recyclable or Organic Waste content shall be processed through a Material Recovery Facility (MRF) that currently processes salvaged separate materials for reuse or processing. Customers achieving this content, or higher, shall only be charged the service rates that appear in Exhibit "A". Those accounts that do not satisfy the content level, shall have their waste stream disposed of at the landfill. In addition, if required by applicable law, these accounts shall receive separate Recyclable and/or Organic Waste container service as required. In addition, if any customer desires to commence a source separated recycling and/or Organic Waste diversion program, a recycling and/or Organic Waste container shall be provided by Contractor and customers shall be charged the additional service rates reflected in Exhibit "A" will become a customer option.

5. Section 6.E(1). Minimum Requirements for Recyclable Materials.

Replace Section 6.E(1) in its entirety to read as follows:

(1) Minimum Requirements for Recyclable Materials.

Contractor shall utilize a truck dedicated for the purpose of Collecting Organic Waste from Customers, such that Organic Waste which has been separated prior to Collection, once collected, is not commingled with other Solid Waste (including Recyclable Material). Similarly, Contractor shall utilize a truck dedicated for the purpose of Collecting Recyclable Materials such that Recyclable Material Collected in Recycling Carts, once collected, is not commingled with other Solid Waste (including Organic Waste). All material Collected by Contractor in Recycling Carts pursuant to this Agreement shall be delivered to a properly permitted facility for recycling and reuse purposes. All Organic Waste separated prior to Collection, including Holiday Trees, shall be processed and disposed of pursuant to Section 6.E(3)(f).

6. Section 6.E(3)(f). Organic Waste.

A new section 6.E(3)(f) is added to read as follows:

f. Organic Waste

In order to comply with AB 939 as well as new State legislation of AB 341 (Mandatory Commercial Recycling) and AB 1826 (Organic Wastes), Contractor shall direct applicable Commercial Organic Wastes to the CR&R Anaerobic Digestion (AD) Facility in the City of Perris. This site may be modified by mutual agreement. Commercial Organic Waste Collection services shall be available by April 1, 2016 and charged rates as approved by the City Council prior to July 1, 2016.

Any reference to “Green Waste and/or Composting Facility” shall now be referred to as an “Organics Facility”. Any such Facility utilized by the Contractor shall at all times be fully permitted by all local, State and if applicable Federal Agencies and provide the City of San Clemente Diversion credit for all material (less any contaminants).

Beginning July 1, 2016, Contractor shall direct and deliver all Residential and Commercial Organic Waste generated and collected from the approved programs within the City Limits to its Anaerobic Digester Processing Facility (AD Facility) located in Perris, California. All Organic Waste processed in the AD Facility shall be diverted from the landfill and receive diversionary credit as identified by CalRecycle..

7. Section 21.B. Annual Producer Price Index Adjustments to Contractor Component and Processing Component.

Replace Section 21.B in its entirety to read as follows:

Section 21.B Annual Consumer Price Index Adjustments to Contractor Component and Processing Component.

Commencing on July 1, 2016, the “contractor component” and the “processing component” associated with any of the maximum rates set forth on Exhibit A shall be adjusted, and such components of said rates shall be adjusted annually thereafter on July 1 during the Term hereof (the “Adjustment Dates”), by the annual percentage change in the Consumer Price Index (“CPI”) for All Urban Consumers, CUURA421SAO, not seasonally adjusted, all items index (CPI-U) – Los Angeles County, Riverside County, Orange County for the twelve-month period from January thru December of the year prior to the July 1 Adjustment Date. For the first adjustment in July 2016, the annual adjustment will be based upon the percentage change in the index from April thru December of 2015. For all subsequent annual changes, the twelve month change shall be from January thru December of the year prior to each July 1 Adjustment Date. Notwithstanding the above, no annual adjustment in which the forging items would otherwise increase shall occur if either: (a) the City Manager determines that Contractor did not fully comply with all terms of this Agreement in the 12 month period preceding the increase, including without limitation, provisions hereof relating to reporting, diversion, and Customer service standards; or (b) Contractor is delinquent in the payment of any Franchise Fee to the City. At least ninety (90) days prior to charging Customers any rate increased due to an increase in the CPI as set forth herein, Contractor shall notify the City Manager of its intent to do so, and receive the City Manager’s approval therefore, which approval shall not be withheld unless it conflicts with the provisions hereof. After receiving City Manager approval and no later than thirty (30) days prior to charging customers any rate increased due to an increase in the CPI as set forth herein, Contractor shall provide notice of such increase to all customers. For commercial and multi-family billed customers, contractor shall insert a notice in a monthly billing in May or June. For residential customers billed on a quarterly basis, Contractor shall, at its own expense, mail a notice via post card to all such customers no later than 30 days prior to the July 1 Adjustment Date. Any customer and/or property owner notice per the protest hearing requirements of Article 13D, Section 6 of the California Constitution (also referred to as “Proposition 218”) shall be the responsibility of City and shall be performed in a timely manner such that each annual Adjustment will be compliant to notice requirements of this legislation. Notwithstanding the foregoing and to the extent determined necessary or advisable by City, any rate adjustment shall be subject to the requirements of Proposition 218 and is contingent upon the City not receiving a majority protest against the rate increase as part of such proceedings.

8. Section 21.C. Annual Adjustments to Disposal Component.

The following paragraphs are added to the end of Section 21.C to read as follows:

After implementation of the Residential and Commercial Organic Waste Collection programs outlined herein, beginning prior to the start of the 2018-19 Rate Year and every other year thereafter, Contractor shall submit to the City Manager an audit of the pounds per residential household having curbside cart service and pounds per cubic yard of commercial Organic Waste to determine if the base rates for Organic Waste collection should be modified to better reflect actual usage.

As of the execution of this Amendment, the residential basis shall be 8,894 tons of generation (actual plus 15% anticipated for food scraps) divided by total number of single family billed households. This equates to 19 pounds per household per week. With an AD costing of \$87.50 per ton (also adjusted by CPI as outlined in this section), this equates to \$2.54 per month per household (including fees outlined in Section 3.a.).

The commercial weighting basis is 350 pounds per cubic yard and shall be as outlined in the revised Exhibit A, Rate Schedule.

Notwithstanding the foregoing and to the extent determined necessary or advisable by City, any rate adjustment shall be subject to the requirements of Article 13D, Section 6 of the California Constitution and is contingent upon the City not receiving a majority protest against the rate increase as part of such proceedings.

9. Exhibit A. Rate Schedule.

Exhibit A is hereby replaced as set forth in Exhibit A-1 to this Amendment. To the extent determined necessary or advisable by City, any new or increased rates set forth in Exhibit A-1 shall be subject to the requirements of Article 13D, Section 6 of the California Constitution and is contingent upon the City not receiving a majority protest against the rate increase as part of such proceedings.

IN WITNESS THEREOF, City and Contractor have executed this Amendment No. 1 to be effective as of the Effective Date.

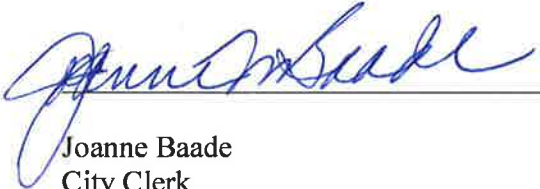
("City")

CITY OF SAN CLEMENTE, a municipal corporation

By: 

Mayor


ATTEST:



Joanne Baade
City Clerk
City of San Clemente

APPROVED AS TO FORM:


Best, Best & Krieger, LLP

By: 

City Attorney
City of San Clemente

("Contractor")

CR&R INCORPORATED, A California corporation

By: 

Dean A. Ruffridge
Senior Vice President

EXHIBIT A-1
RATE SCHEDULE
Effective July 1, 2016

**SOLID WASTE COLLECTION SERVICE
MAXIMUM MONTHLY RATES
Effective July 1, 2016**

<u>Residential with Organics (Anaerobic Digestion)</u>	<u>Base Rate</u>	<u>Disposal Component</u>	<u>AD Processing Component</u>	<u>Total Maximum Rate</u>
Set of 2 Carts: 35 Gallon	\$14.04	\$2.40	\$2.54	\$18.98
Standard 3 Carts: 35 Gallon	\$14.86	\$2.40	\$2.54	\$19.80
Set of 2 Carts: 65 Gallon	\$14.53	\$2.54	\$2.54	\$19.61
Standard 3 Carts: 65 Gallon	\$15.38	\$2.54	\$2.54	\$20.46
Additional 35 Gallon Refuse Cart	\$3.92	\$0.41	\$0.00	\$4.33
Additional 65 Gallon Refuse Cart	\$4.09	\$0.43	\$0.00	\$4.52

<u>Multi-Family Bin Service</u>	<u>Base Rate</u>	<u>Processing Component</u>	<u>Total Maximum Rate</u>
3 Yard x1/week	\$119.37	\$50.14	\$169.51
3 Yard x2/week	\$126.97	\$100.27	\$227.24
3 Yard x3/week	\$156.50	\$150.41	\$306.92
3 Yard x4/week	\$185.70	\$200.52	\$386.22
3 Yard x5/week	\$214.87	\$250.66	\$465.52
3 Yard x6/week	\$244.08	\$300.80	\$544.87
4 Yard x1/week	\$159.18	\$66.84	\$226.02
4 Yard x2/week	\$167.97	\$133.68	\$301.65
4 Yard x3/week	\$208.68	\$200.52	\$409.20
4 Yard x4/week	\$247.60	\$267.38	\$514.98
4 Yard x5/week	\$286.51	\$334.22	\$620.73
4 Yard x6/week	\$325.50	\$401.06	\$726.56

<u>Multi-Family Bin- Green Waste Service</u>	<u>Base Rate</u>	<u>AD Processing Component</u>	<u>Total Maximum Rate</u>
2 Yard x1/week	\$119.37	\$80.12	\$199.49
2 Yard x2/week	\$126.97	\$160.24	\$287.21
2 Yard x3/week	\$156.50	\$240.37	\$396.87
2 Yard x4/week	\$185.70	\$320.48	\$506.18
2 Yard x5/week	\$214.87	\$400.59	\$615.46
2 Yard x6/week	\$244.08	\$480.72	\$724.80
3 Yard x1/week	\$119.37	\$120.19	\$239.56
3 Yard x2/week	\$126.97	\$240.36	\$367.33
3 Yard x3/week	\$156.50	\$360.55	\$517.05
3 Yard x4/week	\$185.70	\$480.72	\$666.42
3 Yard x5/week	\$214.87	\$600.91	\$815.78
3 Yard x6/week	\$244.08	\$721.08	\$965.16
4 Yard x1/week	\$159.18	\$160.24	\$319.42
4 Yard x2/week	\$167.97	\$320.49	\$488.46
4 Yard x3/week	\$208.68	\$480.72	\$689.40
4 Yard x4/week	\$247.60	\$640.97	\$888.57
4 Yard x5/week	\$286.51	\$801.21	\$1,087.72
4 Yard x6/week	\$325.50	\$961.45	\$1,286.95

<u>Multi-Family Cart Service-Green Waste</u>	<u>Base Rate</u>	<u>AD Processing Component</u>	<u>Total Maximum Rate</u>
35 Gallon x1/week	\$20.93	\$7.02	\$27.95
35 Gallon x2/week	\$41.86	\$14.02	\$55.88
35 Gallon x3/week	\$62.79	\$21.04	\$83.83
35 Gallon x4/week	\$83.72	\$28.04	\$111.76
35 Gallon x5/week	\$104.65	\$35.06	\$139.71
35 Gallon x6/week	\$125.58	\$42.06	\$167.64
65 Gallon x1/week	\$20.93	\$13.42	\$34.35
65 Gallon x2/week	\$41.86	\$26.85	\$68.71
65 Gallon x3/week	\$62.79	\$40.27	\$103.06
65 Gallon x4/week	\$83.72	\$53.68	\$137.40
65 Gallon x5/week	\$104.65	\$67.11	\$171.76
65 Gallon x6/week	\$125.58	\$80.53	\$206.11
95 Gallon x1/week	\$20.93	\$19.08	\$40.01
95 Gallon x2/week	\$41.86	\$38.16	\$80.02
95 Gallon x3/week	\$62.79	\$57.23	\$120.02
95 Gallon x4/week	\$83.72	\$76.31	\$160.03
95 Gallon x5/week	\$104.65	\$95.39	\$200.04
95 Gallon x6/week	\$125.58	\$114.47	\$240.05

<u>Commercial Bin Service</u>	<u>Base Rate</u>	<u>Disposal Component Tonnage Basis</u>	<u>Disposal Component</u>	<u>Total Maximum Rate</u>
3 Yard x1/week	\$117.73	0.7936	\$26.16	\$143.89
3 Yard x2/week	\$123.64	1.5872	\$52.31	\$175.95
3 Yard x3/week	\$151.50	2.3808	\$78.47	\$229.97
3 Yard x4/week	\$179.03	3.1744	\$104.63	\$283.66
3 Yard x5/week	\$206.56	3.9680	\$130.79	\$337.35
3 Yard x6/week	\$234.09	4.7616	\$156.94	\$391.03
4 Yard x1/week	\$156.95	1.0581	\$34.87	\$191.82
4 Yard x2/week	\$163.52	2.1162	\$69.75	\$233.27
4 Yard x3/week	\$202.01	3.1743	\$104.62	\$306.63
4 Yard x4/week	\$238.71	4.2324	\$139.50	\$378.21
4 Yard x5/week	\$275.40	5.2905	\$174.37	\$449.77
4 Yard x6/week	\$312.16	6.3486	\$209.25	\$521.41

<u>Commercial Bin Service -Organics</u>	<u>Base Rate</u>	<u>AD Processing Component</u>	<u>Total Maximum Rate</u>
2 Yard x1/week	\$117.73	\$140.20	\$257.93
2 Yard x2/week	\$123.64	\$280.42	\$404.06
2 Yard x3/week	\$151.50	\$420.63	\$572.13
2 Yard x4/week	\$179.03	\$560.84	\$739.87
2 Yard x5/week	\$206.56	\$701.05	\$907.61
2 Yard x6/week	\$234.09	\$841.27	\$1,075.36

**SOLID WASTE COLLECTION SERVICE
MAXIMUM MONTHLY RATES
Effective July 1, 2016**

Commercial Cart Service	Base Rate	Disposal Component Tonnage Basis	Processing Component	Total Maximum Rate
65 Gallon Set	\$20.93	0.1546	\$5.10	\$26.03
95 Gallon Set	\$21.63	0.2300	\$7.58	\$29.21
Extra 65 Trash	\$9.69	0.1546	\$5.10	\$14.79
Extra 95 Trash	\$9.72	0.2300	\$7.58	\$17.30
Extra 65 Recycle	\$9.07			\$9.07
Extra 95 Recycle	\$9.30			\$9.30

Commercial Cart Service-Organics	Base Rate	AD Processing Component	Total Maximum Rate
35 Gallon x1/week	\$20.93	\$12.28	\$33.21
35 Gallon x2/week	\$41.86	\$24.53	\$66.39
35 Gallon x3/week	\$62.79	\$36.81	\$99.60
35 Gallon x4/week	\$83.72	\$49.07	\$132.79
35 Gallon x5/week	\$104.65	\$61.35	\$166.00
35 Gallon x6/week	\$125.58	\$73.60	\$199.18
65 Gallon x1/week	\$20.93	\$23.49	\$44.42
65 Gallon x2/week	\$41.86	\$46.97	\$88.83
65 Gallon x3/week	\$62.79	\$70.46	\$133.25
65 Gallon x4/week	\$83.72	\$93.93	\$177.65
65 Gallon x5/week	\$104.65	\$117.43	\$222.08
65 Gallon x6/week	\$125.58	\$140.90	\$266.48

Recycling Bins Accompanying Commercial Bin Service	Base Rate	Processing Component	Total Maximum Rate
3 Yard x1/week	\$63.87		\$63.87
3 Yard x2/week	\$102.21		\$102.21
3 Yard x3/week	\$153.31		\$153.31
3 Yard x4/week	\$204.41		\$204.41
3 Yard x5/week	\$255.51		\$255.51
3 Yard x6/week	\$306.60		\$306.60
4 Yard x1/week	\$83.04		\$83.04
4 Yard x2/week	\$132.87		\$132.87
4 Yard x3/week	\$199.29		\$199.29
4 Yard x4/week	\$265.74		\$265.74
4 Yard x5/week	\$332.16		\$332.16
4 Yard x6/week	\$398.59		\$398.59

Recycling Carts Accompanying Commercial Bin Service	Base Rate	Processing Component	Total Maximum Rate
65 or 95 Gallon x1/week	\$19.16		\$19.16
65 or 95 Gallon x2/week	\$38.34		\$38.34
65 or 95 Gallon x3/week	\$57.49		\$57.49
65 or 95 Gallon x4/week	\$76.65		\$76.65
65 or 95 Gallon x5/week	\$95.81		\$95.81
65 or 95 Gallon x6/week	\$114.98		\$114.98

Roll-off (Commercial and Temporary Services)	Base Rate	Organics Processing per ton	Processing Component per ton	Disposal Component per ton
Roll off Boxes (except compactors)	\$175.69		\$52.96	\$34.70
Compactors	\$206.25		\$52.96	\$34.70
Clean, Source Separated loads:				
Dirt/Asphalt/Concrete (10 yd Lowboy)	\$354.54		n/a	n/a
Wood, Metal, Paper/Cardboard (40 yd Drop Off Box)	\$284.67		n/a	n/a
Greenwaste (40 yd Drop Off Box)	\$175.68	\$92.75	\$0.00	

Bulky Item Collection	Maximum Rate
Residential (up to 4 items)	\$15.06
Commercial (up to 4 items)	\$52.69
Each Additional Commercial Bulky Item	\$20.35

Temporary Service	Maximum Flat Rate
Bins (weekly flat rate)	\$97.94

Service Fees	
Walk-out Residential Service (in addition to monthly service rate)	\$23.34
Additional Residential Pick Up	\$18.63 per pick up
Bin Cleaning Fee (in excess of one time per year)	\$33.02 per bin
Convert Standard Bin to Locking	\$26.20 one time charge
Bin Roll-out Charges (25' - 50')	\$10.37 per month
Bin Roll-out Charges (50' - 75')	\$20.66 per month
Additional Bin Pickup	\$81.13
Bin Overflow Charge	\$40.73
Locking Bin Monthly Charge (Recycle or Refuse Bin)	\$15.26

Delinquency Fees	
Residential	After 90 days 1.5% of balance, minimum balance of \$15.00, charged quarterly
Commercial	After 60 days 1.5% of balance, minimum balance of \$15.00, charged monthly
Temporary Service	After 60 days 1.5% of balance, minimum balance of \$15.00, charged monthly

Administrative Fees	
Stop Service	\$15.00
Refund Processing Fee	\$1.50
Container Replacement Charge (per Container)	\$50.00

AMENDMENT NO. 2

TO AGREEMENT BETWEEN THE

CITY OF SAN CLEMENTE

AND

CR&R INCORPORATED

FOR SOLID WASTE HANDLING SERVICES

**AMENDMENT NO. 2 TO AGREEMENT
BETWEEN THE CITY OF SAN CLEMENTE AND CR&R
INCORPORATED FOR SOLID WASTE HANDLING SERVICES**

This AMENDMENT NO. 2 TO AGREEMENT BETWEEN THE CITY OF SAN CLEMENTE AND CR&R INCORPORATED FOR SOLID WASTE HANDLING SERVICES (“Amendment No. 2”) is made and entered into on this 9th day of Nov. 2021 by and between CITY OF SAN CLEMENTE, a California municipal corporation (“City”), and CR&R INCORPORATED (“Contractor”).

RECITALS

- A. City and Contractor entered into that certain Amended and Restated Agreement between the City of San Clemente and CR&R Incorporated for Solid Waste Handling Services (the “2011 Agreement”) dated January 1, 2011.
- B. City and Contractor entered into that certain Amendment No. 1 to Agreement between the City of San Clemente and CR&R Incorporated for Solid Waste Handling Services (“First Amendment”) on June 13, 2016. The 2011 Agreement, as modified by Amendment No. 1, is hereinafter referred to as the “Agreement.”
- C. The Bureau of Labor Statistics introduced a new Consumer Price Index (CPI) geographic area in 2018 that affects the City of San Clemente.
- D. SB 1383 (Lara, Chapter 395, Statutes of 2016) and the regulations promulgated by the California Department of Resources Recycling and Recovery (CalRecycle) to implement SB 1383 (SB 1383 Regulations) require the City and Contractor to add programs and services to divert organic waste from the landfills.
- E. Contractor has agreed, as part of this Agreement, to provide such services as are necessary or desirable to ensure City complies with the requirements of AB 939, AB 341, AB 1826, AB 1594 and SB 1383 and Public Resources Code Section 40000, *et seq.*
- F. City and Contractor desire to amend the Agreement in the manner provided herein below.

Based upon the foregoing Recitals, which are true and correct and incorporated in this Amendment, and for good and valuable consideration, the receipt and sufficiency of which is acknowledged by both parties, City and Contractor hereby agree to the following revisions to the Agreement:

1. Section 2 is hereby amended to add the following definitions:

NN. SB 1383

“SB 1383” means SB 1383 (Lara, Chapter 395, Statutes of 2016) that sets organics disposal reduction targets, and provides CalRecycle the regulatory authority required to achieve the organic waste reduction goals.

OO. SB 1383 Regulations.

“SB 1383 Regulations” means the regulations promulgated by CalRecycle to implement SB 1383 that are contained in Chapter 12 (Short-lived Climate Pollutants) of Division 7 of Title 14 of the California Code of Regulations.

2. Section 6.A(11) is hereby added to the Agreement as follows:

(11) Waste Characterizations.

Beginning January 1, 2022 and at a minimum, one time per year, the Contractor will conduct a waste characterization of each waste stream (recyclables, organics and municipal solid waste) for both residential and commercial customers, in a method approved by the City. The goal is to better understand the types and amounts of materials disposed and diverted from each waste stream and each customer type. The Contractor will conduct the waste characterizations in a way that is most efficient and cost-effective to collect specific data required by CalRecycle. An annual report will be provided to the City at the conclusion of this task.

3. Section 6.B(5) of the Agreement is amended in its entirety to read as follows:

(5) Organic Waste Program for Single Family Dwellings:

Contractor shall provide each Customer at a Single Family Dwelling to whom it provides a Refuse Cart with the Customer’s choice of either (1) thirty-five (35) gallon or one (1) sixty-seven (67) gallon Cart designated for the Collection of organic waste (an “Organic Waste Cart”) at no additional charge. Upon request from any Customer at a Single Family Dwelling, Contractor shall provide such Customer with one (1) additional Organic Waste Cart at no additional charge. Contractor shall collect organic waste placed in Organic Waste Carts for Collection from each Customer on the same day as such Customers’ Refuse Cart is Collected, using an automated collection process. Customers shall be directed to place Organic Waste Carts in the same location for Collection as Refuse Carts.

Beginning January 1, 2022, Contractor shall provide each customer at a single family dwelling that received an organics exemption in 2016 for collection of commingled organics wastes, a 35-gallon organics cart. Customers shall be charged for this additional cart as reflected in Exhibit “A-2.” If the 35-gallon cart is delivered after

January 1, 2022 customers will be charged beginning the first of the month subsequent to the month of delivery.

4. Section 6.B(10) is added to the Agreement as follows:

Beginning on January 1, 2022 and annually thereafter, Contractor shall conduct on-site field contamination audit which shall target a minimum of three percent (3%) of the residences served by the Contractor in the City. The Contractor may conduct the audit over the course of several days or complete the audit in a single day. The audits shall be conducted on carts placed at curbside or in alleyways by the resident for collection by Contractor (e.g. municipal solid waste, recyclable materials, and organic waste) before the carts are collected on the regular service day. If there is any observable contamination in any cart, the Contractor shall place a hangtag on the Cart notifying the customer of the contamination incident and how to correct it. The hang tag should indicate 1) the type of contaminant(s) observed by Contractor's staff during the inspection and 2) the appropriate cart in which the prohibited contaminant(s) should be placed. The notification shall include information regarding the resident's requirement to properly separate materials into the appropriate carts. The Contractor shall conduct route reviews or waste evaluations to meet container contamination minimization requirements in accordance with 14 CCR Section 18984.5.

5. Section 6.B(11) is hereby added to the Agreement as follows:

(11) Edible Food Recovery Program

Beginning January 1, 2022, Contractor shall conduct targeted and recorded outreach pertaining to the recovery of excess edible food to all commercial edible food generators in cooperation. Contractor and its subcontractors will perform all requirements that are the City's responsibility under Article 10 of Chapter 12 of Division 7 of Title 14 of CCR.

6. Section 8.I is hereby added to the Agreement as follows:

8.I Provision of One Recycling/Public Education Coordinator.

Contractor shall provide funding for one (1) full time equivalent Recycling and Public Education Coordinator (Coordinator) to implement Diversion programs in the City. Contractor to retain, at Contractor's expense, a full-time Coordinator to perform 2,000 hours of work per fiscal year (July 1 – June 30) exclusively for the City. The annual fully loaded salary is assumed to be \$122,222 for fiscal year 2021-2022, and City and Contractor shall review and determine the amount of the Coordinator's fully loaded salary each fiscal year. At the City's discretion and upon the City Manager's approval, the Contractor may provide less than 2,000 hours for a fiscal year. Contractor shall document the hours of work performed and submit them to the City on a monthly basis. The report for hours worked for a calendar month shall be due to the City within 10 days following the calendar month. If the Coordinator does not perform 2,000 hours at the annual fully

loaded salary for a particular fiscal year, Contractor shall issue a check to City on a pro-rata basis for unused hours within one month after the end of the fiscal year for which work was to be performed. Contractor will provide remaining funding to the City to provide said services described below at its discretion.

The role of the Coordinator shall be to educate and manage recycling and organics diversion services for customers at commercial businesses, multi-family dwellings and Single Family Dwellings. The minimum duties, work tasks, and requirements for the Coordinator shall include, but are not be limited to: (i) conducting waste audits at commercial and business establishments; (ii) preparing recycling and diversion plans for businesses, institutions and other waste generators in the City; (iii) routinely auditing each of the diversion programs including photographing said programs and reporting to City on the results of each program; (iv) working in a fully transparent manner with the City and its agents in troubleshooting and implementing programs, including audits and processing; and (v) providing data for annual reporting to CalRecycle; (vi) providing data to the City upon request; and (vii) other duties as may be assigned by City. City reserves the right to re-direct the work efforts of the Coordinator and prioritize the tasks to be completed as needed throughout the term of the Agreement in order to keep the City compliant with CalRecycle mandates. The Coordinator shall be fully trained on diversion requirements by Contractor by January 1, 2022.

7. Section 21.B. of the Agreement is hereby amended in its entirety to read as follows:

21.B Annual Consumer Price Index Adjustments to Contractor Component and Processing Component

Commencing on October 1, 2021, the “contractor component” and the “processing component” associated with any of the maximum rates set forth on Exhibit A shall be adjusted, and such components of said rates shall be adjusted annually thereafter on July 1st during the Term hereof (the “Adjustment Dates”), by the annual percentage change in the Consumer Price Index (“CPI”) for All Urban Consumers, CUURS49ASA0, not seasonally adjusted, all items index (CPI-U) – Los Angeles-Long Beach-Anaheim, CA for the twelve-month period from January thru December of the year prior to the July 1st Adjustment Date. Notwithstanding the above, no annual adjustment in which the forging items would otherwise increase shall occur if either: (a) the City Manager determines that Contractor did not fully comply with all terms of this Agreement in the 12-month period preceding the increase, including without limitation, provisions hereof relating to reporting, diversion, and Customer service standards; or (b) Contractor is delinquent in the payment of any Franchise Fee to the City. At least ninety (90) days prior to charging Customers any rate increased due to an increase in the CPI as set forth herein, Contractor shall notify the City Manager of its intent to do so, and receive the City Manager’s approval therefore, which approval shall not be withheld unless it conflicts with the provisions hereof. After receiving City Manager approval and no later than thirty (30) days prior to charging customers any rate increased due to an increase in the CPI as set forth herein,

Contractor shall provide notice of such increase to all customers in a form approved by the City. For commercial and multi-family billed customers, contractor shall insert a notice in the monthly billing for May. For residential customers billed on a quarterly basis, Contractor shall, at its own expense, mail a notice via post card to all such customers no later than 30 days prior to the July 1st Adjustment Date. Any notice that must be mailed to customers and/or property owners pursuant to the protest hearing requirements of Article XIII D, Section 6 of the California Constitution (also referred to as "Proposition 218") shall be the responsibility of City and shall be performed in a timely manner such that each annual Adjustment will be compliant to notice requirements of this legislation. Notwithstanding the foregoing, and to the extent determined necessary or advisable by City, any rate increase or new rate shall be subject to the requirements of Proposition 218 and is contingent upon the City not receiving a majority protest against the rate increase as part of such proceedings.

8. Section 26.A(2) of the Agreement is amended in its entirety to read as follows:

Contractor, upon demand of the City, made by and through the City Attorney, shall protect City and appear in and defend the City and its elected officials, officers, employees and agents, in any claims or actions by third parties, whether judicial, administrative or otherwise, including, but not limited to disputes and litigation over the definitions of "Solid Waste," "Recyclable Material," or "Organic Waste," the scope of the rights granted herein, conflicts between the rights granted herein and rights asserted by other Persons, or the limits of City's authority with respect to the grant of licenses, or agreements, exclusive or otherwise, asserting rights under the Dormant Commerce Clause or any other federal or state laws to provide Solid Waste Handling Services in the City.

9. Exhibit A-1

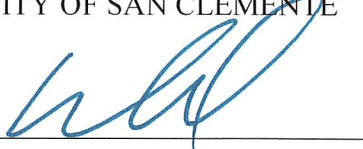
Exhibit A-1 is hereby replaced with the attached Exhibit A-1 to this Amendment and incorporated herein by reference.

10. All references to "Green Waste" in the Agreement shall refer to "Organic Waste."

Except as expressly amended by this Second Amendment, the remaining portions of the Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have caused this Amendment No. 2 to be duly executed on the respective dates set forth opposite their signatures.

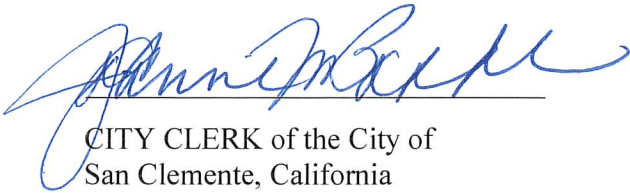
CITY OF SAN CLEMENTE

By: 


Its: CITY MANAGER

Dated: SEPT. 28, 2021

ATTEST:



CITY CLERK of the City of
San Clemente, California

Approved as to form:
BEST BEST & KRIEGER


City Attorney

CR&R Incorporated

(“CONTRACTOR”)

By: 

David Ronnenberg
Its: Division President and COO

Dated: OCT 18, 2021


Finance Authorization

**EXHIBIT A-1
SOLID WASTE CHARGES**

	<u>Current Rate</u>	<u>Effective 10/1/2021 Rate (CPI)</u>	<u>Effective 1/1/2022 Rate (SB1383)</u>
<u>Residential with Organics (Anaerobic Digestion)</u>			
(2) 35 Gallon	\$ 21.17	\$ 21.61	NA
(3) 35 Gallon	\$ 22.08	\$ 22.55	\$ 22.76
(2) 65 Gallon	\$ 21.88	\$ 22.33	NA
(3) 65 Gallon	\$ 22.82	\$ 23.29	\$ 23.51
Additional 35 Gallon Refuse	\$ 4.83	\$ 4.94	\$ 4.98
Additional 65 Gallon Refuse	\$ 5.05	\$ 5.16	\$ 5.21
<u>Commercial Bin Service</u>			
3 Yard x1/week	\$ 160.26	\$ 163.55	\$ 165.11
3 Yard x2/week	\$ 195.19	\$ 199.07	\$ 200.96
3 Yard x3/week	\$ 254.72	\$ 259.72	\$ 262.19
3 Yard x4/week	\$ 313.87	\$ 319.98	\$ 323.02
3 Yard x5/week	\$ 373.02	\$ 380.25	\$ 383.86
3 Yard x6/week	\$ 432.20	\$ 440.53	\$ 444.73
4 Yard x1/week	\$ 213.63	\$ 218.02	\$ 220.09
4 Yard x2/week	\$ 258.79	\$ 263.94	\$ 266.45
4 Yard x3/week	\$ 339.62	\$ 346.29	\$ 349.58
4 Yard x4/week	\$ 418.51	\$ 426.66	\$ 430.72
4 Yard x5/week	\$ 497.35	\$ 506.98	\$ 511.80
4 Yard x6/week	\$ 576.29	\$ 587.41	\$ 593.00
<u>Multi-family Bin Service</u>			
3 Yard x1/week	\$ 189.96	\$ 194.07	\$ 195.91
3 Yard x2/week	\$ 254.68	\$ 260.19	\$ 262.66
3 Yard x3/week	\$ 343.96	\$ 351.40	\$ 354.74
3 Yard x4/week	\$ 432.84	\$ 442.20	\$ 446.41
3 Yard x5/week	\$ 521.72	\$ 532.99	\$ 538.06
3 Yard x6/week	\$ 610.66	\$ 623.85	\$ 629.78
4 Yard x1/week	\$ 253.30	\$ 258.78	\$ 261.24
4 Yard x2/week	\$ 338.06	\$ 345.37	\$ 348.65
4 Yard x3/week	\$ 458.59	\$ 468.50	\$ 472.95
4 Yard x4/week	\$ 577.15	\$ 589.62	\$ 595.23
4 Yard x5/week	\$ 695.66	\$ 710.69	\$ 717.45
4 Yard x6/week	\$ 814.27	\$ 831.86	\$ 839.77
<u>Multi-family, Commercial Cart Service</u>			
65 Gallon Set	\$ 28.98	\$ 29.57	\$ 29.85
90 Gallon Set	\$ 32.43	\$ 33.08	\$ 33.40
Extra 65 Trash	\$ 16.37	\$ 16.69	\$ 16.85
Extra 90 Trash	\$ 19.09	\$ 19.46	\$ 19.65
Extra 65 Recycle	\$ 10.16	\$ 10.37	\$ 10.47
Extra 90 Recycle	\$ 10.42	\$ 10.65	\$ 10.75
<u>Multi-family, Commercial Recycling Bin Service</u>			
3 Yard x1/week	\$ 71.58	\$ 73.13	\$ 73.82
3 Yard x2/week	\$ 114.55	\$ 117.03	\$ 118.14
3 Yard x3/week	\$ 171.82	\$ 175.53	\$ 177.20
3 Yard x4/week	\$ 229.08	\$ 234.03	\$ 236.25
3 Yard x5/week	\$ 286.35	\$ 292.54	\$ 295.32

	<u>Current Rate</u>	<u>Effective 10/1/2021 Rate (CPI)</u>	<u>Effective 1/1/2022 Rate (SB1383)</u>
95 Gallon x1/week	\$ 44.85	\$ 45.81	\$ 46.25
95 Gallon x2/week	\$ 89.67	\$ 91.60	\$ 92.48
95 Gallon x3/week	\$ 134.52	\$ 137.43	\$ 138.73
95 Gallon x4/week	\$ 179.35	\$ 183.23	\$ 184.97
95 Gallon x5/week	\$ 224.19	\$ 229.03	\$ 231.21
95 Gallon x6/week	\$ 269.02	\$ 274.82	\$ 277.44
<u>Multi-Family, Commercial Bin Service - Organics</u>			
2 Yard x1/week	\$ 289.07	\$ 295.31	\$ 298.12
2 Yard x2/week	\$ 452.84	\$ 462.63	\$ 467.03
2 Yard x3/week	\$ 641.21	\$ 655.06	\$ 661.30
2 Yard x4/week	\$ 829.18	\$ 847.09	\$ 855.15
2 Yard x5/week	\$ 1,017.16	\$ 1,039.13	\$ 1,049.02
2 Yard x6/week	\$ 1,205.17	\$ 1,231.20	\$ 1,242.91
<u>Multi-Family, Commercial Cart Service - Organics</u>			
35 Gallon x1/week	\$ 37.23	\$ 38.03	\$ 38.39
35 Gallon x2/week	\$ 74.42	\$ 76.03	\$ 76.76
35 Gallon x3/week	\$ 111.64	\$ 114.05	\$ 115.14
35 Gallon x4/week	\$ 148.82	\$ 152.03	\$ 153.48
35 Gallon x5/week	\$ 186.05	\$ 190.06	\$ 191.87
35 Gallon x6/week	\$ 223.23	\$ 228.06	\$ 230.23
65 Gallon x1/week	\$ 49.80	\$ 50.88	\$ 51.36
65 Gallon x2/week	\$ 99.56	\$ 101.71	\$ 102.67
65 Gallon x3/week	\$ 149.34	\$ 152.57	\$ 154.02
65 Gallon x4/week	\$ 203.62	\$ 208.02	\$ 210.00
65 Gallon x5/week	\$ 248.90	\$ 254.27	\$ 256.69
65 Gallon x6/week	\$ 298.65	\$ 305.10	\$ 308.01
<u>Roll-off Service</u>			
Drop off Box - haul	\$ 196.89	\$ 201.14	\$ 203.06
Compactor - haul	\$ 231.14	\$ 236.13	\$ 238.37
Dirt/Asphalt/Concrete (10 yd) - Flat	\$ 397.35	\$ 405.94	\$ 409.80
Wood, Metal, Cardboard (40 yd) - Flat	\$ 319.03	\$ 325.92	\$ 329.02
Greenwaste (40 yd Drop Off Box) - Haul	\$ 196.89	\$ 201.14	\$ 203.06
Organics Processing - AD	\$ 103.95	\$ 106.19	\$ 107.20
Greenwaste Processing	\$ 59.36	\$ 60.64	\$ 61.22
Processing	\$ 59.36	\$ 60.64	\$ 61.22
Landfill	\$ 37.56	\$ 38.15	\$ 38.51
<u>Roll-off Temp COD Rates</u>			
10 yard Processed 7 tons avg	\$ 612.41	\$ 625.62	\$ 631.58
10 yard Landfilled 7 tons avg	\$ 459.81	\$ 468.17	\$ 472.62
40 yard Processed 5 tons avg	\$ 493.69	\$ 504.34	\$ 509.14
40 yard Landfilled 5 tons avg	\$ 384.69	\$ 391.88	\$ 395.61
<u>Bulky Item Collection</u>			
Residential	\$ 16.88	\$ 17.24	\$ 17.40
Commercial	\$ 59.05	\$ 60.33	\$ 60.90
Additional Bulky Commercial	\$ 22.81	\$ 23.30	\$ 23.53

	<u>Current Rate</u>	<u>Effective 10/1/2021 Rate (CPI)</u>	<u>Effective 1/1/2022 Rate (SB1383)</u>
<u>Processing (Construction)</u>			
Cleanup Bin Weekly	\$ 109.76	\$ 112.13	\$ 113.20
<u>Service Fees</u>			
Walk-out Residential Service (in addition to monthly service rate)	\$ 26.15	\$ 26.71	\$ 26.96
Additional Residential Pick Up	\$ 20.87	\$ 21.32	\$ 21.53
Bin Cleaning Fee (in excess of one time per year)	\$ 37.01	\$ 37.81	\$ 38.17
Convert Standard Bin to Locking	\$ 29.36	\$ 30.00	\$ 30.29
Bin Roll-out Charges (25' - 50')	\$ 11.62	\$ 11.87	\$ 11.99
Bin Roll-out Charges (50' - 75')	\$ 23.15	\$ 23.66	\$ 23.88
Locking Bin Monthly Charge (Recycle or Refuse Bin)	\$ 17.10	\$ 17.47	\$ 17.64
Bin Overflow Charge	\$ 45.65	\$ 46.64	\$ 47.08
Additional Bin Pickup	\$ 90.69	\$ 92.61	\$ 93.49
Additional Cart Pickup	\$ 55.28	\$ 55.28	\$ 55.80
<u>Split Bin Service -Commercial</u>			
3 Yard Split (1.5 Trash, 1.5 Recy) x 1/week	\$ 115.94	\$ 118.37	\$ 119.49
3 Yard Split (1.5 Trash, 1.5 Recy) x 2/week	\$ 154.87	\$ 158.04	\$ 159.55
3 Yard Split (1.5 Trash, 1.5 Recy) x 3/week	\$ 213.28	\$ 217.64	\$ 219.71
3 Yard Split (1.5 Trash, 1.5 Recy) x 4/week	\$ 271.47	\$ 277.02	\$ 279.65
3 Yard Split (1.5 Trash, 1.5 Recy) x 5/week	\$ 329.69	\$ 336.40	\$ 339.60
3 Yard Split (1.5 Trash, 1.5 Recy) x 6/week	\$ 387.93	\$ 395.81	\$ 399.58
4 Yard Split (1.5 Trash, 1.5 Recy) x 1/week	\$ 153.37	\$ 156.56	\$ 158.05
4 Yard Split (1.5 Trash, 1.5 Recy) x 2/week	\$ 203.87	\$ 208.04	\$ 210.02
4 Yard Split (1.5 Trash, 1.5 Recy) x 3/week	\$ 281.49	\$ 287.24	\$ 289.97
4 Yard Split (1.5 Trash, 1.5 Recy) x 4/week	\$ 358.18	\$ 365.47	\$ 368.95
4 Yard Split (1.5 Trash, 1.5 Recy) x 5/week	\$ 434.82	\$ 443.66	\$ 447.88
4 Yard Split (1.5 Trash, 1.5 Recy) x 6/week	\$ 511.50	\$ 521.87	\$ 526.84
<u>Split Bin Service -Multi-family</u>			
3 Yard Split (1.5 Trash, 1.5 Recy) x 1/week	\$ 130.79	\$ 133.62	\$ 134.89
3 Yard Split (1.5 Trash, 1.5 Recy) x 2/week	\$ 184.62	\$ 188.61	\$ 190.40
3 Yard Split (1.5 Trash, 1.5 Recy) x 3/week	\$ 257.90	\$ 263.47	\$ 265.98
3 Yard Split (1.5 Trash, 1.5 Recy) x 4/week	\$ 330.97	\$ 338.13	\$ 341.35
3 Yard Split (1.5 Trash, 1.5 Recy) x 5/week	\$ 404.04	\$ 412.77	\$ 416.70
3 Yard Split (1.5 Trash, 1.5 Recy) x 6/week	\$ 477.15	\$ 487.46	\$ 492.09
4 Yard Split (1.5 Trash, 1.5 Recy) x 1/week	\$ 173.20	\$ 176.93	\$ 178.62
4 Yard Split (1.5 Trash, 1.5 Recy) x 2/week	\$ 243.49	\$ 248.76	\$ 251.12
4 Yard Split (1.5 Trash, 1.5 Recy) x 3/week	\$ 340.98	\$ 348.34	\$ 351.65
4 Yard Split (1.5 Trash, 1.5 Recy) x 4/week	\$ 437.49	\$ 446.93	\$ 451.18
4 Yard Split (1.5 Trash, 1.5 Recy) x 5/week	\$ 533.97	\$ 545.52	\$ 550.71
4 Yard Split (1.5 Trash, 1.5 Recy) x 6/week	\$ 630.48	\$ 644.11	\$ 650.24

CITY OF SAN CLEMENTE

PROFESSIONAL CONSULTANT SERVICES AGREEMENT

1. PARTIES AND DATE.

This Agreement is made and entered into this 21 day of March, 2022, by and between the City of San Clemente, a municipal corporation, organized under the laws of the State of California, with its principal place of business at 910 Calle Negocio, San Clemente, California, 92673 ("City") and **MSW CONSULTANTS**, a **CORPORATION IN THE STATE OF CALIFORNIA** its principal place of business at **41760 IVY ST. SUITE 203 MURRIETA, CALIFORNIA 92562** ("Consultant"). City and Consultant are sometimes individually referred to herein as "Party" and collectively as "Parties."

2. RECITALS.

2.1 Consultant.

Consultant desires to perform and assume responsibility for the provision of certain professional **SOLID WASTE PROCUREMENT ASSISTANCE** consulting services required by the City on the terms and conditions set forth in this Agreement. Consultant represents that it is experienced in providing professional **SOLID WASTE PROCUREMENT ASSISTANCE** consulting services to public clients, is licensed in the State of California, if applicable, and is familiar with the plans of City.

2.2 Project.

City desires to engage Consultant to render such professional **SOLID WASTE PROCUREMENT ASSISTANCE** consulting services for the **SOLID WASTE PROCUREMENT ASSISTANCE** project ("Project") as set forth in this Agreement.

3. TERMS.

3.1 Scope of Services and Term.

3.1.1 General Scope of Services. Consultant promises and agrees to furnish to the City all labor, materials, tools, equipment, services, and incidental and customary work necessary to fully and adequately supply the professional **SOLID WASTE PROCUREMENT ASSISTANCE** consulting services necessary for the Project ("Services"). The Services are more particularly described in Exhibit "A" attached hereto and incorporated herein by reference. All Services shall be subject to, and performed in accordance with, this Agreement, the exhibits attached hereto and incorporated herein by reference, and all applicable local, state and federal laws, rules and regulations.

3.1.2 Term. The term of this Agreement shall be from **THE DATE NOTED IN SECTION 1 to June 30, 2024**, unless earlier terminated as provided herein. Consultant shall complete the Services within the term of this Agreement, and shall meet any other established schedules and deadlines.

3.2 Responsibilities of Consultant.

3.2.1 Independent Contractor; Control and Payment of Subordinates. The

Services shall be performed by Consultant or under its supervision. Consultant will determine the means, methods and details of performing the Services subject to the requirements of this Agreement. City retains Consultant on an independent contractor basis and not as an employee. Consultant retains the right to perform similar or different services for others during the term of this Agreement. Any additional personnel performing the Services under this Agreement on behalf of Consultant shall also not be employees of City and shall at all times be under Consultant's exclusive direction and control. Neither City, nor any of its officials, officers, directors, employees or agents shall have control over the conduct of Consultant or any of Consultant's officers, employees, or agents, except as set forth in this Agreement. Consultant shall pay all wages, salaries, and other amounts due such personnel in connection with their performance of Services under this Agreement and as required by law. Consultant shall be responsible for all reports and obligations respecting such additional personnel, including, but not limited to: social security taxes, income tax withholding, unemployment insurance, disability insurance, and workers' compensation insurance.

3.2.2 Schedule of Services. Consultant shall perform the Services expeditiously, within the term of this Agreement, and in accordance with the Schedule of Services set forth in Exhibit "B" attached hereto and incorporated herein by reference. Consultant represents that it has the professional and technical personnel required to perform the Services in conformance with such conditions. In order to facilitate Consultant's conformance with the Schedule, City shall respond to Consultant's submittals in a timely manner. Upon request of City, Consultant shall provide a more detailed schedule of anticipated performance to meet the Schedule of Services.

3.2.3 Endorsement on PS&E/ Other Data. Consultant shall sign all plans, specifications, estimates (PS&E) and engineering data furnished by Consultant, and where appropriate will indicate Consultant's authorized signature and professional registration number.

3.2.4 Conformance to Applicable Requirements. All work prepared by Consultant shall be subject to the approval of City.

3.2.5 Substitution of Key Personnel. Consultant has represented to City that certain key personnel will perform and coordinate the Services under this Agreement. Should one or more of such personnel become unavailable, Consultant may substitute other personnel of at least equal competence upon written approval of City. In the event that City and Consultant cannot agree as to the substitution of key personnel, City shall be entitled to terminate this Agreement for cause. As discussed below, any personnel who fail or refuse to perform the Services in a manner acceptable to the City, or who are determined by the City to be uncooperative, incompetent, a threat to the adequate or timely completion of the Project or a threat to the safety of persons or property, shall be promptly removed from the Project by the Consultant at the request of the City. The key personnel for performance of this Agreement are as follows: **DAVID DAVIS, PRESIDENT, MSW CONSULTANTS.**

3.2.6 City's Representative. The City hereby designates **DAVID REBENS DORF, UTILITIES DIRECTOR**, or his/her designee, to act as its representative in all matters pertaining to the administration and performance of this Agreement ("City's Representative"). City's Representative shall have the power to act on behalf of the City for review and approval of all products submitted by Consultant but not the authority to enlarge the Scope of Work or change the total compensation due to Consultant under this Agreement. The City Manager shall be authorized to act on City's behalf and to execute all necessary documents which enlarge the Scope of Work or change the Consultant's total compensation subject to the provisions contained in Section 3.3 of this Agreement. Consultant shall not accept direction or orders from any person other than the City Manager, City's Representative or his/her designee.

3.2.7 Consultant's Representative. Consultant hereby designates **DAVID DAVIS, PRESIDENT, MSW CONSULTANTS**, or his/her designee, to act as its representative for the performance of this Agreement ("Consultant's Representative"). Consultant's Representative shall have full authority to represent and act on behalf of the Consultant for all purposes under this Agreement. The Consultant's Representative shall supervise and direct the Services, using his/her best skill and attention, and shall be responsible for all means, methods, techniques, sequences, and procedures and for the satisfactory coordination of all portions of the Services under this Agreement.

3.2.8 Coordination of Services. Consultant agrees to work closely with City staff in the performance of Services and shall be available to City's staff, consultants and other staff at all reasonable times.

3.2.9 Standard of Care; Performance of Employees. Consultant shall perform all Services under this Agreement in a skillful and competent manner, consistent with the standards generally recognized as being employed by professionals in the same discipline in the State of California. Consultant represents and maintains that it is skilled in the professional calling necessary to perform the Services. Consultant warrants that all employees and subconsultants shall have sufficient skill and experience to perform the Services assigned to them. Finally, Consultant represents that it, its employees and subconsultants have all licenses, permits, qualifications and approvals of whatever nature that are legally required to perform the Services, and that such licenses and approvals shall be maintained throughout the term of this Agreement. As provided for in the indemnification provisions of this Agreement, Consultant shall perform, at its own cost and expense and without reimbursement from the City, any services necessary to correct errors or omissions which are caused by the Consultant's failure to comply with the standard of care provided for herein. Any employee of the Consultant or its sub-consultants who is determined by the City to be uncooperative, incompetent, a threat to the adequate or timely completion of the Project, a threat to the safety of persons or property, or any employee who fails or refuses to perform the Services in a manner acceptable to the City, shall be promptly removed from the Project by the Consultant and shall not be re-employed to perform any of the Services or to work on the Project.

3.2.10 Laws and Regulations. Consultant shall keep itself fully informed of and in compliance with all local, state and federal laws, rules and regulations in any manner affecting the performance of the Project or the Services, including all Cal/OSHA requirements, and shall give all notices required by law. Consultant shall be liable for all violations of such laws and regulations in connection with Services. If Consultant performs any work knowing it to be contrary to such laws, rules and regulations, Consultant shall be solely responsible for all costs arising therefrom. Consultant shall defend, indemnify and hold City, its officials, directors, officers, employees, agents, and volunteers free and harmless, pursuant to the indemnification provisions of this Agreement, from any claim or liability arising out of any failure or alleged failure to comply with such laws, rules or regulations.

3.2.11 Safety. Consultant shall execute and maintain its work so as to avoid injury or damage to any person or property. In carrying out its Services, the Consultant shall at all times be in compliance with all applicable local, state and federal laws, rules and regulations, and shall exercise all necessary precautions for the safety of employees appropriate to the nature of the work and the conditions under which the work is to be performed. Safety precautions, where applicable, shall include, but shall not be limited to: (A) adequate life protection and lifesaving equipment and procedures; (B) instructions in accident prevention for all employees and subconsultants, such as safe walkways, scaffolds, fall protection ladders, bridges, gang planks, confined space procedures, trenching and shoring, equipment and other safety devices,

equipment and wearing apparel as are necessary or lawfully required to prevent accidents or injuries; and (C) adequate facilities for the proper inspection and maintenance of all safety measures.

3.2.12 Insurance. Consultant agrees to procure and maintain, at Consultant's expense all insurance specified in Exhibit "C" attached hereto and by this reference incorporated herein. Consultant shall require all subconsultants to carry the same policies and limits of insurance that the Consultant is required to maintain, unless otherwise approved in writing by the City.

3.3 Fees and Payments.

3.3.1 Compensation. Consultant shall receive compensation, including authorized reimbursements, for all Services rendered under this Agreement at the rates set forth in Exhibit "D" attached hereto and incorporated herein by reference. The total compensation shall not exceed **TWENTY FIVE THOUSAND DOLLARS (\$25,000)** without written approval of the City Council or City Manager as applicable. Extra Work may be authorized, as described below, and if authorized, will be compensated at the rates and manner set forth in this Agreement.

3.3.2 Payment of Compensation. Consultant shall submit to City a monthly invoice which indicates work completed and hours of Services rendered by Consultant. The invoice shall describe the amount of Services provided since the initial commencement date, or since the start of the subsequent billing periods, as appropriate, through the date of the invoice. City shall, within 30 days of receiving such invoice, review the invoice and pay all non-disputed and approved charges thereon. If the City disputes any of Consultant's fees, the City shall give written notice to Consultant within thirty (30) days of receipt of an invoice of any disputed fees set forth therein.

3.3.3 Reimbursement for Expenses. Consultant shall not be reimbursed for any expenses unless authorized in writing by City, or included in Exhibit "D" of this Agreement.

3.3.4 Extra Work. At any time during the term of this Agreement, City may request that Consultant perform Extra Work. As used herein, "Extra Work" means any work which is determined by City to be necessary for the proper completion of the Project, but which the Parties did not reasonably anticipate would be necessary at the execution of this Agreement. Consultant shall not perform, nor be compensated for, Extra Work without written authorization from the City.

3.3.5 Rate Increases. In the event that this Agreement is renewed pursuant to Section 3.1.2, the rate set forth in Exhibit "D" may be adjusted each year at the time of renewal as set forth in Exhibit "D."

3.3.6 Labor Code Requirements.

3.3.6.1 Prevailing Wages. Consultant is aware of the requirements of California Labor Code Section 1720, et seq., and 1770, et seq., as well as California Code of Regulations, Title 8, Section 16000, et seq., ("Prevailing Wage Laws"), which require the payment of prevailing wage rates and the performance of other requirements on "public works" and "maintenance" projects. IF the Services are being performed as part of an applicable "public works" or "maintenance" project, as defined by the Prevailing Wage Laws, and if the total compensation is \$1,000 or more, Consultant agrees to fully comply with such Prevailing Wage Laws. Consultant shall make copies of the prevailing rates of per diem wages for each craft,

classification or type of worker needed to execute the Services available to interested parties upon request, and shall post copies at the Consultant's principal place of business and at the project site. Consultant shall defend, indemnify and hold the City, its officials, officers, employees, agents, and volunteers free and harmless from any claim or liability arising out of any failure or alleged failure to comply with the Prevailing Wage Laws.

3.3.6.2 Registration. If the Services are being performed as part of an applicable "public works" or "maintenance" project, in addition to the foregoing, then pursuant to Labor Code sections 1725.5 and 1771.1, the Consultant and all subconsultants must be registered with the Department of Industrial Relations ("DIR"). Consultant shall maintain registration for the duration of the project and require the same of any subconsultants. This project may also be subject to compliance monitoring and enforcement by the DIR. It shall be Consultant's sole responsibility to comply with all applicable registration and labor compliance requirements, including the submission of payroll records directly to the DIR. Notwithstanding the foregoing, the contractor registration requirements mandated by Labor Code sections 1725.5 and 1771.1 shall not apply to Services performed on a public works project that is exempt pursuant to the small project exemption specified in Labor Code sections 1725.5 and 1771.1.

3.4 Accounting Records.

3.4.1 Maintenance and Inspection. Consultant shall maintain complete and accurate records with respect to all costs and expenses incurred under this Agreement. All such records shall be clearly identifiable. Consultant shall allow a representative of City during normal business hours to examine, audit, and make transcripts or copies of such records and any other documents created pursuant to this Agreement. Consultant shall allow inspection of all work, data, documents, proceedings, and activities related to the Agreement for a period of four (4) years from the date of final payment under this Agreement.

3.5 General Provisions.

3.5.1 Termination of Agreement.

3.5.1.1 Grounds for Termination. City may, by written notice to Consultant, terminate the whole or any part of this Agreement at any time, with or without cause, by giving written notice to Consultant of such termination, and specifying the effective date thereof, at least seven (7) days before the effective date of such termination. Upon termination, Consultant shall be compensated only for those services which have been adequately rendered to City, and Consultant shall be entitled to no further compensation. Consultant may not terminate this Agreement except for cause.

3.5.1.2 Effect of Termination. If this Agreement is terminated as provided herein, City may require Consultant to provide all finished or unfinished Documents and Data and other information of any kind prepared by Consultant in connection with the performance of Services under this Agreement. Consultant shall be required to provide such document and other information within fifteen (15) days of the request.

3.5.1.3 Additional Services. In the event this Agreement is terminated in whole or in part as provided herein, City may procure, upon such terms and in such manner as it may determine appropriate, services similar to those terminated.

3.5.2 Delivery of Notices. All notices permitted or required under this Agreement shall be given to the respective parties at the following address, or at such other address as the

respective parties may provide in writing for this purpose:

Consultant: **MSW CONSULTANTS
41760 IVY ST., SUITE 203
MURRIETA, CALIFORNIA 92562
ATTN: MR. DAVID DAVIS, PRESIDENT**

City: City of San Clemente
380 Avenida Pico, Bldg. N
San Clemente, CA 92672
ATTN: **DAVID REBENDORF, UTILITIES DIRECTOR**

Such notice shall be deemed made when personally delivered or when mailed, forty-eight (48) hours after deposit in the U.S. Mail, first class postage prepaid and addressed to the party at its applicable address. Actual notice shall be deemed adequate notice on the date actual notice occurred, regardless of the method of service.

3.5.3 Ownership of Materials and Confidentiality.

3.5.3.1 Documents & Data; Licensing of Intellectual Property. This Agreement creates a non-exclusive and perpetual license for City to copy, use, modify, reuse, or sublicense any and all copyrights, designs, and other intellectual property embodied in plans, specifications, studies, drawings, estimates, and other documents or works of authorship fixed in any tangible medium of expression, including but not limited to, physical drawings or data magnetically or otherwise recorded on computer diskettes, which are prepared or caused to be prepared by Consultant under this Agreement ("Documents & Data"). Consultant shall require all subconsultants to agree in writing that City is granted a non-exclusive and perpetual license for any Documents & Data the subconsultant prepares under this Agreement. Consultant represents and warrants that Consultant has the legal right to license any and all Documents & Data. Consultant makes no such representation and warranty in regard to Documents & Data which were prepared by design professionals other than Consultant or provided to Consultant by the City. City shall not be limited in any way in its use of the Documents & Data at any time, provided that any such use not within the purposes intended by this Agreement shall be at City's sole risk.

3.5.3.2 Confidentiality. All ideas, memoranda, specifications, plans, procedures, drawings, descriptions, computer program data, input record data, written information, and other Documents & Data either created by or provided to Consultant in connection with the performance of this Agreement shall be held confidential by Consultant. Such materials shall not, without the prior written consent of City, be used by Consultant for any purposes other than the performance of the Services. Nor shall such materials be disclosed to any person or entity not connected with the performance of the Services or the Project. Nothing furnished to Consultant which is otherwise known to Consultant or is generally known, or has become known, to the related industry shall be deemed confidential. Consultant shall not use City's name or insignia, photographs of the Project, or any publicity pertaining to the Services or the Project in any magazine, trade paper, newspaper, television or radio production or other similar medium without the prior written consent of City.

3.5.3.3 Confidential Information. The City shall refrain from releasing Consultant's proprietary information ("Proprietary Information") unless the City's legal counsel determines that the release of the Proprietary Information is required by the California Public Records Act or other applicable state or federal law, or order of a court of competent jurisdiction, in which case the City shall notify Consultant of its intention to release Proprietary Information.

Consultant shall have five (5) working days after receipt of the Release Notice to give City written notice of Consultant's objection to the City's release of Proprietary Information. Consultant shall indemnify, defend and hold harmless the City, and its officers, directors, employees, and agents from and against all liability, loss, cost or expense (including attorney's fees) arising out of a legal action brought to compel the release of Proprietary Information. City shall not release the Proprietary Information after receipt of the Objection Notice unless either: (1) Consultant fails to fully indemnify, defend (with City's choice of legal counsel), and hold City harmless from any legal action brought to compel such release; and/or (2) a final and non-appealable order by a court of competent jurisdiction requires that City release such information.

3.5.4 Cooperation; Further Acts. The Parties shall fully cooperate with one another, and shall take any additional acts or sign any additional documents as may be necessary, appropriate or convenient to attain the purposes of this Agreement.

3.5.5 Attorney's Fees. If either party commences an action against the other party, either legal, administrative or otherwise, arising out of or in connection with this Agreement, the prevailing party in such litigation shall be entitled to have and recover from the losing party reasonable attorney's fees and all other costs of such action.

3.5.6 Indemnification.

3.5.6.1 To the fullest extent permitted by law, Consultant shall defend (with counsel of City's choosing), indemnify and hold the City, its directors, officials, officers, employees, volunteers and agents free and harmless from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury of any kind, in law or equity, to property or persons, including wrongful death, in any manner arising out of, pertaining to, or incident to any alleged acts, errors or omissions, or willful misconduct of Consultant, its officials, officers, employees, subcontractors, consultants or agents in connection with the performance of the Consultant's Services, the Project or this Agreement, including without limitation the payment of all damages, expert witness fees and attorney's fees and other related costs and expenses. Consultant's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by Consultant, the City, its officials, officers, employees, agents, or volunteers.

3.5.6.2 If Consultant's obligation to defend, indemnify, and/or hold harmless arises out of Consultant's performance as a "design professional" (as that term is defined under Civil Code section 2782.8), then, and only to the extent required by Civil Code section 2782.8, which is fully incorporated herein, Consultant's indemnification obligation shall be limited to claims that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the Consultant, and, upon Consultant obtaining a final adjudication by a court of competent jurisdiction, Consultant's liability for such claim, including the cost to defend, shall not exceed the Consultant's proportionate percentage of fault.

3.5.7 Entire Agreement. This Agreement contains the entire Agreement of the parties with respect to the subject matter hereof, and supersedes all prior negotiations, understandings or agreements. This Agreement may only be modified by a writing signed by both parties.

3.5.8 Governing Law. This Agreement shall be governed by the laws of the State of California. Venue shall be in Orange County.

3.5.9 Time of Essence. Time is of the essence for each and every provision of this Agreement.

3.5.10 City's Right to Employ Other Consultants. City reserves right to employ other consultants in connection with this Project.

3.5.11 Successors and Assigns. This Agreement shall be binding on the successors and assigns of the parties.

3.5.12 Assignment or Transfer. Consultant shall not assign, hypothecate, or transfer, either directly or by operation of law, this Agreement or any interest herein without the prior written consent of the City. Any attempt to do so shall be null and void, and any assignees, hypothecates or transferees shall acquire no right or interest by reason of such attempted assignment, hypothecation or transfer.

3.5.13 Construction; References; Captions. Since the Parties or their agents have participated fully in the preparation of this Agreement, the language of this Agreement shall be construed simply, according to its fair meaning, and not strictly for or against any Party. Any term referencing time, days or period for performance shall be deemed calendar days and not work days. All references to Consultant include all personnel, employees, agents, and subconsultants of Consultant, except as otherwise specified in this Agreement. All references to City include its elected officials, officers, employees, agents, and volunteers except as otherwise specified in this Agreement. The captions of the various articles and paragraphs are for convenience and ease of reference only, and do not define, limit, augment, or describe the scope, content, or intent of this Agreement.

3.5.14 Amendment; Modification. No supplement, modification, or amendment of this Agreement shall be binding unless executed in writing and signed by both Parties.

3.5.15 Waiver. No waiver of any default shall constitute a waiver of any other default or breach, whether of the same or other covenant or condition. No waiver, benefit, privilege, or service voluntarily given or performed by a Party shall give the other Party any contractual rights by custom, estoppel, or otherwise.

3.5.16 No Third-Party Beneficiaries. There are no intended third party beneficiaries of any right or obligation assumed by the Parties.

3.5.17 Invalidity; Severability. If any portion of this Agreement is declared invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions shall continue in full force and effect.

3.5.18 Prohibited Interests. Consultant maintains and warrants that it has not employed nor retained any company or person, other than a bona fide employee working solely for Consultant, to solicit or secure this Agreement. Further, Consultant warrants that it has not paid nor has it agreed to pay any company or person, other than a bona fide employee working solely for Consultant, any fee, commission, percentage, brokerage fee, gift or other consideration contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, City shall have the right to rescind this Agreement without liability. For the term of this Agreement, no member, officer or employee of City, during the term of his or her service with City, shall have any direct interest in this Agreement, or obtain any present or anticipated material benefit arising therefrom.

3.5.19 Equal Opportunity Employment. Consultant represents that it is an equal opportunity employer and it shall not discriminate against any subconsultant, employee or applicant for employment because of race, religion, color, national origin, handicap, ancestry, sex

or age. Such non-discrimination shall include, but not be limited to, all activities related to initial employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination. Consultant shall also comply with all relevant provisions of City's Minority Business Enterprise program, Affirmative Action Plan or other related programs or guidelines currently in effect or hereinafter enacted.

3.5.20 Labor Certification. By its signature hereunder, Consultant certifies that it is aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for Worker's Compensation or to undertake self-insurance in accordance with the provisions of that Code, and agrees to comply with such provisions before commencing the performance of the Services.

3.5.21 Authority to Enter Agreement. Consultant has all requisite power and authority to conduct its business and to execute, deliver, and perform the Agreement. Each Party warrants that the individuals who have signed this Agreement have the legal power, right, and authority to make this Agreement and bind each respective Party.

3.5.22 Counterparts. This Agreement may be signed in counterparts, each of which shall constitute an original.

3.6 Subcontracting.

3.6.1 Prior Approval Required. Consultant shall not subcontract any portion of the work required by this Agreement, except as expressly stated herein, without prior written approval of City. Subcontracts, if any, shall contain a provision making them subject to all provisions stipulated in this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed on the respective dates set forth opposite of their signatures.

CITY OF SAN CLEMENTE

By: [Signature]

ATTEST:

[Signature] Legislative Administrator
Its: City Manager
Dated: 3/17, 2022
CITY CLERK of the City of San Clemente, California

APPROVED AS TO FORM:
BEST BEST & KRIEGER

[Signature]
City Attorney

APPROVED AS TO AVAILABILITY
OF FUNDING:

[Signature]
Finance Authorization

MSW Consultants
("CONSULTANT")

By: [Signature]

Its: President

Dated: 3-11, 2022

EXHIBIT "A"
SCOPE OF SERVICES

TASK 1 - EVALUATE CURRENT AGREEMENT; RECOMMEND NEGOTIATE VS. RFP

To accomplish these objectives, Consultant will perform the following tasks:

Task 1a- Kickoff Meeting / Project Management

Consultant will conduct a kickoff meeting with City staff. The purpose of the meeting with City staff will be to confirm the project scope, schedule, key issues, deliverables, and the City's negotiating strategy. Throughout the project, Consultant will provide the City with monthly project status reports.

Deliverables:

- Meeting agenda and notes
- Monthly status reports

Task 1b- Evaluate Existing Agreement with CR&R

Consultant will review the City's franchise agreement and prepare a baseline analysis and recommendations to the City. Consultant will also prepare a contract profile. The contract profile will consist of a summary of relevant key terms and services. Based on our discussions with the City, Consultant will identify the key contract terms and services needed to fulfill the requirements of SB 1383 and all CalRecycle mandates. Based on the key terms and services Consultant identifies, Consultant will prepare contract language to amend the franchise agreement such that it will contain the needed services and terms to enable customers to comply with their organics recycling requirements. Consultant will recommend additional tasks and services to be included in the scope of services.

Deliverable:

- Contract profile
- Contract recommendations

Task 1c- Compare Rates and Services

Consultant will gather and analyze information on the cost of service from other similar jurisdictions. In addition to simply collecting the amount charged to customers by those jurisdictions, Consultant will also collect other information that will enable us to determine and quantify any 'distinguishing characteristics' in comparing those rates to the City of San Clemente. For example, Consultant may collect information about whether other services (e.g., free commercial recycling, organics collection, bulky waste collection, etc.) are included in the rates of other cities.

Consultant will prepare tables comparing the rates in these jurisdictions to those in the City of San Clemente. These tables will also address the various distinguishing characteristics among the jurisdictions. By understanding the rates charged in other cities, and by understanding the amount of CR&R's total revenue at current and proposed lower rates, the City will be able to negotiate from a position of knowledge and strength.

Deliverable:

- Rate comparison exhibits

Task 1d- Make and Present Recommendation on Negotiate vs. RFP

Based on the information Consultant gathers, and our discussions with City staff, Consultant will make a recommendation for the City to either: negotiate with CR&R, Inc. or, to undertake an RFP process. Table 1 below outlines the issues Consultant will consider together with City staff.

Table 1 – Pros and Cons of Negotiate vs. RFP

Advantages of Negotiating with Incumbent Hauler	Advantages of Soliciting Competitive Proposals from Several Haulers
<ul style="list-style-type: none"> ▪ Allows the City to subsequently issue an RFP if the negotiations are not successful. ▪ Avoids the risk of problems arising from the transition to a new service provider (e.g., changed pickup days, a new hauler will not be familiar with the City's unique service requirements, etc.). ▪ Avoids the problems that may occur if the City receives a 'low-ball' bid; avoids the risk of creating a high-profile and controversial contractor selection process. ▪ Allows the City to achieve much of the same assurances that it has obtained a fair deal by comparing its rates, services and terms to those in nearby jurisdictions. ▪ Requires less City Council and staff time. 	<ul style="list-style-type: none"> ▪ Provides more assurance that City has obtained the greatest value. ▪ Provides more assurance to the public that contractor was selected in a fair manner. ▪ City benefits from the technical creativity of several firms. ▪ Allows the City to choose from several haulers. ▪ Allows the City to 'mix 'n match' features from multiple proposals. ▪ Requires more City Council and staff time.
<p>Bottom line: More appropriate when:</p> <ul style="list-style-type: none"> ▪ City is already meeting its solid waste program objectives: ▪ Reliable service at reasonable rates; ▪ Achievement of waste diversion goals. 	<p>Bottom line: More appropriate when:</p> <ul style="list-style-type: none"> ▪ City is less satisfied with hauler, or ▪ City intends to make significant changes to the scope of services.

These two courses of action are not mutually exclusive. Consultant may recommend beginning to negotiate with CR&R with the understanding that the City may conduct a competitive procurement if negotiations are not successful.

Consultant will prepare a City Council staff report and PowerPoint that summarizes our recommendation whether to negotiate with CR&R or to move forward with a competitive procurement. Consultant will review this presentation with City staff, and revise it as necessary. Consultant will present our recommendation to the City Council.

Deliverables:

- City Council staff report
- PowerPoint presentation
- Presentation to City Council

EXHIBIT "B"
SCHEDULE OF SERVICES

Project Schedule, 2022

Task	Description	March				April					May				June			
		5	12	19	26	2	9	16	23	30	7	14	21	28	5	12	19	26
Evaluation of CR&R Franchise Agreement																		
1a	Kickoff Meeting/Project Management			MR					MR				MR					
1b	Evaluate Exiting Agreement																	
1c	Compare Rates and Services																	
1d	Make and Present Recommendation								RD		PP			CC				

Deliverables:

- MR Monthly Status Reports
- RD Recommendation to Renegotiate or New Procurement
- PP Prepare PowerPoint Presentation for City Council Meeting
- CC Deliver Presentation at June 7th City Council Meeting

EXHIBIT "C"
INSURANCE REQUIREMENTS

3.2.12 Insurance.

3.2.12.1 Time for Compliance. Consultant shall not commence work under this Agreement until it has provided evidence satisfactory to the City that it has secured all insurance required under this section. In addition, Consultant shall not allow any subconsultant to commence work on any subcontract until it has provided evidence satisfactory to the City that the subconsultant has secured all insurance required under this section.

3.2.12.2 Types of Insurance Required. As a condition precedent to the effectiveness of this Agreement for work to be performed hereunder, and without limiting the indemnity provisions of the Agreement, the Consultant, in partial performance of its obligations under such Agreement, shall procure and maintain in full force and effect during the term of the Agreement the following policies of insurance. If the existing policies do not meet the insurance requirements set forth herein, Consultant agrees to amend, supplement or endorse the policies to do so.

(A) **Commercial General Liability:** Commercial General Liability Insurance which affords coverage at least as broad as Insurance Services Office "occurrence" form CG 0001, or the exact equivalent, with limits of not less than \$1,000,000 per occurrence and no less than \$2,000,000 in the general aggregate. Defense costs shall be paid in addition to the limits. The policy shall contain no endorsements or provisions (1) limiting coverage for contractual liability; (2) excluding coverage for claims or suits by one insured against another (cross-liability); or (3) containing any other exclusion(s) contrary to the terms or purposes of this Agreement.

(B) **Automobile Liability Insurance:** Automobile Liability Insurance with coverage at least as broad as Insurance Services Office Form CA 0001 covering "Any Auto" (Symbol 1), or the exact equivalent, covering bodily injury and property damage for all activities with limits of not less than \$1,000,000 combined limit for each occurrence. **NOTE: If Consultant does not own any company vehicles or may not be able to purchase a Business Automobile Insurance Policy, the requirement may be satisfied by providing either of the following:** (1) a Personal Automobile Liability policy for the Consultant's own vehicle stipulating "Automobile Liability Insurance with a limit of not less than \$1,000,000 each accident"; and (2) a non-owned auto endorsement to the Commercial General Liability policy if Consultant uses vehicles of others (e.g., vehicles of employees).

(C) **Workers' Compensation:** Workers' Compensation Insurance, as required by the State of California and Employer's Liability Insurance with a limit of not less than \$1,000,000 per accident for bodily injury and disease.

(D) **Professional Liability (Errors & Omissions):** Professional Liability insurance or Errors & Omissions insurance appropriate to Consultant's profession with limits of not less than \$1,000,000 per claim. Covered professional services shall specifically include all work to be performed under the Agreement and delete any exclusions that may potentially affect the work to be performed (for example, any exclusions relating to lead, asbestos, pollution, testing, underground storage tanks, laboratory analysis, soil work, etc.). If coverage is written on a claims-made basis, the retroactive date shall precede the effective date of the initial

Agreement and continuous coverage will be maintained or an extended reporting period will be exercised for a period of at least three (3) years from termination or expiration of this Agreement.

3.2.12.3 Insurance Endorsements. Required insurance policies shall contain the following provisions, or Consultant shall provide endorsements on forms approved by the City to add the following provisions to the insurance policies:

(A) Commercial General Liability:

(1) Additional Insured: The City, its officials, officers, employees, agents, and volunteers shall be additional insureds with regard to liability and defense of suits or claims arising out of the performance of the Agreement.

Additional Insured Endorsements shall not (1) be restricted to "ongoing operations"; (2) exclude "contractual liability"; (3) restrict coverage to "sole" liability of Consultant; or (4) contain any other exclusions contrary to the terms or purposes of this Agreement. For all policies of Commercial General Liability insurance, Consultant shall provide endorsements in the form of ISO CG 20 10 10 01 (or endorsements providing the exact same coverage) to effectuate this requirement.

(2) Cancellation: Required insurance policies shall not be canceled or the coverage reduced until a thirty (30) day written notice of cancellation has been served upon the City except ten (10) days shall be allowed for non-payment of premium.

(B) Automobile Liability:

(1) Cancellation: Required insurance policies shall not be canceled or the coverage reduced until a thirty (30) day written notice of cancellation has been served upon the City except ten (10) days shall be allowed for non-payment of premium.

3.2.12.4 Professional Liability (Errors & Omissions):

(A) Cancellation: Required insurance policies shall not be canceled or the coverage reduced until a thirty (30) day written notice of cancellation has been served upon the City except ten (10) days shall be allowed for non-payment of premium.

(B) Contractual Liability Exclusion Deleted: This insurance shall include contractual liability applicable to this Agreement. The policy must "pay on behalf of" the insured and include a provision establishing the insurer's duty to defend.

3.2.12.5 Workers' Compensation:

(A) Cancellation: Required insurance policies shall not be canceled or the coverage reduced until a thirty (30) day written notice of cancellation has been served upon the City except ten (10) days shall be allowed for non-payment of premium.

3.2.12.6 Primary and Non-Contributing Insurance. All policies of Commercial General Liability and Automobile Liability insurance shall be primary and any other insurance, deductible, or self-insurance maintained by the City, its officials, officers, employees, agents, or volunteers shall not contribute with this primary insurance. Policies shall contain or be endorsed to contain such provisions.

3.2.12.7 Waiver of Subrogation. All policies of Commercial General Liability and Automobile Liability insurance shall specifically allow Consultant or others providing insurance evidence in compliance with these specifications to waive their right of recovery prior to a loss. Consultant hereby waives its own right of recovery against the City, its officials, officers, employees, agents, and volunteers, and shall require similar written express waivers and insurance clauses from each of its subconsultants.

3.2.12.8 Deductibles and Self-Insured Retentions. Any deductible or self-insured retention greater than \$5,000 must be approved in writing by the City and shall protect the City, its officials, officers, employees, agents, and volunteers in the same manner and to the same extent as they would have been protected had the policy or policies not contained a deductible or self-insured retention.

3.2.12.9 Evidence of Insurance. The Consultant, concurrently with the execution of the Agreement, and as a condition precedent to the effectiveness thereof, shall deliver either certified copies of the required policies, or original certificates on forms approved by the City, together with all endorsements affecting each policy. Required insurance policies shall not be in compliance if they include any limiting provision or endorsement that has not been submitted to the City for approval. The certificates and endorsements for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf. At least fifteen (15) days prior to the expiration of any such policy, evidence of insurance showing that such insurance coverage has been renewed or extended shall be filed with the City. If such coverage is cancelled or reduced and not replaced immediately so as to avoid a lapse in the required coverage, Consultant shall, within ten (10) days after receipt of written notice of such cancellation or reduction of coverage, file with the City evidence of insurance showing that the required insurance has been reinstated or has been provided through another insurance company or companies.

3.2.12.10 Failure to Maintain Coverage. In the event any policy of insurance required under this Agreement does not comply with these specifications or is canceled and not replaced immediately so as to avoid a lapse in the required coverage, City has the right but not the duty to obtain the insurance it deems necessary and any premium paid by City will be promptly reimbursed by Consultant or City will withhold amounts sufficient to pay premium from Consultant payments. In the alternative, City may cancel this Agreement effective upon notice.

3.2.12.11 Acceptability of Insurers. Each such policy shall be from a company or companies with a current A.M. Best's rating of no less than A- VII and authorized to transact business of insurance in the State of California, or otherwise allowed to place insurance through surplus line brokers under applicable provisions of the California Insurance Code or any federal law.

3.2.12.12 Enforcement of Agreement Provisions (non estoppel). Consultant acknowledges and agrees that actual or alleged failure on the part of the City to inform Consultant of non-compliance with any requirement imposes no additional obligation on the City nor does it waive any rights hereunder.

3.2.12.13 Requirements Not Limiting. Requirement of specific coverage or minimum limits contained in this Appendix are not intended as a limitation on coverage, limits, or other requirement, or a waiver of any coverage normally provided by any insurance.

3.2.12.14 Insurance for Subconsultants. Consultant shall include all subconsultants engaged in any work for Consultant relating to this Agreement as additional insureds under the Consultant's policies, or the Consultant shall be responsible for causing subconsultants to purchase the appropriate insurance in compliance with the terms of these Insurance Requirements, including adding the City, its officials, officers, employees, agents, and volunteers as additional insureds to the subconsultant's policies. All policies of Commercial General Liability insurance provided by Consultant's subconsultants performing work relating to this Agreement shall be endorsed to name the City, its officials, officers, employees, agents and volunteers as additional insureds using endorsement form ISO CG 20 38 04 13 or an endorsement providing equivalent coverage. Consultant shall not allow any subconsultant to commence work on any subcontract relating to this Agreement until it has received satisfactory evidence of subconsultant's compliance with all insurance requirements under this Agreement, to the extent applicable. The Consultant shall provide satisfactory evidence of compliance with this section upon request of the City.

EXHIBIT "D"
COMPENSATION

Fee Schedule 2022

Task	Description	David Davis Project Manager	Girard Mobley Analyst	Chen Newman Analyst	Total Hours	Total Cost
Evaluation of CR&R Agreement						
1a	Kickoff Meeting/Project Management	12	4	4	20	4,200
1b	Evaluate Exiting Agreement	12	24	4	40	8,100
1c	Compare Rates and Services	4	4	16	24	4,780
1d	Make and Present Recommendation	24	12	0	36	7,620
Total Hours		52	44	24	120	
Hourly Rate		\$220	\$195	\$195		
Subtotal Fees		\$11,440	\$8,580	\$4,680		24,700
Subtotal- Estimated Expenses						\$300
Total Fees and Expenses						\$25,000

WORKER'S COMPENSATION INSURANCE CERTIFICATION

WORKERS' COMPENSATION DECLARATION

I hereby affirm under penalty of perjury one of the following declarations:

(ONE OF THE BOXES BELOW MUST BE CHECKED)



I have and will maintain a certificate of consent from the California Labor Commission to self-insure for workers' compensation, as provided for by Section 3700 of the Labor Code, for the performance of the work to be performed under this contract.



I have and will maintain workers' compensation insurance, as required by Section 3700 of the Labor Code, for the performance of the work to be performed under this contract. My workers' compensation insurance carrier and policy number are:

Carrier State Compensation Insurance Fund

Policy Number 186 3281 - 2021

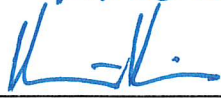


I certify that, in the performance of the work under this Agreement, I shall not employ any person in any manner so as to become subject to the workers' compensation laws of California, and I hereby agree to indemnify, defend, and hold harmless the City of San Clemente and all of its officials, employees, and agents from and against any and all claims, liabilities, and losses relating to personal injury or death, economic losses, and property damage arising out of my failure to provide such worker's compensation insurance. I further agree that, if I should become subject to the workers' compensation provisions of Section 3700 of the Labor Code, I shall forthwith comply with those provisions.

WARNING: FAILURE TO SECURE WORKERS' COMPENSATION COVERAGE IS UNLAWFUL, AND SHALL SUBJECT AN EMPLOYER TO CRIMINAL PENALTIES AND CIVIL FINES UP TO ONE HUNDRED THOUSAND DOLLARS (\$100,000), IN ADDITION TO THE COST OF COMPENSATION, DAMAGES AS PROVIDED FOR IN SECTION 3706 OF THE LABOR CODE, INTEREST, AND ATTORNEY'S FEES.

Dated: 3-11, 2022

David Davis
Consultant MSW Consultants

By: 

President
Title

41760 Ivy St., Suite 203
Address

Murrieta, CA 92562

**FIRST AMENDMENT TO
PROFESSIONAL CONSULTANT SERVICES AGREEMENT FOR
SOLID WASTE PROCUREMENT ASSISTANCE CONSULTING SERVICES**

This First Amendment to Professional Consultant Services Agreement for professional **SOLID WASTE PROCUREMENT ASSISTANCE** consulting services (this “First Amendment”) is made and entered into on this ____ day of _____, 2022, by and between the CITY OF SAN CLEMENTE, a California municipal corporation (“City”), and **MSW CONSULTANTS** (“Consultant”).

RECITALS:

- A. City and Consultant entered into that certain Professional Consultant Services Agreement for **SOLID WASTE PROCUREMENT ASSISTANCE** (the “Agreement”) on March 21, 2022.
- B. City and Consultant desire to amend the Agreement in the manner provided herein.

COVENANTS:

Section 3.1 of the Agreement is hereby amended by adding services to provide for solid waste and recycling negotiations. In addition to the services to be performed by Consultant as referenced in Exhibit A to the Agreement, Consultant shall also perform those services described in Exhibit “A” to this First Amendment, which exhibit is attached hereto and incorporated herein by this reference.

Section 3.3 of the Agreement is hereby amended by increasing the not to exceed amount from Twenty Five Thousand Dollars (\$25,000) to Sixty Thousand Dollars (\$60,000) for the remainder of the Agreement.

Except as expressly amended by this First Amendment, the remaining portions of the Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have caused this First Amendment to be duly executed on the respective dates set forth opposite of their signatures.

CITY OF SAN CLEMENTE

By: _____

Its: _____

Dated: _____, 20____

ATTEST:

CITY CLERK of the City of
San Clemente, California

**APPROVED AS TO FORM:
BEST BEST & KRIEGER**

City Attorney

**APPROVED AS TO AVAILABILITY
OF FUNDING:**

Finance Authorization

("CONSULTANT")

By: _____

Its: _____

Dated: _____, 20____

EXHIBIT “A”

SCOPE OF WORK -TASK 2 - NEGOTIATE WITH CR&R

Objective of Negotiation with CR&R

The main objective of a sole source negotiation is to realize the 'best of both worlds.' The objective is to avoid the potential risks involved with the selection and transition to a new service provider, while at the same time securing an agreement with CR&R that represents the same value that the City would have otherwise obtained if it had conducted a competitive procurement.

Scope of Work - Negotiate with CR&R

To accomplish this objective, we will perform the following tasks:

Task 2a - Negotiation Kickoff Meeting

If the City decides to begin negotiations with CR&R, we will conduct a kickoff meeting with City staff. We will also conduct a subsequent meeting with City staff and representatives from CR&R. The purpose of the meeting with City staff will be to confirm the project scope, schedule, key issues, deliverables, and the City's negotiating strategy. The purpose of the meeting with CR&R will be to discuss the project schedule, the information CR&R will need to provide, and potential modifications to the key terms and services in the franchise agreement.

Deliverables:

- Meeting agenda and notes

Task 2b - Gather Operational and Billing Information

We will gather from CR&R billing information about its customers in the City. This information will likely include the number of customers, number of dwelling units, and each residential customer's size and number of carts.

We will gather operational information from CR&R. For example, we will gather information about the number of routes they operate and the number of tons they collect. We will also gather information about the number of customers at each level of service, including the size and number of containers, and number of pickups per week, etc. We will analyze the information we gather and evaluate it for reasonableness. The purpose for gathering this information is to calculate the company's total revenue, disposal and fuel expense, as described below in Task 2c.¹

We will also gather the bid results from other recent competitive solid waste procurements from other cities, including those in which CR&R may have participated. The purpose for gathering this market data is to gain a better understanding of CR&R's cost drivers and market objectives.

Deliverable:

- Information gathered from CR&R

¹ This step will need to be performed whether the City negotiates or goes out to bid. If the City decides to subsequently issue an RFP, this operational data will be included in the RFP Package. The purpose for including this operational data in the RFP Package is to assist the proposers in estimating their cost of service.

Task 2c - Estimate Total Contract Revenue

We will use the information we gather in Task 2b above to estimate CR&R's total revenue in the City, as well as its disposal and fuel cost expense. The purpose for estimating the company's total revenue, disposal and fuel expense is to enable the City to understand the rate impact of various negotiating issues.

Deliverables:

- Workbook of CR&R's total current contract revenue

Task 2d - Develop Negotiating Strategy; Prepare Meeting Materials

Based on the information we gather and our previous discussions with City staff, we will develop a negotiation strategy, and prepare meeting materials for use in our discussions with CR&R. We will develop a negotiation strategy by preparing an outline of the key contract terms, which will be accompanied by a 'preferred' and a 'fallback' outcome for each issue. The 'preferred' outcomes will be those that we believe would benefit the City and may be marginally acceptable to CR&R. The 'fallback' outcomes are those that would be marginally acceptable to the City, but not less favorable than the City might expect to achieve through a competitive procurement.

The purpose for developing such a negotiating strategy is not to necessarily prescribe the terms the City would be willing to accept. The City will always have the flexibility to 'call an audible,' and vary from its negotiating strategy. The primary purpose of having a written negotiation strategy is to cause the City to deliberate on all the issues, and thereby be better prepared for its discussions with CR&R.

We will also prepare written materials for use in negotiating meetings with CR&R. These materials will likely take the form of tables or exhibits listing all the issues. These materials will also include an updated version of the franchise agreement with the City's proposed changes 'redlined.' The purpose of the meeting materials will be to ensure that both parties have a common understanding of the issues, and to promote an organized and systematic approach to reaching an agreement that is best for the City.

Deliverables:

- Meeting materials
- Outline of negotiation strategy

Task 2e - Participate in Negotiating Sessions

We will prepare for and participate in up to four meetings with City staff and CR&R. At these meetings, we will listen to CR&R's proposals, and confirm our understanding of the company's objectives. We will also present the City's negotiating positions. To the extent that they will further the City's negotiating objectives, we will present various market information and cost analyses. We will seek to persuade CR&R to accept the City's proposals. The purpose of these meetings will be to systematically bring the parties closer together on the various issues, and to ultimately agree on a new franchise agreement that represents the best value for the City.

During the course the contract negotiations, we will perform other tasks such as preparing status reports for distribution to the Council Subcommittee, and revising our meeting materials (e.g., 'redlined' versions of the franchise agreement, etc.).

Deliverable:

- Meeting agenda and materials

Task 2f- Meet with Council Subcommittee

We have found that it is often beneficial to consult with a City Council subcommittee during the negotiation process. Therefore, after the negotiations are complete, we propose to meet once with the Council Subcommittee and review the results of the City's negotiations with CR&R. If the City and CR&R have agreed to terms for a new agreement, we will present those terms to the members of the Council Subcommittee.

If the City is not able to agree on terms with CR&R, we will describe the outstanding issues, outline each party's position, and explain why it is not in the City's interest to agree to CR&R's terms. The purpose of this task is to obtain the City's approval of the outcome of the negotiating process, and to formulate a recommendation to the City Council on how to move forward.

Deliverable:

- Meeting agenda and notes

Task 2g- Present Negotiation Results and Recommended Action to City Council

We will prepare a Powerpoint summary of the results of the negotiations. If the negotiations result in the City and CR&R agreeing on terms for a new franchise agreement, we will prepare a City Council staff report and Power Point that outlines the services, rates, and key terms of the agreement. We will also present a rate comparison to other cities using the newly agreed-upon service rates.

If the negotiations are not successful, we will present, in general terms, the reasons why we found it not in the City's interest to agree to CR&R's proposed terms. However, we will be mindful to not present any information in public that may compromise the conduct of a competitive procurement. We will review this presentation with City staff, and revise it as necessary. We will attend a meeting of the City Council and present the outcome of the contract negotiations, and the recommended action.

Deliverables:

- City Council staff report
- Power Point presentation
- Presentation to City Council


Attachment 6



MSW Consultants


Solid Waste Agreement: Negotiate or RFP

September 6, 2022

Residential Rates

- SB 1383
- Capital spending on organics facilities
- Decrease in recyclables market value
- Driver shortage
- Supply shortages; cost of material
- Cost of fuel; inflation








City's Agreement with CR&R


- Negotiated in 2010 for 11 ½ years
- Automatic extensions each July 1st
- Amended to include organics services
- Meeting diversion goals
- Recent service issues

Solid Waste Consultants
to Local Government




More appropriate to Negotiate

- High quality, reliable service
- Rates are reasonable
- City meeting diversion goals
- Scope of service will not change




Solid Waste Consultants
to Local Government




RFP More Appropriate

- City is less satisfied with hauler
- Rates are high
- City not meeting diversion goals
- Significant changes to scope of service




Solid Waste Consultants
to Local Government




Recommendation

- Notify CR&R to terminate automatic renewal
- Negotiate for six months
- If parties cannot agree; conduct RFP process




Solid Waste Consultants
to Local Government



Questions and Answers

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Solid Waste Consultants
to Local Government