

**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 1<sup>st</sup> 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,<sup>1</sup> 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

<sup>1</sup> 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.

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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.

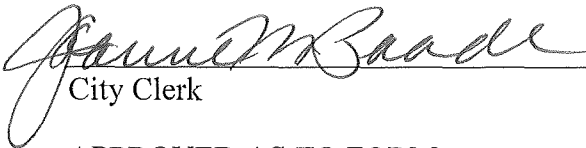
Q. Compliance with Law.

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

<b>Residential</b>	<b>Contractor Component</b>	<b>Disposal Component Tonnage Basis</b>	<b>Disposal Component</b>	<b>Total Maximum Rate (monthly)</b>
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

<b>Multi-Family Bin Service</b>	<b>Contractor Component</b>	<b>Processing Component</b>	<b>Total Maximum Rate (monthly)</b>
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

<b>Commercial Bin Service</b>	<b>Contractor Component</b>	<b>Disposal Component Tonnage Basis</b>	<b>Disposal Component</b>	<b>Total Maximum Rate (monthly)</b>
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

<b>Commercial Cart Service</b>	<b>Contractor Component</b>	<b>Disposal Component Tonnage Basis</b>	<b>Disposal Component</b>	<b>Total Maximum Rate (monthly)</b>
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

<b>Recycling Bins Accompanying Commercial Bin Service</b>	<b>Total Maximum Rate (monthly regular Bin)</b>
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)
<b>Recycling Carts Accompanying Commercial Bin Service</b>	
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 13<sup>TH</sup> 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.

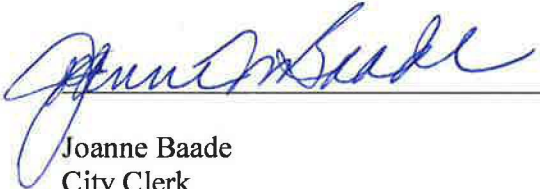
("City")

**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**

<b>Commercial Cart Service</b>	<b>Base Rate</b>	<b>Disposal Component Tonnage Basis</b>	<b>Processing Component</b>	<b>Total Maximum Rate</b>
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

<b>Commercial Cart Service-Organics</b>	<b>Base Rate</b>	<b>AD Processing Component</b>	<b>Total Maximum Rate</b>
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

<b>Recycling Bins Accompanying Commercial Bin Service</b>	<b>Base Rate</b>	<b>Processing Component</b>	<b>Total Maximum Rate</b>
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

<b>Recycling Carts Accompanying Commercial Bin Service</b>	<b>Base Rate</b>	<b>Processing Component</b>	<b>Total Maximum Rate</b>
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

<b>Roll-off (Commercial and Temporary Services)</b>	<b>Base Rate</b>	<b>Organics Processing per ton</b>	<b>Processing Component per ton</b>	<b>Disposal Component per ton</b>
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	

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

<b>Temporary Service</b>	<b>Maximum Flat Rate</b>
Bins (weekly flat rate)	\$97.94

<b>Service Fees</b>	
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

<b>Delinquency Fees</b>	
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

<b>Administrative Fees</b>	
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 9<sup>th</sup> 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

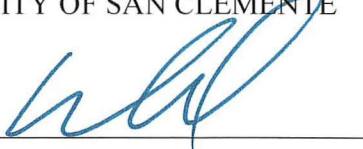
Exhibit A-1 is hereby replaced with the attached Exhibit A-1 to this Amendment and incorporated herein by reference.

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.

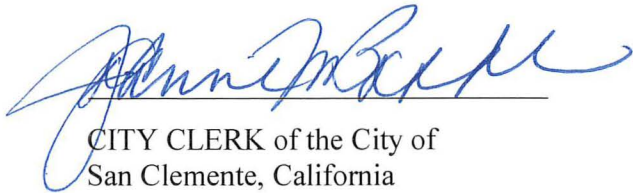
CITY OF SAN CLEMENTE

By: 

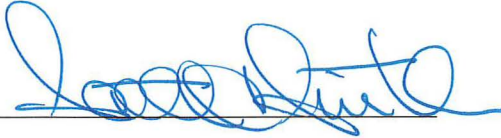
Its: CITY MANAGER

Dated: SEPT. 28, 2021

ATTEST:

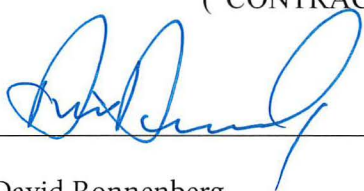
  
CITY CLERK of the City of  
San Clemente, California

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>
<b><u>Residential with Organics (Anaerobic Digestion)</u></b>			
(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
<b><u>Commercial Bin Service</u></b>			
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
<b><u>Multi-family Bin Service</u></b>			
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
<b><u>Multi-family, Commercial Cart Service</u></b>			
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
<b><u>Multi-family, Commercial Recycling Bin Service</u></b>			
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
<b><u>Multi-Family, Commercial Bin Service - Organics</u></b>			
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
<b><u>Multi-Family, Commercial Cart Service - Organics</u></b>			
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
<b><u>Roll-off Service</u></b>			
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
<b><u>Roll-off Temp COD Rates</u></b>			
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
<b><u>Bulky Item Collection</u></b>			
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>
<b><u>Processing (Construction)</u></b>			
Cleanup Bin Weekly	\$ 109.76	\$ 112.13	\$ 113.20
<b><u>Service Fees</u></b>			
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
<b><u>Split Bin Service -Commercial</u></b>			
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
<b><u>Split Bin Service -Multi-family</u></b>			
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