



Amended and Restated Franchise Agreement  
between the City of Rancho Santa Margarita  
and CR&R Incorporated  
for  
Integrated Waste Management Services

\* \* \*

Final Draft October 6, 2021

ATTACHMENT B

## Table of Contents

1	Definitions.....	3
1.1	AB 939.....	3
1.2	Affiliate.....	3
1.3	Agreement.....	4
1.4	Applicable Law .....	4
1.5	BASIC Score.....	4
1.6	Billings.....	4
1.7	Bin .....	5
1.8	Blue Container .....	5
1.9	Bulky Waste .....	5
1.10	Cart .....	5
1.11	City .....	6
1.12	City Code.....	6
1.13	Collect/Collection .....	6
1.14	Commercial and Industrial Property .....	6
1.15	Company.....	6
1.16	Company Compensation .....	6
1.17	Compost.....	7
1.18	Compostable Plastics .....	7
1.19	Construction and Demolition Debris .....	7
1.20	Containers.....	7
1.21	Customer .....	7
1.22	Diesel Gallon Equivalent.....	7
1.23	Disposal.....	8
1.24	Disposal Site(s).....	8
1.25	Edible Food .....	8
1.26	Electronic Waste.....	8
1.27	Environmental Laws .....	8
1.28	Facility.....	9
1.29	Food Scraps.....	9
1.30	Food Soiled Paper .....	9
1.31	Food Waste.....	9
1.32	Franchise.....	9
1.33	Franchise Fee .....	9
1.34	Gray Container.....	10
1.35	Gray Container Waste .....	10

1.36	Green Container .....	10
1.37	Green Waste .....	10
1.38	Gross Receipts .....	10
1.39	Hazardous Substance.....	11
1.40	Hazardous Waste.....	11
1.41	Household Hazardous Waste (HHW) .....	11
1.42	Household Sharps Waste.....	12
1.43	Multi-family Residential .....	12
1.44	Orange County Landfill System .....	12
1.45	Organic Waste .....	12
1.46	Owner .....	12
1.47	Person .....	13
1.48	Premises.....	13
1.49	Prohibited Container Contaminates.....	13
1.50	Rate Year.....	13
1.51	Recycling .....	13
1.52	Recyclable Materials.....	14
1.53	Refuse .....	14
1.54	Renewable Gas Transportation Fuel .....	14
1.55	Residential Property .....	14
1.56	Rolloff Box.....	14
1.57	Route Review.....	14
1.58	Single-Family Dwelling Unit.....	14
1.59	Solid Waste .....	15
1.60	State.....	15
1.61	Temporary Bin Collection Service.....	15
1.62	Temporary Rolloff Box Collection Service .....	15
1.63	Transformation .....	15
1.64	Universal Waste.....	16
1.65	Waste Evaluation.....	16
2	Grant and Acceptance of Franchise.....	17
2.1	Grant and Acceptance of Franchise.....	17
2.2	Exclusive Nature of Franchise.....	17
2.3	Effective Date.....	17
2.4	Term of Agreement .....	17
2.5	Conditions to Effectiveness of Agreement.....	18
2.6	Delegation of Authority .....	19
2.7	Limitations on Scope of Franchise.....	19

2.8	City's Right to Direct Changes.....	21
2.8.1	General.....	21
2.8.2	New Diversion Programs .....	21
2.8.3	City's Right to Acquire Services.....	22
2.9	Ownership of Solid Waste .....	22
2.10	Company Status.....	23
2.11	Company Authorization.....	23
2.12	Annexations .....	23
3	Fees and Licenses.....	24
3.1	Franchise Fee .....	24
3.1.1	Franchise Fee .....	24
3.1.2	Time and Method of Franchise Fee Payment.....	24
3.2	Administrative Fee.....	25
3.3	Outreach Fee .....	25
3.4	Other Fees .....	25
4	Direct Services.....	26
4.1	General .....	26
4.2	Refuse Collection Services.....	26
4.2.2	Refuse Overage .....	27
4.2.3	Bin Collection .....	27
4.2.4	Temporary Bin Service and Rolloff Box Service .....	27
4.2.5	On-Call Bulky Waste Pickup .....	28
4.2.6	Bulky Item Diversion .....	28
4.2.7	Disposal of Electronic Waste .....	29
4.3	Recycling Services .....	29
4.3.1	Automated Cart Recycling Collection .....	29
4.3.2	Multi-Family Bin Customer Recycling .....	30
4.3.3	Commercial Recycling .....	30
4.3.4	Multi-Family and Commercial Site Visits .....	31
4.3.5	Construction Waste Recycling .....	31
4.3.6	Warning Notice .....	32
4.3.7	Marketing and Sale of Recyclable Materials.....	32
4.3.8	Non-Profit Recyclables Roll-Off Service .....	32
4.4	Green Waste Program .....	32
4.4.1	Automated Cart Green Waste Collection .....	32
4.4.2	Commercial Green Waste Collection.....	33
4.4.3	Holiday Tree Collection Program .....	34

4.5	City Services .....	34
4.5.1	City Facilities' Collection .....	34
4.5.2	City Sponsored Events .....	34
4.5.3	Abandoned Item Collection .....	34
4.5.4	Emergency Collection and Disposal Service .....	34
4.5.5	Annual Report Preparation and Submittal .....	35
4.5.6	Universal Waste Collection .....	35
4.5.7	Electronic Waste Collection .....	35
4.5.8	Household Sharps Collection .....	35
4.5.9	Food Waste Collection .....	36
4.6	Diversion Requirements .....	36
4.7	Operations .....	36
4.7.1	Schedules .....	36
4.7.2	Missed Pickups .....	37
4.7.3	Vehicles .....	37
4.7.4	Containers .....	41
4.7.5	Litter Abatement .....	42
4.7.6	Personnel .....	43
4.7.7	Identification Required .....	44
4.7.8	Fees and Gratuities .....	44
4.7.9	Non-Discrimination .....	44
4.7.10	Coordination with Street Sweeping Services .....	44
4.7.11	Change in Collection Schedule .....	45
4.7.12	Report of Accumulation of Solid Waste; Unauthorized Dumping .....	45
4.7.13	Contamination Monitoring .....	45
4.8	Transportation of Refuse .....	47
4.9	Disposal of Refuse .....	47
4.10	Status of Disposal Site .....	48
4.11	Commingling of Collection Routes .....	48
4.12	Annual Route Audit .....	48
4.13	Service Exceptions; Hazardous Waste Notifications .....	50
4.14	Disaster Preparedness Plan .....	50
5	Other Services .....	51
5.1	Services and Customer Billing .....	51
5.1.1	Service Description .....	51
5.1.2	Billing .....	51
5.1.3	Review of Billings .....	52
5.2	Customer Service .....	53

5.2.1	Office Hours .....	53
5.2.2	Complaint Documentation .....	53
5.2.3	Resolution of Customer Complaints .....	54
5.2.4	Company Representative.....	54
5.3	Education and Public Awareness.....	55
5.3.1	Public Education - General.....	55
5.3.2	Community Events .....	57
5.4	Waste Generation/Characterization Studies .....	57
5.5	Free Compost Give-A-Way .....	57
6	Company Compensation and Rates.....	58
6.1	General .....	58
6.2	Competitive Rate Guarantee .....	58
6.3	Rates and Rate Adjustments .....	59
6.3.1	General.....	59
6.3.2	Fixed Adjustment Percentage.....	59
6.3.3	Weighted Cost Components .....	60
6.3.4	Residential and Commercial Rate Adjustment Steps .....	62
6.3.5	Rolloff Rate Adjustment Steps .....	63
6.4	Extraordinary Adjustments.....	64
6.5	Supporting Information .....	64
7	Review of Services and Performance .....	66
7.1	Performance Hearing.....	66
7.2	Performance Satisfaction Survey.....	67
8	Records, Reports and Information Requirements.....	69
8.1	General .....	69
8.2	Records .....	69
8.2.1	General.....	69
8.2.2	Financial Records .....	69
8.2.3	Solid Waste, Recycling, and Green Waste Service Records.....	70
8.2.4	CERCLA Defense Records .....	70
8.2.5	Disposal Records .....	70
8.2.6	Other Programs' Records.....	71
8.2.7	Cost of Audit.....	71
8.2.8	Payments and Refunds .....	71
8.3	Reports.....	71
8.3.1	Report Formats and Schedule .....	71

8.3.2	Monthly Reports .....	72
8.3.3	Quarterly Reports .....	73
8.3.4	Annual Report .....	73
8.3.5	Financial Report .....	74
8.4	Adverse Information.....	74
8.5	Right to Inspect Records.....	75
9	Indemnification, Insurance and Bond.....	76
9.1	Indemnification.....	76
9.2	Hazardous Substances Indemnification .....	77
9.3	AB 939 Indemnification .....	79
9.4	Insurance .....	79
9.5	Faithful Performance Bond.....	84
9.6	Forfeiture of Performance Bond .....	84
9.7	Letter of Credit .....	85
9.8	Forfeiture of Letter of Credit .....	85
10	City's Right to Perform Service.....	86
10.1	General .....	86
10.2	Billing and Compensation to the City During the City's Possession .....	87
10.3	City's Right to Relinquish Possession.....	87
10.4	City's Possession Not A Taking .....	88
10.5	Duration of the City's Possession .....	88
11	Default, Remedies and Liquidated Damages .....	89
11.1	Events of Default .....	89
11.2	Right to Terminate Upon Default .....	91
11.3	Liquidated Damages .....	91
11.4	Excuse from Performance .....	97
11.5	Arbitration .....	98
11.6	Assurance of Performance .....	99
12	Other Agreements of the Parties .....	100
12.1	Relationship of Parties.....	100
12.2	Compliance with Law.....	100
12.3	Governing Law .....	100
12.4	Jurisdiction.....	100
12.5	Assignment .....	101
12.6	Affiliated Companies .....	103

12.7	Contracting or Subcontracting .....	103
12.8	Binding on Assigns .....	103
12.9	Parties in Interest .....	104
12.10	Waiver .....	104
12.11	The Company's Investigation .....	104
12.12	Condemnation .....	104
12.13	Notice .....	104
12.14	Representatives of the Parties .....	105
12.15	City Free to Negotiate with Third Parties .....	106
12.16	Compliance with Municipal Code .....	106
12.17	Privacy .....	106
12.18	Cooperation Following Termination .....	106
12.19	Compliance with Immigration Laws .....	107
12.20	Proprietary Information, Public Records .....	107
12.21	Attorney's Fees .....	107
13	Miscellaneous Agreements .....	108
13.1	Entire Agreement .....	108
13.2	Section Headings .....	108
13.3	References to Laws and Other Agreements .....	108
13.4	Interpretation .....	108
13.5	Agreement .....	108
13.6	Severability .....	108
13.7	Exhibits .....	109
13.8	Non-Waiver Provision .....	109
13.9	Signatures .....	109
	Exhibit 1 – Rates Effective January 1, 2022 .....	A-1
	Exhibit 2 – Rate Adjustment Example – Residential and Commercial .....	A-2
	Exhibit 3 – Rate Adjustment Example – Rolloff .....	A-3
	Exhibit 4 – Company's Faithful Performance Bond .....	A-4

## RECITALS

This Amended and Restated Franchise Agreement (Agreement) is entered into this \_\_\_\_ day of \_\_\_\_\_, 2021, by and between the City of Rancho Santa Margarita (City) and CR&R Incorporated (Company).

WHEREAS, the Legislature of the State of California, by enactment of the California Integrated Waste Management Act of 1989 (AB 939) (California Public Resources Code Section 40000 et seq.), has declared that it is in the public interest to authorize and require local agencies to make adequate provisions for solid waste handling within their jurisdictions to meet the goals and requirements of AB 939; and,

WHEREAS, the City is obligated to protect the public health and safety of the residents and businesses of the City of Rancho Santa Margarita, and collection of solid waste should be undertaken in a manner consistent with the exercise of the City's obligations for the protection of public health and safety; and,

WHEREAS, pursuant to California Public Resources Code Section 40059(a)(2), the City of Rancho Santa Margarita has determined that the public health, safety, and well-being require that an exclusive franchise be awarded to a qualified company for the collection, transportation, recycling, processing, and disposal of solid waste and other services to meet the goals and requirements of AB 939; and,

WHEREAS, City and Company are mindful of recent laws adopted by the State of California intended to divert recyclables and organic materials from being landfilled. AB 341 mandates that commercial waste generators arrange for recycling services. AB 1826 mandates that commercial waste generators recycle their organic waste. AB 1594 excludes organic material from being used as Alternative Daily Cover (ADC). SB 1383 requires jurisdictions to take significant measures to divert organic materials (including recoverable edible food) from being landfilled, and empowers the Department of Resources Recycling and Recovery (CalRecycle) to implement new solid waste and recycling regulations on local jurisdictions; and,

WHEREAS, City and Company 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 Company 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 Company, not City, who is "arranging for" the collection from residences and businesses in the City, transport for disposal, composting, and recycling of municipal Solid Waste which may contain hazardous substances; and further to confirm that Company 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 Company's performance under this Agreement; and,

WHEREAS, Company represents and warrants to City that it has the experience, responsibility and qualifications to conduct recycling programs, to conduct public outreach, and to provide City with information, sufficient to meet the City's obligations under the State of California's regulations including AB 939, AB 341, AB 1826, and SB 1383; and,

WHEREAS, the City's primary goals in entering into this Agreement are to ensure that the solid waste collection is of the highest caliber, that customer satisfaction remains at the highest level, that the environment is protected, that maximum diversion levels are achieved, and that materials collected are put to the highest and best use;

WHEREAS, the Company and the City previously entered into a franchise agreement for integrated waste management services dated March 24<sup>th</sup> 2004, and that agreement was amended on January 11, 2006, April 11, 2012, and January 8, 2020; and,

WHEREAS, the Parties intend for the above mentioned existing franchise agreement remain in full force and effect until the effective date of this Agreement.

NOW, THEREFORE, in consideration of the premises above stated and the terms, conditions, covenants and agreements contained in this Agreement, the Parties do hereby agree as follows:

## 1 Definitions

Whenever any term used in this Agreement has been defined by the provisions of the Rancho Santa Margarita City Code or by Division 30, Part 1, Chapter 2 of the California Public Resources Code, the definitions in the Municipal Code or the Public Resources Code shall apply unless the term is otherwise defined in this Agreement, in which case this Agreement shall control.

Except as provided in Article 1, words beginning with lower case letters are being used with their common ordinary meanings, not as defined terms. Otherwise, the following capitalized words and terms shall have the following meanings:

### 1.1 AB 939

"AB 939" means the California Integrated Waste Management Act of 1989 (California Public Resources Code Section 40000 et seq.), as it may be amended from time to time and as implemented by the regulations of the California Department of Resources Recycling and Recovery (CalRecycle), or its successor.

### 1.2 Affiliate

"Affiliate" means all businesses (including corporations, limited and general partnerships and sole proprietorships) which are directly or indirectly related to the Company by virtue of direct or indirect ownership interest or common management. Any such business shall be deemed to be "Affiliated with" the Company and included within the term "Affiliates" as used in this Agreement. An Affiliate shall include a business in which the Company owns a direct or indirect ownership interest, a business which has a direct or indirect ownership interest in the Company 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 the Company. 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.

### **1.3 Agreement**

"Agreement" means this Franchise Agreement between the City and the Company for the Collection, transportation, Recycling, processing and Disposal of Solid Waste, and other services related to meeting the goals and requirements of AB 939, AB 341, AB 1826, and SB 1383 including all exhibits and attachments, and any amendments.

### **1.4 Applicable Law**

"Applicable Law" means all Federal, State, County, and local laws, regulations, rules, orders, judgments, decrees, permits, approvals, or other requirement of any governmental agency having jurisdiction over the Collection, Transportation, Processing, and Disposal of discarded materials that are in force on the effective date and as may be enacted, issued, or amended during the term of this Agreement. Applicable Law includes, but is in no way limited to, AB 939, AB 341, AB 1826, and SB 1383 and corresponding regulations.

### **1.5 BASIC Score**

"BASIC Score" means the Behavior Analysis and Safety Improvement Category percentile score assigned to motor carriers and determined by the Federal Motor Carrier Safety Administration's Safety Measurement System. BASIC Scores are also known as "CSA Scores." BASIC scores are calculated on a zero to 100 percentile scale, with 100 indicating the worst performance and zero indicating the best performance.

### **1.6 Billings**

"Billings" means any and all statements of charges for services rendered, howsoever made, described or designated by the City or the Company, or made by others for the City or the Company, to Persons responsible for arranging for Solid Waste removal.

## **1.7 Bin**

“Bin” means a metal Container with hinged lids and wheels serviced by a front-end loading truck with a capacity of 1.5 to 8 cubic yards.

## **1.8 Blue Container**

“Blue Container” means a container where either: (a) the lid of the container is in blue color, or (b) the body of the container is blue in color and the lid is either blue, gray, or black in color. Hardware such as hinges and wheels on a blue container may be any color. Blue Containers shall be used for the purpose of storage and collection of Source Separated Recyclable Materials , which includes non-putrescible and non-hazardous recyclable wastes such as cans, metals, plastics and glass, or as otherwise defined in 14 CCR Section 18982(a)(43).

## **1.9 Bulky Waste**

“Bulky Waste” 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, ranges, washers, dryers, water heaters, dishwashers, plumbing, small household appliances and other similar items, commonly known as “white goods”); electronic equipment (including stereos, televisions, computers and monitors, cellular phones, VCRs, microwaves and other similar items commonly known as “e-waste”); residential wastes (including wood waste, tree branches, scrap wood, debris from building remodeling, rocks, sod and earth, in the aggregate not exceeding one cubic yard per Collection); clothing; and tires. Bulky Wastes do not include such things as car bodies or Construction and Demolition Debris. In the event a question ever arises as to whether a specific item, or category of items meets the definition of Bulky Wastes, City shall be responsible to determine whether said definition shall apply, which determination shall be final and binding on the Parties.

## **1.10 Cart**

“Cart” means a plastic Container with a hinged lid and wheels serviced by an automated or semi-automated side-loading truck with a capacity of no less than 35- and no greater than 101-gallons.

## **1.11 City**

"City" means the City of Rancho Santa Margarita, a municipal corporation, and all the territory lying within the municipal boundaries of the City as presently existing or as such boundaries may be modified during the term of this Agreement.

## **1.12 City Code**

"City Code" means the municipal code of the City of Rancho Margarita

## **1.13 Collect/Collection**

"Collect" or "Collection" means to take physical possession, transport, and remove Solid Waste within and from the City.

## **1.14 Commercial and Industrial Property**

"Commercial and Industrial Property" means property upon which business activity is conducted, including but not limited to retail sales, services, wholesale operations, manufacturing and industrial operations, but excluding businesses conducted upon Residential Property which are permitted under applicable zoning regulations and are not the primary use of the property.

## **1.15 Company**

"Company" means CR&R Incorporated, a corporation organized and operating under the laws of the State of California and its officers, directors, employees, agents, companies, Affiliates and Subcontractors.

## **1.16 Company Compensation**

"Company Compensation" means the revenue received by the Company from Billings in return for providing services in accordance with this Agreement and any amendments to this Agreement.

## **1.17 Compost**

“Compost” means the product resulting from the controlled biological decomposition of organic Solid Wastes that are Source Separated from the municipal Solid Waste stream, or which are separated at a centralized Facility.

## **1.18 Compostable Plastics**

‘Compostable Plastics’ means plastic material that meets the American Society for Testing and Materials (ASTM) D6400 standard for compostability (sections 5.1 through 6.4.2 published May 2019).

## **1.19 Construction and Demolition Debris**

“Construction and Demolition Debris” (or C&D Debris) means used or discarded materials removed from premises during construction, renovation, remodeling, repair, or demolition operations on any pavement, residential building, commercial or industrial building, or other structure and shall include, but is not limited to concrete, asphalt paving, asphalt roofing, lumber, gypsum board, rock, soil and metal.

## **1.20 Containers**

“Containers” means any and all types of Solid Waste receptacles, including Carts, Bins, Rolloff Boxes, and receptacles provided by Customers.

## **1.21 Customer**

“Customer” means the Person who receives the Company’s Collection services and to whom the Company submits its billing invoice to and collects payment from for Collection services provided to a Premise. The Customer may be either the occupant, owner, or property manager of the Premises.

## **1.22 Diesel Gallon Equivalent**

“Diesel Gallon Equivalent” or “DGE” means a standardized unit of measure used to compare the energy content of one gallon of alternative fuel, such as compressed natural gas, to the equivalent energy content of one gallon of diesel fuel. One (1) DGE is equivalent to 6.38 pounds of compressed natural gas. For purposes of calculating the organic waste in the City’s organic

waste procurement target, one (1) ton of organic waste is equal to twenty-one (21) DGEs.

### **1.23 Disposal**

"Disposal" means the ultimate disposition of Solid Waste Collected by the Company at a landfill in full regulatory compliance.

### **1.24 Disposal Site(s)**

"Disposal Site(s)" mean the Solid Waste handling Facility or facilities utilized for the ultimate Disposal of Solid Waste Collected by the Company. The Orange County Landfill System shall be the designated Disposal Site as of the effective date of this Agreement.

### **1.25 Edible Food**

"Edible Food" means food intended for human consumption that meets the food safety requirements of the California Retail Food Code. Edible Food is not Solid Waste if it is recovered and not discarded.

### **1.26 Electronic Waste**

"Electronic Waste" means discarded electronic goods that are conditionally exempt from classification as hazardous waste pursuant to Title 22 of the California Code of Regulations (22 CCR), section 66261.9, including but not limited to computers and peripherals, printer, CRT monitors, televisions, electronic equipment, and cathode ray tubes.

### **1.27 Environmental Laws**

"Environmental Laws" means all federal and state statutes, county, local and the 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 §6902 et seq.; the Federal Clean Water Act, 33 USC §1251 et seq.; the Toxic Substances Control Act, 15 USC §1601 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 California Toxic

Substances Control 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.

### **1.28 Facility**

"Facility" means any plant or site, owned or leased and maintained, operated or used by the Company for purposes of performing under this Agreement.

### **1.29 Food Scraps**

"Food Scraps" means discarded food that will decompose and/or putrefy and is segregated for Collection and Recycling. Food scraps includes, but is not limited to, fruits, vegetables, meat, poultry, seafood, shellfish, bones, rice, beans, pasta, bread, cheese, and eggshells. Food Scraps excludes fats, oils, and grease when such materials are Source Separated from other Food Scraps.

### **1.30 Food Soiled Paper**

"Food-Soiled Paper" means compostable paper material that has come in contact with food or liquid, such as, but not limited to, compostable paper plates, paper coffee cups, napkins, and pizza boxes.

### **1.31 Food Waste**

'Food Waste' means Food Scraps, Food-Soiled Paper, and Compostable Plastics.

### **1.32 Franchise**

"Franchise" means the exclusive right granted by the City to provide Solid Waste services within the City.

### **1.33 Franchise Fee**

"Franchise Fee" means the fee paid by the Company to the City for the right to hold the Franchise granted by this Agreement.

### **1.34 Gray Container**

Gray Container means a container where either: (a) the lid of the container is gray or black in color, or (b) the body of the container is entirely gray or black in color and the lid is gray or black in color. Hardware such as hinges and wheels on a gray container may be any color. Gray Containers shall be used for the purpose of storage and collection of Gray Container Waste or Refuse.

### **1.35 Gray Container Waste**

“Gray Container Waste” means Solid Waste that is collected in a Gray Container that is part of a three-container Organic Waste collection service that prohibits the placement of Organic Waste or Recyclable Materials in the Gray Container.

### **1.36 Green Container**

“Green Container” means a container where either: (a) the lid of the container is green in color, or (b) the body of the container is green in color and the lid is green, gray or black in color. Hardware such as hinges and wheels on a gray container may be any color. Green Containers shall be used for the purpose of storage and collection of Source Separated Green Container Organic Waste.

### **1.37 Green Waste**

“Green Waste” means leaves, grass, weeds, and wood materials from trees and shrubs (not more than six (6) inches in diameter or 48 inches in length) and similar materials generated at the Premises.

### **1.38 Gross Receipts**

“Gross Receipts” means any and all revenue receipts, or compensation in any form of Company or subsidiaries, parent companies or other Affiliates of Company, for Customer services provided pursuant to this Agreement, in accordance with Generally Accepted Accounting Principles, including, but not limited to Customer fees, without subtracting Franchise Fees or any other cost of doing business. Sales revenue from the sale of Recyclable Materials is excluded from Gross Receipts for purposes of calculating Franchise Fees.

### **1.39 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 §1802, 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 §7901 et seq.; or (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 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.

### **1.40 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.

### **1.41 Household Hazardous Waste (HHW)**

"Household Hazardous Waste" means Hazardous Waste generated at Residential Premises.

## **1.42 Household Sharps Waste**

"Household Sharps Waste" shall mean home-generated sharps, as defined in Section 117671 of the California Health & Safety Code, including hypodermic needles, pen needles, intravenous needles, lancets, and other devices that are used to penetrate the skin for the delivery of medications, which are generated by a single-family or multi-family residence. "Household Sharps Waste" does not include any waste generated in the course of operating a business concern at a residence, business generated waste, or medical waste not described in this Agreement.

## **1.43 Multi-family Residential**

Multi-family Residential or Multi-family means of, from, or pertaining to residential premises with five (5) or more dwelling units. Multi-Family premises do not include hotels, motels, or other transient occupancy facilities, which are considered Commercial Businesses.

## **1.44 Orange County Landfill System**

"Orange County Landfill System" means any Landfill owned or operated by the County of Orange, currently including Brea Olinda, Frank R. Bowerman, or Prima Deshecha.

## **1.45 Organic Waste**

"Organic Waste" or "Organics" means Green Waste, Food Waste, manure, and any other organic waste material which is acceptable to be delivered to an organics processing facility such as an anaerobic digester, or composting facility.

## **1.46 Owner**

"Owner" means the Person holding the legal title to the real property constituting the Premises to which Solid Waste Collection service is to be provided under this Agreement or the Person holding legal title to the Disposal Site, depending upon the context used in this Agreement.

## **1.47 Person**

"Person" means any individual, firm, association, organization, partnership, corporation, business trust, joint venture, the United States, the State of California, the County of Orange, town, city, or special purpose district.

## **1.48 Premises**

"Premises" means any land, or building in the City, where Solid Waste is generated or accumulated.

## **1.49 Prohibited Container Contaminates**

"Prohibited Container Contaminants" means the following: (i) discarded materials placed in the Blue Container that are not identified as acceptable Source Separated Recyclable Materials for the Blue Container; (ii) discarded materials placed in the Green Container that are not identified as acceptable Source Separated Green Container Organic Waste for the Green Container; (iii) discarded materials placed in the Gray Container that are identified as acceptable Source Separated Recyclable Materials and/or Source Separated Green Container Organic Wastes to be placed in the Green Container and/or Blue Container; and, (iv) Excluded Waste placed in any container.

## **1.50 Rate Year**

"Rate Year" means the twelve-month period from July 1 to June 30, for each year of the Agreement.

## **1.51 Recycling**

"Recycling" means any process by which materials which would otherwise become Solid Waste are Collected (source-separated, co-mingled, or as "mixed waste"), separated and/or processed and returned to the economic mainstream in the form of raw materials or products or materials which are otherwise salvaged or recovered for reuse.

## **1.52 Recyclable Materials**

"Recyclable Materials" means Residential, Commercial or Industrial Source Separated by-products of some potential economic value, set aside, handled, packaged, or offered for Collection in a manner different from Refuse.

## **1.53 Refuse**

"Refuse" means Putrescible and non-Putrescible Solid Waste or debris, except sewage, whether combustible or non-combustible.

## **1.54 Renewable Gas Transportation Fuel**

"Renewable Gas Transportation Fuel" means fuel derived from renewable gas derived from organic waste that has been diverted from a landfill and processed at a properly permitted in-vessel digestion facility.

## **1.55 Residential Property**

"Residential Property" means property used for residential purposes including Single-Family and Multi-Family Dwelling Units, irrespective of whether such dwelling units are rental units or are Owner-occupied.

## **1.56 Rolloff Box**

"Rolloff Box" means an open-top metal Container serviced by a rolloff truck with a capacity of 10 to 50 cubic yards.

## **1.57 Route Review**

"Route Review" means a procedure in which individual containers set out for collection along the Company's routes are visually or electronically inspected on a representative sample basis to determine the degree to which they are contaminated.

## **1.58 Single-Family Dwelling Unit**

"Single-Family Dwelling Unit" means a detached home, attached home or condominium dwelling unit receiving individual (not Bin) Refuse Collection

service. For the purposes of this Franchise only, the current use of such a dwelling unit for purposes other than as a dwelling, or in addition to its use as a dwelling, shall not determine whether a location is designated as Commercial Premises or Residential Premises.

### **1.59 Solid Waste**

"Solid Waste" means all Putrescible and non-Putrescible Refuse, Recyclable Material, and Green Waste, and as otherwise defined in Public Resources Code §40191.

### **1.60 State**

"State" means the State of California.

### **1.61 Temporary Bin Collection Service**

"Temporary bin collection service" means collection of occasional, non-continuing, accumulations of solid waste from Bins which is not generated from ongoing activities or operations, but which is either a) solid waste resulting from construction, remodeling, repair, demolition, site preparation, or grading; or b) other temporary solid waste collection where a container is provided for no more than 30 consecutive days, or no more than 60 days in any 90 day period.

### **1.62 Temporary Rolloff Box Collection Service**

"Temporary rolloff collection service" means collection of occasional, non-continuing accumulations of solid waste from Rolloff Boxes which is not generated from ongoing activities or operations, but which is either a) solid waste resulting from construction, remodeling, repair, demolition, site preparation, or grading; or b) other temporary solid waste collection where a container is provided for no more than 30 consecutive days, or no more than 60 days in any 90 day period.

### **1.63 Transformation**

"Transformation" means incineration, pyrolysis, distillation, gasification, or biological conversion other than composting. "Transformation" does not include composting.

## **1.64 Universal Waste**

"Universal Waste" shall mean those hazardous wastes identified as universal wastes 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, 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 generated by a single family or multi-family residence. "Universal Waste" does not include any waste generated in the course of operating a business concern at a residence or business generated waste.

## **1.65 Waste Evaluation**

"Waste Evaluation" means a procedure in which representative samples of waste and recyclables are taken from vehicle loads and sorted at a permitted facility to determine the degree to which the material is contaminated.

## **2 Grant and Acceptance of Franchise**

### **2.1 Grant and Acceptance of Franchise**

Subject to the terms and conditions of this Agreement, the City hereby grants to the Company a Franchise to Collect, transfer, transport, recycle, process, and dispose of Solid Waste accumulating in the City that is required to be accumulated and offered for Collection to the Company in accordance with this Agreement. The Company hereby accepts the Franchise on the terms and conditions set forth in this Agreement.

### **2.2 Exclusive Nature of Franchise**

During the term of this Agreement, except as otherwise provided in Section 2.7 below, or as may otherwise be provided by federal or state law, the rights granted to the Company under this Agreement shall be exclusive to the Company. The City will not let any contract to, or enter into any agreement with, any other Person for the performance of the services in this Agreement required to be performed by the Company.

The City shall protect the Company's exclusive rights by proper ordinances, and by reasonable enforcement of those ordinances. Should the City be required to take administrative, law enforcement, or other legal action against any Person that infringes on the Company's exclusive rights, the Company shall reimburse the City for its reasonable administrative, law enforcement, or other legal costs related to any such action. Nothing in this Agreement shall preclude Company from taking such legal action against third parties as it deems appropriate to protect the exclusive nature of its Franchise.

### **2.3 Effective Date**

The effective date of this Agreement shall be January 1, 2022 ("Effective Date").

### **2.4 Term of Agreement**

The term of this Agreement shall start on January 1, 2022 and continue through June 30, 2027. Effective on July 1, 2027 the term of this Agreement shall automatically extend without further action by the Parties for an additional five-year term through June 30, 2032.

On July 1, 2032, and every five-year term thereafter, the term of this Agreement shall automatically extend for an additional five-year term unless either Party gives the other Party written notice of non-renewal at least twelve (12) months prior to the end of the then current five-year term.

Should notice be given by either Party of non-renewal at least twelve (12) months prior to the end of the then current term, the term shall extend for a fixed final one (1) year term starting on the July 1<sup>st</sup> following the end of the then current term, and shall terminate at the end of that final extended one-year term.

As an example, should either party provide written notice of non-renewal by June 30, 2026, the term would then extend through June 30, 2028; the remaining one year of the then existing term, plus an additional one-year term beginning on July 1, 2027.

## **2.5 Conditions to Effectiveness of Agreement**

The obligation of the City to permit this Agreement to become effective and to perform its undertakings provided for in this Agreement is subject to the satisfaction of each and all of the conditions set out below, each of which may be waived in whole or in part by the City.

- a) Accuracy of Representations. Representations and warranties made by the Company throughout this Agreement are accurate, true and correct on and as of the Effective Date of this Agreement.
- b) Absence of Litigation. There is no litigation pending in any court challenging the award of this Franchise to the Company or the execution of this Agreement or seeking to restrain or enjoin its performance.
- c) Furnishing of Insurance and Bonds. The Company has furnished evidence of the insurance and bonds required by Article 9 (Indemnification, Insurance and Bond).

## **2.6 Delegation of Authority**

The administration of this Agreement by the City shall be under the supervision and direction of the City Manager, and the actions specified in this Agreement, unless otherwise stated, shall be taken by the City Manager or the City Manager's designee.

## **2.7 Limitations on Scope of Franchise**

The Franchise granted to the Company shall be exclusive except as to the categories of Solid Waste listed in this Section 2.7 (Limitations on Scope of Franchise). The granting of this Franchise shall not preclude the categories of Solid Waste listed below from being delivered to, Collected or transported by others provided that nothing in this Agreement is intended to or shall be construed to excuse any Person from obtaining any authorization from the City which is otherwise required by law:

- a) Any Collection services that current service providers are entitled to provide pursuant to the Public Resource Code;
- b) Recyclable Materials source separated from Solid Waste by the Customer and for which Customer sells or is otherwise compensated by other Persons in a manner resulting in a net payment to the Customer;
- c) Solid Waste, including Recyclable Materials and Green Waste, which is removed from any Premises by the Customer, and which is transported personally by the Customer of such Premises (or by his or her full-time employees) to a processing or Disposal Facility;
- d) Recyclable Materials and Green Waste which are source separated at any Premises by the Customer and donated to youth, civic, or charitable organizations;
- e) Containers delivered for Recycling under the California Beverage Container Recycling Litter Reduction Act, Section 14500, et. seq., California Public Resources Code;

- f) Green Waste removed from a Premises by a gardening, landscaping, or tree trimming Company utilizing its own equipment as an incidental part of a total service offered by the company rather than as a hauling service;
- g) Temporary Bin Service and Temporary Rolloff Box Service;
- h) Animal waste and remains from slaughterhouse or butcher shops for use as tallow;
- i) By-products of sewage treatment, including sludge, sludge, ash, grit and screenings;
- j) Hazardous Waste and radioactive waste, regardless of its source; and,
- k) The casual or emergency Collection, removal, Disposal or diversion of Solid Waste by the City through the City officers or employees in the normal course of their employment;
- l) Solid waste resulting from construction, remodeling, repair, demolition, site preparation, or grading; and,
- m) Other temporary solid waste collection where service is provided for no more than 30 consecutive days, or no more than 60 days in a 90-day period.

The Company acknowledges and agrees that the City may permit other Persons besides the Company to Collect any or all types of the Solid Waste listed in this Section 2.7 (Limitations on Scope of Franchise), including Recyclable Materials, without seeking or obtaining approval of the Company under this Agreement.

This grant to the Company of an exclusive Franchise, right and privilege to Collect, transport, or process and Dispose of Solid Waste shall be interpreted to be consistent with state and federal laws, now and during the term of the Franchise, and the scope of this exclusive Franchise shall be limited by current and developing state and federal laws with regard to Solid Waste handling, exclusive Franchise, control of Recyclable Materials, Solid Waste flow control, and related doctrines. In the event that future interpretations of current law,

enactment or developing legal trends limit the ability of the City to lawfully provide for the scope of Franchise services as specifically set forth in this Agreement, the Company agrees that the scope of the Franchise will be limited to those services and materials which may be lawfully provided for under this Agreement, and that the City shall not be responsible for any lost profits claimed by the Company to arise out of further limitations of the scope of the Agreement set forth in this Agreement. In such an event, it shall be the responsibility of the Company to minimize the financial impact to other services being provided as much as possible.

## **2.8 City's Right to Direct Changes**

### **2.8.1 General**

The City may direct the Company to perform additional services (including new diversion programs, etc.) or modify the manner in which it performs existing services or bills for services. Pilot programs and innovative services which may entail new Collection methods, different kinds of services and/or new requirements for Customers, and alternative rate structures are included among the kinds of changes which the City may direct. The Company shall be entitled to an adjustment in its Company Compensation for providing such additional or modified services.

### **2.8.2 New Diversion Programs**

In the event that the City desires to implement new diversion programs, the Company shall present, within 30 days of a request to do so by the City, a proposal to provide additional or expanded diversion services. The proposal shall contain a complete description of the following:

- Collection methodology to be employed (equipment, manpower, etc.).
- Equipment to be utilized (vehicle number, types, capacity, age, etc.).
- Labor requirements (number of employees by classification).
- Type of materials Containers to be utilized.
- Provision for program publicity/education/marketing.

- Three-year projection of the financial results of the program's operations in an operating statement format including documentation of the key assumptions underlying the projections and the support for those assumptions.

### **2.8.3 City's Right to Acquire Services**

The Company acknowledges and agrees that the City may permit other Persons besides the Company to provide additional Solid Waste services not otherwise contemplated under this Agreement. If pursuant to Section 2.8.2 (New Diversion Programs), the Company and the City cannot agree on terms and conditions of such additional or expanded diversion services within ninety (90) days from the date when the City first requests a proposal from the Company to perform such services, the Company acknowledges and agrees that the City may permit Persons other than the Company to provide such services. In the event that City exercises its right to permit third party Persons to provide such services, and if such a decision reduces or eliminates Company's Collection services as contemplated under this Agreement, Company shall reduce its Billings proportionately.

### **2.9 Ownership of Solid Waste**

Once Solid Waste is placed in Containers and properly placed at the designated Collection location, ownership and the right to possession shall transfer directly from the Customer to the Company by operation of this Agreement. Subject to the Company's objective to meet the Source Reduction and Recycling goals which apply to the City and the City's right to direct the Company to process and dispose of Solid Waste at a particular licensed Solid Waste Facility or to dispose of Solid Waste at a particular licensed Disposal Site, if and only if the City exercises such right by providing specific written direction to the Company, the Company is hereby granted the right to retain, Recycle, process, Dispose of, and otherwise use such Solid Waste, or any part thereof, in any lawful fashion or for any lawful purpose desired by the Company. Subject to the provisions of this Agreement, the Company shall have the right to retain any benefit resulting from its right to retain, Recycle, process, Dispose, or reuse the Solid Waste, Green Waste, and Recyclable Materials that it Collects. Solid Waste, Green Waste, and Recyclable Materials, or any part thereof, which is disposed of at a Disposal Site or sites (whether landfill, Transformation Facility, Transfer Station, Processing Facility or materials recovery facility) shall become the property of the Owner or operator of the Disposal Site(s) once deposited there by the Company. The City may obtain ownership or possession of Solid Waste placed for Collection upon written notice of its intent to do so, however, nothing in this Agreement

shall be construed as giving rise to any inference that the City has such ownership or possession unless such written notice has been given to the Company.

## **2.10 Company Status**

The Company represents and warrants that it is duly organized, validly existing and in good standing under Applicable Law. It is qualified to transact business in the State of California and has the power to provide services as required by this Agreement.

## **2.11 Company Authorization**

The Company has the authority to enter into and perform its obligations under this Agreement. The Board of Directors or partners of the Company (or the shareholders, if necessary) have taken all actions required by law, its articles of incorporation, its bylaws or otherwise to authorize the execution of this Agreement. The Persons signing this Agreement on behalf of the Company have authority to do so. Company shall authorize one employee for the City as a single point of contact for issues arising under this Agreement. City may accept that this employee's actions are taken on behalf of and with the full approval of the Company.

## **2.12 Annexations**

This Agreement extends to any territory annexed to the City during the term of this Agreement except to the extent that Collection by the Company within that annexed territory would violate the provisions of Public Resources Code Section 49520. In such event, this Agreement shall become effective as to such area at the earliest possible date permitted by law, and the City agrees that it shall cooperate with the Company to fulfill any requirement necessary for the Company to serve the annexed area consistent with this paragraph.

### **3 Fees and Licenses**

In addition to any other consideration set forth in this Agreement, as part of its consideration for entering into this Agreement, and for the exclusive franchise right and privilege to provide Solid Waste Handling Services as specified in this Agreement, Company shall provide the following:

#### **3.1 Franchise Fee**

##### **3.1.1 Franchise Fee**

Throughout the term of this Agreement, Company shall pay to City a Franchise Fee in an amount equal to 5% of the Gross Receipts derived by Company from services billed by Company and provided in City pursuant to the terms of this Agreement. Franchise Fee need not be paid on Gross Receipts derived from services that are not exclusive under this franchise Agreement, such as Temporary Bin Service and Temporary Rolloff Box Service.

##### **3.1.2 Time and Method of Franchise Fee Payment**

On or before the thirtieth (30th) day following the end of each calendar quarter during the term of this Agreement, company shall remit to City a sum of money equal to the percent, as provided in Section 3.1.1 (Franchise Fee), of the Gross Receipts collected by Company as a result of services provided within City pursuant to the terms hereof during the preceding calendar quarter, as a Franchise Fee.

If the Franchise Fee is not paid on or before the due date, the Company shall pay to the City a service charge, and not as interest, in an amount equal to ten percent (10%) of the amount still owed. The Company shall pay an additional ten percent (10%) service charge on any unpaid balance for each additional thirty (30) day period the Franchise Fee remains unpaid. The Company agrees that the service charges contemplated by this section reasonably reflect the cost to the City to process any delinquency calculations and notices, and to monitor the Company's services, all in an effort to Collect the delinquent Franchise Fees which, together with all other remedies afforded City under this Agreement (including any award of attorney's fees and costs), and in accordance with Applicable Law, are intended to compensate City in any Collection efforts in the event of Company's default in the payment of Franchise Fees.

### **3.2 Administrative Fee**

The Company shall pay to the City an Administrative Fee in a one-time lump sum payment equal to one hundred thousand dollars (\$100,000) within seven days of execution of this Agreement to reimburse the City for its staff time and out-of-pocket costs of awarding this Agreement.

### **3.3 Outreach Fee**

Company shall pay to City an Outreach Fee of \$150,000 annually on each July 1 during the term. The first Outreach Fee shall be due on July 1, 2022. The Outreach Fee shall be adjusted annually by the same percent change in the CPI used to adjust customer rates pursuant to Section 6.3 (Rates and Standard Rate Adjustment) or Section 6.4 (Extraordinary Adjustments).

### **3.4 Other Fees**

The City shall reserve the right to set other fees, as it deems reasonably necessary. In the event that City sets new fees on Company's rates, City shall approve adjustments to Company's rates to compensate Company for the cost of any new fees.

## 4 Direct Services

### 4.1 General

The work to be done by the Company pursuant to this Agreement shall include, but not be limited to, the furnishing of all labor, supervision, equipment, materials, supplies, and all other items necessary to perform the services required. The enumeration of, and specification of requirements for, particular items of labor or equipment shall not relieve the Company of the duty to furnish all others, as may be required, whether or not they are enumerated elsewhere in the Agreement.

The work to be done by the Company pursuant to this Agreement shall be accomplished in a thorough and professional manner so that the residents and businesses within the City are provided reliable, courteous and high-quality Solid Waste Collection at all times.

### 4.2 Refuse Collection Services

#### 4.2.1.1 Residential Cart Refuse Collection

Company shall Collect Refuse delivered for Collection by Single-Family Dwelling Unit Customers at the curbside or other designated staging area from Company-provided Carts, not less than once per week. Standard Collection service shall be automated Collection unless another method is approved by the City. If Customer and Company cannot agree upon Collection location, or if City determines the selected location to cause safety or other concerns, City will make the final determination of the Collection location. Company will supply each Single-Family Dwelling Unit with one 96-, 64-, or 35-gallon Cart, with an option to obtain additional refuse Carts at the rate shown in Exhibit 1.

#### 4.2.1.2 Commercial Refuse Cart Collection

Company shall offer Cart service to Commercial Customers that do not have space for, or do not generate enough waste to require, Bin service. Cart service will be provided once per week and charged in accordance with the approved rate schedule.

#### **4.2.2 Refuse Overage**

Customers may periodically generate more Refuse than will fit in the Refuse Cart(s). Customers are therefore entitled to four annual pickups of material that does not fit in the Refuse Cart(s) at no additional cost. One pickup shall consist of up to the equivalent of three large bags, boxes or barrels of refuse. Company shall Collect all Refuse put out for Collection in addition to the foregoing four pickups to be provided at no charge, and Customers may be charged for additional pickups above four per year at the rate shown in Exhibit 1. In addition to the four free pickups, Company shall Collect all additional Refuse placed out for Collection in the Customer's own containers (bags, barrels, etc.) at no additional charge for the two weekly Collections following December 25th. This service is limited to Refuse that could otherwise be placed in the Refuse Cart, and not Bulky Items.

#### **4.2.3 Bin Collection**

Company shall offer Bin service to Multi-Family, Commercial and Industrial Customers. Company shall Collect and remove all Refuse that is placed in Bins from all Multi-Family Dwelling Units, and Commercial and Industrial Properties receiving Bin service, at least once every week or more frequently if required to handle the Solid Waste stream of the Premises where the Bins are located. Special consideration shall be given when determining the pick up area to ensure that the flow of traffic is not impeded. If Company and Customer have a disagreement as to Bin location, or if City determines the Collection location to cause safety or other concerns, City shall make the final determination as to where Bins shall be stored and Collected.

#### **4.2.4 Temporary Bin Service and Rolloff Box Service**

The Company shall offer Temporary Bin service and permanent and Temporary Rolloff Box service to Single and Multi-Family Dwelling Units, and Commercial and Industrial Property for the Collection of Refuse or Construction Waste. The Company shall deliver and Collect temporary Bins and Rolloff Boxes at the direction of the Customer. Temporary Bins and Rolloff Boxes shall be free of graffiti and in good repair, and must be clearly marked and identifiable as belonging to the Company. In placing temporary bins and rolloff boxes, the Company shall not impede the flow of traffic. The designated Collection location, if disputed by the Customer or the Company, shall be determined by the City. Additionally, if in the City's opinion the location of an existing Collection location is inappropriate for aesthetic or safety reasons, the City may require the Customer and/or Company to relocate the Collection

location. Note that Temporary Bin Services and Temporary Rolloff Box Services are not exclusive under this Agreement. See Sections 1.61 and 1.62 for definitions. Permanent Rolloff Box services are exclusive services to be provided by the Company, subject to exclusions in Section 2.7.

Company shall deliver all permanent Rolloff Box Refuse loads to a diversion facility for processing. Company shall deliver loads of concrete, dirt or any other recoverable material to facilities that recover such materials. Mixed refuse loads shall be delivered to a MRF, City may instruct Company to deliver loads directly to a landfill if processing is not cost effective due to low anticipated recovery. Company must obtain written approval from the City before directing specific loads, or loads from a specific Customer, to a landfill without processing. Company may charge no more than the per pull charge plus the actual processing/Disposal cost per ton (net of any rebate for Recyclables), not to exceed rates set forth in Exhibit 1.

#### **4.2.5 On-Call Bulky Waste Pickup**

Company shall provide Bulky Waste pickup service to Single-Family and Multi-Family Dwelling Unit Customers. Single-Family and Multi-Family Dwelling Unit Customers will be entitled four (4) pickups per dwelling unit per calendar year, with a maximum of four items per pickup, or up to 20 bags of Green Waste, for no additional charge. Customers will provide the Company with 48 hours notice and the items will be collected on the Customer's regular Collection day. Additional pickups will be charged in accordance with the rate schedule in Exhibit 1.

#### **4.2.6 Bulky Item Diversion**

Bulky Waste Collected by Company in accordance with Sections 4.2.5 (On-Call Bulky Waste Pickup) or 4.2.6 (Bulky Item Diversion), or otherwise Collected under this Agreement, may not be landfilled or disposed of until the following hierarchy of diversion efforts has been followed by Company:

- 1) Reuse as is (if energy efficient)
- 2) Disassemble for reuse or Recycling
- 3) Recycle, transformation, other means of diversion

#### 4) Disposal

This hierarchy is intended to preclude the use of front or rear loading packer vehicles for Bulky Items unless the compaction mechanism is not used to compact the Bulky Items.

##### **4.2.7 Disposal of Electronic Waste**

Company shall divert electronic waste or “e-waste,” Collected in accordance with Sections 4.2.5 (On-Call Bulky Waste Pickup) or 4.2.6 (Bulky Item Diversion), or by other means under this Agreement, by taking these goods to a properly permitted facility, and not by landfilling.

#### **4.3 Recycling Services**

##### **4.3.1 Automated Cart Recycling Collection**

Company shall issue each Single-Family Dwelling Unit one 96-gallon Recycling Cart at no additional charge. Company shall provide 64-gallon Carts for space constrained Customers. Company will make available one additional Recycling Cart at no additional charge to Customers who regularly recycle more than will fit into their existing Recycling Cart. Company may charge the monthly extra recycling cart fee shown in Exhibit 1 per cart for additional carts (in excess of two) to Customers requesting three or more Recycling Carts. Customers may exchange their Cart sizes at no cost. Company shall Collect and remove all Recyclable Materials placed in Recycling Carts at the curbside for Single-Family Dwelling Units. Recyclable Material Collection from Residential Property within the City shall be once each week. At a minimum, Recyclable Material Collected from Residential Property shall include, but not be limited to:

- Aluminum foil, clean • Brochures • Computer paper
- Food cans • Glass cosmetic bottles • Magazines
- Paper • Phone books • Plastic bottles
- Tissue boxes • Wrapping paper • Aluminum cans

- Beverage cans • Cardboard • Coupons
- Glass bottles and jars • Junk mail • Ledger paper
- Newspaper • Laundry bottles (remove caps and lids)
- Empty Aerosol cans

Recyclable Materials are to be commingled in a single type of Recycling Cart. Residential Recyclable Materials Collection shall be on the same day of the week as Refuse Collection service.

#### **4.3.2 Multi-Family Bin Customer Recycling**

The Company shall provide Multi-Family Recycling Collection service to all Multi-Family Customers requesting it from the Company at a rate equal to eighty-five percent (85%) of the rate for a similar size, number of Containers, and frequency of service for Refuse Collection Service. The Company shall provide Recycling Bins or Carts in sufficient quantities to meet the Recycling needs of each Multi-Family Residential complex. Multi-Family Dwelling Units shall be offered Recyclables Collection of the same Recyclable Materials as Single-Family Dwelling Units (see Section 4.3.1 - Automated Cart Recycling Collection). The Company shall make programs available for all other Recyclable Materials for which it has established markets. The Company shall notify all its Multi-Family Dwelling Unit Customers each year of the availability of Multi-Family Recycling Collection programs.

Company shall notify all Multi-Family Customers annually of the availability of on floor Recycling Containers at no additional cost. These Containers would be placed on each floor of multi-story buildings, or at other such locations as to make dropping off Recyclables convenient for residents. Multi-Family Customers may request sufficient on-floor containers as necessary to make Recycling convenient for residents. Customer is responsible for either emptying the on-floor Containers into the Recycling Carts or Bins at point of Collection, or for rolling on-floor Carts to point of Collection.

#### **4.3.3 Commercial Recycling**

The Company shall provide Commercial Recycling Collection service to all Commercial and Industrial Property Customers requesting it from the

Company at 85% of trash rates identified in Exhibit 1. Commercial Recycling Collection programs shall be offered Recyclables Collection of the same Recyclable Materials as Single-Family Dwelling Units (see Section 4.3.1 - Automated Cart Recycling Collection). The Company also shall make programs available for all other materials for which it has established markets. The Company shall notify all of its Commercial and Industrial Property Customers each year of the availability of Commercial Recycling Collection programs. Commercial Recycling Collection shall be performed using a Container type (i.e., Carts, Bins) mutually agreed upon by the Company and the Customer or Owner of the property.

#### **4.3.4 Multi-Family and Commercial Site Visits**

Company will visit each Multi-Family and Commercial Customer within six months of the start of service under this Agreement for the purpose of establishing a recycling program. Company will provide a monthly log to the City, including the name and address of customer, the date of the visit and the contact name and phone number, demonstrating that the required visits have been made. At the end of the first six months of service, Company will provide City with two lists, one of Multi-Family and Commercial recycling program participants and one of Multi-Family and Commercial Customer non-participants. Each list shall include Customer names and addresses, contact names and phone numbers, refuse service levels including number and size of containers and number of weekly pickups, and recycling service levels (if applicable), including number and size of containers and number of weekly pickups. Company will continue to conduct on-site visits to Multi-Family and Commercial Customers throughout the term of the Agreement to implement and optimize recycling programs for each Customer.

#### **4.3.5 Construction Waste Recycling**

The Company shall make reasonable efforts to prevent Construction Waste that is suitable for Recycling from being taken to the landfill by transporting it to an alternate Facility where it will be processed for reuse. Such efforts include, but are not limited to, contacting and educating building contractors about available Recycling services. City will provide Company with a minimum list of contractors to contact.

#### **4.3.6 Warning Notice**

The Company shall warn Customers who have Prohibited Container Contaminates in their Containers. If after two sequential written warnings the Container continues to be contaminated, the Company may remove the Recycling Container from Customers who fail to sort properly and segregate Recyclable Materials. The Company shall report monthly to the City any warning notices issued.

#### **4.3.7 Marketing and Sale of Recyclable Materials**

The Company shall be responsible for marketing and sale of all Recyclable Materials Collected pursuant to this Agreement. Company shall retain proceeds from sales of Recyclable Materials.

#### **4.3.8 Non-Profit Recyclables Roll-Off Service**

Company will provide Roll-Off Box Containers to registered non-profit groups for the Collection of recyclables at no charge. All proceeds from the sale of recovered recyclable materials shall be remitted to the non-profit group at least quarterly.

### **4.4 Organics and Green Waste Program**

#### **4.4.1 Automated Cart Green Waste Collection**

Company shall Collect Organics from all Single-family Dwelling Unit Customers and Multi-family Dwelling Unit Customers in the City that receive Refuse Cart Collection service. Company shall Collect all Organics including Food Scraps placed in Organics Carts and properly set out for Collection not less than once per week on the same day as Customer's Refuse Cart is Collected. Company shall Collect Organics in a separate Collection vehicle that collects only source separated Organics. Company shall provide each Single-family Dwelling Unit and Multi-family Dwelling Unit Customer with Refuse Cart Collection service with a 96, 64, or 35-gallon Organics Cart. Company shall make available one (1) additional Organics Cart at no additional charge to Customers who regularly divert more Organics than will fit into their existing Organics Cart. Company may charge the additional monthly rate per Cart for any additional Organics Cart(s) (in excess of two) to Customers requesting three or more Organics Carts. The additional monthly rate per Cart shall be based on the schedule of monthly solid waste rates in Exhibit 1.

Company shall Collect all Green Waste placed in Organics Carts, as well as all properly bundled Green Waste. Company shall only be obligated to Collect Green Waste set out for Collection in bundles if it is a maximum of four (4) feet long and twenty-four (24) inches in diameter, with a bundled weight limit of forty-five pounds (45 lbs.).

Company shall transport all Organics Collected from Single-family and Multi-family Cart Customers in the City to the Perris Regional Organics Anaerobic Digestion Facility (ROAR) for processing. Company shall not deliver any Organics collected from Single-family or Multi-family Cart Customers to any Facility to be landfilled or used as Alternative Daily Cover. Company guarantees it will provide adequate capacity at ROAR for all Organics generated in City by Single-family and Multi-family Cart Customers throughout the term of this Agreement. City reserves the right to direct Organics to any alternative processing Facility. If City exercises that right, City shall approve a commensurate rate adjustment pursuant to Section 6.4 (Extraordinary Adjustments).

Company shall continuously monitor the Single-family Organics Collection program for both participation and contamination such that each year, Company has opened the Cart lid and checked the contents of a minimum of two percent (2%) of all Single-Family and Multi-family Cart Customers in the City to note contamination levels in the Carts. (Company shall develop a plan to randomly sample areas of City, which shall be submitted to City for approval annually.) When Company finds a household that is not participating, Company shall leave or direct mail the Customer education materials describing the program, and how to participate. When Company finds contamination, Company shall alert the Customer by leaving a hang-tag and by leaving public education materials concerning the acceptable materials for the program. Company shall recheck the residences that were tagged within sixty (60) days to see if the contamination has been reduced or eliminated. Company's compensation for Collecting Organics from Single-family and Multi-family Cart Customers shall be included in the maximum bundled rate for automated Refuse, Recycling, and Organics Cart Collection service in the schedule of solid waste rates approved by City.

#### **4.4.2 Commercial Green Waste Collection**

Company will provide Green Waste Rolloff Box Collection and will divert loads from landfilling.

#### **4.4.3 Holiday Tree Collection Program**

Company shall operate an annual holiday tree Collection program by Collecting all holiday trees discarded by any Single-family or Multi-family Customer, on regularly scheduled Collection days for two weeks following December 25.

### **4.5 City Services**

#### **4.5.1 City Facilities' Collection**

Company shall Collect and dispose of all Solid Waste excluding construction and demolition waste generated at Premises owned and/or operated by the City, for no additional charge. Collections shall be scheduled at a time mutually agreed upon by the Company and the City. Company will provide Recycling and Greenwaste Containers at City facilities and provide for the Collection of such Recyclables at no additional charge.

#### **4.5.2 City Sponsored Events**

The Company shall provide Solid Waste Collection and portable toilet services at eight (8) City sponsored special events each year. For these events, Company shall provide Containers (cardboard boxes, Bins and/or Rolloff Boxes) to Collect and Dispose of all Refuse, and providing Containers to Collect and process source-separated Recyclables. Service requirements may fluctuate from year to year. The Company shall provide these services at no additional cost to the City, the ratepayers, or the event sponsors. For each event, City shall arrange to have Company designated as an event sponsor.

#### **4.5.3 Abandoned Item Collection**

Company shall Collect all items abandoned in City's public right-of-way, or on City's public property within one business day of notification from the City. Company shall not charge City for this service.

#### **4.5.4 Emergency Collection and Disposal Service**

Company will assist City at the City's request with emergency Collection and Disposal service (in the event of a major disaster, such as an earthquake, storm, riot or civil disturbance), or as otherwise determined necessary by the

City, by providing Collection vehicles and drivers normally assigned to the City, at the rate set forth in Exhibit 1.

#### **4.5.5 Annual Report Preparation and Submittal**

The Company shall provide to City, at no charge, preparation and submittal of annual reports due to the State of California and CalRecycle. The Company may provide the services itself or through a consultant approved by City. Submittals to the State and/or CalRecycle shall first be reviewed and approved by the Public Works Director.

#### **4.5.6 Universal Waste Collection**

Company shall develop and implement a Universal Waste Collection program at no cost to the City or Customers. Company shall provide Universal Waste collection drop-off areas when requested by the City (up to 12 locations, including City Hall) at public or private facilities subject to City approval. Included items shall be batteries and fluorescent tubes. Universal Waste collected by Company shall be processed as to recycle, re-use, and otherwise diverted from disposal facilities to the greatest extent practical. To the extent that Universal Waste is placed in the waste stream of the City, it shall be disposed of in compliance with all Applicable Law and regulations.

#### **4.5.7 Electronic Waste Collection**

Company shall establish up to two (2) annual Electronic Waste collection events at no charge to the City or Customers, per City direction.

#### **4.5.8 Household Sharps Collection**

Company shall establish at least two Household Sharps Waste drop off locations in the City with pharmaceutical establishments or other facilities as approved by City. Sharps collected by Company shall be processed as to divert from disposal facilities these materials to the greatest extent practical. To the extent that Household Sharps Waste is placed in the waste stream of the City, it shall be disposed of in compliance with all applicable laws and regulations. City facilities shall not be used as a Household Sharps Waste drop off locations.

#### **4.5.9 Food Waste Collection**

Company shall establish a food waste collection program, at 85% of the Commercial 64-gallon Refuse Cart rates shown in Exhibit 1. The program shall be made available to City businesses for enrollment into the program.

### **4.6 Diversion Requirements**

Company shall achieve a diversion rate for City as a result of its operations hereunder such that the diversion requirements established by the State of California and CalRecycle are at all times met. City shall evaluate Company's diversion performance at the end of each year. Should the City's diversion not meet the requirement for its entire waste stream, including self-hauled material disposed of directly by residents or businesses in the City, and should City determine, in its sole discretion, that Company has not maximized diversion as contemplated under this Agreement, the Company shall undertake reasonable efforts at its cost to implement programs and provide equipment necessary in order for the City to meet the diversion goal as soon as possible. In addition, if CalRecycle determines that the City must improve or increase its diversion, Company shall undertake efforts at its cost to implement programs and provide equipment necessary in order for the City to meet the new diversion goals, as soon as possible, and in all cases within any time frames required by CalRecycle.

If diversion rate requirements, as established by the State of California and CalRecycle, are not achieved, company is liable for penalties as established by Section 11.3 (Liquidated Damages).

### **4.7 Operations**

#### **4.7.1 Schedules**

To preserve peace and quiet, no Solid Waste shall be Collected between 6:00 P.M. and 7:00 A.M. on any day from any Residential Property, and from any Commercial Property within 200 feet of Residential Property. Residential Solid Waste shall be Collected Monday through Friday, unless the City approves Saturday Collection on a case-by-case basis. Residential Collection routes shall be designed such that Collection activities occur within contiguous residential regions or individual neighborhoods on only one day each week. Commercial and Industrial Solid Waste Collection shall be Collected Monday

through Saturday, unless the City approves Sunday Collection on a case-by-case basis.

If the regularly scheduled Collection day falls on New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, or Christmas Day, alternate Collection shall be performed on the following day, unless that day falls on Sunday and City has not instructed the Company to perform alternative Collection on Sunday. Alternative Collection shall then be performed on the following Monday. Collections for the remainder of the holiday week only may be delayed one day. All other Collection days falling on a legal holiday shall remain as scheduled.

The Company shall be prepared to review its operations plan outlining the Collection routes, intervals of Collection and Collection times for all materials Collected under this Agreement with the City once annually upon 30-day written notice requesting said review. More frequent reviews may be required if operations are not satisfactory based on documented observations or reports of complaints. If the plan is determined to be inadequate by the City, the Company shall revise its plan incorporating any changes into a revised plan and review said revised plan with the City within thirty (30) calendar days.

#### **4.7.2 Missed Pickups**

When notified of a missed pick-up, the Company shall Collect the Refuse, Recyclable Materials, and/or Organics/Green Waste within one (1) business day.

#### **4.7.3 Vehicles**

A. General. The Company shall provide Collection vehicles sufficient in number and capacity to efficiently perform the work required by this Agreement. The Company shall have available on Collection days sufficient back-up vehicles for each type of Collection vehicle used to respond to complaints and emergencies.

B. Specifications – Fleet and Vehicle Age. Company shall furnish Collection vehicles used in the City such that the average age of the fleet, and the maximum age of any vehicle in the fleet, shall be less than the vehicle ages shown below in Table 1. This requirement shall be met not later than December 31, 2022.

**Table 1 – Vehicle Age Specifications**

<b>No later than:</b>	<b>Average Age of Fleet:</b>	<b>No Vehicle Older Than:</b>
December 31, 2022	8 years	12 years
December 31, 2023	7 years	11 years
December 31, 2024, and thereafter	7 years	10 years

**C. Specifications – Fuel and Emissions.** All route vehicles shall be powered by natural gas, or another alternative fuel used to minimize vehicle emissions. All the Company's vehicles shall comply with SCAQMD Rule 1193, and the Air Resource Board's emission standards for Refuse removal vehicles, as well as other Federal, State, or regional vehicle emission laws and regulations that may be enacted during the term of this Agreement.

**D. Specification – Water Tight Bodies and Cameras.** All vehicles shall have water-tight bodies designed to prevent leakage, spillage and overflow. All vehicles shall be equipped to provide live video display to dispatch, two to three angle time-stamped video service records and GPS.

**E. Vehicle Identification.** The Company's name, local telephone number, and a unique vehicle identification number designed by the Company for each vehicle shall be prominently displayed on all vehicles, in letters and numbers no less than (3) three inches high. The Company shall not place the City's name and/or any City logos on the Company vehicles.

**F. Cleaning and Maintenance**

1) The Company shall maintain all of its properties, vehicles, facilities, and equipment used in providing service under this Agreement in a good, safe, neat, clean and operable condition at all times; City may instruct Company to remove a vehicle from service until repaired for not meeting cleaning and maintenance requirements. Reasons for removal from service may include dents or rust on the vehicle and other cosmetic problems, as well as operational problems.

2) Vehicles used in the Collection of Refuse, Recyclable Materials, and Organics/Green Waste shall be painted, thoroughly washed, and thoroughly

steam cleaned on a regular basis so as to present a clean appearance. The City may inspect vehicles at any time to determine compliance with this Agreement. The Company shall also make vehicles available to the Orange County Health Department for inspection, at any frequency it requests. The Company shall replace or repair to the City's satisfaction, any vehicle which the City determines to be of unsightly appearance, leaking, or in unsatisfactory operating condition.

3) The Company shall repaint all vehicles used in the Collection of Refuse, Recyclable Materials and Green Waste within sixty (60) days' notice from the City, if the City determines that their appearance warrants painting.

4) The Company shall inspect each vehicle daily to ensure that all equipment is operating properly. Vehicles that are not operating properly, or vehicles in such a condition as to be unsafe or excessively noisy, shall be removed from service until repaired and operating properly. The Company shall reasonably perform all scheduled maintenance functions in accordance with the manufacturer's specifications and schedule. The Company shall keep accurate records of all vehicle maintenance, recorded according to date and mileage (or hours of operation) and shall make such records available to the City upon request.

5) The Company 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. If an item of repair is covered by a warranty, the Company shall obtain warranty performance. The Company shall maintain accurate records of repair, which shall include the date and mileage (or hours of operation), nature of repair and the verification by signature of a maintenance supervisor that the repair has been properly performed.

6) Upon request by the City, the Company shall furnish the City a written inventory of all equipment, including Collection vehicles, used in providing service, and shall update the inventory annually. The inventory shall list all equipment by manufacturer, ID number, date of acquisition, type, and capacity.

G. Operation. Vehicles shall be operated in compliance with the California Vehicle Code, and all applicable safety and local ordinances. The Company shall not load vehicles in excess of the manufacturer's recommendations or limitations imposed by state or local weight restrictions on vehicles.

Equipment shall comply with US EPA noise emission regulations, currently codified at 40 CFR Part 205 and other applicable noise control regulations, and shall incorporate noise control features throughout the entire vehicle. In no event shall the noise level of equipment used for Collection exceed 75 dBA when measured at a distance of 25 feet from the vehicle, five feet from the ground. The Company shall store all equipment in safe and secure locations in accordance with the City's applicable zoning regulations.

Subject to Section 9.1 (Indemnification), the Company shall be responsible for any damage resulting from or directly attributable to any of its operations, and which it causes to: the City's driving surfaces, whether or not paved; associated curbs, gutters and traffic control devices; other public improvements; and private roads and alleys.

**H. City Inspection Per Code.** The City may cause any vehicle used in performance of this Agreement to be inspected and tested at any commercially reasonable time and in such manner as may be appropriate to determine that the vehicle is being maintained in compliance with the applicable provisions of the State Vehicle Code, including all Vehicle Code sections regarding smog equipment requirements. The City may direct the removal of any vehicle from service if that vehicle is found to be in nonconformance with applicable codes. No vehicle directed to be removed from service by the City shall be returned to service until it conforms with, and its return to service has been approved by the City.

**I. Vehicle Inspections.** Each year with its Annual Report, Company shall submit to City a copy of:

- Its most recent BASIC Score determined by the Federal Motor Carrier Safety Administration, and,
- Any terminal inspection reports resulting from the California Highway Patrol's Basic Inspection of Terminals (BIT) program.

If Company receives a terminal rating below satisfactory, the Company is in violation of the Agreement. The Company has the time allowed by the Department of California Highway Patrol ("CHP") to cure violations and bring the terminal rating up to satisfactory. If the CHP does not adjust the rating to satisfactory or better within six months, then the Company shall be considered in default of the contract and the City may terminate the Agreement.

J. Correction of Defects. Following any inspection, the Public Works Director shall have the right to cause the Company, at its sole cost and expense, to recondition or replace any vehicle or equipment found to be unsafe, unsanitary or unsightly. The Public Works Director's determination may be appealed to the City Council which decision shall be final.

#### **4.7.4 Containers**

##### **4.7.4.1 Automated Carts**

All Carts used in the City shall be maintained in good condition. The Carts shall be manufactured by injection or rotational molding. The Refuse, Recycling and Organics/Green Waste Carts will be differentiated by color and identified as for Refuse (black or gray), Recycling (brown or blue) or Green Waste and Organic Waste (green). Colors will be uniform throughout the City, and be colorfast and resistant to fading as a result of weathering or ultraviolet degradation. Company shall provide Refuse, Recycling and Green Waste Carts in sizes of approximately 96, 64 and 35-gallons. Recycling and Green Waste Carts shall be labeled, using both words and graphics to indicate what materials are to be placed in each container. Company's name and phone number shall also be placed on the Carts.

The Company shall be responsible for Cart repair and maintenance, graffiti removal and replacing lost, stolen or damaged Carts within one (1) business day at no additional charge to the Customer or to the City. If approved in advance by the City on a case-by-case basis, Company may charge Customer a fee no higher than the Company's actual cost of repair and replacement in the event of willful neglect or abuse of the Cart by the Customer, provided that the Company shall exchange carts once per calendar year at no charge to the Customer for any Customer requesting the exchange. Each cart so exchanged shall be new or in a "like new" condition.

All Carts provided under this Agreement shall become the property of the City at the end of this Agreement, although the City retains the right to direct the Company to remove and Dispose of the Carts at the end of the term of the Agreement term of this Agreement at no additional charge.

##### **4.7.4.2 Cart Colors – SB 1383**

In the event that the term extends beyond January 1, 2036, Company shall furnish all Carts in the City such that the colors of the Carts are compliant with

CalRecycle's SB 1383 regulations. Company shall phase out the brown Recycling Carts. After January 1, 2032, all Carts for Refuse shall be black or gray; all Carts for Recyclables shall be blue; and all Carts for Organics/Greenwaste shall be green.

#### **4.7.4.3 Bins**

The Company shall provide Commercial and Industrial, and Multi-Family Dwelling Unit Customers with Containers for Collection of Solid Waste. The Company shall maintain its Containers in a clean, sound condition free from putrescible residue. Containers shall be constructed of heavy metal, or other suitable, durable material, and shall be watertight and well painted. Wheels, forklift slots, and other appurtenances which were designed for movement, loading, or unloading of the Container shall be maintained in good repair.

Upon request by Customer or City, Company shall clean or replace all Commercial and Industrial Containers once per year at no charge. Company shall perform cleaning or replacement of Containers more frequently, if necessary, for an additional fee, to prevent a nuisance caused by odors or vector harborage. Customer may request additional cleanings at the rates shown in Exhibit 1. Graffiti shall be removed from any Container within one (1) business day of request by City or Customers. Each Container placed in the City by the Company shall have the name of the Company in letters not less than three inches high on the exterior of the Container so as to be visible when the Container is placed for use. Company phone number shall also be included. Recycling and Green Waste Carts shall be labeled, using both words and graphics to indicate what materials are to be placed in each container. Company's name and phone number shall also be placed on the Carts.

The Company shall identify the Containers that are assigned to each Commercial and Industrial Customer, and Multi-Family Customer using a method that is acceptable to the City.

#### **4.7.5 Litter Abatement**

A. Minimization of Spills. The Company shall use due care to prevent Solid Waste or fluids from leaking, being spilled and/or scattered during the Collection or transportation process. If any Solid Waste or fluids leak or are spilled during Collection, the Company shall promptly clean up all such materials. Each Collection vehicle shall carry a broom and shovel at all times for this purpose.

The Company shall not transfer loads from one vehicle to another on any public street, unless it is necessary to do so because of mechanical failure, accidental damage to a vehicle, or a pre-approved method of Solid Waste transfer between vehicles, without prior written approval by the City.

B. Clean Up. During the Collection or transportation process, the Company shall clean up litter in the immediate vicinity of any Solid Waste storage or Collection area whether or not the Company has caused the litter. The Company shall identify instances of repeated spillage not caused by it directly with the Customer responsible and will report such instances to the City. City will attempt to rectify such situations with the Customer if the Company has already attempted to do so without success.

C. Covering of Loads. The Company shall properly cover all open Rolloff Boxes during transport to the Disposal Site.

#### **4.7.6 Personnel**

The Company shall furnish such qualified drivers, mechanical, supervisory, clerical, management and other personnel as may be necessary to provide the services required by this Agreement in a satisfactory, safe, economical and efficient manner. All drivers shall be trained and qualified in the operation of vehicles they operate and must possess a valid license, of the appropriate class, issued by the California Department of Motor Vehicles.

The Company also shall establish and vigorously enforce an educational program which will train the Company's employees in the identification of Hazardous Waste. The Company's employees shall not knowingly place such Hazardous Waste in the Collection vehicles, nor knowingly dispose of such Hazardous Wastes at the processing Facility or Disposal Site.

The Company shall train its employees in Customer courtesy, shall prohibit the use of loud or profane language, and shall instruct Collection crews to perform the work quietly. The Company shall use its best efforts to assure that all employees present a neat appearance and conduct themselves in a courteous manner. If any employee is found to be discourteous or not to be performing services in the manner required by this Agreement, the Company shall take all necessary corrective measures including, but not limited to, transfer, discipline or termination. If the City has notified the Company of a complaint related to discourteous or improper behavior, the Company will consider reassigning the

employee to duties not entailing contact with the public while the Company is pursuing its investigation and corrective action process.

The Company shall provide suitable operations, health and safety training for all of its employees who use or operate equipment or who are otherwise directly involved in Collection or other related operations.

#### **4.7.7 Identification Required**

The Company shall provide its employees, companies and Subcontractors with identification for all individuals who may make personal contact with residents or businesses in the City. The City may require the Company to notify Customers yearly of the form of said identification. The Company shall provide a list of current employees, companies, and Subcontractors to the City upon request.

The City reserves the right to perform a security and identification check through law enforcement agencies upon the Company and all its present and future employees, in accordance with accepted procedures established by the City, or for probable cause.

#### **4.7.8 Fees and Gratuities**

The Company shall not, nor shall it permit any agent, employee, or Subcontractors employed by it, to request, solicit, demand, or accept, either directly or indirectly, any compensation or gratuity for any of the services required in this Agreement.

#### **4.7.9 Non-Discrimination**

The Company shall not discriminate in the provision of service or the employment of Persons engaged in performance of this Agreement on account of race, color, religion, sex, age, physical handicap or medical condition in violation of any applicable federal or state law.

#### **4.7.10 Coordination with Street Sweeping Services**

Company shall coordinate route schedules with the City's street sweeping schedule. Company shall provide all routes and route schedules to the City and work with City to resolve conflicts with street sweeping schedules.

#### **4.7.11 Change in Collection Schedule**

The Company shall notify the City forty-five (45) days prior to, and Single-Family Dwelling Unit Customers not later than fourteen (14) days prior to, any change in Single-Family Dwelling Unit Collection operations which results in a change in the day on which Solid Waste Collection occurs. The Company will not permit any Customer to go more than seven (7) days without service in connection with a Collection schedule change. The City's approval of any change in Single-Family Dwelling Unit Collection is required prior to such change, and such approval will not be withheld unreasonably.

Any changes in the route map or Collection schedule shall require the prior approval of the City. The City may require changes in the route map or Collection schedule, to improve service, to resolve complaints or for other reasons.

#### **4.7.12 Report of Accumulation of Solid Waste; Unauthorized Dumping**

The Company shall direct its drivers to note the addresses of any Premises at which they observe that Solid Waste is accumulating and is not being delivered for Collection; and the address, or other location description, at which Solid Waste has been dumped in an apparently unauthorized manner. The Company shall deliver the address or description to the City within five (5) working days of such observation. Company shall cooperate with City in the investigation and prosecution of any violations of the City Code.

#### **4.7.13 Contamination Monitoring**

The Company shall implement a contamination monitoring program to minimize Prohibited Container Contaminants in a manner that complies with Section 18984.5 of Title 14 of the California Code of Regulations. The Company may conduct its contamination monitoring requirements through either Route Reviews or Waste Evaluations, or a combination of the two methods. The Company's contamination monitoring program shall include, but not be limited to, the following:

##### **4.7.13.1 Route Reviews**

For routes on which the Company conducts Route Reviews (i.e., on-route observations of individual Containers), the routes must be reviewed at least

once per year. Upon finding Prohibited Container Contaminates in a Container, Company shall notify the customer of the violation. The notification shall include information regarding the Customer's obligation to properly source separate materials in the appropriate Containers and should include photographic evidence of the violation. The notice of violation may be left at the Customer's location, or mailed, e-mailed, or electronically messaged to the generator.

#### **4.7.13.2 Waste Assessments**

For routes on which Company performs Waste Evaluations (i.e., conducting waste characterizations of collected material at the processing facility), Waste Evaluations shall be conducted at least twice per year for the Green Containers and Blue Containers, and at least once per quarter for the Gray Containers. Waste Evaluations shall include samples of each Container type, and samples from different areas of the City, and from different seasons in the year. The Waste Evaluations shall include at least the number of samples required in Section 18984.5 (C)(1)(e) of Title 14 of the California Code of Regulations.

If the sampled weight of prohibited container contaminants in the Waste Evaluations exceeds 25 percent of the measured sample for any container type, the Company shall perform one of the following:

(A) Notify all generators on the sampled routes of their requirement to properly separate materials into the appropriate containers. The jurisdiction may provide this information by placing a notice on the generator's container, gate, or door, and/or by mail, e-mail, or electronic message to the generator.

(B) Perform a targeted route review of containers on the routes sampled for waste evaluations to determine the sources of contamination and notify those generators of their obligation to properly separate materials. The jurisdiction may provide this information to these generators by placing a notice on the generator's container gate, or door, and/or by mail, e-mail, or electronic message to the applicable generators.

#### **4.7.13.3 Recordkeeping and Reporting**

The Company shall include the following information and documents related to its contamination minimization program:

- (A) A description of the Company's process for determining the level of container contamination.
- (B) Documentation of any of the Route Reviews it conducts.
- (C) Documentation of any Waste evaluations performed including information about any targeted Route Reviews conducted as a result of the Waste Evaluations. The documentation shall at a minimum include dates of the studies, the location of the solid waste facility where the study was performed, routes, source sector (e.g., commercial or residential), number of samples, weights and ratio of Prohibited Container contaminants and total sample size. Copies of all notices issued to generators with Prohibited Container Contaminants.
- (D) Documentation of the number of Containers where the contents were disposed due to observation of Prohibited Container Contaminants.

#### **4.8 Transportation of Refuse**

Company shall transport all Refuse Collected under Section 4.2 (Refuse Collection Services) to a transfer station, MRF, Transformation Facility, a properly permitted e-waste processing facility or Disposal Site. Unless the City otherwise obtains ownership of the Solid Waste or Refuse stream as described in Section 2.9 (Ownership of Solid Waste), the Disposal Site shall be the Orange County Landfill System. The Company shall make all reasonable efforts to separate Recyclable Materials from Refuse for diversion from landfill Disposal.

The Company shall maintain complete, accurate and up-to-date records of the quantities of Solid Waste transported to the transfer station, MRF, Transformation Facility, e-waste processing facility or Disposal Site and will cooperate with the City in any audits or investigations of such quantities.

#### **4.9 Disposal of Refuse**

Company shall ensure that all Refuse Collected under Section 4.2 (Refuse Collection Services) is disposed of at the Disposal Site. Unless and until the City otherwise obtains ownership of the Solid Waste stream under Section 2.9 (Ownership of Solid Waste), the Disposal Site Company has designated shall be the Orange County Landfill System.

#### **4.10 Status of Disposal Site**

Any Disposal Site utilized by the Company shall be designed and constructed in accordance with 23 California Code of Regulations Section 2510 et seq. ("Subchapter 15"). Any such landfill must have been issued all permits from federal, state, regional, county and the City agencies necessary for it to operate as a Class III Sanitary Landfill and is in full regulatory compliance with all such permits.

#### **4.11 Commingling of Collection Routes**

Company shall not commingle City Refuse, Recycling or Organics Collection routes with other city or county routes. If this is not feasible, upon approval by the City, Company may commingle routes, but must use a reasonable measurement method to allocate the weight of materials among routes shared with other jurisdictions.

#### **4.12 Annual Route Audit**

At least once annually, within 60 days of the anniversary of this Agreement, the Company shall complete an audit of its Commercial Collection routes (Bin and permanent Rolloff Box Customers) in the City. Once during the Agreement term, City may require the route audit to include all Customers, including Residential Cart Customers. The timing of this complete, City-wide route audit is at the City's discretion. The route audit, at minimum, shall consist of an independent physical observation by Person(s) other than the route driver or route supervisor of each Customer in the City. The route audit information shall include, as a minimum, the following information for each account:

- Route Number;
- Truck Number;
- Account Name;
- Account Number;
- Account Service Address;
- Service Level per Billing System (quantity, size, frequency);
- Service Level per Routing System;
- Observed Containers (quantity, type and size);
- Bin condition;
- Proper signage; and,
- Graffiti.

Within 30 days after the completion of the route audit, the Company shall submit to the City a report summarizing the results of the annual audit. This summary shall include:

- Identification of the routes;
- Truck numbers;
- Number of accounts, by route and in total;
- Types of exceptions observed;
- Number of exceptions by type;
- Total monthly billing, pre-audit;
- Total monthly billing, post-audit (subsequent to corrections of identified exceptions);
- Percentage of exceptions;
- Percentage of the number of accounts with errors to the total number of accounts served;
- Percentage of the “net” change in monthly billing as a result of the audit to the total pre-audit monthly billing; and,
- Percentage of the “absolute” change in net monthly billing as a result of the audit to the total “pre-audit” monthly billing.

The report shall include a description of the procedures followed to complete the annual route audit. This description shall include the names and titles of those supervising the route audits and the name and titles of those performing the observations. Additionally, the report shall include a description of the pre-audit training of the route auditors, particularly if temporary personnel are used.

The report shall also include a description of the changes and the Company's plans to resolve the exceptions. The results of the audit shall be available for review by the City or its representative.

Company shall conduct annually residential audits of at a minimum 5% of the residential customers to determine either 1) Contamination of trash in the recycling cart or 2) Excessive recyclables in the trash cart. Company shall inspect carts and leave notification tags on the cart instructing customer "how to" do better in sources separation procedures. Tags must be approved by City in advance and shall leave a positive message to customer to improve recycling habits. Company shall report results of each annual audit, including results from a second follow up inspection to those premises previously "tagged" and report to City in its Annual Report.

#### **4.13 Service Exceptions; Hazardous Waste Notifications**

A. Failure to Collect. When Solid Waste is not Collected from any Customer, the Company shall notify the Customer in writing, at the time Collection is not made, through the use of a "tag" or otherwise, of the reasons why the Collection was not made.

B. Hazardous Waste Inspection and Reporting. The Company reserves the right and has the duty under law to inspect Solid Waste put out for Collection and to reject and not collect Solid Waste observed to be contaminated with Hazardous Waste.

The Company shall notify all agencies with jurisdiction, if appropriate, including the Orange County Fire Authority, the California Department of Toxic Substances Control, and or National Response Center of reportable quantities of Hazardous Waste, found or observed in Solid Waste anywhere within the City.

In addition to other required notifications, if the Company observes any substances which it or its employees reasonably believe or suspect to contain Hazardous Wastes unlawfully disposed of or released on any City property, including storm drains, streets or other public rights of way, the Company will immediately notify the Public Work's Director or the Public Works Director's designee.

C. Hazardous Waste Diversion Records. The Company shall maintain records showing the types and quantities, if any, of Hazardous Waste found in Solid Waste and which was inadvertently Collected from Customers within the City, but diverted from landfilling.

#### **4.14 Disaster Preparedness Plan**

If requested by the City, Company shall submit to City within 60 days of the request, a written contingency plan demonstrating Company's arrangements to provide vehicles and personnel and to maintain uninterrupted service during breakdowns, and in case of natural disaster or other emergency (not including a labor dispute), including the events described in Section 11.4 (Excuse from Performance).

## 5 Other Services

### 5.1 Services and Customer Billing

#### 5.1.1 Service Description

Company shall annually, at least 30 days prior to the effective date of a rate change, prepare and distribute, subject to the direction of the City, a notice to each Customer listing the Company's new Collection rates and effective dates, rates for other services, annual holiday schedule, Recycling programs offered, and a general summary of services required to be provided in this Agreement and optional service which may be furnished by the Company. Such notice shall be in a form subject to the City's approval prior to its distribution. For Customers billed by the Company, notice may be included with Billings. The notice may also be included as part of the Company's public education plan described below in Section 5.3.1 (Public Education - General).

#### 5.1.2 Billing

Company shall invoice all Customers.

##### 5.1.2.1 Residential Customers

Residential Customers shall be billed every three months in advance, approximately one week prior to the three-month service period. Customers who have not remitted payments within thirty (30) days after the date of billing shall be notified on forms approved by the City. Final notices will be sent sixty (60) days after billing and shall state that service may be discontinued if payment is not made within fifteen (15) days. Service will not be discontinued until it is at least seventy-five (75) days after billing, if no payment is made within that time. Company must also notify City fifteen (15) days prior to the last date of Collection. Upon payment of delinquent fees, Company shall resume Collection on the next regularly scheduled Collection day. Company may charge a maximum Resumption of Service Charge as shown in Exhibit 1, but may not charge for service during the period it was suspended.

### **5.1.2.2 Bin Customers**

Bin Customers shall be billed monthly, during the period in which the service is rendered and shall not be considered past due until thirty (30) days after the date of the Billing statement. To start service new Customers will pay for one billing period's service in advance. Customers who have not remitted payments within thirty (30) days after the date of billing shall be notified on forms approved by the City. The form shall state that service may be discontinued fifteen (15) days from the date of notice if payment is not made before that time. Company must also notify City fifteen (15) days prior to last date of Collection. Company will not discontinue service until seventy-five (75) days after invoice date, if payment is still delinquent. Upon payment of delinquent fees, Company shall resume Collection on the next regularly scheduled Collection day. Company may charge a maximum Resumption of Service Charge as shown in Exhibit 1 for Commercial and Industrial Customers, but may not charge for service during the period it was suspended.

### **5.1.2.3 Rolloff Box Customers**

For Single-Family Dwelling Unit Customers who request Rolloff Box service, the Company shall accept major credit cards for payment. Single-Family Dwelling Unit Customers that do not use credit cards may be required by the Company to post a security deposit or pay on a "Cash on Delivery" (C. O. D.) basis. Any unused portion of a security deposit shall be refunded to the Customer within five (5) business days of the termination of service.

For all other Rolloff Box Customers, the Company shall invoice monthly or semi-monthly in arrears with payment due within 15 or 30 days from the invoice date (i.e., the beginning of the month or the inception of service). Delinquent accounts shall be handled in the same manner as Bin Customers, see above. Company may require a security deposit for temporary roll-off boxes, with the unused portion refunded to the Customer within five business days of the termination of service.

### **5.1.3 Review of Billings**

The Company shall review its Billings to Customers under Section 5.1.2 (Billing). The purpose of the review is to determine that the amount which the Company is billing each Customer is correct in terms of the level of service being provided to such Customer by the Company. The Company shall review

Customer accounts annually, and submit to the City a written report of that review annually on the anniversary of the Effective Date of this Agreement.

The Company shall maintain copies of said Billings and receipts, each in chronological order, for a period of five (5) years after the date of service for inspection by the City upon request. The Company may, at its option, maintain those records in electronic form, or in any other manner, provided that the records can be preserved and retrieved for inspection and verification in a timely manner, are sufficient to verify accuracy of Franchise Fees owed to the City, and may be produced in a form and manner sufficient to establish the existence of Customer obligations in a court of competent jurisdiction.

## **5.2 Customer Service**

### **5.2.1 Office Hours**

Company shall provide an office in Orange County and office hours shall be, at a minimum, from 8:00 A.M. to 5:00 P.M., Monday through Friday, excluding holidays, and from 8:00 A.M. to 12:00 P.M. on Saturday. A responsible and qualified representative of the Company shall be available during office hours for communication with the public at the office. Normal office hour telephone numbers shall be a toll free call. The Company's telephone system shall be adequate to handle the volume of calls typically experienced on the busiest days. The Company shall also maintain a toll free telephone number for use during other than normal business hours. The Company shall have a representative or an answering or message providing/receiving (voice-mail) service available at said after-hours telephone number. After-hours calls shall be responded to on the next business day. Company shall provide the City staff with the phone number of a live person who may be reached 24 hours a day.

### **5.2.2 Complaint Documentation**

All service complaints shall be directed to the Company. Daily logs of complaints concerning Collection of Solid Waste, Recyclable Materials and Green Waste shall be retained for a minimum of twenty-four (24) months and shall be available to the City at all times upon request.

The Company shall log all complaints received by telephone and said log shall include the date and time the complaint was received, name, address and telephone number of caller, description of complaint, employee recording

complaint and the action taken by the Company to respond to and remedy complaint. All written Customer complaints and inquiries shall be date-stamped when received. All complaints shall be initially responded to within one (1) business day of receipt. The Company shall log action taken by the Company to respond to and remedy all complaints.

All Customer service records and logs kept by the Company shall be available to the City upon request and at no cost to the City. The City shall, at any time during regular Company business hours, have access to the Company's Customer service department for purposes that may include monitoring the quality of Customer service or researching Customer complaints.

### **5.2.3 Resolution of Customer Complaints**

Company is responsible for resolving customer complaints. Missed pickups must be Collected within one business day. All other complaints must be initially addressed (i.e., customer contacted by phone and given a course of action to resolve complaint) within one business day, and resolved within five (5) business day.

The City shall have the right, but not the obligation, to resolve disputes between the Company and its Customers regarding the services provided in accordance with this Agreement. Any such resolution by the City shall be final and binding. Should Company and Customers not be able to establish a mutually acceptable fee to be charged for special hauling services, the matter shall be determined by the City, and the City's decision shall be final.

Intervention by the City is not a condition precedent to any rights or remedies third parties might otherwise have in any dispute with Company. Nothing in this section is intended to affect the remedies of third parties against the Company. To the extent that remedies are warranted through this Agreement, this Agreement shall apply.

### **5.2.4 Company Representative**

The Company shall designate in writing a "Company Representative " who shall be responsible for working with the City and/or the City's designated representative(s) to resolve Customer complaints. City shall have the right to approve the Company's choice for a representative.

## **5.3 Education and Public Awareness**

### **5.3.1 Public Education - General**

Company acknowledges and agrees that education and public awareness are critical, key and essential elements of any efforts to achieve the requirements of AB 939, AB 341, AB 1826, and SB 1383. Accordingly, the Company shall implement a public education program to expand public and Customer awareness concerning the need to and methods of reducing, reusing and Recycling Solid Waste. Company shall cooperate fully with City in this regard. A Public Education Plan shall be submitted to the City for review within 60 days of the execution of this Agreement. The plan shall address the items described in this section. The Public Education Plan shall be updated as needed by mutual agreement of the Parties.

Company shall maintain its own program of providing information relevant to billing and Solid Waste services, issues and needs to Customers. All public education materials shall be approved in advance by City.

City may request the Company to perform mailing services and if so able, provide not less than thirty (30) days notice to the Company prior to the mailing date of any proposed mailing to permit the Company to make appropriate arrangements for inclusion of the City's materials. The City will provide the Company the mailers at least fifteen (15) days prior to the mailing date. The City shall normally bear the expense of reproduction and distribution of such additional information only to the extent it is clearly in excess of the Company's normal billing costs and represents services beyond the approved public education plan.

Company will provide a minimum of the following public education items to be developed and distributed at Company's expense:

- Instructional Packet Accompanying Company-Provided Containers – An information packet shall be attached to each set of Carts or Bins distributed to a Customer. This packet shall: describe available services, including available Recycling and diversion programs; provide instructions for proper use of the Carts and Bins provided (such as how to place Carts or Cans for Collection, the types of materials to be placed in each Cart); detail holiday Collection schedules; and provide Company's Customer service phone number.

- Container Labels - Recyclables, Green Waste, and Manure Containers shall carry stickers/labels or other identifying markings in both English and Spanish indicating the materials that should and should not be placed in each Container.
- How-To Brochure – Company will prepare and distribute a brochure packet to new Customers when they start service. This packet will contain updated information on how to use the Company-provided Containers, when, where and how to place Solid Waste for Collection, and who to contact with service or Billing questions.
- Annual Brochures – Four (4) pages, full color informing Customers of how to use available services. Three (3) separate brochures shall be developed: one for Single-Family Customers, one for Multi-Family Customers, and one for Commercial and Industrial Customers.
- Quarterly Billing Inserts/Notices – Company is responsible for sending three quarterly notices per year, each calendar quarter in which the annual brochure is not distributed, promoting and explaining programs and Collection schedules to all Customers, at the City's request and with City's review and approval of the materials. Notice shall include holiday Collection schedules and Customer service numbers. Notices may be inserted in the Billings for Customers billed directly by the Company.
- Corrective Action Notice – For use in instances where the Customer sets out inappropriate materials.
- Web Site Page – Company shall dedicate one page of a Company web site to City services, which shall include at least the following information: a listing of contact names and numbers for Customer Service; information on Bulky Item Collection; Collection schedules, including holiday schedules; and the procedures to begin and terminate services. Company shall assist the City in establishing a link to this web page from the City's web site.
- Recycling Curriculum – Company shall provide a Recycling education curriculum for use in classroom visits and workshops, and shall develop materials for use with such curriculum such as posters, coloring books, puzzles and quizzes.

- Representative - Company shall provide a representative able to visit civic groups, homeowners' associations, and building managers at Multi-Family complexes and Commercial businesses to promote and explain the Recycling programs.
- Full-time Recycling Coordinator - Company will maintain a full-time recycling coordinator on staff for the term of this agreement that will be available for the development, implementation, public outreach and monitoring of City recycling programs.

All brochures, mailings, and other educational materials are to be approved by the City in advance of distribution, and shall bear the City seal, unless otherwise approved by the City.

### **5.3.2 Community Events**

At the direction of the City, the Company shall participate in and promote Recycling and other diversion techniques at community events and local activities. Such participation would normally include providing, without cost to City, Collection of Solid Waste at the event and educational information promoting the goals of the City's Solid Waste diversion or Recycling program.

### **5.4 Waste Generation/Characterization Studies**

The Company acknowledges that the City may be required to perform Solid Waste generation and Disposal characterization studies periodically to comply with AB 939 or other waste diversion requirements. The Company shall participate and cooperate with the City and its agents and to accomplish such studies at no additional cost the City.

### **5.5 Free Compost Give-A-Way**

Company will conduct two annual mulch give-a-ways, providing each Customer with two free bags of compost per event. In order to control distribution of bags to Customers, Company may issue certificates for two free bags of compost in its quarterly newsletters prior to each event.

## 6 Company Compensation and Rates

### 6.1 General

The Company Compensation provided for in this Article shall be the full, entire and complete compensation due to the Company pursuant to this Agreement for all labor, equipment, materials and supplies, taxes, insurance, bonds, overhead, Disposal, transfer, profit and all other things necessary to perform all the services required and reasonably anticipated by this Agreement in the manner and at the times prescribed.

The Company will perform the responsibilities and duties described in this Agreement in consideration of the right to receive compensation for services rendered at the rates fixed by the City from time-to-time. The City and the Company agree that the Company will retain any proceeds from the sale of Recyclable Materials.

### 6.2 Competitive Rate Guarantee

Company guarantees that rates for Single-family Residential Service, Multi-family Residential Service, and Commercial Service shall at all times during the term of this Agreement be equal to or less than the 50<sup>th</sup> percentile of the comparable rates for similar services charged by the following nine (9) jurisdictions in south Orange County with substantially similar solid waste services: Aliso Viejo, Dana Point, Laguna Hills, Laguna Niguel, Lake Forest, Mission Viejo, Orange County Franchise Area 8 (Coto de Caza), San Clemente, and San Juan Capistrano. The 50<sup>th</sup> percentile of the comparable rates shall be the midpoint between the comparable rates of the 4<sup>th</sup> and 5<sup>th</sup> ranked jurisdictions.

At the end of every fourth year of each five-year term, or whenever the City requests, the Company shall submit a report to the Public Works Director for review, evaluating rates and services among south Orange County jurisdictions including the nine (9) jurisdictions noted in this Section.

For purposes of the rate comparison, the basic residential rate less franchise fees and other special fees and organics disposition shall be used. For Multi-family and Commercial bin rates, the basic three (3) cubic yard, serviced one time per week shall be used as the comparison.

## **6.3 Rates and Rate Adjustments**

The initial rates set forth in Exhibit 1 shall become effective on January 1, 2022. Company shall be entitled to a standard rate adjustment to each of the rates in Exhibit 1, or those rates then in effect, on July 1<sup>st</sup> of each year during the term of this Agreement.

### **6.3.1 General**

The annual rate adjustment percentage shall be based on a combination of:

1. An Inflation Adjustment Percentage; and,
2. A Fixed Adjustment Percentage.

The Fixed Adjustment Percentages are set forth in Section 6.3.2. in Table 2, Table 3, and Table 4. The total rate adjustment percent for any given Rate Year shall be the sum of the Inflation Adjustment Percentage and the Fixed Adjustment Percentage. The Fixed Adjustment Percentages shall only apply to the rate adjustment scheduled to become effective on July 1, 2022.

The Inflation Adjustment Percentage for Residential and Commercial Rates is comprised of the combination of: 1) the change in service costs, and, 2) the change in disposal costs. These are based on the adjustment steps described in Section 6.3.4.

The Inflation Adjustment Percentage for Rolloff Load Rates is comprised of only on the change in service costs and is based on the adjustment steps described in Section 6.3.5 .

### **6.3.2 Fixed Adjustment Percentage**

The Fixed Adjustment Percentages in the following Table 2, Table 3, and Table 4, were negotiated by City and Company and shall remain constant and fixed for the rate adjustment scheduled for July 1, 2022.

**Table 2 - Fixed Adjustment Percentages - Residential**

Rate Adjustment Effective Date	Rate Year Ended	Fixed Adjustment Percentage
July 1, 2022	June 30, 2023	5.0%
July 1, 2023	June 30, 2024	0.0%

**Table 3 - Fixed Adjustment Percentages - Commercial**

Rate Adjustment Effective Date	Rate Year Ended	Fixed Adjustment Percentage
July 1, 2022	June 30, 2023	46.0%
July 1, 2023	June 30, 2024	0.0%

**Table 4 - Fixed Adjustment Percentages - Rolloff**

Rate Adjustment Effective Date	Rate Year Ended	Fixed Adjustment Percentage
July 1, 2022	June 30, 2023	46.0%
July 1, 2023	June 30, 2024	0.0%

### 6.3.3 Weighted Cost Components

For the Residential and Commercial rate adjustments scheduled to become effective July 1, 2022, the Inflation Adjustment Percentage shall consist of the weighted change in the Service Cost Component categories shown in Table 5, combined with the percent change in the Disposal Cost Component shown in Table 6. For the Rolloff rate adjustment scheduled to become effective July 1, 2022, the Inflation Adjustment Percentage shall consist only of the weighted change in the Service Cost Component categories shown in Table 5.

The weighted cost components in Table 5 and Table 6 are used in the rate adjustment steps in Sections 6.3.4 and 6.3.5. For each subsequent rate adjustment after July 2022, the relative weights in Table 5 and Table 6 will be revised as part of the final step in each of the rate adjustment methods described in Sections 6.3.4 and 6.3.5.

**Table 5 – Relative Weight of Service Cost Components**

Cost Category	Initial Weightings for July 1, 2022 Adjustment		Index
	Residential	Commercial	
Labor	40.4%	40.4%	Producer Price Index for Waste Collection PCU562111562111
Fuel	3.5%	3.5%	Producer Price Index, WPU 0531 not seasonally adjusted, Fuels and related products and power, natural gas
Equipment	27.4%	27.4%	Producer Price Index, PCU336211336211, Heavy duty truck manufacturing
All Other	28.7%	28.7%	Consumer Price Index, Series ID: CUURS49ASA0, All items in Los Angeles-Long Beach-Anaheim, CA, all urban consumers, not seasonally adjusted (U.S. Department of Labor, Bureau of Labor Statistics).
Total	100.0%	100.0%	Total Service Cost

**Table 6 – Weight of Service Component and Landfill Component**

Cost Category	Initial Weightings for July 1, 2022 Adjustment		Index
	Residential	Commercial	
Service	85.6%	73.1%	Weighted Change in Service Components
Landfill	14.4%	26.9%	Change in OC Landfill Tipping Fee
Total	100.0%	100.0%	Total Cost

### **6.3.4 Residential and Commercial Rate Adjustment Steps**

Residential and Commercial rates will be adjusted using the methodology described below, and shown in the example in Exhibit 2.

Step One - Calculate the percentage increase or decrease in each index listed above in Table 5 in Section 6.3.3. The increase or decrease in the published indices for fuel, equipment insurance and all other (CPI) will be for the change in the average annual published index between the calendar year ended the December prior to the Rate Year anniversary date and prior calendar year. Though the first year's adjustment is 6 months into the term of this Agreement, the adjustment will still be based upon only the applicable 12-month change in all indices, including labor.

Step Two - The first set of rate adjustment Service Cost Components as a percentage of total service costs are provided above in Table 5 of Section 6.3.3. These are to be used for the rate adjustment effective July 1, 2022. For rate adjustments after July 2022, the components will be recalculated in Step Five of the rate adjustment. For Step Two of each subsequent rate adjustment, use the cost components recalculated in Step Five during the previous rate adjustment. Multiply the percentage changes for each rate adjustment cost component by that component's weighting and add these resulting percentages together to derive the weighted change in the Service Component.

Step Three - The weighted Service Cost Component and the Disposal Tipping Fee Component as a percentage of total cost are provided above in Table 6 of Section 6.3.3. These are to be used for the rate adjustment effective July 1, 2022. Subsequent Service Cost Components and Disposal Components are calculated in Step Five of the rate adjustment. For Step Three of each subsequent rate adjustment, use the Service Cost Component and Disposal Tipping Fee Components recalculated in Step Five during the previous rate adjustment. Multiply the percentage change for the Service Cost Component and the Disposal Tipping Fee Component by that component's weight and add these resulting percentages together to derive the Inflation Adjustment Percentage.

Step Three - A – Add the Inflation Adjustment Percentage in Step Three to the corresponding Fixed Adjustment Percentage from

Table 2 and Table 3 in Section 6.3.2. The result is the Total Rate Adjustment Percentage.

Step Four - Multiply the Total Rate Adjustment Percentage from Step Three A by the existing Customer rates to calculate the increase or decrease to the maximum rates. Add the rate increase or decrease to the existing rates to derive the newly adjusted rates.

Step Five - Recalculate Service Cost Component weightings, and Service Component and Disposal Component weightings for the following year based upon these changes.

### **6.3.5 Rolloff Rate Adjustment Steps**

The approved rolloff box rates consist of the service component, which is the pull rate, and the disposal tipping fee, which is the actual cost per ton multiplied by the actual tons disposed of or processed. The disposal component is separately calculated for each pull and itemized on each invoice. As a result, only the service component or “pull rate” needs to be adjusted. Rolloff rates will be adjusted using the methodology described below, and shown in the example in Exhibit 3.

Step One – Calculate the percentage increase or decrease in each index listed above in Table 5 in Section 6.3.3. The increase or decrease in the published indices for fuel, equipment insurance and all other (CPI) will be for the change in the average annual published index between the calendar year ended the December prior to the Rate Year anniversary date and prior calendar year. Though the first year's adjustment is 6 months into the term of this Agreement, the adjustment will still be based upon only the applicable 12-month change in all indices, including labor.

Step Two - The first set of rate adjustment service cost components as a percentage of total service costs are provided above in Table 5 of Section 6.3.3, to be used for the rate adjustment effective July 1, 2022, with subsequent components calculated in Step Four of the rate adjustment. For Step Two of each subsequent rate adjustment, use the cost components recalculated in Step Four during the previous rate adjustment. Multiply the percentage changes for each rate adjustment cost component by that component's weighting and add these resulting percentages together to derive the weighted change in the Service Cost Component. For the Rolloff rate calculation, the percent change in the Service Cost Component is the same as the Inflation Adjustment Percentage.

Step Two - A – Add the Inflation Adjustment Percentage in Step Two to the corresponding Fixed Adjustment Percentage from Table 4 in Section 6.3.2. The result is the Total Rate Adjustment Percentage for Rolloff rates.

Step Three - Multiply the Total Rate Adjustment Percentage from Step Two - A by the existing Customer rates to calculate the increase or decrease to the maximum load rates. Add the rate increase or decrease to the existing rates to derive the newly adjusted load rates.

Step Four - Recalculate Service Cost Component weightings, and Service Component and Disposal Component weightings for the following year based upon these changes.

#### **6.4 Extraordinary Adjustments**

The Company or the City may request an adjustment to rates at reasonable times other than that required in Section 6.3 for unusual changes in the cost of providing service under this Agreement. For each such request, the Company shall prepare a schedule documenting the extraordinary costs. Such request shall be prepared in a form acceptable to the City with support for assumptions made by the Company in preparing the estimate. The City shall review the Company's request and, in the City's sole judgment, make the final determination on the appropriate amount of the adjustment if any.

Such changes may include extraordinary changes in the tipping fee charged by the Orange County Landfill System, or changes in a direct per ton surcharge assessed at the Disposal Site by Federal, State or local regulatory agencies after the effective date of this Agreement. Such changes shall not include changes in any other fees or taxes such as Social Security, disability or income tax. Such changes shall not include changes in the market value of Recyclables or processing costs for Recyclables or Green Waste, or inaccurate estimates by the Company of its cost of operations.

#### **6.5 Supporting Information**

In the event the Company requests a rate adjustment on the basis of unusual changes or extraordinary increases or costs of doing business, the Company shall provide the City with documentation supporting its request. Additionally, if required by the City, the Company will also provide a copy of its certified annual financial statements prepared by a Certified Public Accountant, which shall have been prepared in compliance with Rule 58 of the "Rules and

Regulations of the State Board of Accountancy," as established by the California Code of Regulations, Title 16, Chapter I. Such Certified Public Accountant shall be entirely independent of the Company and shall have no financial interest whatsoever in the business of the Company. The City may specify the form and detail of the financial statements.

## 7 Review of Services and Performance

### 7.1 Performance Hearing

In or about October 2024, and once in each Rate Year thereafter during the term of this Agreement, City may hold a public hearing to review Company's Solid Waste Collection efforts, source reduction, processing and other diversion services and overall performance under this Agreement (the "Solid Waste Services and Performance Review Hearing.") The purpose of the Solid Waste Services and Performance Review Hearing is to provide for a discussion and review of technological, economic, and regulatory changes in Collection, source reduction, Recycling, processing and Disposal to achieve a continuing, advanced Solid Waste Collection, source reduction and Recycling and Disposal system; and to ensure services are being provided by Company with adequate quality, effectiveness and economy and in full compliance with the terms of this Agreement.

Topics for discussion and review at the Solid Waste Services and Performance Review Hearing shall include, but shall not be limited to, services provided, feasibility of providing new services, application of new technologies, Customer complaints, amendments to this Agreement, developments in the law, new initiatives for meeting or exceeding the goals of AB 939, AB 341, AB 1826, and SB 1383, regulatory constraints and Company performance. City and Company may each select additional topics for discussion at any Solid Waste Services and Performance Review Hearing.

City shall notify Company of its intent to hold a Solid Waste Services and Performance Review Hearing at least ninety (90) days in advance thereof. Forty-five (45) days after receiving notice from City of a Solid Waste Services and Performance Review Hearing, Company shall submit a report to City which may contain such information as it wished to have considered, and shall contain the following:

- a) Current diversion rates and a report on Company's outreach activities for the past year.
- b) Recommended changes and/or new services to improve the City's ability to meet the goals of AB 939 and to contain costs and minimize impacts on rates.

- c) Any specific plans for provision of changed or new services by Company.

The reports required by this Agreement regarding Customer complaints shall be used as one basis for review of Company's performance, and Company may submit other relevant performance information and reports for consideration at the Solid Waste Services and Performance Review Hearing. In addition to the above, City may request Company to submit any other specific information relating to its performance for consideration at the Solid Waste Services and Performance Review Hearing, and any Customer may submit comments or complaints during or before the Hearing, either orally or in writing. Company shall be present at and participate in the Solid Waste Services and Performance Review Hearing.

As a result of its findings following any Solid Waste Services and Performance Review Hearing, City may require Company to provide expanded or new services within a reasonable time and City may direct or take corrective actions for any performance inadequacies (although nothing contained in this provision should be construed as requiring City to hold a Solid Waste Services and Performance Review Hearing in order to enforce any rights or remedies it has pursuant to the terms hereof.) Should City require expanded or new services as a remedy for Company's failure to perform its obligations hereunder, no additional compensation shall be due for such services. Otherwise, any new or expanded services required of Company shall be subject to the provisions of Section 2.8 (City's Right to Direct Changes).

## **7.2 Performance Satisfaction Survey**

If requested by the City, Company will create and conduct a survey at Company's expense in preparation for any Solid Waste Services and Performance Review Hearing held pursuant to Section 7.1 (Performance Hearing). City shall notify Company of its desire for such a survey at least 90 days in advance of the Solid Waste Services and Performance Review Hearing. The purpose of the survey is to determine Customer satisfaction with current Collection services and Customer service provided by the Company. The Survey will be distributed to a minimum of 10% of the Customers, selected at random. City may instruct Company to send out separate Single-family and Multi-Family/Commercial surveys. Company shall obtain City's approval of each survey's content, format, and mailing list prior to its distribution. The City may require that Company have Customer responses to the survey returned directly to the City. The Survey results shall be made available to the City 30

days prior to the Solid Waste Services and Performance Review Hearing. A minimum of 90% of responding Residential Customers and 80% of responding Commercial Customers must be satisfied with Company's overall performance when asked to respond yes or no to the following written question:

"Are you satisfied with the current services and the trash company's overall performance?                    Yes                    No".

## **8 Records, Reports and Information Requirements**

### **8.1 General**

The Company shall maintain such accounting, statistical and other records related to its performance under this Agreement as shall be necessary to develop the financial statements and other reports required by this Agreement. Also, the Company shall conduct data Collection, information and record keeping, and reporting activities needed to comply with Applicable Law and regulation and to meet the reporting and Solid Waste program management needs of the City. To this extent, such requirements set out in this and other Articles of this Agreement shall not be considered limiting or necessarily complete. In particular, this Article is intended to only highlight the general nature of records and reports and is not meant to define exactly what the records and reports are to be and their content. Further, with the written direction or approval of the City, the records and reports to be maintained and provided by the Company in accordance with this and other Articles of the Agreement shall be adjusted in number, format, or frequency.

### **8.2 Records**

#### **8.2.1 General**

The Company shall maintain records required to conduct its operations, to support requests it may make to the City, and to respond to requests from the City in the conduct of the City business. Adequate record security shall be maintained to preserve records from events that can be reasonably anticipated such as a fire, theft and earthquake. Electronically maintained data/records shall be protected and backed up. All records shall be maintained for five (5) years after the expiration of this Agreement.

The Company agrees that the records of any and all Subcontractors conducting operations addressed in the Agreement shall be provided or made available to the City and its official representatives during normal business hours. The City may review or utilize any of the records described in this section for any purpose whatsoever.

#### **8.2.2 Financial Records**

Financial records shall be maintained and expense and revenue information for the City shall be segregated from other areas served by the Company.

### **8.2.3 Solid Waste, Recycling, and Green Waste Service Records**

Records shall be maintained by the Company for the City relating to:

- Customer services and billing;
- Routes;
- Facilities, equipment and personnel used;
- Complaints;
- Missed pick ups;
- Number of Refuse and Recycling Carts;
- Tons Collected, processed, diverted, and disposed by type of service (Bin, Cart, Customer-provided Container or Rolloff), waste stream (Refuse, Recycling, Green Waste) and Customer (Single-Family, Multi-Family, Commercial); and,
- Weight of each Recyclable Material recovered at the MRF.

### **8.2.4 CERCLA Defense Records**

The 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. The Company 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) and provide a copy of the reports and records required in Article 8 (Records, Reports and Information Requirements) for five (5) years after the term during which Collection services are to be provided pursuant to this Agreement, or to provide copies of such records to the City. The Company shall notify the City's Risk Manager and the City Attorney at least 90 days before destroying such records. This provision shall survive the expiration of the period during which Collection services are to be provided under this Agreement.

### **8.2.5 Disposal Records**

The Company shall maintain records of Disposal of all Solid Waste Collected in the City for the period of this Agreement and all extensions to this Agreement or successor Agreements. In the event the Company discontinues providing Solid Waste services to the City, the Company shall provide all records of Disposal or processing of all Solid Waste Collected in the City within thirty (30)

days of discontinuing service. Records shall be in chronological and organized form and readily and easily interpreted.

### **8.2.6 Other Programs' Records**

Records for other programs shall be tailored to specific needs. In general, they shall include:

- a) Plans, tasks, and milestones; and,
- b) Accomplishments in terms such as dates, activities conducted, quantities of products used, produced or distributed, and numbers of participants and responses.

### **8.2.7 Cost of Audit**

Should an audit by the City disclose that two percent (2%) or more of the Customers were billed incorrectly by the Company, for the period under review, the Company shall, in addition to any other remedy City might have, pay for the full cost of the City's audit.

### **8.2.8 Payments and Refunds**

Should an audit by the City disclose that Customers were overcharged for the period under review, the Company shall refund to the Company's Customers any overcharges. Any refunds to be made shall be due and payable (30) days following the date of the audit.

## **8.3 Reports**

### **8.3.1 Report Formats and Schedule**

Records shall be maintained in forms and by methods that facilitate flexible use of data contained in them to structure reports, as needed. Reports are intended to compile recorded data into useful forms of information that can be used to, among other things:

- a) Determine and set rates and evaluate the efficiency of operations;

- b) Evaluate past and expected progress towards achieving the goals and objectives of AB 939, AB 341, AB 1826, and SB 1383;
- c) Determine needs for adjustment to programs; and,
- d) Evaluate Customer service and complaints.

The Company may propose report formats that are responsive to the objectives and audiences for each report. The format of each report shall be approved by the City. The Company shall submit all reports on computer discs or by electronic means in a format compatible with the City's software/computers at no additional charge, if requested by the City. The Company will provide a certification statement, under penalty of perjury, by an authorized Company official, that the report being submitted is true and correct.

Monthly reports shall be submitted within twenty-five (25) calendar days after the end of each month. Quarterly reports shall be submitted within twenty (20) calendar days after the end of the calendar quarter. If requested, the Company's complaint summary, described in Section 8.3.3 (a) (Quarterly Reports) below, shall be sent to the City Manager within 5 days of request. Annual reports shall be submitted before January 31st following the reporting year.

All reports shall be submitted via email to:

Public Works Director (or designated representative)  
City of Rancho Santa Margarita  
22112 El Paseo  
Rancho Santa Margarita, CA 92688

### **8.3.2 Monthly Reports**

The information listed shall be the minimum reported:

- a) Solid Waste Collected by the Company for each month, sorted by type of solid Waste (Refuse, Recycling, Green Waste) and type of Customer (Residential, Commercial/Industrial Bin Service, Rolloff) in tons, and the Facilities where the tons were processed or disposed.

- b) Materials Recovered. Statement showing kinds of material and quantity sold (in tons).
- c) Narrative summary of problems encountered (including scavenging) and actions taken with recommendations for the City, as appropriate.
- d) Warning notices issued for contaminated Recyclables and Green Waste Containers.

### **8.3.3 Quarterly Reports**

Report should contain at a minimum the information required in the monthly report and the following:

- a) Complaint summary for the quarter summarized by nature of complaints on a compatible computer disc.
- b) Copies of promotional and public education materials sent during the quarter.
- c) Other information or reports that the City may reasonably request or require.

### **8.3.4 Annual Report**

The Annual Report is to be essentially in the form and content of the monthly and quarterly reports combined, but shall also include:

- a) A complete inventory of equipment used to provide all services (such as vehicles and Containers by size and waste stream type Container is used for).
- b) Results of route audits, including a summary of the number of Bins by size and service level, Cart counts by size (35, 64, or 96-gallon) and type of service (Refuse, Recycling, Green Waste, and Residential versus Commercial), and Rolloff Box pulls per month by material type.
- c) Environmental Litigation Defense records required under Section 8.2.4 (CERCLA Defense Records).
- d) Copy of Hazardous Waste diversion records showing types and quantities, if any, of Hazardous Waste that was inadvertently Collected, but diverted from landfilling.
- e) Number of routes and route hours per day by type of service.
- f) Results of contamination monitoring and follow up actions
- g) Its most recent BASIC Score determined by the Federal Motor Carrier Safety Administration.

- h) Any terminal inspection reports resulting from the California Highway Patrol's Basic Inspection of Terminals (BIT) program.

#### **8.3.5 Financial Report**

The City may, at the City's option, request the Company's annual audited financial reports/statements for the most recently completed fiscal year in connection with a rate adjustment, performance audit, billing audit, franchise fee audit, or verification of other information required under this Agreement. City shall pay for the direct cost of reproduction of such copies.

Financial statements shall include a supplemental combining schedule showing the Company's results of operations, including the specific revenues and expenses in connection with the operations provided for in this Agreement, separated from others included in such financial statements. The financial statements and footnotes shall be prepared in accordance with Generally Accepted Accounting Principles (GAAP) and audited, in accordance with Generally Accepted Auditing Standards (GAAS) by a certified public accountant (CPA) licensed (in good standing) to practice public accounting in the State of California as determined by the State of California Department of Consumer Affairs Board of Accountancy. The cost for preparation of the financial statements and audit shall be borne by the Company as a direct cost of service. In addition, the Company shall provide to the City the supplemental schedule on a compiled basis.

The Company shall, in its agreement with the CPA preparing the audit above, have its CPA make available to the City (or the City's designated representative) such CPA's working papers related to the audit. The cost, if any, incurred by the Company's CPA shall be included in the cost of the audit.

At the City's request, the Company shall provide the City with copies of working papers or other documentation deemed relevant by the City relating to information shown in the disclosure letter. The disclosure letter shall be provided to the City.

#### **8.4 Adverse Information**

A. Reporting Adverse Information. The Company shall provide the City three copies (one to the Public Works Director, one to the City Manager, and one to the City Attorney) of all reports, pleadings, applications,

notifications, Notices of Violation, communications or other material relating specifically to the Company's performance of services pursuant to this Agreement, submitted by the Company to, or received by the Company from, the United States or California Environmental Protection Agency, CalRecycle, the Securities and Exchange Commission or any other federal, state or local agency, including any federal or state court. Copies shall be submitted to the City simultaneously with the Company's filing or submission of such matters with said agencies. The Company's routine correspondence to said agencies need not be routinely submitted to the City, but shall be made available to the City promptly upon the City's written request.

B. Failure to Report. The refusal or failure of the Company to file any required reports, or to provide required information to the City, or the inclusion of any materially false or misleading statement or representation by the Company in such report shall be deemed a material breach of the Agreement as described in Section 11.1 (Events of Default) and shall subject the Company to all remedies which are available to the City under the Agreement or otherwise.

### **8.5 Right to Inspect Records**

The City shall have the right to inspect or review the payroll tax reports, specific documents or records required expressly or by inference pursuant to this Agreement, or any other similar records or reports of the Company or its related party entities that the City shall deem, in its sole discretion, necessary to evaluate annual reports, compensation applications provided for in this Agreement and the Company's performance provided for in this Agreement.

## 9 Indemnification, Insurance and Bond

### 9.1 Indemnification

The Company shall indemnify and hold harmless the City, its elected and appointed boards, commissions, officers, employees, and agents (collectively, Indemnitees) 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 or resulting from and in any way connected with (1) the negligence or willful misconduct of the Company, its officers, employees, agents, Companies and/or Subcontractors in performing services under this Agreement; (2) the failure of the Company, its officers, employees, agents, Companies and/or Subcontractors to comply in all respects with the provisions of this Agreement, Applicable Law (including, without limitation, the Environmental Laws), ordinances and regulations, and/or applicable permits and licenses; (3) the acts of the Company, 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). Subject to Public Resources Code 40059.1, the foregoing indemnity 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 Indemnitees negligence. The Company shall, upon demand of the City, at the Company's sole cost and expense, defend (with attorneys acceptable to the City) the Indemnitees 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.

The Company, upon demand of the City, made by and through the City Attorney, shall protect the City and appear in and defend the Indemnitees, 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" or the limits of the City's authority with respect to the grant of licenses, or agreements, exclusive or otherwise, asserting rights under the Dormant Commerce Clause or federal or state laws to provide Solid Waste services in the City. This provision shall survive the expiration of the period during which Collection services are to be provided under this Agreement. The City and the Company agree to confer following any trial to decide jointly whether to appeal or to oppose any appeal. In the event the City and the Company jointly agree to appeal, or to oppose

any appeal, the City and the Company agree to share equally the costs of appeals. Should either the City or the Company decide to appeal, or to oppose an appeal, and the other decide not to appeal, or to oppose an appeal, the party which decides to appeal, or to oppose an appeal, shall bear all fees and costs of the appeal or the opposition to the appeal.

The Company's duty to indemnify and defend from the aforementioned events arising during the term of the Agreement and as it may be extended shall survive the expiration or earlier termination of this Agreement.

## **9.2 Hazardous Substances Indemnification**

A. Without regard to any insurance coverage or requirements, and without limiting the above general indemnification obligation in any way, Company 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 Company that:

1. results in any demand, claim, notice, order, or lawsuit, asserting that any Indemnified Party is liable, responsible or in anyway obligated to investigate, assess, monitor, study, test, treat, remove, remediate, or otherwise cleanup, any Hazardous Contaminant (as defined in this Section 9.2); or
2. relates to material collected, transported, recycled, processed, treated or disposed of by Company.

B. Company's obligations pursuant to this section shall apply, without limitation, to:

1. Any Claims brought pursuant to or based on the provisions of 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. § 9601 et seq., the California 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;

2. 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 of Company of any facility;

3. 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 Company;

4. 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.

C. The foregoing indemnity and defense obligations shall apply irrespective of the negligence or willful misconduct of Company or any Affiliate of Company.

D. For purposes of this section, the term "Hazardous Contaminant" shall mean any "hazardous material," as that term is defined under California Health & Safety Code Section 25501(1); any "hazardous substance," as that term is defined in this Agreement or under California Health & Safety Code Sections 25281(f), 25501(e), 25501.1 and under Title 42, Section 9601(14) of the United States Code; any "hazardous waste," as that term is defined under Title 42, Section 6093(5) of the United States Code and under California Health & Safety Code Section 25550(m); 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.

E. 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.

F. In the event City directs Company to dispose of Solid Waste Collected pursuant to this Agreement at a facility designated by City, Company shall not be required to provide the indemnification set forth in this section with respect to Claims arising from allegations relating to the handling and/or disposal of such Solid Waste after it is delivered to a City designated facility (although this exception shall not apply to any other Claims relating to said Solid Waste); provided, however, this exception to the indemnification requirements of this section that would otherwise apply shall not apply in the event the City designated disposal facility in question is either owned or operated, in whole or part, by Company or any Affiliate.

### **9.3 AB 939 Indemnification**

A. To the extent authorized by law, Company shall indemnify and hold harmless the City from and against all fines and/ or penalties imposed by CalRecycle in the event the source reduction and Recycling goals or any other requirement of AB 939 are not met by the City with respect to the waste stream Collected under this Agreement.

B. Company warrants and represents that it is familiar with City's waste characterization study as set forth in City's SRRE, and that it has the ability to and will provide sufficient programs and services to ensure City will meet or exceed CalRecycle compliance with AB 939 and CalRecycle requirements (including, without limitation, amounts of Solid Waste to be diverted, time frames for diversion, and any other requirements) goal set forth in AB 939 and CalRecycle regulations, with respect to that portion of the Solid Waste generated in City that is the subject of this Agreement..

### **9.4 Insurance**

The City does not, and shall not, waive any rights against the Company which it may have by reason of the aforesaid hold harmless agreements, because of acceptance by the City or the deposit with the City by the Company of the insurance policies described in this provision.

A. Minimum Scope of Insurance. Coverage shall be at least as broad as:

1. The most recent editions of Insurance Services Office Commercial General Liability coverage ("occurrence" form CG 0001).
2. The most recent editions of Insurance Services Office form number CA 0001 covering Automobile Liability, code 1 "any auto" and endorsement CA 0025.
3. Workers' Compensation insurance as required by the Labor Code of the State of California and Employers Liability insurance.

B. Minimum Limits of Insurance. The Company shall maintain in force for the term of this Agreement limits no less than:

1. Comprehensive General Liability: Ten Million Dollars (\$10,000,000) limit for each person, with Ten Million Dollars (\$10,000,000) limit per occurrence, for bodily injury, personal injury and property damage.
2. Automobile Liability: Ten Million Dollars (\$10,000,000) per accident for bodily injury and property damage.
3. Workers' Compensation and Employers Liability: Workers' compensation limits as required by the Labor Code of the State of California and Employers Liability limits of One Million Dollars (\$1,000,000) per accident.
4. Minimum limits of insurance can be achieved through a combination of primary and excess liability policies.

C. Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions must be declared to and approved by the City. At the option of the City, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the Indemnitees; or the Company shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses in the amount of such deductibles or self-insured retentions.

D. Other Insurance Provisions. The policies are to contain, or be endorsed to contain, the following provisions:

1. General Liability and Automobile Liability Coverages

- a) The City of Rancho Santa Margarita and its officers and employees are to be named as additional insureds as respects: liability arising out of activities performed by or on behalf of the Company; products and completed operations of the Company; Premises owned, leased or used by the Company; or vehicles owned, leased, hired or borrowed by the Company. The coverage shall contain no limitations on the scope of protection afforded to the City of Rancho Santa Margarita, its elective and appointive boards, commissions, officials, employees, agents or volunteers.
- b) The Company's insurance coverage shall be primary insurance as respects the Indemnitees. Any insurance or self-insurance maintained by the City, its officials, elective and appointive boards, commissions, employees, agents or volunteers shall be excess of the Company's insurance and shall not contribute with it.
- c) Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the Indemnitees.
- d) Coverage shall state that the Company's insurance shall apply separately to each insured against whom a claim is made or suit is brought, except with respect to the limits of the insurer's liability.

2. Workers' Compensation and Employers Liability Coverage - The insurer shall agree to waive all rights of subrogation against the Indemnitees for losses arising from work performed by the Company for the City.

3. All Coverages - Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the City.

E. Acceptability of Insurers. The insurance policies required by this section shall be issued by an insurance company or companies authorized to do business in the State of California and with a rating in the most recent edition of Best's Insurance Reports of size category VII or larger and a rating classification of A or better, except that City may accept a rating classification of B or better for Workers' Compensation insurance only.

F. Verification of Coverage. The Company shall furnish the City with certificates of insurance and with original endorsements affecting coverage required by this clause. The certificates and endorsements for each insurance policy are to be signed by a Person authorized by that insurer to bind coverage on its behalf. The certificates and endorsements are to be on forms provided by or acceptable to the City and are to be received and approved by the City before work commences. The City reserves the right to require complete, certified copies of all required insurance policies, at any time.

Company shall furnish renewal certificates annually to the City to demonstrate maintenance of the required coverage throughout the term of this Agreement.

G. Companies and Subcontractors. The Company shall include all other companies and Subcontractors Company engages to provide services to the City as insureds under its policies or shall furnish separate certificates and endorsements for each other company and Subcontractor. All coverages for companies and Subcontractors shall be subject to all of the requirements stated in this Agreement.

H. Required Endorsements

1. The Workers' Compensation policy shall contain an endorsement in substantially the following form:

"Thirty (30) days prior written notice by certified mail, return receipt requested, shall be given to the City in the event of cancellation, reduction in coverage, or non-renewal of this policy. Such notice shall be sent to:

Public Works Director  
City of Rancho Santa Margarita  
22112 El Paseo  
Rancho Santa Margarita, CA 92688

2. The General Liability and Auto Liability policies shall contain endorsements in substantially the following form:

a) "Thirty (30) days prior written notice shall be given to the City in the event of cancellation, reduction in coverage, or non-renewal of this policy. Such notice shall be sent to:

Director of Public Works  
City of Rancho Santa Margarita  
22112 El Paseo  
Rancho Santa Margarita, CA 92688

b) "The City, its officers, elective and appointive boards, commissions, employees, and agents are additional insureds on this policy."

c) "This policy shall be considered primary insurance as respects any other valid and collectible insurance maintained by the City, including any self-insured retention or program of self-insurance, and any other such insurance shall be considered excess insurance only."

d) "Inclusion of the City as an insured shall not affect the City's rights as respects any claim, demand, suit or judgment brought or recovered against the Company. This policy shall protect the Company and the City in the same manner as though a separate policy had been issued to each, but this shall not operate to increase the Company's liability as set forth in the policy beyond the amount shown or to which the Company would have been liable if only one party had been named as an insured."

## I. Other Insurance Requirements

1. In the event any services are delegated to another company or Subcontractor, the Company shall require such company or Subcontractor to provide statutory workers' compensation insurance and employer's liability insurance for all of the other company or Subcontractor's employees engaged in the work in accordance with this section. The liability insurance required by this Section 9.4 shall cover all company or Subcontractors or the company or Subcontractor must furnish evidence of insurance that meets all of the requirements of this section.

2. The Company shall comply with all requirements of the insurers issuing policies. The carrying of insurance shall not relieve the Company from any obligation under this Agreement. If any claim exceeding the amount of any deductibles or self-insured reserves is made by any third Person against the Company or any company or Subcontractor on account of any occurrence related to this Agreement, the Company shall promptly report the facts in writing to the insurance carrier and to the City.

If the Company fails to procure and maintain any insurance required by this Agreement, the City may take out and maintain, at the Company's expense, such insurance as it may deem proper and deduct the cost thereof from any moneys due the Company.

### **9.5 Faithful Performance Bond**

Concurrently with execution of this Agreement, the Company shall deliver to the City a performance bond, from an admitted surety insurer, in the amount of \$375,000, (Three Hundred Seventy-five Thousand Dollars), similar to the form provided in Exhibit 4, which secures the faithful performance of this Agreement, including, without limitation, payment of any penalty and the funding of any work to cure a breach of this Agreement. The bond shall contain the original notarized signature of an authorized officer of the surety and affixed thereto shall be a certified and current copy of his power of attorney. The bond shall be unconditional and remain in force during the entire term of the Agreement and shall be null and void at the conclusion of the term of this Agreement only if the Company promptly and faithfully performs all terms and conditions of this Agreement.

### **9.6 Forfeiture of Performance Bond**

In the event the Company shall for any reason become unable to, or fail in any way to, perform as required by this Agreement, the City may declare a portion or all of the performance bond which is necessary to recompense and make whole the City. In that event, the amount of the declared portion of the performance bond shall be forfeited to the City. Upon partial or full forfeiture of the performance bond, the Company shall restore the performance bond to its face amount within 30 days of the City's declaration. Failure to restore the performance bond to its full amount within 30 days shall be a material breach of contract.

## **9.7 Letter of Credit**

In addition to a corporate surety bond as noted in Section 9.5 above, Company shall furnish an irrevocable letter of credit drawn upon a financial institution with an office within one hundred (100) miles of City in the amount of One Hundred Twenty-five Thousand Dollars (\$125,000), in a form acceptable to the City attorney as security for the performance of this Agreement (the "LOC"). The LOC shall be the sole responsibility of Company, and shall be released within thirty days after both (i) the expiration of the term of this Agreement, or upon the earlier termination hereof; and (ii) Company's satisfactory performance of all obligations hereunder.

## **9.8 Forfeiture of Letter of Credit**

Thirty (30) days following City providing Company with written notice of its failure to pay City any amount owing under this Agreement, the LOC may be drawn upon by City for purposes including, but not limited to:

- a. Payment of sums due under the terms of this Agreement which Company has failed to timely pay to City.
- b. Reimbursement of costs borne by City to correct violations of this Agreement not corrected by Company.

City may draw upon the entire Letter of Credit and convert it to a cash deposit if Company fails to cause the Letter of Credit to be extended or replaced with another satisfactory letter of credit no later than 60 days prior to its expiration during the term of this Agreement.

## 10 City's Right to Perform Service

### 10.1 General

In addition to, but not in lieu of, any other rights or remedies City might have under this Agreement, at law or in equity, in the event that the Company, for any reason whatsoever, fails, refuses or is unable to Collect, Recycle, process, transport or dispose of any or all Solid Waste which it is required by this Agreement, at the time and in the manner provided in this Agreement, for a period of more than forty-eight (48) hours, and if, as a result, Solid Waste should accumulate in the City to such an extent, in such a manner, or for such a time that the City should find that such accumulation endangers or menaces the public health, safety or welfare, then the City shall have the right, but not the obligation, upon notice to the Company during the period of such emergency as determined by the City, as set forth in this Agreement, (1) to perform, or cause to be performed, such services itself with its own or other personnel without liability to the Company; and/or (2) to take possession of any or all of the Company's land, equipment and other property used or useful in the Collection and transportation of Solid Waste, and to use such property to Collect and transport any Solid Waste generated within the City which the Company would otherwise be obligated to Collect, transport and properly dispose of or process pursuant to this Agreement.

Notice of the Company's failure, refusal or neglect to Collect, transport and properly dispose of or process Solid Waste may be given orally by telephone to the Company at its principal office and shall be effective immediately. Written confirmation of such oral notification shall be sent to the Company within twenty-four (24) hours of the oral notification.

The Company further agrees that in such event:

- A. It will take direction from the City to effect the transfer of possession of equipment and property to the City for the City's use.
- B. It will, if the City so requests, keep in good repair and condition all of such equipment and property, provide all motor vehicles with fuel, oil and other service, and provide such other service as may be necessary to maintain said property in operational condition.

C. The City may immediately engage all or any personnel necessary or useful for the Collection and transportation of Solid Waste, including, if the City so desires, employees previously or then employed by the Company. The Company further agrees, if the City so requests, to furnish the City the services of any or all management or office Personnel employed by the Company whose services are necessary or useful for Solid Waste Collection, transportation, processing and Disposal operations and for the billing and Collection of fees for these services.

The City agrees that it assumes complete responsibility for the proper and normal use of such equipment and facilities while in its possession.

If the interruption or discontinuance in service is caused by any of the reasons listed in Section 11.4 (Excuse from Performance), the City shall pay to the Company the reasonable rental value of the equipment and facilities, possession of which is taken by the City, for the period of the City's possession, if any, which extends beyond the period of time for which the Company has rendered bills in advance of service, for the class of service involved.

### **10.2 Billing and Compensation to the City During the City's Possession**

During such time that the City is providing Solid Waste services, as above provided, the Company shall bill and collect payment from all users of the above-mentioned services as described in Section 5.1 (Services and Customer Billing). The Company further agrees that, in such event, it shall reimburse the City for any and all costs and expenses incurred by the City beyond that billed and received by the City in taking over possession of the above-mentioned equipment and property for Solid Waste service in such manner and to an extent as would otherwise be required of the Company under the terms of this Agreement. Such reimbursement shall be made from time to time after submission by the City to the Company of each statement listing such costs and expenses, but in no event later than five (5) working days from and after each such submission.

### **10.3 City's Right to Relinquish Possession**

It is further mutually agreed that the City may at any time at its discretion relinquish possession of any or all of the above-mentioned property to the Company and thereupon demand that the Company resume the Solid Waste

services as provided in this Agreement, whereupon the Company shall be bound to resume the same.

#### **10.4 City's Possession Not A Taking**

Except as otherwise expressly provided in the previous paragraph, the City's exercise of its rights under this Article 10 (1) does not constitute a taking of private property for which compensation must be paid; (2) will not create any liability on the part of the City to the Company; and (3) does not exempt the Company from the indemnity provisions of Article 9 (Indemnification, Insurance and Bond), which are meant to extend to circumstances arising under this section, provided that the Company is not required to indemnify the City against claims and damages arising from the sole negligence of the City, its elective and appointive boards, commissions, officers, employees and agents in the operation of Collection vehicles during the time the City has taken possession of such vehicles.

#### **10.5 Duration of the City's Possession**

The City's right pursuant to this Article to retain temporary possession of the Company's facilities and equipment, and to render Collection services, shall terminate when the City determines that such services can be resumed by the Company, or when the City no longer reasonably requires such property or equipment. In any case, the City has no obligation to maintain possession of the Company's property or equipment and/or continue its use for any period of time and may at any time, in its sole discretion, relinquish possession to the Company.

## 11 Default, Remedies and Liquidated Damages

### 11.1 Events of Default

All provisions of this Agreement to be performed by the Company are considered material. Each of the following shall constitute an event of default.

- A. Fraud or Deceit or Misrepresentation. If the Company engages in, or attempts to practice, any fraud or deceit upon the City or makes a misrepresentation regarding material information to the City.
- B. Insolvency or Bankruptcy. If the Company becomes insolvent, unable, or unwilling to pay its debts, files a bankruptcy petition or takes steps to liquidate its assets.
- C. Failure to Maintain Coverage. If the Company fails to provide or maintain in full force and effect the Workers' Compensation, liability, or indemnification coverage as required by this Agreement.
- D. Violations of Regulation. If the Company violates any orders or filings of any regulatory body having jurisdiction over the Company or City relative to this Agreement, provided that the Company may contest any such orders or filings by appropriate proceedings conducted in good faith, in which case no breach of the Franchise and this Agreement shall be deemed to have occurred until a final decision adverse to the Company is entered.
- E. Failure to Perform. If the Company ceases to provide Collection, processing or Recycling services as required under this Agreement over all or a substantial portion of its Franchise area for a period of two (2) consecutive days or more, for any reason within the control of the Company, including labor disputes.
- F. Failure to Pay. If the Company fails to make any payments required under this Agreement and/or refuses to provide the City, within ten (10) days of the demand therefor, with required information, reports, and/or records in a timely manner as provided for in the Agreement.

G. Acts or Omissions. Any other act or omission by the Company which violates the terms, conditions, or requirements of this Agreement, AB 939, any Environmental law as it may be amended from time to time, or any law, statute, ordinance, order, directive, rule, or regulation issued thereunder and which is not corrected or remedied within the time set in the written notice of the violation or, if the Company cannot reasonably correct or remedy the breach within the time set forth in such notice, if the Company should fail to commence to correct or remedy such violation within the time set forth in such notice and diligently effect such correction or remedy thereafter. This section is intended to apply to any situation in which Company or any of its officers, directors or employees are found guilty of any crime related to the performance of this Agreement, or of any crime related to anti-trust activities, illegal transport or Disposal of hazardous or toxic materials, or bribery of public officials. The term "found guilty" shall be deemed to include any judicial determination that Company or any of Company's officers, directors or employees is guilty as well as any admission of guilt by Company or any of Company's officers, directors or employees including, but not limited to, the plea of "guilty", "nolo contendere", "no contest", and "guilty to a lesser charge."

H. False or Misleading Statements. Any representation or disclosure made to the City by the Company in connection with or as an inducement to entering into this Agreement, or any future amendment to this Agreement, which proves to be false or misleading in any material respect as of the time such representation or disclosure is made, whether or not any such representation or disclosure appears as part of this Agreement.

I. Attachment. There is a seizure of, attachment of, or levy on, the operating equipment of the Company, including without limits its equipment, maintenance or office facilities, or any part thereof.

J. Suspension or Termination of Service. There is any termination or suspension of the transaction of business by the Company, including without limit, due to labor unrest including strike, work stoppage or slowdown, sick-out, picketing, or other concerted job action lasting more than two (2) consecutive days.

K. Failure to Provide Assurance of Performance. If the Company fails to provide reasonable assurances of performance as required under Section 11.6. Company shall be given forty-eight (48) hours from notification by the City to cure any default arising under subsections E, F, I, J and K provided,

however, that the City shall not be obligated to provide the Company with a notice and cure opportunity if the Company has committed the same or similar breach within a twenty-four (24) month period.

## **11.2 Right to Terminate Upon Default**

Upon a default by the Company, the City shall have the right to terminate this Franchise and this Agreement upon a ten (10) days notice if the public health or safety is threatened, or otherwise a thirty (30) days notice, but without the need for any hearing, suit or legal action.

The City's rights to terminate this Agreement, or to take possession of the Company's Facility are not exclusive, and the City's termination of this Agreement shall not constitute an election of remedies. Instead, they shall be in addition to any and all other legal and equitable rights and remedies which the City may have.

By virtue of the nature of this Agreement, the urgency of timely continuous and high- quality service, the time required to effect alternative service, and the rights granted by the City to the Company, the remedy of damages for a breach hereof by the Company is inadequate and the City shall be entitled in injunctive relief.

## **11.3 Liquidated Damages**

A. General. The City finds, and the Company agrees, that as of the time of the execution of this Agreement, it is impractical, if not impossible, to reasonably ascertain the extent of damages which shall be incurred by the City as a result of a breach by the Company of its obligations under this Agreement. The factors relating to the impracticability of ascertaining damages include, but are not limited to, the fact that: (i) substantial damage results to members of the public who are denied services or denied quality or reliable service; (ii) such breaches cause inconvenience, anxiety, frustration, and deprivation of the benefits of the Agreement to individual members of the general public for whose benefit this Agreement exists, in subjective ways and in varying degrees of intensity which are incapable of measurement in precise monetary terms; (iii) the services provided under this Agreement might be available at substantially lower costs than alternative services and the monetary loss resulting from denial of services or denial of quality or reliable services is impossible to calculate in precise monetary terms; and (iv) the termination of

this Agreement for such breaches, and other remedies are, at best, a means of future correction and not remedies which make the public whole for past breaches.

B. Service Performance Standards; Liquidated Damages for Failure to Meet Standards. The parties further acknowledge that consistent, reliable Solid Waste Collection service is of utmost importance to the City and that the City has considered and relied on the Company's representations as to its quality of service commitment in awarding the Franchise to it. The parties further recognize that some quantified standards of performance are necessary and appropriate to ensure consistent and reliable service and performance. The parties further recognize that if the Company fails to achieve the performance standards, or fails to submit required documents in a timely manner, the City and its residents will suffer damages and that it is and will be impractical and extremely difficult to ascertain and determine the exact amount of damages which the City will suffer. Therefore, without prejudice to the City's right to treat such non-performance as an event of default under this Article 11, the parties agree that the following liquidated damage amounts represent a reasonable estimate of the amount of such damages considering all of the circumstances existing on the date of this Agreement, including the relationship of the sums to the range of harm to the City that reasonably could be anticipated and the anticipation that proof of actual damages would be costly or impractical. In placing their initials at the places provided, each party specifically confirms the accuracy of the statements made above and the fact that each party has had ample opportunity to consult with legal counsel and obtain an explanation of the liquidated damage provisions at the time that the Agreement was made.

Company      City

Initial Here      Initial Here

The Company shall pay (as liquidated damages and not as a penalty) the amounts set forth below:

1. Collection Reliability

- a) For each failure to commence service to a new Customer account within seven (7) days after order, which exceed five (5) such failures annually: \$150
- b) For each failure to Collect Solid Waste, which has been properly set out for Collection, from an established Customer account on the scheduled Collection day (missed pickup) and not Collected within one business day of the original collection day, which exceeds five (5) such failures annually: \$150
- c) For each failure to Collect Solid Waste, which has been properly set out for Collection, from the same Customer on two (2) consecutive scheduled pickup days: \$150
- d) For each day the Company Collects from a Customers outside of authorized Collection hours as defined in Section 4.7.1 (Schedules): \$250/day
- e) For each day collection is delayed during the week following a holiday, beyond the one day delay permitted per Section 4.7.1 (Schedules) (for example, Monday holidays permit Monday collections to take place on Tuesday, and each Collection day for the remainder of the week may be delayed only one day. If any portion of Monday's Collections take place on Wednesday, or if any of Tuesday's Collections take place on Thursday, etc., then liquidated damages apply to each impermissibly delayed day of collection): \$2,000 per day

## 2. Collection Quality

- a) For each occurrence of failure to properly return empty Containers to avoid pedestrian or vehicular traffic impediments which exceeds ten (10) such occurrences annually: \$150
- b) For each failure to clean up Solid Waste spilled from Solid Waste Containers within 90 minutes that exceeds five (5) such failures annually: \$150

- c) For each failure to clean or replace commercial and industrial Containers in accordance with Section 4.7.4.3 (Bins) of this Agreement which exceeds five (5) such failures annually: \$150
- d) For each failure to deliver a Rolloff Box within two (2) business days of a Customer's request: \$ 50
- e) For each occurrence of excessive noise or discourteous behavior: \$250
- f) For each failure to lock bins or close bin enclosures that exceed five (5) such failures annually: \$150
- g) For failure to have at least 90% of Single-family Customers express satisfaction in response to the survey question listed in Section 7.2 (Performance Satisfaction Survey), when surveyed by Company upon City's request:

Per each percentage point short of 90 % - \$1,000

(example: 87% of respondents express satisfaction equals \$3,000 liquidated damages payment)

- h) For failure to have at least 80% of Multi-family/Commercial Customers express satisfaction in response to the survey question listed in Section 7.2, when surveyed by Company upon City's request:

Per each percentage point short of 80% - \$1,000

(example: 77% of respondents express satisfaction equals \$3,000 liquidated damages payment)

### 3. Customer Responsiveness

- a) For each failure to initially respond to a Customer complaint within one (1) business day in accordance with Section 5.2.3 (Resolution of Customer

Complaints), and for each additional business day in which the complaint is not addressed: \$100

b) For each failure to resolve a Customer complaint within five (5) business days in accordance with Section 5.2.3 (Resolution of Customer Complaints): \$500

c) For each failure to remove graffiti from Containers, or to replace with Containers bearing no graffiti, within two business days of request from City or Customers: \$150

d) For each complaint received from more than 0.50% of the total residential and commercial Customer base within a six (6) month period:

\$ 25

#### 4. Reporting

a) For each occurrence of failure to maintain records required under this Agreement: \$1,000

Any report shall be considered late until such time as a correct and complete report is received by the City. For each calendar day a report is late, the daily liquidated damage amount shall be:

b) Monthly Reports: \$100 per day

c) Quarterly Reports: \$250 per day

d) Annual Reports: \$350 per day

e) Annual Diversion Reporting requirements, including calculations and supporting documentation: \$500.00 per day.

#### 5. Accuracy of Billing

- a) Each Customer invoice that is not prepared in accordance with the City's approved rate schedule: \$250
- b) Each occurrence in which a service address is "double billed" with multiple invoices sent to different billing addresses (for examples, both a tenant and an off-site property Owner are billed for service at the same location):

\$250

## 6. Implementation of Public Education Plan

- a) Each day past the agreed upon deadline that the Company fails to perform a task set forth in its public education plan. \$100 per day

Liquidated damages will only be assessed after the Company has been given the opportunity but failed to rectify the damages as described in this Agreement.

The City may determine the occurrence of events giving rise to liquidated damages through the observation of its own employees or representative or investigation of Customer complaints.

## 7. Diversion Requirements

The Company shall pay a penalty to City of Twenty Thousand (\$20,000) for each year in which the Company fails to divert and/or cannot provide documentation verifying that diversion requirements, as established by the State of California and CalRecycle, were achieved. Payment of this penalty is due within thirty days of the end of each calendar year, along with documentation stating and supporting that year's diversion, and is subject to the late payment provisions as applied of Section 3.1.2 (Time and Method of Franchise Fee Payment).

Prior to assessing liquidated damages, the City shall give the Company notice of its intention to do so. The notice will include a brief description of the incident(s)/non-performance. The Company may review (and make copies at its own expense) all non-confidential information in the possession of the City relating to incident(s)/non-performance. The Company may, within ten (10)

business days after receiving the notice, request a meeting with the City Manager or his or her designee. The Company may present evidence in writing and through testimony of its employees and others relevant to the incident(s)/non-performance. The City Manager or his or her designee will provide the Company with a written explanation of his or her determination on each incident(s)/non-performance prior to authorizing the assessment of liquidated damages. The decision of the City Manager or his designee shall be final.

C. Amount. The City may assess liquidated damages for each calendar day or event, as appropriate, that the Company is determined to be liable in accordance with this Agreement.

D. Timing of Payment. The Company shall pay any liquidated damages assessed by the City within ten (10) days after they are assessed. If they are not paid within the ten (10) day period, the City may proceed against the performance bond required by the Agreement or order the termination of the Franchise granted by this Agreement, or exercise any other right or remedy available to City under this Agreement or at law or in equity, or any combination of these remedies.

#### **11.4 Excuse from Performance**

The parties shall be excused from performing their respective obligations in this Agreement in the event they are prevented from so performing by reason of floods, earthquakes, other natural disasters, war, civil insurrection, riots, acts of any government (including judicial action), and other similar catastrophic events which are beyond the control of and not the fault of the party claiming excuse from performance hereunder. Labor unrest, including but not limited to strike, work stoppage or slowdown, sick-out, picketing, or other concerted job action conducted by the Company's employees or directed at the Company is not an excuse from performance and the Company shall be obligated to continue to provide service notwithstanding the occurrence of any or all of such events.

The party claiming excuse from performance shall, within two (2) days after such party has notice of such cause, give the other party notice of the facts constituting such cause and asserting its claim to excuse under this section.

The interruption or discontinuance of the Company's services caused by one or more of the events excused shall not constitute a default by the Company under this Agreement. Notwithstanding the foregoing, however, if the Company is excused from performing its obligations hereunder for any of the causes listed in this section for a period of seven (7) days or more, the City shall nevertheless have the right, in its sole discretion, to terminate this Agreement by giving ten (10) days' notice, in which case the provisions relative to taking possession of the Company's land, equipment and other property and engaging the Company's Personnel in Article 10 (Default, Remedies And Liquidated Damages) and this Article 11, will apply.

### **11.5 Arbitration**

Any dispute arising out of or relating to this Agreement, which dispute involves claims or controversies having no monetary value, or are in an amount or amounts, if combined, not exceeding \$25,000, shall be first mediated between the parties. The party making demand for mediation shall select a panel of three (3) mediators from those mediators listed and approved by the local Superior Court of jurisdiction, and the party not selecting the panel shall choose one (1) of the listed mediators who shall serve in that capacity. The parties shall share equally in the cost and expense of the mediation.

Any dispute arising out of or relating to this Agreement, which dispute involves claims or controversies, having a monetary value in an amount or amounts, if combined, not exceeding \$25,000, which dispute was not resolved by mediation as required in this Agreement, shall be decided by arbitration in accordance with the commercial rules of the American Arbitration Association then pertaining, unless the parties agree otherwise and consent, in writing, to a different method of dispute resolution, including mediation or judicial arbitration.

Any dispute arising out of or relating to this Agreement, which dispute involves claims or controversies in an amount or amounts, if combined, exceeding \$25,000, shall not involve arbitration, or any other method of dispute resolution, unless the parties agree otherwise and consent, in writing, but shall instead be brought in a court of competent jurisdiction in the County of Orange, State of California.

Venue for any action, including those actions subject to arbitration, shall be Orange County. Company hereby expressly waives any right to remove any

such action to a County other than Orange County otherwise provided by California Code of Civil Code of Civil Procedure Section 394.

Notice of the demand for arbitration is to be filed in writing with the other party to this Agreement and with the American Arbitration Association. The demand is to be made within a reasonable period of time after the claim, dispute, or other matter in controversy has arisen. In no event, however, is the demand for arbitration to be made after the date when institution of legal or equitable proceedings based on such claim, dispute or other matter in controversy would be barred by the applicable statute of limitations.

Any award rendered by the arbitrator shall be final and judgment may be entered upon it in accordance with Applicable Law in any court having jurisdiction thereof.

#### **11.6 Assurance of Performance**

The City may, at its option and in addition to all other remedies it may have, demand from the Company reasonable assurances of timely and proper performance of this Agreement, in such form and substance as the City may require. If the Company fails or refuses to provide satisfactory assurances of timely and proper performance in the form and by the date required by the City, such failure or refusal shall be an event of default.

## **12 Other Agreements of the Parties**

### **12.1 Relationship of Parties**

The parties intend that the Company shall perform the services required by this Agreement as an independent Company engaged by the City and not as an officer or employee of the City nor as a partner of or joint venture with the City. No employee or agent or Company shall be or shall be deemed to be an employee or agent of the City. Except as expressly provided in this Agreement, the Company shall have the exclusive control over the manner and means of conducting the Solid Waste Collection services performed under this Agreement, and all Persons performing such services. The Company shall be solely responsible for the acts and omissions of its officers, employees, Companies, Subcontractors, Affiliates and agents. Neither the Company nor its officers, employees, Companies, Subcontractors, Affiliates and agents shall obtain any rights to retirement benefits, workers' compensation benefits, or any other benefits which accrue to the City employees by virtue of their employment with the City.

### **12.2 Compliance with Law**

In providing the services required under this Agreement, the Company shall at all times, at its sole cost, comply with all Applicable Law and regulations of the United States, the State of California, and local agencies. The City shall comply with all applicable regulations promulgated by federal, state, regional or local administrative and regulatory agencies, now in force and as they may be enacted, issued or amended during the term of this Agreement.

### **12.3 Governing Law**

This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of California.

### **12.4 Jurisdiction**

Any lawsuits between the parties arising out of this Agreement shall be brought and concluded in the courts of the State of California, which shall have exclusive jurisdiction over such lawsuits.

With respect to venue, the parties agree that this Agreement is made in and will be performed in Orange County.

## **12.5 Assignment**

Except as may be provided for in Article 10 (City's Right to Perform Service), neither party shall assign its rights, nor delegate, subcontract or otherwise transfer its obligations under this Agreement to any other Person without the prior written consent of the other party. Any such assignment made without the consent of the other party shall be void and the attempted assignment shall constitute a material breach of this Agreement.

For purposes of this section when used in reference to the Company, "assignment" shall include, but not be limited to (i) a sale, exchange or other transfer of substantially all of the Company's assets dedicated to service under this Agreement to a third party; (ii) a sale, exchange or other transfer of outstanding common stock of the Company to a third party provided said sale, exchange or transfer may result in a change of control of the Company; (iii) any dissolution, reorganization, consolidation, merger, re-capitalization, stock issuance or re-issuance, voting trust, pooling agreement, escrow arrangement, liquidation or other transaction to which results in a change of Ownership or control of the Company; (iv) any assignment by operation of law, including 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 the Company'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 the Company.

The Company acknowledges that this Agreement involved rendering a vital service to the City's residents and businesses, and that the City has selected the Company to perform the services specified in this Agreement based on (1) the Company's experience, skill and reputation for conducting its operations 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) the Company's financial resources to maintain the required equipment and to support its indemnity obligations to the City under this Agreement. The City has relied on each of these factors, among others, in choosing the Company to perform the services to be rendered by the Company under this Agreement.

If the Company requests the City's consideration of and consent to an assignment, the City may deny or approve such request in its complete discretion. No request by the Company for consent to an assignment need be considered by the City unless and until the Company has met the following requirements:

- a) The Company shall undertake to pay the City its reasonable expenses for attorney's fees and investigation costs necessary to investigate the suitability of any proposed assignee, and to review and finalize any documentation required as a condition for approving any such assignment;
- b) The Company shall pay the City a transfer fee equal to 1% of the gross revenues times the number of years (pro-rated for partial years) remaining under this Agreement;
- c) The Company shall furnish the City with audited financial statements of the proposed assignee's operations for the immediately preceding three (3) operating years;
- d) The Company shall furnish the City with satisfactory proof: (i) that the proposed assignee has at least ten (10) years of Solid Waste management experience on a scale equal to or exceeding the sale of operations conducted by the Company under this Agreement; (ii) that in the last five (5) years, the proposed assignee has not suffered any significant citations or other censure from any federal, state or local agency having jurisdiction over its Solid Waste management operations due to any significant failure to comply with state, federal or local Environmental Laws and that the assignee has provided the City with a complete list of such citations and censures; (iii) that the proposed assignee has at all times conducted its operations in an environmentally safe and conscientious fashion; (iv) that the proposed assignee conducts its Solid Waste management practices in accordance with sound Solid Waste management practices in full compliance with all federal, state and local laws regulating the Collection and Disposal of Solid Waste including Hazardous Substances; and, (v) of any other information required by the City to ensure the proposed assignee can fulfill the terms of this Agreement in a timely, safe and effective manner.

Under no circumstances shall the City be obliged to consider any proposed assignment by the City if the Company is in default at any time during the period of consideration.

## **12.6 Affiliated Companies**

The Company's accounting records shall be maintained on a basis showing the results of the Company's operations under this Agreement separately from operations in other locations, as if the Company were an independent entity providing service only to the City. The costs and revenues associated with providing service to the City shall not be combined, consolidated or in any other way incorporated with those of other operations conducted by the Company in other locations, or with those of an Affiliate.

If the Company enters into any financial transactions with an Affiliate for the provision of labor, equipment, supplies, services, capital, etc., related to the furnishing of service under this Agreement, that relationship shall be disclosed to the City, and in the financial reports submitted to the City. In such event, the City's rights to inspect records, and obtain financial data shall extend to such Affiliates.

Any application for a change of ownership, control, or a franchise transfer shall be made in a manner prescribed by the City Manager. The application shall include a transfer fee in an amount to be set by a resolution of the City Council, to cover the reasonable costs of all direct and indirect administrative expenses of the City, including, without limitation, consultants and attorneys, necessary to analyze the application and to reimburse the City for all its direct and indirect expenses. The applicant shall pay such invoices prior to any authorized change of ownership or franchise transfer becoming effective.

## **12.7 Contracting or Subcontracting**

The Company shall not engage any companies or Subcontractors for Collection, transfer, processing, Recycling or Disposal of Solid Waste without the prior written consent of the City.

## **12.8 Binding on Assigns**

The provisions of this Agreement shall inure to the benefit of and be binding on the permitted assigns of the parties.

## **12.9 Parties in Interest**

Nothing in this Agreement, whether express or implied, is intended to confer any rights on any Persons other than the parties to it and their representatives, successors and permitted assigns.

## **12.10 Waiver**

The waiver by either party of any breach or violation of any provisions of this Agreement shall not be deemed to be a waiver of any breach or violation of any other provision nor of any subsequent breach or violation of the same or any other provision. The subsequent acceptance by either party of any moneys which become due hereunder shall not be deemed to be a waiver of any pre-existing or concurrent breach or violation by the other party of any provision of this Agreement.

## **12.11 The Company's Investigation**

The Company has made an independent investigation (satisfactory to it) of the conditions and circumstances surrounding the Agreement and the work to be performed by it.

## **12.12 Condemnation**

The City fully reserves the rights to acquire the Company's property utilized in the performance of this Agreement, by purchase or through the exercise of the right of eminent domain. This provision is additive, and not intended to alter the rights of the parties set forth in Article 10 (City's Right to Perform Service).

## **12.13 Notice**

All notices, demands, requests, bids, proposals, approvals, consents and other communications which this Agreement requires, authorizes or contemplates shall be in writing and shall either be personally delivered to a representative of the parties at the address below or be deposited in the United States mail, first class postage prepaid, addressed as follows:

If to the City:

Public Works Director  
City of Rancho Santa Margarita  
22112 El Paseo  
Rancho Santa Margarita, CA 92688

If to the Company by regular U.S. mail:

Senior Vice President  
CR&R Incorporated  
P.O. Box 125  
San Juan Capistrano, CA 92683

If to the Company by certified-or overnight mail:

Senior Vice President  
CR&R Incorporated  
11292 Western Avenue  
Stanton, CA 90680

The address to which communications may be delivered may be changed from time to time by a written notice given in accordance with this section. Notice shall be deemed given on the day it is personally delivered or, if mailed, three days from the date it is deposited in the mail.

#### **12.14 Representatives of the Parties**

References in this Agreement to the "City" shall mean the City Council and all actions to be taken by the City shall be taken by the City Council except as provided below. The City Council may delegate, in writing, authority to the City Manager, and/or to other City employees and may permit such employees, in turn, to delegate in writing some or all of such authority to subordinate employees. The Company may rely upon actions taken by such delegates if they are within the scope of the authority properly delegated to them.

The Company shall, by the effective date, designate in writing a responsible officer who shall serve as the representative of the Company in all matters related to the Agreement and shall inform the City in writing of such designation and of any limitations upon his or her authority to bind the Company. The City may rely upon action taken by such designated representative as actions of

the Company unless they are outside the scope of the authority delegated to him/her by the Company as communicated to the City.

### **12.15 City Free to Negotiate with Third Parties**

Notwithstanding the exclusive nature of the Franchise, the City may investigate all options for the Collection, transporting, Recycling, processing and Disposal of Solid Waste at any time prior to the expiration of the term of this Agreement. Without limiting the generality of the foregoing, the City may solicit bids from the Company and from third parties for the provision of Collection services, Disposal services, Recycling services, Green Waste services and processing, and any combination thereof, and may negotiate and execute agreements for such services which will take effect upon the expiration or earlier termination under Section 11.1 (Events of Default) of this Agreement.

### **12.16 Compliance with Municipal Code**

The Company shall comply with those provisions of the municipal code of the City which are applicable, and with any and all amendments to such applicable provisions during the term of this Agreement.

### **12.17 Privacy**

The Company shall strictly observe and protect the rights of privacy of Customers. Information identifying individual Customers or the composition or contents of a Customer's waste stream shall not be revealed to any Person, governmental unit, private agency, or company, unless upon the authority of a court of law, by statute, or upon valid authorization of the Customer. This provision shall not be construed to preclude the Company from preparing, participating in, or assisting in the preparation of waste characterization studies or waste stream analyses which may be required by AB 939. This provision shall not apply to reports or records provided to City pursuant to this Agreement so long as City maintains reports or records with Customer identification or confidential information in accordance with this section, in which case this section shall apply to City in the same manner to which it applies to Company.

### **12.18 Cooperation Following Termination**

At the end of the term of this Agreement, or in the event this Agreement is terminated for cause prior to the end of the term, the Company covenants to

cooperate fully with the City and any subsequent company to assure a smooth transition of Solid Waste management services. The Company's cooperation shall include, but not be limited to, providing operating records needed to service all properties 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.

#### **12.19 Compliance with Immigration Laws.**

The Company agrees that, in the performance of this Agreement, it will comply with all immigration laws.

#### **12.20 Proprietary Information, Public Records**

The City acknowledges that a number of the records and reports of the Company are proprietary and confidential. The Company is obligated to permit the City inspection of its records on demand and to provide copies to the City where requested. The City will endeavor to maintain the confidentiality of all proprietary information provided by the Company. Notwithstanding the foregoing, and notwithstanding Section 12.18 (Privacy) (as it applies to City), any documents provided by the Company to the City that are public records may be disclosed pursuant to a proper public records request.

#### **12.21 Attorney's Fees**

In any action or proceeding to enforce or interpret any of the terms or conditions of this Agreement the prevailing party shall be entitled to an award to attorney's fees in the amount reasonably incurred in the prosecution or defense of such action. The term "prevailing party" shall mean the party entitled to recover costs of suit, upon the conclusion of the matter, in accordance with the laws of the State of California.

## **13 Miscellaneous Agreements**

### **13.1 Entire Agreement**

This Agreement, including the exhibits, represents the full and entire Agreement between the parties with respect to the matters covered in this Agreement. No verbal agreement or conversation with any office, agent, or employee of the City, either before, during, or after the execution of this contract, shall affect or modify any of the terms or obligations in this Agreement contained nor such verbal agreement or conversation entitle the Company to any additional payment whatsoever under the terms of this contract.

### **13.2 Section Headings**

The article headings and 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.

### **13.3 References to Laws and Other Agreements**

All references in this Agreement to laws shall be understood to include such laws as they may be subsequently amended or recodified, unless otherwise specifically provided. This Agreement supersedes any and all agreements heretofore entered into by the parties and the City.

### **13.4 Interpretation**

This Agreement, including the exhibits attached hereto, shall be interpreted and construed reasonably and neither for nor against either party, regardless of the degree to which either party participated in its drafting.

### **13.5 Agreement**

This Agreement may not be modified or amended in any respect except by a writing signed by the parties.

### **13.6 Severability**

If any non-material provision of this Agreement is for any reason deemed to be invalid and unenforceable, the invalidity or unenforceability of such provision

shall not affect any of the remaining provisions of this Agreement which shall be enforced as if such invalid or unenforceable provision had not been contained in this Agreement.

### **13.7 Exhibits**

Each of the exhibits identified in this Agreement is attached hereto and incorporated in this Agreement and made a part hereof by this reference.

### **13.8 Non-Waiver Provision**

Failure of either party to exercise any of the remedies set forth in this Agreement within the time periods provided for shall not constitute a waiver of any rights of that party with regard to that failure to perform or subsequent failures to performing whether determined to be a breach, excused performance or unexcused defaults by the other party.

### **13.9 Signatures**

IN WITNESS WHEREOF, City and Company have executed this Agreement as of the day and year first written above.

CITY OF RANCHO SANTA MARGARITA

CR&R INCORPORATED

By: \_\_\_\_\_

Name: L. Anthony Beall

Title: Mayor

By: \_\_\_\_\_

Name: David Ronnenberg

Title: President

Approved as to form by:

By: \_\_\_\_\_

Name: Gregory Simonian

Title: City Attorney

By: \_\_\_\_\_

Name: Dean Ruffridge

Title: Vice-president

ATTEST:

By: \_\_\_\_\_

Name: Amy Diaz

Title: City Clerk

## Exhibit 1 – Rates Effective January 1, 2022

Monthly							
Residential Service							
Rate							
Automated Refuse, Recycling, and Organics							\$ 21.09
Reduced Senior Rate (10% discount, customers 65 + years)							\$ 18.99
Extra Refuse Cart							\$ 5.94
Additional Recycling or Organics Cart (above two each)							\$ 1.50
Monthly Rates for Refuse Collection							
Container	Pickups Per Week						
	1	2	3	4	5	6	7
64-gallon cart	\$ 46.10						
96-gallon cart	\$ 64.53						
2 cubic yard	\$ 89.88	\$ 135.96	\$ 182.07	\$ 331.90	\$ 400.99	\$ 447.11	\$ 516.25
3 cubic yard	\$ 101.42	\$ 147.50	\$ 193.60	\$ 343.38	\$ 412.54	\$ 458.62	\$ 527.76
3 cu. Yd. locking	\$ 124.48	\$ 175.14	\$ 221.26	\$ 354.91	\$ 424.05	\$ 470.13	\$ 539.27
4 cubic yard	\$ 159.05	\$ 221.26	\$ 325.00	\$ 430.97	\$ 527.76	\$ 640.68	\$ 753.65
4 cu. Yd. locking	\$ 182.07	\$ 244.32	\$ 348.01	\$ 453.99	\$ 550.84	\$ 663.72	\$ 776.67
6 cubic yard	\$ 237.36	\$ 327.27	\$ 453.99	\$ 580.78	\$ 707.55	\$ 834.32	\$ 961.05
2 yard compactor	\$ 237.36	\$ 327.27	\$ 453.99	\$ 580.78	\$ 707.55	\$ 834.32	\$ 961.05
Rates for commercial recycling, organics and foodwaste collection are 85% of refuse rates							
Rolloff Box Pull Charges							
Standard Rolloff Pull Rate							\$ 205.87
Compactor Rolloff Pull Rate (excluding compactor rental)							\$ 205.87
Disposal Charge Per Ton Landfilled							\$ 40.41 per ton
Mixed Waste Processing Charge Per Ton Processed (including residue disposal)							\$ 61.16 per ton
Charge Per Ton of Green Waste Processed							\$ 61.16
Special Services							
Rate							
Bin Cleaning (in excess of one free per year) - Each							\$ 74.32
Additional Residential Bulky Waste Pickup (in excess of two pickups per year per dwelling unit)							\$ 29.13 per pickup
Commercial Bulky Item Pickup							\$ 46.10 per item
Emergency Service - one crew member, one vehicle, per hour							\$ 159.28
Additional Special Pickup for Automated Cart Customers (in excess of four pickups per year) - Each							\$ 6.90 per pickup
Resumption of Service Charge							\$ 13.82
Steam Clean Compactor							\$ 188.64

## Exhibit 2 – Rate Adjustment Example – Residential and Commercial

### Step One: Calculate percentage change in indices

Line	Adjustment Factor	Index	A Old Index Value	B New Index Value	C Percent Change In Index (Column B / Column A - 1)	D Percent of Index Change Allowed for Rate Adjustment	E Percent Change for Rate Adjustment (Column C X Column D)
1	Service Component						
2	Labor	(1)	153.70	158.30	2.99%	100%	3.0%
3	Fuel	(2)	131.50	135.50	3.04%	100%	3.0%
4	Equipment	(3)	276.50	284.80	3.00%	100%	3.0%
5	All Other	(4)	273.00	281.200	3.00%	50%	1.5%
6	Disposal Component	(5)	36.09	\$ 37.17	2.99%	100%	2.99%

### Step Two: Determine Components

Line	Adjustment Factor	Index	F Initial Cost Component (6)	G Cost Factor Category Weighted as % of Component Total (7)	H Percent Change in Index from Column (E)	I Total Weighted Change
7	Service Component					
8	Labor	(1)	\$ 657,096	40.4%	2.99%	1.2%
9	Fuel	(2)	\$ 102,167	3.5%	3.04%	0.1%
10	Equipment	(3)	\$ 476,755	27.4%	3.00%	0.8%
11	All Other	(4)	\$ 562,667	28.7%	1.50%	0.4%
12	Service Component Total		\$ 1,798,688	100.0%		2.6%
13	Service Component Rate Adjustment Percentage					2.6%
14	Disposal Component	(5)	\$ 242,622	100.0000%	2.99%	2.9930%

### Step Three: Apply Weighted Changes in Cost Components

Line	Cost Component Factor	J Initial Cost Component (6)	K Component Weighted in Total Rate (7)	L Percent Change (from Step 2 in Column 1)	M Weighted Percent Change
15	Service Component	\$ 1,798,688	85.6%	2.57%	2.2%
16	Disposal Component	\$ 242,622	14.4%	2.99%	0.4%
17	Total - Inflation Adj. Percent	\$ 2,041,310	100.0%		2.63%

Step 3A - Add Fixed Rate Adjustment Percent (if applicable):  
Total Percent Change

5.00%

7.63%

### Step Four: Apply Percentage Change to Rates

Line	Rate Category	N Current Monthly Customer Rate	O Total Weighted Percentage Change (from Column M)	P Rate Increase or Decrease (Column N x Column O)	Q Adjusted Monthly Rate (Column N + Column P)
18	Standard Service	\$ 21.09	7.63%	\$ 1.61	\$ 22.70
19	Extra Refuse Cart	\$ 5.94	7.63%	\$ 0.45	\$ 6.39
20	Extra Recycling Cart (above 2)	\$ 1.50	7.63%	\$ 0.11	\$ 1.61
21	Extra Green Waste Cart (above 2)	\$ 1.50	7.63%	\$ 0.11	\$ 1.61
22	Special Pickup - Bulky	\$ 29.13	7.63%	\$ 2.22	\$ 31.35

### Step Five: Determine Cost Components for Future Rate Adjustment Calculation

Line	Adjustment Factor	Index	R Cost Component (Column G)	S Percentage Change as Applied to Rate Adjustment (Column E)	T Increase In Cost Components (Column R x Column S)	U Cost Component Increased (Column R + Column T)	V Cost Components Reweighted to Equal 100% for Future Adjustments
23	Service Component						
24	Labor	(1)	40.4%	3.0%	1.2%	41.6%	40.6%
25	Fuel	(2)	3.5%	3.0%	0.1%	3.6%	3.5%
26	Equipment	(3)	27.4%	3.0%	0.8%	28.3%	27.5%
27	All Other	(4)	28.7%	1.5%	0.4%	29.1%	28.4%
28	Service Component Total		100.0%			102.6%	100.0%
29	Service Component		85.6%	2.6%	2.2%	87.8%	85.5%
30	Disposal Component		14.4%	3.0%	0.4%	14.9%	14.5%
31	Total		100.0%			102.6%	100.0%

#### Step One:

- ✓ (1) PPI Index, Waste collection, Annual, final indexes (PCU562111562111)
- ✓ (2) WPU0531, PPI, Not seasonally adjusted, Fuels and related products and power, Natural Gas, Annual, final indexes
- ✓ (3) PCU36211336211, PPI, Motor vehicle body manufacturing, Annual, final indexes
- ✓ (4) CUUR0000SA0, CPI, All Urban Consumers, not seasonally adjusted, U.S. City Average, all items, Annual, final indexes
- ✓ (5) County of Orange gate rate as of the effective rate date

#### Steps Two and Three:

- (1)-(5) From Step Five of the previous year Rate adjustment.

#### Step Four: Rates per previous rate schedule

## Exhibit 3 – Rate Adjustment Example – Rolloff

### Step One: Calculate percentage change in indices

Line	Adjustment Factor	Index	A Old Index Value	B New Index Value	C Percent Change In Index (Column B / Column A - 1)	D Percent of Index Change Allowed for Rate Adjustment	E Percent Change for Rate Adjustment (Column C X Column D)
1	Service Component						
2	Labor	(1)	153.70	158.30	2.99%	100.00%	2.99%
3	Fuel	(2)	131.50	135.50	3.04%	100.00%	3.04%
4	Equipment	(3)	276.50	284.80	3.00%	100.00%	3.00%
5	All Other	(4)	273.00	281.20	3.00%	50.00%	1.50%

### Step Two: Determine Components

Line	Adjustment Factor	Index	F Initial Cost Component (6)	G Cost Factor Category Weighted as % of Component Total (7)	H Percent Change in Index from Column (E)	I Total Weighted Change
6	Service Component					
7	Labor	(1)	\$ 93,871	40.4%	2.99%	1.21%
8	Fuel	(2)	\$ 14,595	3.5%	3.04%	0.11%
9	Equipment	(3)	\$ 68,108	27.4%	3.00%	0.82%
10	All Other	(4)	\$ 80,381	28.7%	1.50%	0.43%
11	Total - Inflation Adj. Percent		\$ 256,955	100.0%		2.57%
12						2.57%

Step 2A - Add Fixed Rate Adjustment Percent (if applicable):  
Total Percent Change

46.00%  
**48.57%**

### Step Three: Apply percentage change to rates, up to 3%

Line	Rate Category	J Current Monthly Customer Rate	K Total Weighted Percentage Change (from Column I, Line 12)	L Rate Increase or Decrease (Column J x Column K)	M Adjusted Monthly Rate (Column J + Column L)
13	Standard Rolloff Box	\$ 205.88	48.57%	\$ 99.99	\$ 305.87
14	Compactor Rolloff Box	\$ 205.88	48.57%	\$ 99.99	\$ 305.87

### Step Four: Determine Cost Components for Future Rate Adjustment Calculation

Line	Adjustment Factor	Index	N Cost Component (Column G)	O Percentage Change as Applied to Rate Adjustment (Column E)	P Increase In Cost Components (Column N x Column O)	Q Cost Component Increased (Column N + Column P)	R Cost Components Reweighted to Equal 100% for Future Adjustments
15	Service Component						
16	Labor	(1)	40.40%	2.99%	1.21%	41.61%	40.57%
17	Fuel	(2)	3.49%	3.04%	0.11%	3.60%	3.51%
18	Equipment	(3)	27.43%	3.00%	0.82%	28.25%	27.55%
19	All Other	(4)	28.67%	1.50%	0.43%	29.10%	28.38%
20	Service Component Total		100.00%			102.57%	100.00%

#### Step One:

- (1) PCU5621-5621-PPI Index, Waste collection, Annual, final indexes
- (2) WPU0531, PPI, Not seasonally adjusted, Fuels and related products and power, Natural Gas, Annual, final indexes
- (3) PCU336211336211, PPI, Motor vehicle body manufacturing, Annual, final indexes
- (4) CUUR0000SA0, CPI, All Urban Consumers, not seasonally adjusted, U.S. City Average, all items, Annual, final indexes
- (5) County of Orange gate rate as of the effective rate date

#### Step Two:

- (1)-(5) From Step Four of the previous year adjustment.

Step Three Rates per previous rate schedule

## Exhibit 4 – Company's Faithful Performance Bond

KNOW ALL MEN BY THESE PRESENTS:

That , a California corporation , as PRINCIPAL, and , a Corporation organized and doing business by virtue of the laws of the State of California, and duly licensed for the purpose of making, guaranteeing, or becoming sole surety upon bonds or undertakings required or authorized by the laws of the State of California, as SURETY, are held and firmly bound to City, hereinafter called OBLIGEE, in the penal sum of (\$) lawful money of the United States, for the payment of which, well and truly to be made, we and each of us hereby bind ourselves, and our and each of our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH THAT:

WHEREAS, the above bounden PRINCIPAL has entered into a contract, entitled "INTEGRATED SOLID WASTE MANAGEMENT SERVICES" with City, to do and perform the following work, to wit: Collect, Process and Dispose of Solid Waste generated within City, in accordance with the contract. NOW, THEREFORE, if the above bounden PRINCIPAL shall well and truly perform, or cause to be performed each and all of the requirements and obligations of said contract to be performed by said PRINCIPAL, as in said contract set forth, then this BOND shall be null and void; otherwise it will remain in full force and effect. And the said Surety, for value received hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the contract or to the work to be performed thereunder or the specifications accompanying the same shall in any wise affect its obligations on this BOND, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the contract or to the work or to the specifications.

IN WITNESS WHEREOF, said PRINCIPAL and said SURETY have caused these presents to be duly signed and sealed this DAY OF , 2021.

a California Corporation

SURETY

By:

By:

(PRINCIPAL)  
(SEAL)

(ATTORNEY IN FACT)  
(SEAL)

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## Attachment C - Table of Franchise Agreement Changes

Item	Agreement Reference	Description	Source/Reference
<b>Provisions from Amendment #1 incorporated into 2004 Agreement</b>			
1	1.46	Updated definition of Temporary Bin Collection Service	Was previously Section 1.44
2	1.47	Updated definition of Temporary Rolloff Box Collection Service	Was previously Section 1.45
3	2.7	Items l. and m. added to Limitations of Scope of Agreement	C&D and temp collection service outside scope
<b>Provisions from Amendment #2 incorporated into 2004 Agreement</b>			
4	1.49	Amended definition of Universal Waste	Was previously Section 1.47
5	1.50	Amended definition of Household Sharps	Was previously Section 1.48
6		Amended term, now moot	NA
7	3.3	Outreach Fee (increased to \$100,000)	Was previously \$84,000 per amendment #2
8	4.2.5	Updated provision for On-call bulky waste pickup	
9	4.2.6	Semi annual curbside cleanup eliminated	
10	4.5.5	Add new service: Annual Report Preparation	
11	4.5.6	Universal Waste Collection	Requires company to provide up to 12 drop off locations, at city request. Has this been done?
12	4.5.7	Household Sharps Collection	obsolete. SB 212 requires firms in the supply chain of medical sharps to establish stewardship programs. Most drug stores will accept sharps for a modest charge.
13	4.5.8	Add new service: Electronic Waste Collection	company required to establish e waste collection at no charge to city, at city's direction.
14	4.5.9	Food Waste Collection	Food waste to be collected at rates in Exhibit 2
15	4.5.1	Service to City Facilities: added location Bus Stops	
16	4.5.1	Service to City Facilities: Free service City hall and Bell Tower	
17	4.5.1	Service to City Facilities: 6 recycling containers City Hall etc.	
18	4.7	Diversion Requirement updated	
19	4.8.3.1	Replacemet of automated carts updated	
20	4.13	Residential Audits added; contamination monitoring	This should work for SB 1383
21	6.4.4	Material Facility Adjustment	Not needed All rates adjusted by CPI, including RO box rate
22	6.5	Add provision for Grant funding	City or ratepayers get benefit of grants to company
23	9.4	City address updated in insurance provisions	
24	9.9	Indemnification and Bond added	
25	12.14	Update address	
26	Exhibit 2	Price Guarantee Clause	Revised and moved to Section 6.2
27	11.3.B.4 e	Liquidated damages for diversion reporting failures	
28	11.3.B	Liquidated damages for not meeting diversion requirements	Liquidated damage of \$20,000 for not meeting diversion
<b>Provisions from Amendment #3 incorporated into 2004 Agreement</b>			
29	1.22	Definition: Food Waste	New definition
30	1.33	Definition: Organic Waste	New definition
31	4.4.1	Updated provision for Automated Cart Greenwaste Collection	Provides for SFR organics to Perris facility
32		Maximum rate for SFR carts = \$17.55 per month - now moot	NA
<b>New provisions incorporated into 2004 Agreement</b>			
33	Recitals	Recitals - updated	
34	1.4	Definitions: Applicable Law	Made consistent with Model Franchise Agreement
35	1.7	Definitions: Bin	increase max up to 8 yards. Same as Model Franchise Agreement
36	1.8	Definitions: Blue Container	Made consistent with updated ordinance
37	NA	Definitions: Company's propososal	Delete: obsolete
38	1.17	Definitions: Compost	Made consistent with Model Franchise Agreement
39	1.18	Definitions: Construction and Demolition Debris	Made consistent with updated ordinance
40	1.2	Definitions: Customer	Made consistent with Model Franchise Agreement
41	1.18	Definition: Compostable Plastics	Made consistent with Model Franchise Agreement
42	1.21	Definition: Diesel Gallon Equivalent	<a href="http://nhcleancities.org/2017/04/can-compare-energy-content-alternative-fuels-gasoline-diesel/">http://nhcleancities.org/2017/04/can-compare-energy-content-alternative-fuels-gasoline-diesel/</a>
43	1.28	Definition: Food Scraps	Made consistent with Model Franchise Agreement
44	1.29	Definition: Food Soiled Paper	Made consistent with Model Franchise Agreement

## Attachment C - Table of Franchise Agreement Changes

Item	Agreement Reference	Description	Source/Reference
45	1.3	Definition: Food Waste	Made consistent with Model Franchise Agreement
46	1.31	Definitions: Gray Container	Made consistent with updated ordinance
47	1.32	Definitions: Gray Container Waste	Made consistent with updated ordinance
48	1.33	Definitions: Green Container	Made consistent with updated ordinance
49	1.39	Household Sharps	Realphabetized
50	1.40	Definitions: Multi-family Residential or Multi-family	Made consistent with updated ordinance
51	NA	Definitions: Putrescible Waste	Delete: not needed
52	1.50	Definitions: Renewable Gas Transportation Fuel	From Model Franchise Agreement
53	2.4	Term	Initial 5.5 year term; automatic 5-yr. renewals; 1-year notice; 1-yr add term; if notice given, two years remain. Delete term '5 year.'
54	3.2	One-time reimbursement of \$100,000	CR&R letter dated May 27, 2020
55	3.3	Annual recycling outreach fee increased to \$150,000	CR&R letter dated May 27, 2020; superceded by phone call with J. Cervantez
56	4.2.9	Collect former contractor's containers	Not applicable
57	4.3.6	Warning Notice to customers who contaminate	Update to Prohibited Container Contaminates
58	4.3.8	CR&R provides free recyclable rolloffs to non-profits	No change.
59	4.4.1	Automated Cart Green Waste Collection	Specified 'Food Waste' can be included in Green Cart
60	4.4.2	Comm. Gwaste in Rolloff boxes	No change.
61	4.4.4	End Uses for Green waste	Obsolete/duplicative
62	4.5.1	City Facilities	No need to enumerate;
63	4.5.2	City Sponsored Events; Trails4All and New Years Eve	Increase to 8 events; no need to enumerate
64	4.5.3	Abandoned Item Collection	Edited for clarity
65	4.5.5	AB 939 Annual Reports: CR&R is responsible to prepare	Hazel does this; ok to leave in.
66	4.5.6	Universal Waste: CR&R to collect from 12 locations upon request	Program to continue
67	4.5.7	CR&R to establish e-waste collection at no charge to City	Program to continue
68	4.5.8	Household Sharps: CR&R to coordinate with 2 pharmacies	Program to continue
69	4.6	Commingling of routes	Duplicate: See Section 4.12. Delete this instance
70	4.6	Diversion Requirement	Delete reference to Transformation
71	4.7.1	Schedules	Move missed pickup to 4.1 - General
72	4.7.2	Missed pickups	Added this as its own section; important.
73	4.7.3 A	Vehicles	Delete reference to company proposal
74	4.7.3 B	Minimum age of vehicles 10 years; phase it in	CR&R letter dated May 27, 2020; discussions at 6-16-20 pc w BH
75	4.7.3 C	CNG trucks	Language simplified
76	4.7.3 D	Vehicle equipped with cameras	Added by MSW Consultants; from Orange agreement
77	4.7.3 I	Vehicle Inspections	BIT is obsolete; update
78	4.7.4.1	Automated carts	Current SFR cart colors: refuse-gray; recycling-brown; greenwaste-green (CR&R brochure says recycling can be brown or blue; recycling carts in City are brown. For recycling carts, contract allows for brown or blue to allow for transition to blue for SB 1383 compliance.
79	4.7.4.2	Cart Colors - SB 1383	SB 1383 requires: refuse-gray; recycling-blue; greenwaste-green by January 1, 2036
80	4.7.5 D	Special Clean up	Not well defined and does not require performance. Delete
81	4.7.7	Fees and Gratuities	Tips for any service are prohibited; not just for temp binrolloff
82	4.7.13	Contamination monitoring	Per SB 1383 Section 18984.5
83	4.8	Transportation of Refuse	Last sentence about diversion does not belong here. Delete
84	4.11	Commingling of collection routes	Ok to commingle if reasonable allocation method
85	4.13	Hazardous Waste Notifications	Edited for clarity
86	4.5.2	City Sponsored Events	Increase to 6; CR&R named as sponsor.
87	4.7.4.1	Automated cart	Clarified current colors; moved SB 1383 cart requirements to its own section. Took out yellow carts.
88	4.7.4.2	Cart Colors - SB 1383	Carts must be refuse: Black, Recycling: Blue, Organics: green by 2036
89	4.7.13	Contamination monitoring	Reflects requirements of SB 1383
90	4.12	Route audits	Change sample size from 10% to 2%
91	5.1.3	Review of Billings	Edited for clarity
92	5.2.3	Resolution of Customer Complaints	Made clear that CR&R is responsible for resolving complaints; city has the right to mediate disputes, but not the obligation. Added back paragraph about condition precedent.

## Attachment C - Table of Franchise Agreement Changes

Item	Agreement Reference	Description	Source/Reference
93	5.3.1	Public Education Plan	Public Education Plan is a communication tool.
94	6.2	Continue with competitive rate guarantee	SFR and commercial at or lower than than 50th percentile of nine South County cities; Aliso Viejo, Dana Point, Laguna Hills, Laguna Niguel, Lake Forest, Mission Viejo, San Clemente, San Juan, and OC area 8.
95	6.3	Rate Adjustment Method based on same as in current agreement	Keep method from previous agreement.
96	6.5	Extraordinary adjustments	Last sentence about SCAQMD not needed.
97	6.6	Grants: CR&R required to reduce compensation from grants	Delete: Defeats the public policy incentive of grants
98	8.3.1	Update address	
99	8.3.4 f	Include result of contamination monitoring in reports	
100	9.3	AB 939 Indemnification	replaced 'compliance with 50% diversion' with 'compliance with AB 939 requirements.'
101	9.4 A2	Insurance Auto Liab.	Endorsement CA 0025 pertains to auto dealerships; not needed.
102	9.4 B	Minimum limits of insurance	Increased; same limits as CR&R agreed to in San Juan Capistrano
103	11.3	Review liquidated damages	June 4, 2020 meeting with CR&R; Liquidated damages are same as what CR&R agreed to in SJCap. Streamlined. Omitted damages related to responding to resolving customer damage complaints. City should stay out of this. Decreased number of occurrences per year from 10 to 5.
104	12.9	Transition to Next Company	Duplicative; see Section 12.18
105	12.2	Compliance with Immigration Laws	Duplicative; see Section 12.2 Applicable Law