

AGREEMENT  
BETWEEN  
CITY OF SANTA ANA  
AND  
REPUBLIC WASTE SERVICES OF SOUTHERN CALIFORNIA, LLC  
DBA REPUBLIC SERVICES  
FOR  
COLLECTION AND HANDLING  
OF SOLID WASTE GENERATED, PRODUCED  
AND/OR ACCUMULATED IN THE  
CITY OF SANTA ANA

\* \* \*

August 17, 2021

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**Exhibits**

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2. Example Rate Adjustment Formulas
3. Corporate Guarantee
4. Contractor's Faithful Performance Bond
5. Notary Certification
6. County Waste Disposal Agreement
7. AB 341, AB 1826, and SB 1383 Implementation Plan
8. Processing, Transfer, and Disposal Services, and Facility Standards
9. Collection System Specifications
10. Santa Ana Clean City Initiatives

## RECITALS

This Franchise Agreement ("Agreement") is entered into this 17th day of August, 2021, by and between the City of Santa Ana ("City") and Republic Waste Services of Southern California, LLC *dba* Republic Services. ("Contractor"), for the Collection, transportation, Recycling, processing, and Disposal of Solid Waste and other services related to meeting the goals and requirements of the California Integrated Waste Management Act.

### Recitals

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, pursuant to California Public Resources Code Section 40059(a)(2), the City Council of the City of Santa Ana has determined that the public health, safety, and well-being require that an exclusive franchise be awarded to a qualified company for the Collection, transfer and transportation, Recycling, processing, and Disposal of Solid Waste and other services related to meeting the Diversion goals required by AB 939, and other requirements of the California Integrated Waste Management Act; and,

WHEREAS, the Legislature of the State of California, in California Public Resources Code Section 41780 et seq., has declared a mandatory commercial Recycling program and that it is the policy goal of the state that not less than 75 percent of Solid Waste generated be source reduced, recycled, or composted by the year 2020, and annually thereafter; and,

WHEREAS, the Legislature of the State of California, in California Public Resources Code Section 41781.3 et seq., has declared that as of January 1, 2020, the use of green material as landfill alternative daily cover will no longer constitute diversion through recycling and will instead be considered disposal in terms of measuring a jurisdiction's annual 50 percent per capita disposal rate; and,

WHEREAS, California Public Resources Code Section 42649 et seq., requires a mandatory commercial organics waste diversion program; and,

WHEREAS, the Short-Lived Climate Pollutants Bill of 2016 (SB 1383) establishes regulatory requirements for jurisdictions, generators, haulers, solid waste facilities, and other entities to support achievement of state-wide organic waste disposal reduction targets; and,

WHEREAS, SB 1383 requires jurisdictions to implement collection programs, meet processing facility requirements, conduct contamination monitoring, provide education, maintain records, submit reports, monitor compliance, conduct enforcement and fulfill other requirements; and, the City has chosen to delegate some of its responsibilities to Contractor, acting as the City's designee, through this Agreement; and,

WHEREAS, the City declares its intention of maintaining reasonable rates and quality service related to the Collection, transportation, Recycling, processing, and Disposal of Solid Waste and other services; and,

WHEREAS, the current franchise agreement will expire on June 30, 2022; and,

WHEREAS, in response to a Request for Proposals, the Contractor has submitted a proposal to the City and the City selected the Contractor on the competitive advantages of that proposal over other proposals received by the City; and

WHEREAS, City and Contractor ("Parties") hereto desire to enter said Agreement; and,

WHEREAS, City and Contractor are mindful of the provisions of the laws governing the safe Collection, transport and transportation, Recycling, processing and Disposal of Solid Waste, including AB 939, the Resource Conservation and Recovery Act ("RCRA"), and the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"). City and Contractor desire to leave no doubts as to their respective roles and to memorialize that by entering into this Agreement, City is not thereby becoming an "arranger" or a "generator" as those terms are used in CERCLA, and that it is Contractor, not City, who is "arranging for" the Collection from premises in the City, transport for Disposal, composting or other processing, and Recycling of municipal Solid Waste which may contain Hazardous Material; and further to confirm that as a material inducement to City entering into this Agreement, Contractor has agreed to fully indemnify City in connection with any claims, losses, liabilities, lawsuits or actions relating to the inadvertent or intentional Collection, transportation and/or Disposal of Hazardous Materials that may occur in connection with Contractor's performance under this Agreement, and

WHEREAS, the City Council of the City of Santa Ana, hereby desires that Contractor be engaged to provide for both the Collection of Solid Waste within the corporate limits of the City of Santa Ana and the transportation of such Solid Waste to appropriate places for processing, Recycling, Organics Diversion, and Disposal, and to perform such services on the terms and conditions set forth in this Agreement; and

WHEREAS, Contractor has agreed, as part of this Agreement, acting as an independent contractor to provide such personnel, equipment and supplies as are necessary to ensure City complies with the requirements of Public Resources Code Section 49100 et seq.,

WHEREAS, Contractor agrees to and acknowledges that it shall arrange for the proper Disposal of all Solid Waste Collected in City and City is not instructing Contractor how to Collect, process and dispose of Solid Waste.

NOW, THEREFORE, for the reasons recited above, and in consideration of the respective and mutual covenants and promises hereinafter contained and made, and subject to all the terms and conditions hereof, the parties hereto do hereby agree as follows:

# ARTICLE 1

## DEFINITIONS

Whenever any term used in this Agreement has been defined by the provisions of Chapter 16, Article II, Section 16.29 of the Santa Ana Municipal 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 used in this Agreement shall have the following respective meanings:

**1.1 AB 1594**

"AB 1594" means that per California Public Resources Code Section 41781.3 et seq., commencing January 1, 2020, the use of green material as landfill alternative daily cover does not constitute diversion through recycling and shall be considered disposal.

**1.2 AB 1826**

"AB 1826" means the Organic Waste Recycling Act of 2014 (Chapter 727, Statutes of 2014 modifying Division 30 of the California Public Resources Code), also commonly referred to as "AB 1826," as amended, supplemented, superseded, and replaced from time to time.

**1.3 AB 341**

"AB 341" means the California Jobs and Recycling Act of 2011 (Chapter 476, Statutes of 2011 [Chesbro, AB 341]), also commonly referred to as "AB 341," as it may be amended supplemented, superseded, or replaced from time to time.

**1.4 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, supplemented, superseded, or replaced from time to time.

## **1.5 Affiliate**

"Affiliate" means all businesses (including corporations, limited and general partnerships and sole proprietorships) which are directly or indirectly related to Contractor by virtue of direct or indirect ownership interest or common management shall be deemed to be "Affiliated with" Contractor and included within the term "Affiliates" as used herein. An Affiliate shall include a business in which Contractor owns a direct or indirect ownership interest, a business which has a direct or indirect ownership interest in Contractor and/or a business which is also owned, controlled or managed by any business or individual which has a direct or indirect ownership interest in Contractor. For purposes of determining whether an indirect ownership interest exists, the constructive ownership provisions of Section 318(a) of the Internal Revenue Code of 1986, as in effect on the date of this Agreement, shall apply; provided, however, that (i) "ten percent (10%)" shall be substituted for "fifty percent (50%)" in Section 318(a)(2)(C) and in Section 318(a)(3)(C) thereof; and (ii) Section 318(a)(5)(C) shall be disregarded. For purposes of determining ownership under this paragraph and constructive or indirect ownership under Section 318(a), ownership interest of less than ten percent (10%) shall be disregarded and percentage interests shall be determined on the basis of the percentage of voting interest or value which the ownership interest represents, whichever is greater. Being an Affiliate does not exempt a business from the application of assignment requirements under Section 12.5.

## **1.6 Agreement**

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

## **1.7 Alternative Facility**

"Alternative Facility" means any Facility other than Approved Facilities approved by City for temporary use.

## **1.8 Applicable Law**

"Applicable Law" means all statutes, rules, regulations, guidelines, actions, determinations, Permits, orders, or requirements of the United States, State, county,

City and local and regional government authorities and agencies having applicable jurisdiction, that apply to or govern the Facility, the Site or the performance of the Parties' respective obligations hereunder, including any of the foregoing which concern health, safety, fire, environmental protection, labor relations, mitigation monitoring plans, building codes, zoning, non-discrimination, and prevailing wages if applicable. All references herein to Applicable Law include subsequent amendments or modifications thereof, unless otherwise specifically limited in this Agreement.

#### **1.9 Approved Facility/ies**

"Approved Facility/ies" means facilities designated in Exhibit 8.

#### **1.10 Billings**

"Billings" means any and all statements of charges for services rendered in accordance with this Agreement, howsoever made, described or designated by City or Contractor, or made by others for City or Contractor, to Customers in the City.

#### **1.11 Bin**

"Bin" means a metal Container with hinged lids and wheels with a capacity of less than ten (10) cubic yards.

#### **1.12 Bin Service**

"Bin Service" means all Solid Waste Handling Services provided by Contractor by means of front-loaded collection Bins.

#### **1.13 Bulky Items**

"Bulky Items" means Solid Waste that cannot and/or would not typically be accommodated within a Cart including specifically: furniture (including chairs, sofas, mattresses, and rugs); appliances (including refrigerators, ranges, washers, dryers, water heaters, dishwashers, plumbing, small household appliances and other similar items, commonly known as "white goods"); up to twenty (20), thirty (30) gallon bags of green waste (including wood waste, tree branches, scrap wood; electronic equipment (including stereos, televisions, computers and monitors, VCRs, microwaves and other similar items commonly known as "brown goods" and "e-waste"). Bulky Items do not include car bodies, tires, Construction and Demolition Debris or items requiring more

than two Persons to remove. Other items not specifically included or excluded above will be Collected provided that they are not more than eight feet in length, four feet in width, or more than 150 pounds. In the event a question ever arises as to whether a specific item or category of items meets the definition of Bulky Items, City shall be responsible to determine whether said definition shall apply, which determination shall be final and binding on the Parties.

**1.14 CalRecycle**

"CalRecycle" means the State of California's Department of Resources Recycling and Recovery, and, as this department was structured prior to January 1, 2010, the California Integrated Waste Management Board or CIWMB, as well as any successor agency to CalRecycle.

**1.15 Cart**

"Cart" means a plastic Container with a hinged lid and wheels serviced by an automated or semi-automated truck with a capacity of no less than 30 and no greater than 101 gallons.

**1.16 City**

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

**1.17 Collect/Collection**

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

**1.18 Commercial**

"Commercial" refers to services performed at or for Commercial Premises.

**1.19 Commercial Edible Food Generators**

"Commercial Edible Food Generators" includes Tier One Commercial Edible Food Generators and Tier Two Commercial Edible Food Generators, or as otherwise defined in 14 CCR Section 18982(a)(7). For the purposes of this definition, Food Recovery

Organizations and Food Recovery Services are not Commercial Edible Food Generators.

#### **1.20 Commercial Premises**

"Commercial Premises" means Premises upon which business activity is conducted, and any other premises not defined as Residential Premises per Section 1.70 of this Agreement, including but not limited to retail sales, services, wholesale operations, manufacturing and industrial operations, but excluding Residential Premises upon which business activities are conducted when such activities are permitted under applicable zoning regulations and are not the primary use of the property.

Notwithstanding any provision to the contrary herein, in the Santa Ana Municipal Code, or otherwise, for purposes of this Agreement, Premises upon which the following uses (as defined in the Santa Ana Municipal Code) are occurring shall be deemed to be Commercial Premises: Assisted Living Facilities, Convalescent Homes, Dormitories, Extended Stay Motels, Group Residential Facilities, Group Care Facilities, Hotels, and Motels.

#### **1.21 Construction and Demolition Debris**

"Construction and Demolition Debris" or "C&D Material," means any combination of inert building materials and Solid Waste resulting from construction, remodeling, repair, cleanup, or demolition operations as defined in California Code of Regulations, Title 22 Section 66261.3 et seq. This term includes, but is not limited to, asphalt, concrete, Portland cement concrete, brick, lumber, gypsum wallboard, cardboard, and other associated packaging; roofing material, ceramic tile, carpeting, plastic pipe and steel. The material may be commingled with rock, soil, tree stumps; and other vegetative matter resulting from land clearing and landscaping for construction or land development projects.

#### **1.22 Containers**

"Containers" means any and all types of Solid Waste receptacles, including Carts, Bins, and Roll-off Boxes.

#### **1.23 Contractor**

"Contractor" means Republic Waste Services of Southern California, LLC, and its officers, directors, employees, agents, companies and Subcontractors.

**1.24 Contractor's Proposal**

"Contractor's Proposal" means the proposal submitted by Contractor to City on September 15, 2020 in response to a Request for Proposals dated March 24, 2020, as further negotiated by Contractor and City. Contractor's Proposal was selected by City based on its competitive advantages over other proposals received, and City specifically relied upon the representations and warranties set forth therein in entering into this Agreement. Contractor's Proposal is incorporated into this Agreement by reference, and Contractor represents and warrants that all representations set forth in such proposal, as further negotiated by Contractor and City, are true and correct.

**1.25 Contractor Compensation**

"Contractor Compensation" means the revenue received by the Contractor from Billings, excluding City fees as defined in Article 3 of this Agreement, in return for providing services in accordance with this Agreement and any amendments to this Agreement.

**1.26 CPI**

"CPI" means the Consumer Price Index ("CPI"), All Urban Consumers Less Food and Energy - US City Average (CUUR0000SA0L1E).

**1.27 Customer**

"Customer" means the Person having the care and control of any Premises in the City receiving Solid Waste Handling Service from the Contractor pursuant to the terms of this Agreement.

**1.28 Designated Disposal Facility**

"Designated Disposal Facility" means the Orange County Landfill System operated by Orange County Waste and Recycling.

**1.29 Designated Waste**

"Designated Waste" means non-Hazardous Waste which may pose special Disposal problems because of its potential to contaminate the environment and which may be Disposed of only in Class II Disposal sites or Class III Disposal sites pursuant to a

variance issued by the California Department of Health Services. Designated Waste consists of those substances classified as Designated Waste by the California Water Code Section 13173, as may be amended from time to time.

### **1.30 Discarded Materials**

"Discarded Materials" are included in the definition of Solid Waste, and shall be regulated as such. For purposes of this Agreement, material is deemed to have been discarded, without regard to whether it is destined for Recycling or Disposal, and whether or not it has been separated from other Solid Wastes, in all cases where a fee or other compensation, in any form or amount, is directly or indirectly solicited from, or is levied, charged, or otherwise imposed on, or paid by, the Generator or Customer in exchange for handling services. As used herein, handling services include, without limitation, the Collection, removal, Transportation, delivery, and Processing and/or Disposal of the material. Discarded Materials do not include Edible Food that is recovered for human consumption and is not discarded. For the purposes of this Agreement, Discarded Materials include Source Separated Recyclable Materials, Organic Waste, Food Waste, Refuse Container Waste or Mixed Waste, and C&D once the materials have been placed in Containers for Collection.

### **1.31 Disposal**

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

### **1.32 Divert/Diversion**

"Divert" or "Diversion" means to Divert from Disposal facilities or Transformation facilities (including incineration, pyrolysis, distillation, gasification or biological conversion) through source reduction, Recycling and composting, as provided in Section 41780 of California Public Resources Code as such act may be hereafter amended or superseded provided that Divert or Diversion shall include delivery to Transformation facilities if the overall Diversion achieved by the City is at a level where delivery to such facilities shall be considered Diversion pursuant to the Act.

### **1.33 Edible Food**

"Edible Food" means food intended for human consumption. For the purposes of this

Agreement, Edible Food is not Solid Waste if it is recovered and not discarded. Nothing in this Agreement requires or authorizes the recovery of Edible Food that does not meet the food safety requirements of the California Retail Food Code. If the definition in 14 CCR Section 18982(a)(18) for Edible Food differs from this definition, the definition in 14 CCR Section 18982(a)(18) shall apply to this Agreement.

**1.34 Electronic Waste or E-Waste**

"Electronic Waste" or "E-Waste" means electronic equipment and includes, but is not limited to, stereos, televisions, computers and computer monitors, VCRs, cellular phones, fax machines, household copiers, computer printers, other electronic items with electric plugs that are banned from landfilling, and other similar items commonly known as "brown goods."

**1.35 Environmental Law**

"Environmental Law" means any federal and state statute, county, local and City ordinance, rule, regulation, order, consent decree, judgment or common-law doctrine, and provisions and conditions or permits, licenses and other operating authorizations relating to (i) pollution or protection of the environment, including natural resources, (ii) exposure of Persons, including employees, to Hazardous Materials or other products, raw materials, chemicals or other substances, (iii) protection of the public health or welfare from the effects of by-products, wastes, emissions, discharges or releases of chemical substances from industrial or Commercial activities, or (iv) regulation of the manufacture, use or introduction into commerce of chemical substances, including, without limitation, their manufacture, formulation, labeling, distribution, transportation, handling, storage and Disposal.

**1.36 Excluded Waste**

"Excluded Waste" means Hazardous Substance, Hazardous Waste, infectious waste, Designated Waste, volatile, corrosive, biomedical, infectious, biohazardous, and toxic substances or material, waste that Contractor reasonably believes would, as a result of or upon Disposal, be a violation of local, State or Federal law, regulation or ordinance, including land use restrictions or conditions, waste that cannot be Disposed of in Class III landfills, waste that in Contractor's reasonable opinion would present a significant risk to human health or the environment, cause a nuisance or otherwise create or expose Contractor or City to potential liability; but not including de minimis volumes or

concentrations of waste of a type and amount normally found in Residential Solid Waste after implementation of programs for the safe Collection, Recycling, treatment, and Disposal of batteries and paint in compliance with Sections 41500 and 41802 of the California Public Resources Code. Excluded Waste does not include Used Motor Oil and Filters, or household batteries when properly placed for Collection by Contractor as set forth in this Agreement.

**1.37 Executive Director**

“Executive Director” means the Executive Director of Public Works of the City of Santa Ana, or his or her designee.

**1.38 Facility**

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

**1.39 Food Recovery**

“Food Recovery” means actions to collect and distribute edible food for human consumption which otherwise would be disposed, or as otherwise defined in 14 CCR Section 18982(a)(24).

**1.40 Food Recovery Organization**

“Food Recovery Organization” means an entity that primarily engages in the collection or receipt of Edible Food from Commercial Edible Food Generators and distributes that Edible Food to the public for Food Recovery either directly or through other entities, including, but not limited to:

- A. A food bank as defined in Section 113783 of the Health and Safety Code;
- B. A nonprofit charitable organization; and,
- C. A nonprofit charitable temporary food facility as defined in Section 113842 of the Health and Safety Code.

If the definition in 14 CCR Section 18982(a)(25) for Food Recovery Organization differs from this definition, the definition in 14 CCR Section 18982(a)(25) shall apply to this Agreement.

**1.41 Food Recovery Service**

“Food Recovery Service” means a person or entity that collects and transports Edible Food from a Commercial Edible Food Generator to a Food Recovery Organization or other entities for Food Recovery; or as otherwise defined in 14 CCR Section 18982(a)(26).

**1.42 Food Waste**

“Food Waste” means all food such as, but not limited to, fruits, vegetables, meat, poultry, seafood, shellfish, bones, rice, beans, pasta, bread, cheese, and eggshells; food-soiled paper such as, but not limited to, compostable paper plates, paper coffee cups, napkins, pizza boxes, and milk cartons; , and compostable plastics. Food Waste excludes fats, oils, and grease when such materials are Source Separated from other Food Waste.

**1.43 Franchise**

"Franchise" means the special right granted by City to operate a public utility for Solid Waste services within the City.

**1.44 Franchise Fee**

“Franchise Fee” means the fee paid by Contractor to City for the right to hold the Franchise for Solid Waste services granted by this Agreement.

**1.45 Gross Receipts**

“Gross Receipts” means and includes all revenues actually received by Contractor arising from, or attributable to, the services provided by Contractor to its Customers in the City pursuant to this Agreement, without deducting Disposal charges or any other cost of doing business. Gross Receipts does not include any revenue received by Contractor from the sales of Recyclable Materials, Compost, or fuel from anaerobic digestion processing.

**1.46 Hazardous Material**

“Hazardous Material” is defined to include any hazardous or toxic substance, material or waste which is or becomes regulated by any local governmental authority, the State

of California, or the United States Government. The term "Hazardous Material" includes, without limitation, any material or substance which is: (i) petroleum or oil or gas or any direct or derivate product or byproduct thereof; (ii) defined as a "hazardous waste," "extremely hazardous waste" or "restricted hazardous waste" under Sections 25115, 25117 or 25122.7, or listed pursuant to Section 25140, of the California Health and Safety Code, Division 20, Chapter 6.5 (Hazardous Waste Control Law); (iii) defined as a "hazardous substance" under Section 25316 of the California Health and Safety Code, Division 20, Chapter 6.8 (Carpenter-Presley-Tanner Hazardous Substance Account Act); (iv) defined as a "hazardous material," "hazardous substance," or "hazardous waste" under Sections 25501(j) and (k) and 25501.1 of the California Health and Safety Code, Division 20, Chapter 6.95 (Hazardous Materials Release Response Plans and Inventory); (v) defined as a "hazardous substance" under Section 25281 of the California Health and Safety Code, Division 20, Chapter 6.7 (Underground Storage of Hazardous Substances); (vi) "used oil" as defined under Section 25250.1 of the California Health and Safety Code; (vii) asbestos; (viii) listed under Chapter 11 of Division 4.5 of Title 22 of the California Code of Regulations, or defined as hazardous or extremely hazardous pursuant to Chapter 10 of Division 4.5 of Title 22 of the California Code of Regulations; (ix) defined as waste or a hazardous substance pursuant to the Porter-Cologne Act, Section 13050 of the California Water Code; (x) designated as a "toxic pollutant" pursuant to the Federal Water Pollution Control Act, 33 U.S.C. Section 1317; (xi) defined as "hazardous waste" pursuant to the Federal Resource Conservation and Recovery Act, 42 U.S.C. Section 6901, et seq. (42 U.S.C. § 6903); (xii) defined as a "hazardous substance" pursuant to the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 6901); (xiii) defined as "Hazardous Material" pursuant to the Hazardous Materials Transportation Act 29 U.S.C. Section 5101, et seq.; or (xiv) defined as such or regulated by any "Superfund" or "Superlien" law, or any other federal, state or local law, statute, ordinance, code, rule, regulation, order or decree regulating, relating to, or imposing liability or standards of conduct concerning Hazardous Materials and/or oil wells and/or underground storage tanks and/or pipelines, as now, or at any time hereafter, in effect; (xv) defined as "medical waste" or "biohazardous waste" under applicable Federal or State law, excluding Sharps as defined in Section 1.74.

#### **1.47 High Diversion Organic Waste Processing Facility**

"High Diversion Organic Waste Processing Facility" means a High Diversion Organic

Waste Processing Facility as defined in 14 CCR Section 18982(a)(33). Per SB 1383, the High Diversion Organic Waste Processing Facility is a Facility that is in compliance with the reporting requirements of 14 CCR Section 18815.5(d) and meets or exceeds an annual average Mixed Waste organic content recovery rate of 50 percent between January 1, 2022 and December 31, 2024, and 75 percent after January 1, 2025 as calculated pursuant to 14 CCR Section 18815.5(e) for Organic Waste received from the Mixed Waste.

**1.48 Household Hazardous Waste (“HHW”)**

“Household Hazardous Waste” or “HHW” means material used in residences that may threaten human health or the environment when improperly discarded and usually has one or more of the following characteristics; flammable, toxic, corrosive, and/or reactive.

**1.49 Incompatible Materials**

“Incompatible Material” or “Incompatibles” mean(s) human-made inert material, including, but not limited to, glass, metal, plastic, and also includes Organic Waste that the receiving end-user, Facility, operation, property, or activity is not designed, permitted, or authorized to perform Organic Waste recovery activities as defined in 14 CCR Section 18983.1(b), or as otherwise defined by 14 CCR Section 17402(a)(7.5).

**1.50 Large Event**

“Large Event” means an event, including, but not limited to, a sporting event or a flea market, that charges an admission price, or is operated by a local agency, and serves an average of more than 2,000 individuals per day of operation of the event, at a location that includes, but is not limited to, a public, nonprofit, or privately owned park, parking lot, golf course, street system, or other open space when being used for an event. If the definition in 14 CCR Section 18982(a)(38) differs from this definition, the definition in 14 CCR Section 18982(a)(38) shall apply to this Agreement.

**1.51 Large Venue**

“Large Venue” means a permanent venue facility that annually seats or serves an average of more than 2,000 individuals within the grounds of the facility per day of operation of the venue facility. For purposes of 14 CCR, Division 7, Chapter 12 and this

Agreement, a venue facility includes, but is not limited to, a public, nonprofit, or privately owned or operated stadium, amphitheater, arena, hall, amusement park, conference or civic center, zoo, aquarium, airport, racetrack, horse track, performing arts center, fairground, museum, theater, or other public attraction facility. For purposes of 14 CCR, Division 7 Chapter 12 and this Agreement, a site under common ownership or control that includes more than one Large Venue that is contiguous with other Large Venues in the site, is a single Large Venue. If the definition in 14 CCR Section 18982(a)(39) differs from this definition, the definition in 14 CCR Section 18982(a)(39) shall apply to this Agreement.

**1.52 Materials Recovery Facility ("MRF")**

"Materials Recovery Facility" means a permitted Solid Waste Facility where Solid Wastes or Recyclable Materials are sorted or separated for the purposes of Recycling, processing or composting.

**1.53 Mixed Waste**

"Mixed Waste" means Mixed Waste Organic Collection Stream and Solid Waste Collected in a Container that is required by 14 CCR Sections 18984.1, 18984.2, or 18984.3 to be Transported to a High Diversion Organic Waste Processing Facility.

**1.54 Multi-Family Premises**

"Multi-Family Premises" means any Residential Premises three (3) or more dwelling units (not including hotels or motels), irrespective of whether residence therein is transient, temporary or permanent. Multi-Family Premises generally receive Solid Waste Handling service through the use of shared Bins, but may use Carts with approval of the Executive Director.

**1.55 Orange County Disposal System**

"Orange County Disposal System" means any landfill owned or operated by the County of Orange, currently including landfills known as Olinda Alpha, Frank R. Bowerman, and Prima Deschecha.

**1.56 Organic Materials**

"Organic Materials" means Food Waste, Yard Waste, and other organic material as

defined by CalRecycle, collectively or individually. Organic Materials are a subset of Organic Waste

**1.57 Organic Materials Processing Facility**

"Organic Materials Processing Facility" means a permitted Facility where Organic Material is sorted, mulched, or separated for the purposes of Recycling, reuse or composting.

**1.58 Organic Waste**

"Organic Waste" means Solid Waste containing material originated from living organisms and their metabolic waste products including, but not limited to, food, Yard Waste, organic textiles and carpets, lumber, wood, paper products, printing and writing paper, manure, biosolids, digestate, and sludges, or as otherwise defined in 14 CCR Section 18982(a)(46). Biosolids and digestate are as defined in 14 CCR Section 18982(a)(4) and 14 CCR Section 18982(a)(16.5), respectively.

**1.59 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.

**1.60 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, towns, cities, and special purpose districts.

**1.61 Premises**

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

**1.62 Process, Processed, or Processing**

"Process", "Processed", "Processing" means the controlled separation, recovery, volume reduction, conversion, or Recycling of Solid Waste including, but not limited to, organized, manual, automated, or mechanical sorting, the use of vehicles for spreading

of waste for the purpose of recovery, and/or includes the use of conveyor belts, sorting lines, or volume reduction equipment, or as otherwise defined in 14 CCR Section 17402(a)(20).

### **1.63 Prohibited Container Contaminants**

"Prohibited Container Contaminants" means the following: (i) Discarded Materials placed in the Source Separated Recyclable Materials Container that are not identified as acceptable Source Separated Recyclable Materials for the City's Source Separated Recyclable Materials Container; (ii) Discarded Materials placed in the Source Separated Organic Waste Container that are not identified as acceptable Source Separated Container Organic Waste for the City's Source Separated Organic Waste Container; (iii) Discarded Materials placed in the Refuse Container that are acceptable Source Separated Recyclable Materials and/or Source Separated Organic Waste to be placed in City's Source Separated Organic Waste Container and/or Source Separated Recyclable Materials Container; and (iv) Excluded Waste placed in any Container.

### **1.64 Rate Year**

"Rate Year" means the period July 1 to June 30, for each year during the Term of this Agreement.

### **1.65 Recycling**

"Recycling" means Collecting, sorting, cleansing, treating, Processing and reconstituting Recyclable Materials for the purpose of reuse or resale.

### **1.66 Recyclable Materials**

"Recyclable Materials" means those Discarded Materials that the Generators set out in Recyclables Containers for Collection for the purpose of Recycling by the Contractor and that exclude Excluded Waste. No Discarded Materials shall be considered Recyclable Materials unless such material is separated from Organic Materials, and Solid Waste. Recyclable Materials shall include, but not be limited to: newspaper (including inserts, coupons, and store advertisements); mixed paper (including office paper, computer paper, magazines, junk mail, catalogs, brown paper bags, brown paper, paperboard, paper egg cartons, telephone books, grocery bags, colored paper, construction paper, envelopes, legal pad backings, shoe boxes, gabletop beverage

containers, cereal, and other similar food boxes yet excluding paper tissues, paper towels, paper with plastic coating, paper contaminated with food, wax paper, foil-lined paper and cartons, Tyvex non-tearing paper envelopes); chipboard; corrugated Cardboard; glass containers of any color (including brown, clear, and green glass bottles and jars); aluminum (including beverage containers and small pieces of scrap metal); steel, tin, or bi-metal cans; mixed plastics such as plastic containers (no. one (1) to seven (7)), except expanded Polystyrene (EPS); bottles including containers made of HDPE, LDPE, or PET; film plastic (when clean, dry, and contained inside of a plastic bag); dry cell household batteries when placed on the Recycling Cart in a sealed heavy-duty plastic bag; and, those materials added by the Contractor from time to time.

**1.67 Refuse**

"Refuse" means Solid Waste or debris, except sewage, Construction and Demolition Debris, Recyclable Materials, and/or Organic Materials placed in source-separated Containers for Collection.

**1.68 Residential**

"Residential" refers to services performed at and for Residential Premises, which include both single-family and Multi-Family Premises.

**1.69 Residential Curbside Service Unit**

"Residential Curbside Service Unit" means each single family residence and duplex unit which receives curbside Collection services using a Cart provided by Contractor. This shall include any Multifamily Premises which does not require Bin Service as determined by the Executive Director. Residential Curbside Service Units do not include Commercial Cart service.

**1.70 Residential Premises**

"Residential Premises" means Premises upon which dwelling units exist, including, without limitation, single family and multi-family dwellings, apartments, boarding or rooming houses, condominiums, mobile homes, efficiency apartments, and second units. Notwithstanding any provision to the contrary herein, in the Santa Ana Municipal Code, or otherwise, for purposes of this Agreement, Premises upon which the following uses are occurring shall not be deemed to be Residential Premises, and

rather shall be deemed to be Commercial Premises: assisted living facilities, convalescent homes, dormitories, extended stay motels, group residential facilities, group care facilities, hotels, motels, and any other businesses not specifically listed at which residency is transient in nature and hence should be classified as Commercial Premises as determined by City on a case by case bases.

**1.71 Roll-off Box**

“Roll-off Box” means Solid Waste Collection Containers of 10-yards or larger.

**1.72 SB 1383**

“SB 1383” means Senate Bill 1383 of 2016 approved by the Governor on September 19, 2016, which added Sections 39730.5, 39730.6, 39730.7, and 39730.8 to the Health and Safety Code, and added Chapter 13.1 (commencing with Section 42652) to Part 3 of Division 30 of the Public Resources Code, establishing methane emissions reduction targets in a Statewide effort to reduce emissions of short-lived climate pollutants as amended, supplemented, superseded, and replaced from time to time. For the purposes of this Agreement, SB 1383 specifically includes the Short-Lived Climate Pollutants (SLCP): Organic Waste Reductions regulations developed by CalRecycle and adopted in November 2020 that created Chapter 12 of 14 CCR, Division 7 and amended portions of regulations of 14 CCR and 27 CCR.

**1.73 Self-Hauler**

“Self-Hauler” or “Self-Haul” means a Person who hauls Discarded Materials, recovered material, or any other material, to another Person, or as otherwise defined in 14 CCR Section 18982(a)(66). Self-Hauler also includes a Person who Back-Hauls waste, as defined in 14 CCR Section 18982(a)(66)(A).

**1.74 Sharps**

“Sharps” means hypodermic needles, pen needles, intravenous needles, lancets, and other devices that are used to penetrate the skin for the delivery of medications.

**1.75 Solid Waste**

"Solid Waste" means all Solid Wastes generated by Residential, Commercial, and industrial sources, including Refuse, Recyclable Materials and Organic Materials, and

all Solid Waste generated at construction and demolition sites, and at treatment works for water and wastewater, which are Collected and transported under the authorization of the City or are self-hauled by residents or contractors. Municipal Solid Waste does not include agricultural crop residues, mining waste and fuel extraction waste, forestry wastes, ash from industrial boilers, furnaces and incinerators or Hazardous Material, any waste which is not permitted to be disposed of at a Class III landfill and which fall within the definition of "Nonhazardous Solid Waste" set forth in Title 23, Chapter 15, Section 2523(a) of the California Code of Regulations as amended or designated Class II wastes. Materials shall be deemed "Solid Waste" consistent with the meaning of California Public Resources Code Section 40191, and for purposes of this Agreement shall be regulated as such, whether or not they may be potentially Recyclables, in either of the following instances: (a) the material is mixed or commingled with other types of Solid Waste such that more than 65% of the material consists of Solid Waste rather than Recyclables, or (b) the payment of a fee, charge, or other consideration, in any form or amount, is directly or indirectly solicited or received from the generator by any Person or combination of Persons in exchange for Collection, removal, transportation, storage, processing, handling, consulting, Container rental or Disposal services ("fee for service" Recycling), whether or not arranged by or through a subcontractor, broker, agent, consultant, or affiliate of the provider of such service.

#### **1.76 Solid Waste Handling Services**

"Solid Waste Handling Services" means the Collection, transfer, transport, Recycling, processing, and Disposal of Solid Waste.

#### **1.77 Source Separation/Source-Separated**

"Source Separation" or "Source-Separated" means materials, including commingled Recyclable Materials, that have been separated or kept separate from the Refuse stream, at the point of generation, for the purpose of additional sorting or Processing of those materials for Recycling or reuse in order to return them to the economic mainstream in the form of raw material for new, reused, or reconstituted products which meet the quality standards necessary to be used in the marketplace, or as otherwise defined in 14 CCR Section 17402.5(b)(4). For the purposes of the Agreement, Source Separated shall include separation of materials by the Generator, property Owner, property Owner's employee, property manager, or property manager's employee into different Containers for the purpose of Collection such that Source Separated materials are

separated from Refuse Container Waste/Mixed Waste and other Solid Waste for the purposes of Collection and Processing.

**1.78 State**

“State” means the State of California.

**1.79 Subcontractor**

“Subcontractor” means any Person, firm, or entity hired by Contractor to carry out any of Contractor’s duties under this Agreement.

**1.80 Tier One Commercial Edible Food Generators**

“Tier One Commercial Edible Food Generator” means a Commercial Edible Food Generator that is one of the following, each as defined in 14 CCR Section 18982:

- A. Supermarket.
- B. Grocery Store with a total facility size equal to or greater than 10,000 square feet.
- C. Food Service Provider.
- D. Food Distributor.
- E. Wholesale Food Vendor.

If the definition in 14 CCR Section 18982(a)(73) of Tier One Commercial Edible Food Generator differs from this definition, the definition in 14 CCR Section 18982(a)(73) shall apply to this Agreement.

**1.81 Tier Two Commercial Edible Food Generators**

“Tier Two Commercial Edible Food Generator” means a Commercial Edible Food Generator that is one of the following, each as defined in 14 CCR Section 18982:

- A. Restaurant with 250 or more seats, or a total facility size equal to or greater than 5,000 square feet.
- B. Hotel with an on-site food facility and 200 or more rooms.

- C. Health facility with an on-site food facility and 100 or more beds.
- D. Large Venue.
- E. Large Event.
- F. A State agency with a cafeteria with 250 or more seats or total cafeteria facility size equal to or greater than 5,000 square feet.
- G. A local education agency with an on-site food facility.

If the definition in 14 CCR Section 18982(a)(74) of Tier Two Commercial Edible Food Generator differs from this definition, the definition in 14 CCR Section 18982(a)(74) shall apply to this Agreement.

**1.82 Transfer**

“Transfer” means the act of Transferring the materials Collected by Contractor in its route vehicles into larger vehicles for Transport to other Facilities for the purpose of Recycling or Disposing of such materials.

**1.83 Transfer Station**

“Transfer Station” means a Facility that receives Solid Waste from Collection vehicles and transfers the material to larger vehicles for transport to landfills and other destinations. Transfer Stations may or may not also include MRFs transferring residual Refuse (Refuse left after the sorting of Recyclable Materials) to landfills and Recyclable Materials, including Organic Materials and/or Construction and Demolition debris, to processors, brokers or end-users.

**1.84 Transformation**

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

**1.85 Transportation or Transport**

“Transportation” or “Transport” means the act of conveying Collected materials from one location to another.

**1.86 Universal Waste**

“Universal Waste” or “u-waste” means any of the following waste that are conditionally exempt from classification as hazardous wastes pursuant to Title 22 of the California Code of Regulations (22 CCR), § 66261.9: (i) batteries as described in 22 CCR § 66273.2; (ii) thermostats as described in 22 CCR § 66273.4; (iii) lamps as described in 22 CCR § 66273.5; and (iv) cathode tube materials as described in 22 CCR § 66273.6; (v) Electronic Waste or e-waste as defined in Section 1.34.

**1.87 Waste Generator**

"Waste Generator" means any Person as defined by the Public Resources Code, whose act or process produced Solid Waste as defined in the Public Resources Code, or whose act first causes Solid Waste to become subject to regulation.

**1.88 Yard Waste**

“Yard Waste” means leaves, grass clippings, brush, branches, and other forms of Organic Materials generated from landscapes or gardens, which have been Source Separated from other Solid Waste. Yard Waste is a subset of Organic Materials and excludes Hazardous Materials.

## ARTICLE 2

### GRANT AND ACCEPTANCE OF FRANCHISE

#### 2.1 Grant and Acceptance of Franchise, Indemnity of Award

Subject to the terms and conditions of this Agreement (including but not limited to the exclusions set forth in Section 2.9 hereof) and applicable State laws, and to the rights of State, county and school district facilities to use a Solid Waste enterprise other than Contractor, City hereby grants to Contractor and Contractor hereby accepts from City, for the Term hereof, the exclusive Franchise, right and privilege to provide Solid Waste Handling Services as defined in this Agreement within the boundaries of the City (the "Franchise").

Contractor agrees to and shall timely take all actions that are reasonably necessary to defend the validity and enforceability of this Agreement and shall pay all costs related to such defense. To the maximum extent permitted by law, Contractor shall defend, indemnify, protect and hold harmless, the City, its officers, agents and employees from any and all claims, actions or proceedings to attack, set aside, void, annul or seek monetary damages resulting from an approval by the City of this Agreement, including but not limited to any action brought by referendum or under Proposition 218 (Calif. Const. Art. XIID) to challenge the City's entry into this Agreement or the setting of Solid Waste rates as set forth in this Agreement. The City shall promptly notify Contractor of any such claim, action, or proceeding. The City and Contractor shall meet in good faith in an effort to come to a mutual agreement for a joint defense; provided that the City shall be entitled to select legal counsel of its choice to conduct the defense if an agreement cannot be reached. Contractor's obligations to pay all costs, defend, indemnify, protect and hold harmless under this section shall not be altered in the event City retains separate counsel.

Contractor 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 2.9 below, or as may otherwise be provided by federal or state law, the rights granted to the Contractor under this Agreement shall be exclusive to the Contractor. The City will not

let any contract to, or enter into any agreement with, any other Person for the performance of the services herein required to be performed by the Contractor.

To the extent permitted under state or federal law, the City shall protect the Contractor's exclusive rights by proper ordinances, and may take action to enforce those ordinances upon request and at the City's sole and absolute discretion. Should the City take administrative, law enforcement, or other legal action against any Person that infringes on the Contractor's exclusive rights, the Contractor shall reimburse the City for its reasonable administrative, law enforcement, or other legal costs related to any such action. To the extent permitted under state or federal law, nothing herein shall preclude Contractor 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 the day and year first above written.

### **2.4 Term of Agreement**

The term of the services to be performed by Contractor under this Agreement shall be ten (10) years, commencing at midnight July 1, 2022, and expiring at midnight June 30, 2032, subject to extension as provided herein. Notwithstanding the foregoing, the unexcused failure or refusal of Contractor to perform any material term, covenant, obligation or condition contained in this Agreement shall give rise to the right, in favor of City, for earlier termination of this Agreement for cause in accordance with the procedures elsewhere contained herein.

### **2.5 Extension Period**

#### **2.5.1 Mutual Option to Extend**

City and Contractor may, by mutual agreement, extend the term of the Agreement for an additional five (5) years at the end of the initial ten (10) year term defined in Section 2.4. The mutual option to extend may be exercised by written amendment to this Agreement no sooner than five (5) years prior to the expiration of the initial term described in Section 2.4 and no later than two (2) years prior to the expiration of the initial term defined in Section 2.4.

### **2.5.2 City Option to Extend**

City, in its sole discretion, may authorize an extension ("Extension Period") of up to thirty-six (36) months. The Extension Period shall be on a month-to-month basis. During the Extension Period, and in addition to rights of termination set forth elsewhere in this Agreement, this Agreement may be terminated by City at any time, without cause, if City gives Contractor a 90-day written notice of termination. City may, upon 90-days' advance written notice to Contractor prior to expiration of the Term of Agreement as defined in Section 2.4, or prior to the expiration of an extended term by mutual agreement under Section 2.5.1, exercise the thirty-six (36) month extension option. If City provides this extension notice, then the Agreement Term will automatically renew on a month-to-month basis, up to a total of thirty-six (36) months, unless earlier terminated pursuant to this Agreement.

### **2.6 Representations and Warranties of Contractor**

Contractor hereby covenants, represents, and warrants the following to City for the purpose of inducing City to enter into this Agreement and to consummate the transaction contemplated hereby, all of which shall be true as of the date of this Agreement and as of the Effective Date:

- a) Contractor is a wholly owned subsidiary limited liability company of Republic Services, Inc., a corporation duly organized and validly existing as a corporation under the laws of the State of Delaware.
- b) Neither the execution of this Agreement nor the delivery by Contractor of services nor the performance by Contractor of its obligations hereunder: (1) conflicts with, violates or results in a breach of any Applicable Law; (2) conflicts with, violates or results in a breach of any term or condition of any judgment, decree, agreement (including, without limitation, the certificate of incorporation of Contractor) or instrument to which Contractor is a party or by which Contractor or any of its properties or assets are bound, or constitutes a default under any such judgment, decree, agreement or instrument; or (3) will result in the creation or imposition of any encumbrance of any nature whatsoever upon any of the properties or assets of Contractor.
- c) There is no action, suit or other proceeding as of the date of this Agreement, at law or in equity, or to the best of Contractor's knowledge, any investigation,

before or by any court or governmental authority, pending or threatened against Contractor or Republic Services, Inc., which is likely to result in an unfavorable decision, ruling or finding which would materially and adversely affect the validity or enforceability of this Agreement or any such agreement or instrument entered into by Contractor or Republic Services, Inc., in connection with the transactions contemplated hereby, or which could materially and adversely affect the ability of Contractor to perform its obligations hereunder or which would have a material adverse effect on the financial condition of Contractor or Republic Services, Inc.

- d) Contractor has no knowledge of any Applicable Law in effect as of the date of this Agreement that would prohibit the performance by Contractor of this Agreement and the transactions contemplated hereby.
- e) Contractor has made an independent investigation, satisfactory to it, of the conditions and circumstances surrounding this Agreement and the work to be performed by it, and is satisfied that those conditions and circumstances will not impair its ability to perform the work and provide the Collection services required by this Agreement.
- f) The information supplied by Contractor in all submittals made in connection with negotiation and execution of this Agreement, including all materials in Exhibits of this Agreement, and all representations and warranties made by Contractor throughout this Agreement are true, accurate, correct and complete in all material respects on and as of the Effective Date of this Agreement. Note that inaccuracies in Contractor's Proposal, such as material omissions of past and pending litigation as requested under the Request for Proposals through which this Agreement was procured, is grounds for termination of this Agreement.
- g) Contractor's representative, designated in Section 5.2.4, shall have authority in all daily operational matters related to this Agreement. City may rely upon action taken by such designated representative as action of Contractor unless the actions taken are not within the scope of this Agreement.

## **2.7 Conditions to Effectiveness of Agreement**

The obligation of 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 City.

- a) **Accuracy of Representations.** Representations and warranties made by Contractor 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 Contractor or the execution of this Agreement or seeking to restrain or enjoin its performance.
- c) **Furnishing of Insurance and Bonds.** Contractor has furnished evidence of the insurance and bonds required by Article 9.
- d) **Effectiveness of City Council Action.** City's Resolution approving this Agreement shall have become effective pursuant to California law.

## **2.8 Delegation of Authority**

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

## **2.9 Limitations to Scope**

Notwithstanding any provision to the contrary contained herein, the exclusive Franchise, right and privilege to provide Solid Waste Handling Services at Premises within City granted to Contractor by this Agreement specifically excludes the following services, which services may be provided by Persons other than Contractor and which may be the subject of other permits, licenses, franchises or agreements issued or entered by City:

- a) The sale or donation of source-separated Recyclable Material and/or Organic Material by the Waste Generator to any Person or entity other than Contractor; provided, however, to the extent permitted by law, if the Waste Generator is required to pay monetary or non-monetary consideration for the Collection, transportation, transfer, or processing of Recyclable Material and/or Organic Material, or the Waste Generator receives a reduction or discount in price (or in other terms of the consideration the Waste Generator is required to pay), the

transaction shall not be considered a sale or donation as described in Section 16-30(c) of the City of Santa Ana's Municipal Code;

- b) Solid Waste which is removed from any Premises by the Waste Generator, and which is transported personally by such Waste Generator (or by his or her full-time employees, but not a subcontractor) to a processing or Disposal Facility in a manner consistent with all Applicable Laws and regulations;
- c) Yard 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 that company rather than as a hauling service;
- d) The Collection, transfer, transport, Recycling, processing, and Disposal of animal remains from slaughterhouse or butcher shops for use as tallow;
- e) The Collection, transfer, transport, Recycling, processing, and Disposal of by-products of sewage treatment, including sludge, sludge ash, grit and screenings;
- f) The Collection, transfer, transport, Recycling, processing, and Disposal of Hazardous Material, Household Hazardous Waste and radioactive waste regardless of its source;
- g) Construction and Demolition Debris which is removed by a duly-licensed construction or demolition company or as part of a total service offered by said licensed company or by the City, where the licensed company utilizes its own equipment;
- h) The Collection, transfer, transport, Recycling, processing and Disposal of automobiles and automobile parts by vehicle dismantlers or owners of vehicle salvage yards;
- i) The Collection, transfer and transport of clean dirt, excepting that which is Collected from City Operations as described in Sections 4.4.1 and 4.4.2;
- j) Containers delivered for Recycling under the California Beverage Container Recycling Litter Reduction Act, Section 14500, et. seq. California Public Resources Code;
- k) The Collection, transfer, transport, Recycling, processing, and Disposal of Solid Waste by City through City officers or employees in the normal course of their

City employment;

- l) Solid Waste Handling Services for governmental agencies other than City, which may have facilities in City, but over which City has no jurisdiction in connection with the regulation of Solid Waste;
- m) Solid Waste Handling Services for Solid Waste originating outside the City from hauling such Solid Waste over City streets, provided such collectors comply with any governing laws and/or ordinances;
- n) Contractor's right to Collect and/or Dispose of Solid Waste shall not be exclusive in the event of failure to Collect under Article 10 of this Agreement during which Contractor fails to maintain substantially complete regular Collection services pursuant to this Agreement and the Collection schedules then in effect, for any reason, including a strike by Contractor's employees or similar labor dispute. The City may provide for Collection and/or Disposal services from persons other than Contractor during such periods, including Contractor's Bin and/or Roll-off Service Customers;
- o) Food Waste or other Organic Materials diverted from Disposal by delivery to hog farms or otherwise used as animal feed;
- p) Edible food recovered for human consumption;
- q) Collection services already lawfully provided by another contractor in any territory that has been annexed to the City during the term of this Agreement, as more specifically described in Section 2.14;
- r) Used motor oil and used motor oil filter Collection services provided under Section 4.2.12;
- s) Other Persons with the right to provide Collection services for Construction and Demolition to the extent required by Public Resources Code Section 49520 and other applicable law, if any.

Contractor acknowledges and agrees that City may permit other Persons besides Contractor to Collect any or all types of the Solid Waste listed in this Section 2.9 as exempt from Contractor's Franchise, including Recyclable Materials, without seeking or obtaining approval of Contractor under this Agreement.

This grant to Contractor of an exclusive Franchise, right and privilege to Collect, transport, or process and Dispose of Solid Waste shall be interpreted to be consistent with all Applicable Laws, now and during the term of the Franchise, and the scope of this exclusive Franchise shall be limited by Applicable 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 City to lawfully provide for the scope of Franchise services as specifically set forth herein, Contractor 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 City shall not be responsible for any lost profits claimed by Contractor to arise out of further limitations of the scope of the Agreement set forth herein. In such an event, it shall be the responsibility of Contractor to minimize the financial impact to other services being provided as much as possible.

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

### **2.10.1 General**

City may direct Contractor 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, and different kinds of services and/or new requirements for Waste Generators are included among the kinds of changes which City may direct. Contractor acknowledges that State law may change or increase the Diversion requirement during the term of this Agreement and Contractor agrees to propose services to meet such Diversion requirements. Contractor shall be entitled to an adjustment in its Contractor Compensation for providing such additional or modified services, if Contractor demonstrates that its cost of service would increase, as set forth in Sections 2.10.2 and 2.10.3. City may utilize cost components included in the Contractor's Proposal in calculating equitable rate adjustments. If City and Contractor cannot agree on compensation for new or additional services, then City may contract with other parties for such services, which shall be considered exempt from the exclusivity provisions of Section 2.2.

### **2.10.2 New Diversion Programs**

Contractor shall present, within sixty (60) days of a request to do so by 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(s) of Containers to be utilized.
- Type(s) of material to be Collected.
- Provision for program publicity/education/marketing.
- Projection of the annual 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.
- Any other information reasonably requested by the Executive Director.

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

Contractor acknowledges and agrees that City may permit other Persons besides Contractor to provide additional Solid Waste services not otherwise contemplated under this Agreement. If pursuant to Sections 2.10.1 and 2.10.2, Contractor and City cannot agree on terms and conditions of such services within ninety (90) days from the date when City first requests a proposal from Contractor to perform such services, Contractor acknowledges and agrees that City may permit Persons other than Contractor to provide such services.

### **2.11 Ownership of Solid Waste and City's Right to Direct 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 Waste Generator to Contractor by operation of this Agreement and City ordinance. Subject to Contractor's objective to meet the Source Reduction and Recycling goals

which apply to City and City's right to direct Contractor 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 City exercises such right by providing specific written direction to Contractor, Contractor 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 Contractor; this does not impact Contractor's right to retain Recyclable Materials revenue under Section 4.6.7. Subject to the provisions of this Agreement, Contractor shall have the right to retain any benefit resulting from its right to retain, Recycle, process, Dispose of, or reuse the Solid Waste which it Collects. Solid Waste which is delivered to a Disposal Site or sites (whether landfill, Transformation Facility, Transfer Station, Organic Materials Processing Facility or Material Recovery Facility) shall become the property of the Owner or operator of the Disposal Site(s) once deposited there by Contractor. 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 City has such ownership or possession unless such written notice has been given to Contractor.

City has the option to provide written direction to the Contractor specifying a Facility for handling, processing, and Disposal of Solid Waste. If City directs Contractor to a Facility other than a Facility listed in this Agreement, or otherwise requested by Contractor, and in doing so it adversely affects the ability of the Contractor to meet either or both of the requirements of Section 9.3 and Section 4.6.1, then in this event the City and Contractor shall meet and confer and mutually agree on revised obligations for Sections 9.3 and 4.6.1. The foregoing notwithstanding, in the event City directs Contractor to a Facility other than a Facility listed in this Agreement or otherwise requested by Contractor, then Contractor shall be entitled to a rate adjustment based upon any increase or decrease in costs associated with handling, processing, Disposal and transportation.

## **2.12 Contractor Status**

Contractor represents and warrants that it is duly organized, validly existing and in good standing under Applicable Laws. It is qualified to transact business in the State of California and has the power to own its properties and to carry on its business as now owned and operated and as required by this Agreement.

### **2.13 Contractor Authorization**

Contractor represents and warrants that it has the authority to enter into and perform its obligations under this Agreement. The Board of Directors or partners of Contractor (or the shareholders, if necessary) have taken all actions required by Applicable Law, its articles of incorporation, and its bylaws or otherwise to authorize the execution of this Agreement. The Persons signing this Agreement on behalf of Contractor have authority to do so. Contractor 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 Contractor.

### **2.14 Annexations**

This Agreement extends to any territory annexed to the City during the term of this Agreement except to the extent that Collection by Contractor 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 City agrees that it shall cooperate with Contractor to fulfill any requirement necessary for Contractor to serve the annexed area consistent with this paragraph.

### **2.15 Permits and Licenses**

Contractor shall acquire and maintain all necessary permits and licenses for the Collecting, transporting, Recycling, processing, disposing, and storing of Solid Waste as required under this Agreement. Failure to maintain all required permits shall be deemed a material breach of contract for which City may terminate this Agreement as provided in Section 11.3. Contractor must follow requirements of the Santa Ana Municipal Code, including, but not limited to, obtaining a City of Santa Ana business license.

## ARTICLE 3

### FRANCHISE FEE, NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM FEE, VEHICLE IMPACT FEE, & ADMINISTRATIVE FEE

In addition to any other consideration set forth herein, 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 herein, Contractor shall provide the following:

#### 3.1 Franchise Fee

Contractor shall pay to the City a Franchise Fee based on the Gross Receipts received by Contractor from Customers direct-billed by Contractor. The Franchise Fee is now agreed to be an amount equal to the higher of eight million dollars (\$8,000,000) per contract year (July 1 to June 30) or 17.9% of said Gross Receipts for Customers direct-billed by Contractor. This amount may be increased by resolution of the City Council and, whenever said Franchise Fee is increased by resolution of the City Council, Contractor shall be permitted to pass through to Customers direct-billed by Contractor one hundred percent (100%) of the amount of such increase. Invoices submitted to Customers by Contractor shall not reference the aforementioned Franchise Fee. The Parties acknowledge that this Franchise Fee reflects the reasonable value of the public right-of-way franchise rights granted to Contractor pursuant to this Agreement, as determined through good-faith negotiation of this Agreement. Concurrent with each Franchise Fee payment, Contractor shall provide an accounting worksheet showing the breakout of receipts by line of service and calculation of the Franchise Fee in a format approved by the City.

#### 3.2 National Pollutant Discharge Elimination System (NPDES) Fee

The City has an established National Pollutant Discharge Elimination System (NPDES) program that is designed to minimize any pollutants discharged into the City's storm drain system. The City conducted a study and found a nexus between the NPDES program and its storm drain infrastructure maintenance and cleaning to Solid Waste Collection. Refuse and debris that is generated on residential and non-residential parcels and not placed in appropriate containers for pick-up, is carried through the City's curb and gutter system to catch basins where it is captured by trash screen devices or ends up in the storm drain infrastructure, where it is extracted and disposed

of. The City bears significant annual costs for these activities due to Solid Waste impacts. The study identified the figure below as the City's cost of the NPDES program that may be reasonably apportioned to the cost of providing Solid Waste services.

To reimburse the City for storm drain infrastructure maintenance and cleaning of Solid Waste, Contractor shall pay to the City an NPDES Fee in the amount of one million, ten thousand dollars (\$1,010,000) annually as adjusted herein. The NPDES Fee shall be paid in twelve monthly installments over the course of each Rate Year, beginning with the Rate Year starting July 1, 2022. The July 1, 2022 Rate Year monthly payments will be eighty-four thousand, one hundred sixty-six dollars and sixty-seven cents (\$84,166.67) due under the terms of Section 3.5. The foregoing notwithstanding, beginning with Rate Year 2 (July 1, 2023) and for all subsequent Rate Years, the amount of the NPDES Fee shall be adjusted annually to reflect the change in the average annual CPI for the twelve (12) month period ending December. If there is no increase in the CPI or if the CPI decreases, the NPDES Fee shall remain unchanged from the previous Rate Year.

### **3.3 Vehicle Impact Fee**

The City is adopting a vehicle impact fee program. The primary purpose of the vehicle impact fee program is to provide funding for necessary improvements to the City's streets to offset the "wear and tear" impact of heavy vehicle travel thereon. The City commissioned a study to assess the impact heavy vehicles travelling within the City have on City streets. The study concluded that approximately 38.1% of the "wear and tear" impact is due to refuse trucks and related heavy vehicles travelling on City streets, equivalent to \$7,652,310 of impact annually. As such, the study concluded that the costs of maintaining City streets to offset these impacts may be fairly apportioned to the cost of providing Solid Waste services. The amount identified below reflects less than 30% of maximum costs the City could recover according to the study.

To reimburse the City for the costs of road maintenance due to the use of Contractor's Solid Waste Collection vehicles on City streets, Contractor shall pay two million, two hundred sixty-six thousand, six hundred and sixty-six dollars (\$2,266,666) annually as adjusted herein. The Vehicle Impact Fee shall be paid in twelve monthly installments over the course of each Rate Year, beginning with the Rate Year starting July 1, 2022. The July 1, 2022 Rate Year monthly payments will be one hundred eighty-eight thousand, eight hundred, eighty-eight dollars and eighty-three cents (\$188,888.83) due under the terms of Section 3.5. The foregoing notwithstanding, beginning the Rate Year

2 (July 2, 2023) and for all subsequent Rate Years, the amount of the Vehicle Impact Fee shall be adjusted annually to reflect the change in the average annual CPI for the twelve (12) month period ending December. If there is no increase in the CPI or if the CPI decreases, the Vehicle Impact Fee shall remain unchanged from the previous Rate Year.

### **3.4 Administrative Fee**

The City has analyzed its annual budgeted costs to bill residential accounts and for general administration of this Agreement. These costs are typically paid from the City's General Fund even though these services benefit the Solid Waste franchise, and therefore the costs may be reasonably allocated to and recovered from the Solid Waste franchise. **In order to offset a portion of the City's Refuse Enterprise costs to administer this Agreement and oversight of billing service,** Contractor shall pay to the City an Administrative Fee in the amount of two million, three hundred twenty-six thousand, and eight hundred dollars (\$2,326,800) annually as adjusted herein. The Administrative Fee shall be paid in twelve monthly installments over the course of each Rate Year, beginning with the Rate Year starting July 1, 2022. The July 1, 2022 Rate Year monthly payments will be one hundred ninety-three thousand, and nine hundred dollars (\$193,900) due under the terms of Section 3.5. The foregoing notwithstanding, beginning with Rate Year 2 (July 1, 2023) and for all subsequent Rate Years, the amount of the Administrative Fee shall be adjusted annually to reflect the change in the average annual CPI for the twelve (12) month period ending December. If there is no increase in the CPI or if the CPI decreases, the Administrative Fee shall remain unchanged from the previous Rate Year.

### **3.5 Time and Method of Fee Payments to City**

On or before the thirtieth (30th) day following the end of each calendar month, during the Term of this Agreement, Contractor shall remit to City the Franchise Fee for Contractor billed Services as described in Section 3.1. The Franchise Fee payments shall be submitted with an itemized statement identifying the amount of the fee. If the fee is not paid to the City on or before the thirtieth (30th) day following the end of the calendar month, Contractor shall pay to City a penalty in an amount equal to ten percent (10%) of the amount of the delinquent fee, or portion thereof, owing for that month. Contractor shall pay an additional ten percent (10%), on any unpaid balance for each following thirty (30) day period the fees remain unpaid. Late payment penalties shall not be included in any revenue requirement.

Each monthly Franchise Fee remittance to City shall be accompanied by a statement detailing Gross Receipts from Customers direct-billed by Contractor for the period covered from all operations conducted or permitted, pursuant to this Agreement. In addition, Contractor shall maintain copies of all Billing and Collection records for five (5) years, following the date of billing, for inspection and verification by City at any reasonable time upon request.

### **3.6 Franchise Fee Supplemental Payment**

As described in Section 3.1, the Franchise Fee shall be the higher of eight million dollars (\$8,000,000) per contract year or 17.9% of Gross Receipts. Contractor shall make regular monthly Franchise Fee payments as described in Section 3.5. If the total of the 12 regular monthly Franchise Fee payments for the period of July through June are less than \$8,000,000, then the Contractor shall remit a supplemental payment with the regular June payment that is equal to the difference between \$8,000,000 and the amounts paid for the contract year. For example, if the sum of the regular 12 monthly Franchise Fee payments for the contract year is \$7,500,000, then a supplemental payment of \$500,000 would be due in addition to the regular June payment. If the sum of the 12 regular monthly payments is equal to or greater than \$8,000,000, then no supplemental payment would be due for that contract year.

### **3.7 Clean Business Initiative Program**

On July 1, 2022, and annually thereafter on each July 1 over the Term of this Agreement including Agreement extensions granted by the City, Contractor shall provide to the City fifty-thousand dollars (\$50,000) for the cost of administering the Clean Business Initiatives Program. The foregoing notwithstanding, beginning the Rate Year 2 (July 2, 2023) and for all subsequent Rate Years, the amount of the Clean Business Initiative Program shall be adjusted annually to reflect the change in the average annual CPI for the twelve (12) month period ending December. If there is no increase in the CPI or if the CPI decreases, the Clean Business Initiative Program shall remain unchanged from the previous Rate Year.

## ARTICLE 4

### DIRECT SERVICES

#### 4.1 Services to be Provided by Contractor - General

The work to be done by Contractor 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 Contractor of the duty to furnish all others, as may be required, whether enumerated elsewhere in the Agreement or not.

The work to be done by Contractor pursuant to this Agreement shall be accomplished in a thorough and professional manner so that Customers within City are provided reliable, courteous and high-quality Solid Waste Handling Services at all times. The enumeration of, and specification of requirements for, particular aspects of service quality shall not relieve Contractor of the duty of accomplishing all other aspects in the manner provided in this section, whether such other aspects are enumerated elsewhere in the Agreement or not.

#### 4.2 Residential Curbside Service Unit Services

Residential Refuse, Recyclables, and Organics Processing, Transfer, and Collection shall be in accordance with Exhibit 8 and Exhibit 9 of this Agreement.

##### 4.2.1 Residential Curbside Service Unit Refuse Collection

Contractor shall provide all Residential Curbside Service Unit Customers with one 96-gallon Refuse Cart. Customers may request a smaller 64-gallon or 35-gallon Refuse Cart. See Section 4.7.4.1 for Cart selection procedures. Additional Refuse Carts may be requested for a monthly fee per Cart in accordance with the approved rate schedule.

Collection frequency shall be not less than once per week from Contractor-provided Refuse Carts placed at a suitable location, which is typically on the street adjacent to the curb or along an alley with street access at both ends, unless otherwise approved by the Executive Director. If there is a dispute between a Customer and Contractor as to whether Refuse Cart or Bin Service shall be provided, or the proper location for Refuse Cart placement, City will make the final determination.

#### **4.2.2 Section Reserved**

#### **4.2.3 Residential Curbside Service Unit Recyclable Materials Collection**

Contractor shall provide all Residential Curbside Service Unit Customers receiving Cart Refuse Collection with a 96-gallon Cart for Collection of Recyclable Materials. Customers needing smaller Containers may request 64-gallon or 35-gallon Recycling Carts. Additional Recycling Carts may be requested for a monthly fee per Cart in accordance with the approved rate schedule.

Recyclable Material Collection from Cart Customers within the City shall be a minimum of once each week, on the same day as Refuse Collection, and from the same set-out location as Refuse Containers. Contractor is responsible for moving all Recycling Carts as necessary for Collection, and then returning them to their original location. At a minimum, Recyclable Material Collected from Cart Customers shall include, but not be limited to: glass, tin, aluminum, PET, HDPE, narrow neck plastics, newspaper, mixed paper (including junk mail, phone books, and magazines), cardboard, and any additional materials that can be recovered and Recycled. Contractor and the City may meet and confer from time to time to re-evaluate this Recyclable Material list and to consider any amendments to it, based upon new or enhanced recycling technologies. Contractor shall ensure that all public education and outreach is updated to reflect materials that may be placed in Recyclable Materials Containers as they change during the term of this Agreement.

#### **4.2.4 Residential Curbside Service Unit Organic Materials Collection**

Contractor shall provide a Residential Curbside Unit Organics Collection program sufficient to enable City and Customers to meet or exceed the requirements of SB 1383 as of the start of Collection services under this Agreement. Contractor is required to implement a program to Divert Residential Food Waste from Residential Curbside Service Unit Customers, which is co-collected with Yard Waste.

Contractor shall provide weekly Collection of Organic Materials on the same day as Refuse Collection from the same set-out location as Refuse Carts. Contractor shall Collect Organic Materials placed in Contractor-provided Carts. The standard Organics Cart size is 96 gallons but customers may request a 64-gallon or 35-gallon Cart. Additional Organics Carts may be requested for a monthly fee per Cart in accordance with the approved rate schedule.

Contractor is responsible for moving all Containers as necessary for Collection, and then returning them to their original location. Contractor shall have an Organic Materials Recycling program whereby it, at a minimum, Collects the types of Organic Materials required by CalRecycle for Residential Cart Customers. Contractor shall provide to the City a list of Organic Materials to be collected from Residential Curbside Service Unit Customers upon execution of this Agreement. Contractor shall ensure that all public education and outreach is updated to reflect materials that may be placed in Organics Materials Containers as they change during the term of this Agreement.

#### **4.2.5 Senior and Mobile Home Low Generator Customers**

Contractor shall provide senior residents, as described in Section 5.1.2, and residents living in mobile home communities, both of which must live in households with no more than two persons and are low trash generators, a 35-gallon Refuse, Recycling, and Organics Cart. Senior Residents, and Residents living in mobile home communities, and receiving the Senior and Mobile Home Low Generator Rate (Section 5.1.2), are not eligible to receive additional Carts.

#### **4.2.6 Collection of Neighborhood Association Containers**

The City currently recognizes sixty-four (64) neighborhood associations. The service described in this Section 4.2.6 shall apply to all neighborhood associations, whether existing now or in the future. Contractor shall provide weekly manual Collection of fourteen (14) Refuse Containers owned by and located in the Washington Square Neighborhood Association. Additionally, Contractor shall provide up to fourteen (14) automated Refuse Containers to any other neighborhood association at the request of the association, for a total maximum of eight-hundred eighty-two (882) automated Refuse Containers, and shall also provide weekly Collection of such Containers. The Contractor-provided Containers shall be sixty (60) gallons with a two hundred (200) pound load capacity, have gravity release locks, and weighted bottoms. Containers shall be branded with the City of Santa Ana's Clean City Initiative logo. The City will provide the artwork. Contractor shall steam-clean the interior and exterior of the Contractor-provided and neighborhood association-owned Containers at a minimum of one-time per week. All Containers may be placed on the public right-of-way, and may be placed as far as six (6) feet from the curb face. Collection of all Containers under this Section 4.2.6, shall occur on the same day as the regular Solid Waste Collection services for each neighborhood association. The total number of Containers serviced under this

Section 4.2.6. shall not exceed eight hundred ninety-six (896).

Contractor's services for all neighborhood association Containers, both neighborhood association-owned and Contractor-provided, shall be provided at no additional cost to City or ratepayers.

#### **4.2.7 Section Reserved**

#### **4.2.8 Holiday Tree Collection Program**

Except as provided herein, Contractor shall collect all holiday trees discarded by Residential Curbside Service Units on the first three regularly scheduled weekly Collection days after Christmas Day, at no additional charge. After this period, trees will be Collected as Bulky Items under Section 4.2.10. Trees under six (6) feet in length will be Collected and diverted without Customers needing to cut them. Contractor may require that Customers with larger trees cut the trees to pieces no longer than six (6) feet, and that tinsel, ornaments and stands be removed prior to placement at Collection point (curb or as otherwise determined by Customer and Contractor). The Contractor shall affix a non-Collection notice to any non-Collected tree informing the Customer of the reason(s) for non-Collection. Contractor may charge City-approved rates to return and Collect a previously non-Collected holiday tree that has been corrected and set out. Contractor shall Process all holiday trees that are properly set out for Collection as Organic Waste in accordance with Exhibit 8.

#### **4.2.9 Walk-Out Service**

Contractor shall provide walk-out service to disabled individuals at Residential Curbside Service Units, consisting of removing Refuse, Recycling and Organics Carts from Customer's storage area, placing the Carts out for Collection, and returning Carts to Customer's storage area after Collection, ensuring that all doors or gates are closed securely. This service is provided at no additional charge to disabled Customers subject to the criteria below.

To be eligible for this service, the Customer at the Residential Curbside Service Unit shall have a DMV issued disabled person placard or license plate or provide a letter to Contractor from a licensed physician certifying that he or she is unable to move his/her Carts to the curb. For all forms of eligibility, Customer must certify that there is no other capable person living in the Residential Curbside Service Unit. If eligibility is

established by a physician certification, Contractor may require each eligible person at the Residential Curbside Service Unit to provide a new letter from a physician on an annual basis in order to maintain eligibility for walk-out service. Contractor shall provide the names, addresses, contact information, and method of verification of eligibility to the City for Customers requesting walk-out service as these verified requests are received.

Contractor shall provide walk-out service to other than disabled individuals at the request of the Customer, for a monthly fee as defined in the approved rate schedule.

Contractor may require as a condition of walk-out service that a Customer sign a standardized agreement, the terms of which shall be subject to City's approval, which authorizes entry onto the Residential Curbside Service Unit premises serviced under Customer's account and holds Contractor harmless from liability (including specifically liability related to pets escaping) associated with Contractor providing such service.

Contractor will notify all Residential Curbside Service Unit Customers annually, beginning within thirty (30) days of effectiveness of this Agreement, of this Collection option and submit, for approval, a draft notification to City prior to distribution to Customers. New Customers shall be notified of this option upon initiation of new Collection services.

#### **4.2.10 On-Call Bulky Item Pickup - Residential Curbside Service Unit Customers**

Contractor shall provide Bulky Item pickup service to all Residential Curbside Service Unit Customers. Each Residential Curbside Service Unit Customer shall be entitled to four (4) Bulky Item pickups per Rate Year at no additional charge. Contractor shall provide assistance of removal of Bulky Items on private property to senior citizens and the disabled at no additional cost. Customers may put out up to four (4) Bulky Items at each pickup, or four (4), thirty (30) gallon bags of Refuse, or twenty (20), thirty (30) gallon bags of Yard Waste. Contractor shall Collect all Bulky Items as defined in Section 1.13 including items referred to as Electronic Waste or "e-waste" as defined in Section 1.34. The following provisions shall apply to this program:

- No single item that cannot be handled by two workers will be accepted.
- The following items will not be picked up: Hazardous Materials (including u-waste but excepting e-waste), waste oil or anti-freeze. For the purposes of this section,

items referred to as "e-waste" are not considered hazardous.

Requests by Residential Curbside Service Unit Customers for such Collections shall be made directly to the Contractor who shall provide satisfactory telephone message receiving, transmitting and response procedures and shall be responsible for maintaining a log of such large item collections. On-call Bulky Item Collection requests shall be responded to by Contractor within a reasonable time but no more than five (5) working days after such a request is received. Residential Curbside Service Unit Customers that exceed the number of free pickups may receive Bulky Item Collection under the same terms for a fee, in accordance with the approved rate schedule, and shall be billed directly by Contractor.

Contractor will notify all Residential Curbside Service Unit Customers of this service annually, beginning within thirty (30) days of effectiveness of this Agreement. New Customers shall be notified of this service upon request of Collection services.

Contractor to develop a warning notice to inform Customers who set out Bulky Items without contacting Contractor and that exceed the number of items per pickup, or the number of pickups per year, that they may incur a charge in accordance with the approved rate schedule.

#### **4.2.11 Sharps Collection Program**

Contractor shall deliver or arrange for delivery to Customers, at no additional charge, within one week of request, a pre-paid, postage-paid mail-back container to safely collect Sharps and send Sharps for proper disposal. Residents are limited to four (4) containers at no additional charge per year. Each container shall be of adequate volume to accommodate the needs of a diabetic person for a three month period.

#### **4.2.12 Used Motor Oil Recycling and Used Motor Oil Filter Collection**

Contractor shall Collect and Recycle used motor oil and used motor oil filters placed curbside by Refuse Carts on collection day. Contractor may instruct Customers to call-in for this service at least two business days (excluding Saturday, Sunday and holidays listed in Section 4.7.1) in advance. Contractor shall provide used motor oil Recycling containers and used motor oil filter Recycling bags to Customers upon request. Upon Collection of used motor oil, Contractor shall leave an empty container and oil filter Recycling bag. Contractor shall include in its public education materials the availability

of this program and the free used motor oil containers and bags, and how to properly place the oil and filters for Collection. Contractor shall bill the three-thousand one-hundred and sixty three dollars (\$3,163) per month for its costs associated with the Collection and Recycling of used motor oil and used motor oil filters. Used motor oil Recycling containers and used motor oil filter Recycling bags shall be purchased by the Contractor. Contractor shall submit invoices for the used motor Recycling containers and used motor oil filter Recycling bags for reimbursement by the City. City may elect to reduce or eliminate the used motor oil and used motor oil filter Recycling program and related Contractor compensation if grant funds are insufficient or not available. City may also elect to have a different contractor provide these services.

#### **4.2.13 Universal Waste Collection**

Contractor shall provide a toll free number for Residential Curbside Service Unit Customers to schedule a Universal Waste pickup. Contractor shall collect the following Universal Waste items from Residential Curbside Service Unit Customers:

- Electrical or electronic items (including televisions, stereos, computers, printers, cell phones and microwaves)
- Household batteries
- Automotive batteries
- Mercury thermometers, switches
- Fluorescent and compact fluorescent light bulbs

Contractor shall instruct Residential Curbside Service Unit Customers to leave the materials on their doorstep or near their garage on the scheduled Collection date. Assistance will be provided to disabled Customers. A receipt will be left for all materials Collected per stop.

Contractor shall provide public education and outreach of this program through the initial mailing, workshops, annual brochures/mailings, the Santa Ana Green Quarterly Newsletter, Contractor's webpage, and community events as described in Sections 5.3.3 and 5.3.4.

Contractor shall provide this service at no additional charge.

#### **4.2.14 Recycling Reward Program**

On a quarterly basis, Contractor and City staff will choose four residences that have placed uncontaminated Recycling out for Collection. Contractor shall provide a \$25 gift card, approved by the City, for the selected residences.

### **4.3 Commercial and Multi-Family Services**

This section describes Service provided to Commercial Customers, and Multi-Family Customers that are not Residential Curbside Service Units. Commercial and Multi-Family Refuse, Recyclables, and Organics Processing, Transfer, and Collection shall be in accordance with Exhibit 8 and Exhibit 9 of this Agreement.

#### **4.3.1 Commercial and Multi-Family Customer Refuse Collection**

Contractor shall provide Bin Refuse Service to Multi-Family Premises Customers and Commercial Customers. Contractor shall Collect and remove all Refuse that is placed in Bins from the property of Customers receiving Bin Service, at least once per week and more frequently if required to handle the waste generated at the Premises where the Bins are located, or if requested by Customer. Minimum Container capacity requirements are described in Section 16-37 of the City of Santa Ana's Municipal Code. Special consideration shall be given when determining the pickup areas to ensure that the flow of traffic is not impeded. Repeated, reasonable public complaints about unreasonable interference with traffic flows may constitute a default or violation of this Agreement.

Customers may lease from Contractor or third parties compaction equipment that may be attached to Bins. The provision of compaction equipment is outside the scope of this Agreement. Collection of Bins using these devices remains within the scope of this Agreement unless otherwise excluded per Section 2.9.

#### **4.3.2 Commercial Cart Service**

As an alternative to the requirements of Section 4.3.1, Contractor shall offer Collection in Refuse Carts to Customers at Multi-Family and Commercial Premises that do not have space for, or do not generate enough waste to require the use of Bins for Collection in accordance with the approved rate schedule. If Contractor and Customer have a disagreement as to whether Cart service is appropriate, or if City determines that

Collection in Carts causes health and safety or other concerns, City shall make the final determination as to whether Collection in Carts may occur. Multi-Family Premises with a Homeowners' Association may request Cart service upon approval by the Executive Director, and shall be charged the Residential Curbside Service Unit rates included in the approved rate schedule. Commercial and Multi-Family Premises Customers that receive Refuse Carts, shall also receive a Recycling Cart at no additional charge.

#### **4.3.3 Roll-off Box Service**

Contractor shall provide exclusive (as limited by Section 2.9) permanent and temporary Roll-off Box Collection service upon request. Contractor must deliver a temporary Roll-off Box to a Customer within two business days (excluding Saturday, Sunday and holidays listed in Section 4.7.1) of request. Special request to empty Roll-off Boxes outside of regularly scheduled Collections shall be performed within one business day.

Contractor will provide standard 10, 30 and 40-cubic-yard standard Roll-off Boxes. The provision of compactor Roll-off Boxes, which are enclosed Containers attached to a compaction devise, is not included in this Agreement. Providing service to such compactor Roll-off Boxes is included.

Contractor shall transport and process Roll-off loads at a MRF in compliance with CalRecycle and acceptable to the City.

In the event that Contractor is unable to provide temporary service to any Customer within five (5) business days (excluding Saturday, Sunday, or holidays listed in Section 4.7.1), Executive Director may permit any other licensed hauler to provide service if, but only if, Contractor has not provided service within twenty-four (24) hours after reasonable notification by Executive Director.

#### **4.3.4 Temporary Bin Service**

Contractor shall provide exclusive (as limited by Section 2.9) temporary Bin Service to Customers upon request. Contractor must deliver a temporary Bin to a Customer the next business day (excluding Saturday, Sunday or holidays listed in Section 4.7.1), if requested by 12:00 noon; otherwise, delivery shall be no later than the second day. Rates for temporary Bin Service are listed separately in the approved rate schedule.

### **4.3.5 Commercial and Multi-Family Recycling**

Contractor shall provide Source-Separated Recycling using Bins or Carts for Commercial and Multi-Family Refuse Bin Customers requesting such service in accordance with the approved rate schedule.

#### **4.3.5.1 Site Visits, Education and Outreach**

Contractor will promote Commercial and Multi-Family Recycling programs and assist the City in providing reports on Customers' Recycling efforts. Contractor shall conduct the planned tasks, and procedures contained in Exhibit 7 "AB 341, AB 1826, and SB 1383 Implementation Plan," based on the schedule included in Exhibit 7.

Upon execution of this Agreement, and each July 1 annually thereafter, a Contractor representative will contact, via in-person meetings, all Multi-Family and Commercial Customers not subscribing to Recycling Collection service required under applicable CalRecycle requirements. The Contractor representative shall assist customers with selecting appropriate Containers and Container sizing, identifying acceptable Recyclable Materials for Collection, and attempting to resolve any logistical detriments to providing Recyclable Materials Collection service. Contractor shall provide a written proposal to each AB 341 non-compliant Commercial and Multi-family Customer annually. The proposal shall provide pricing for implementing Recycling service and reducing, or 'right-sizing', Refuse service to account for materials diverted through the Contractor-provided Recycling program; a proposed start date for the implementation of new Recycling services; a description of the requirements of AB 341 and any relevant City ordinances; a plan for training staff and/or residents; and any other components as directed by the City. A proposal template shall be approved by the City prior to initiation of services under this Agreement. Electronic copies of all service proposals from site visits that have been submitted to a Customer shall be provided to the City in an electronic storage format acceptable to the City, such as a cloud-based file sharing system that can be accessed by the City or its representative.

If a Customer rejects the proposal from the Contractor or does not provide a response within 30 days of the Contractor submitting the proposal, and, after at least three documented attempts by the Contractor to follow-up with the Customer, the Customer continues to be non-responsive, the Contractor may refer the Customer to the City for enforcement action through any future ordinances that may be implemented by the

City. Such a referral to the City by the Contractor for non-compliant accounts must include a written summary and timeline of the actions taken by the Contractor to implement an AB 341-compliant program; a copy of the written proposal submitted to the Customer by the Contractor; and any written correspondence from the Customer to the Contractor. If, after the City begins enforcement proceedings against the Customer, the Customer agrees to comply and implement an AB 341-compliant program, the City will notify the Contractor of the Customer's willingness to comply and the Contractor will coordinate with the Customer to implement an AB 341-compliant program.

Contractor will incorporate education regarding Recyclable Material Collection and the State requirements into materials produced under Section 5.3, and will develop its own Recycling-specific instructional materials for use in educating participating Customers. Additional materials may include instructional posters, brochures, educational presentations, bin signage, enclosure signage, stickers to be attached to internal recycling receptacles, or other formats as mutually agreed to between City and Contractor. As with all outreach material, all items must be submitted for review and approval by City prior to distribution.

Contractor shall provide a report, on City provided forms, to the City noting the time, Customer contact, name of Contractor's staff that contacted the Customer, and result of each meeting and, if the Customer will not agree to a meeting, provide the time of contact, Customer contact name and number, and reason for not accepting a meeting. Reports will be updated on a quarterly basis and submitted with Contractor quarterly reports to the City. Contractor will report all Customers that have service levels within the thresholds of AB 341 on reporting forms provided by the City on a quarterly basis. The report will document whether the Customer receives Recycling service from the Contractor, self-recycles, or receives Recycling from a third party. Any internal Recycling programs or third-party recycling programs that the Contractor encounters while conducting Customer site visits shall be documented using a City-approved electronic reporting form and provided in an electronic format such as a cloud-based file-sharing system that can be accessed by the City or its representatives.

#### **4.3.6 Commercial and Multi-Family Organics Collection**

Contractor shall Collect, process and divert Organic Materials from Commercial and Multi-Family Customers. Contractor shall provide a program sufficient to enable City

and Customers to meet or exceed the requirements of SB 1383 as of the start of Collection services under this Agreement.

Contractor shall tailor the appropriate program to accommodate the waste generation and space constraints of each Customer. Contractor shall offer Organic Materials Carts and Bins based on the Customer's needs and space limitations for Container placement.

#### **4.3.6.1 Site Visits, Education and Outreach - Commercial and Multi-Family Organics Recycling**

Contractor will promote Commercial and Multi-Family Organics Collection programs and assist the City in providing reports on Customers' Organics Collection efforts. Contractor shall conduct the planned tasks, and procedures contained in Exhibit 7 "AB 341, AB 1826, and SB 1383 Implementation Plan," based on the schedule included in Exhibit 7.

Upon execution of this Agreement, and each July 1 annually thereafter, a Contractor representative will contact, via in-person meetings, all Multi-Family and Commercial Customers not subscribing to the Organic Materials Collection service required under applicable CalRecycle requirements. The Contractor representative shall assist customers with selecting appropriate Containers and Container sizing, identifying acceptable Organic Materials for Collection and processing, and attempting to resolve any logistical detriments to providing Organic Materials Collection service. Contractor shall provide a written proposal to each non-compliant Commercial and Multi-family Customer that meets the thresholds of AB 1826 and/or SB 1383 annually. The proposal shall provide pricing for implementing Organics Recycling service and reducing, or 'right-sizing', Collection service to account for materials diverted through the Contractor-provided Recycling program; a proposed start date for the implementation of new Organics Recycling services; a description of the requirements of AB 1826/SB 1383 and any relevant City ordinances; a plan for training staff and/or residents; and any other components as directed by the City. A proposal template shall be approved by the City prior to contract initiation. Electronic copies of all service proposals from site visits that have been submitted to a Customer shall be provided to the City in an electronic storage format acceptable to the City, such as a cloud-based file sharing system that can be accessed by the City or its representatives.

If a Customer rejects the proposal from the Contractor or does not provide a response within 30 days of the Contractor submitting the proposal, and, after at least three documented attempts by the Contractor to follow-up with the Customer, the Customer continues to be non-responsive, the Contractor may refer the Customers to the City for enforcement action through any future ordinances that may be implemented by the City. Such a referral to the City by the Contractor for non-compliant accounts must include a written summary of the actions taken by the Contractor to implement an AB 1826/SB 1383-compliant program; a copy of the written proposal submitted to the Customer by the Contractor; and any written correspondence from the Customer to the Contractor. If, after the City begins enforcement proceedings against the Customer, the Customer agrees to comply and implement an AB 1826/SB 1383-compliant program, the City will notify the Contractor of the Customer's willingness to comply and the Contractor will coordinate with the Customer to implement an AB 1826/SB 1383-compliant program.

Contractor will incorporate education regarding Organics Recycling and the State requirements into materials produced under Section 5.3, and will develop its own Organics-specific instructional materials for use in educating participating Customers. All participants shall receive ongoing, on-site training from Contractor for management, kitchen staff, service employees, janitors, etc. Annually, Contractor will create and distribute a letter to all Customers that are enrolled in the Contractor's Organics Recycling program to offer re-training services, printed collateral such as signage and posters, and general technical assistance. Additional materials may include instructional posters, brochures, educational presentations, bin signage, enclosure signage, stickers to be attached to internal Recycling receptacles, or other formats as mutually agreed to between City and Contractor. Contractor will provide Customers that enroll in the Contractor's Organics Recycling program with one (1), yellow, internal Recycling receptacle upon request by the Customer at a price equal to Contractor's cost. Contractor will track the distribution of the internal Recycling receptacles and provide quarterly distribution data to the City. As with all outreach material, all items must be submitted for review and approval by City prior to distribution.

Contractor shall provide a report, on City provided forms, to the City noting the time, Customer contact, name of Contractor staff that contacted the Customer, and result of each meeting and, if the Customer will not agree to a meeting, provide the time of contact, Customer contact name and number, and reason for not accepting a meeting.

Reports will be updated on a quarterly basis and submitted with Contractor quarterly reports to the City. Contractor will report all Customers that have service levels within the thresholds of AB 1826 and SB 1383 on reporting forms provided by the City on a quarterly basis. The report will document whether the Customer receives Recycling service from the Contractor, self-recycles, receives Organics recycling from a third party, or donates edible food. Any internal Organics Recycling programs or third-party Organics Recycling programs that the Contractor encounters while conducting Customer site visits shall be documented using a City-approved electronic reporting form. Contractor shall collect photograph documentation of the internal recycling program or third-party recycling program. All documentation of the internal Organics Recycling programs or third-party Organics Recycling programs, shall be provided in an electronic format approved by the City, such as a cloud-based file-sharing system organized such that each Customer has a unique folder that will house service proposals, photographs, and other items documenting the Contractor's compliance implementation interactions with the Customer.

#### **4.3.6.2 Organics Waste Recycling Program Cost**

The full compensation to Contractor to provide the Commercial and Multi-Family Organic Materials program as described in Section 4.3.6 is included in the approved rate schedule. Organic Materials Carts and Bins, public outreach, and all other elements of this program are to be provided at no additional cost. Participation in this program is anticipated to increase over time and has been factored into the rates, and no further compensation adjustment shall be implemented except for the annual rate adjustment described in Article 6.

#### **4.3.7 Roll-off Box Organic Materials Collection Service**

Contractor shall make permanent Roll-off Box Organic Materials Collection available to all Customers in accordance with the approved rate schedule.

#### **4.3.8 Food Recovery Assistance**

- 1) During the transition of services period from award of this Agreement to the start of services, but no later than July 1, 2022, Contractor shall identify all Commercial Customers that meet the definition of Tier One and Tier Two Commercial Edible Food Generators and provide a list of such Customers to the City, which shall include: Customer name; service address; contact information; Tier One or Tier

Two classification; and, type of business (as it relates to the Tier One and Tier Two Commercial Edible Food Generator definitions).

- 2) Commencing July 1, 2022 and at least annually thereafter, Contractor shall cooperate with City and/or its consultants to conduct inspections of Tier One Commercial Edible Food Generators, Food Recovery Organizations, and Food Recovery Services to assess compliance with the requirements of 14 CCR Chapter 12 Article 10. Commencing January 1, 2024 and at least annually thereafter, Contractor shall expand its assistance to include Tier Two Commercial Edible Food Generators.
- 3) At least annually, the Contractor shall provide Commercial Edible Food Generators with the following information:
  - Information about the Contractor's and/or City's Edible Food Recovery program;
  - Information about the Commercial Edible Food Generator requirements under 14 CCR Chapter 12 Article 10;
  - Information about Food Recovery Organizations and Food Recovery Services operating within the City, and where a list of those Food Recovery Organizations and Food Recovery Services can be found; and,
  - Information about actions that Commercial Edible Food Generators can take to prevent the creation of Food Waste.
- 4) The Contractor may provide the education information required by this section (subsection 3 above) by including it with regularly scheduled notices, education materials, billing inserts, or other information disseminated to Commercial Businesses.
- 5) Contractor shall cooperate with the implementation, expansion, or operation of Food Recovery efforts in the City, Food Recovery Organizations, and/or Food Recovery Services.
- 6) Contractor shall provide Collection and Processing of Organic Materials at no additional cost to Food Recovery Organizations.

#### **4.3.9 Recyclist Software**

Contractor shall utilize the "Recyclist" cloud-based software or, with City approval, another substantially equivalent cloud-based software, at no additional cost to the City or ratepayers, to integrate outreach efforts to businesses within the City, store reports required by Article 8 of this Agreement, and additional data required to be made available to CalRecycle. City shall have on-line access to the database for real-time monitoring of data.

#### **4.3.10 Scout Service**

Upon Customer request and approval by the Executive Director, Contractor shall provide scout service, whereby Contractor will access Containers using a small vehicle either to move Containers to street or other public right-of-way for Collection, or Collecting Solid Waste directly from Container storage location. The Contractor may charge the scout rate included in the approved rate schedule to move or retrieve a Container when operationally required in order to safely position the Container for Collection. In the event of a dispute between Contractor and Customer as to whether scout service will be used, the Executive Director will make the final determination. If a scout fee is charged, then a Bin pushout fee shall not be charged.

#### **4.3.11 Bin Pushout Service**

Upon Customer request, Contractor shall provide Bin pushout service, whereby Contractor will move Containers manually to facilitate Collection. The Contractor may charge the pushout rates included in the approved rate schedule to move or retrieve a Container over twenty-five (25) feet to facilitate Collection. For Containers in Bin enclosures, the measurement of distance shall be from location of the Bin once removed from the enclosure to the point of Collection. In the event of a dispute between Contractor and Customer as to whether pushout service will be used, Executive Director will make the final determination. If a Bin pushout fee is charged then a scout service fee shall not be charged.

If Contractor must place a Bin in the public right-of-way to facilitate Collection, Contractor shall not permit the Bin to remain in the public right-of-way over one hour. If the Bin is stored under a chute for Solid Waste Collection, the Bin must be serviced and returned immediately.

#### **4.3.12 Locking Bins**

Contractor shall provide locking Bin Service (providing the hasp, key and lock and servicing the lock) to Customers that request such service in accordance with the approved Rate Schedule.

#### **4.3.13 Return Trip Fee**

Contractor may charge a return trip fee, per the approved rate schedule, in the event that Contractor arrives on time for a scheduled Collection of Bins or Roll-off Boxes, and is impeded from Collection due to Container being blocked or otherwise unable to be Collected due to issues within the Customer's control. The fee may be assessed if Contractor must return a second time for Collection. Charge may be assessed for the trip, not per Container, in the event of a Customer with multiple Containers. If Contractor attempts to contact Customer to confirm that the Container is accessible, but Customer is non-responsive, Contractor need not return that day and, therefore, may not charge the return trip fee.

#### **4.3.14 On-Call Bulky Item Pickup – Multi-Family Premises with Refuse Bin Service and Commercial Premises Customers**

On-call Bulky Item Collection program for Multi-Family Premises with Bin service, may request Collection of up to ten (10) items per unit per quarter at no additional cost. Unused items per quarter do not roll over to the following quarter. Items need to be scheduled for the next regularly scheduled Collection day, and placed in an area agreed upon by the property manager and Contractor. Multi-Family Premises Bulky Item pickups are a total count for the entire Multi-Family complex; Multi-Family complexes may allocate the Bulky Item pickups as needed among individual tenants. Multi-Family Premises that exceed the number of free pickups may receive Bulky Item Collection under the same terms for a fee, in accordance with the approved rate schedule, and shall be billed directly by Contractor.

Contractor shall Collect all Bulky Items as defined in Section 1.13 including items referred to as Electronic Waste or "e-waste" as defined in Section 1.34. The following provisions shall apply to this program:

- No single item that cannot be handled by two workers will be accepted.

- The following items will not be picked up: Hazardous Materials (including u-waste but excepting e-waste), waste oil or anti-freeze. For the purposes of this section, items referred to as “e-waste” are not considered hazardous.

Requests for Collections shall be made directly to the Contractor who shall provide satisfactory telephone message receiving, transmitting and response procedures and shall be responsible for maintaining a log of such large item collections.

Contractor will notify all Multi-Family Premises Customers of this service annually, beginning within thirty (30) days of effectiveness of this Agreement. New Customers shall be notified of this service upon request of Collection services.

Contractor to develop a warning notice to inform Customers who set out Bulky Items without contacting Contractor and that exceed the number of items per pickup, or the number of pickups per year, that they may incur a charge in accordance with the approved rate schedule.

Commercial customers may request bulky item pickups at the rates included in the approved rate schedule.

#### **4.3.15 Holiday Tree Collection - Multi-Family Bin Customers**

Contractor shall collect all holiday trees discarded by Multi-Family Premises during the three weeks following Christmas Day, at no additional charge. After this period, trees will be Collected as Bulky Items under Section 4.3.14. Trees under six (6) feet in length will be Collected and diverted without Customers needing to cut them. Contractor may require that Customers with larger trees cut the trees to pieces no longer than six (6) feet, and that tinsel, ornaments and stands be removed prior to placement at Collection point (curb or as otherwise determined by Customer and Contractor). The Contractor shall affix a non-Collection notice to any non-Collected tree informing the Customer of the reason(s) for non-Collection. Contractor may charge City-approved rates to return and Collect a previously non-Collected holiday tree that has been corrected and set out. Contractor shall Process all holiday trees that are properly set out for Collection as Organic Waste in accordance with Exhibit 8.

#### **4.4 City Services (City Government Operations)**

##### **4.4.1 City Government Operations**

Contractor shall collect all Solid Waste, Electronic Waste, and Construction and Demolition Solid Waste which is generated by City government operations at no additional cost to the City. The City shall provide Contractor with a list of locations of bins and/or Roll-off containers from which such Solid Waste shall be collected. Said list may be modified by time to time by the Executive Director. Solid Waste generated by such City operations shall be collected by Contractor per a schedule provided to Contractor by the Executive Director. Schedule shall be approved between the Contractor and the Executive Director.

##### **4.4.2 Construction and Demolition from City Government Operations**

The City will implement procedures to separate wood, Organics, metals, and inert materials from mixed waste generated through City construction projects, from City government operations. Contractor is not required to Collect, transport and Divert Construction and Demolition Debris from construction of new buildings or demolition of entire buildings performed by construction contractors. The separation procedures will be applied to inbound loads that readily lend themselves to manual separation. The implementation of the procedures may, from time-to-time, be hampered by City Yard logistics or by personnel availability. The separation procedures will be incorporated by the City as a standard operating procedure and will be reasonable and practicably applied.

##### **4.4.3 City Sponsored Events**

Contractor shall provide Solid Waste Collection and Disposal/processing service for City-sponsored events at no additional charge to City or Ratepayers. This shall include providing Refuse Containers (Carts, Bins, Roll-off Boxes, and cardboard waste boxes with liners) to Collect and dispose of, or process, all Solid Waste. Contractor shall provide Containers for the Collection of Recyclable Materials and Organics Materials. The list of City-sponsored events may change over time and include, but are not limited to:

- 4<sup>th</sup> of July Celebration at Centennial Park

- Wilshire Square Summer Concert
- Townsend-Raitt Community Fiesta/SoCal Day of Hope, Health and Resource Fair
- Santa Ana Fiestas Patrias
- Cleanup Your Yard Cascade Street
- Santa Ana National Night Out

Contractor shall provide a donation of ten-thousand dollars (\$10,000) per Rate Year to sponsor City events. Contractor shall meet and confer with City to determine the appropriate distribution of these funds among events.

#### **4.4.4 Parkway Cleanup Following Garage Sales**

Contractor shall provide two (2) employees in a “front loader” vehicle to provide sixty (60) vehicle hours each six (6) working days following the quarterly garage sales to canvass the City neighborhoods in order to remove debris left in the parkways after the garage sales at no additional charge. Contractor shall transport all Solid Waste Collected by Contractor from Parkway Cleanups within the City boundaries to a state permitted MRF, in compliance with CalRecycle and acceptable to the City.

#### **4.4.5 Weekly Alley Cleanups**

Contractor shall provide two (2) employees in a “front loader” vehicle to provide sixty (60) vehicle hours each six (6) working days each week to canvass the City neighborhoods in order to remove debris, litter, and Bulky Items left in alleyways at no additional charge. Contractor shall transport all Solid Waste Collected by the Contractor from Alley Cleanups within the City boundaries to a state permitted MRF, in compliance with CalRecycle and acceptable to the City.

#### **4.4.6 Grant Administration**

Upon request of City, Contractor shall be responsible for the development and management of grants pursuant to the regulations contained in AB 939 and/or adopted by CalRecycle including the Department of Conservation and other governmental agencies that offer grants related to Collection and Recycling Services provided under

this Agreement. Contractor shall be compensated \$61.44 per hour for grant administrator's time to develop and administer grant programs as requested by the City. Contractor shall submit an invoice detailing tasks performed, and time charged in quarter-hour increments in order to be reimbursed for grant administrator's time. The City shall have the right to approve the grant administrator.

#### **4.4.7 Public Education and Outreach Consultant**

In the event that City, in its sole discretion, determines that the Contractor fails to fulfill the public education and outreach requirements contained in this Agreement to the City's satisfaction, or if CalRecycle refers the City to the Jurisdiction Compliance Unit (JCU) for additional enforcement review/action, or if less than ninety percent (90%) of the City's Commercial and Multi-Family Customers subject to the requirements of AB 341 and/or AB 1826 are in compliance with the mandatory requirements for Commercial Recycling and/or Organics by December 31, 2023, the City retains the right to direct Contractor to provide funding for the City to retain a public education and outreach consultant to perform the duties set forth in this Agreement, at no additional cost to the City. The City will notify the Contractor in writing of its intent to procure a public education and outreach consultant. Within 30 days of written notice from the City, Contractor and City shall meet and confer in good faith prior to City retaining a public education and outreach consultant to develop a scope of work, timeline, and projected budget amount for the public education and outreach consultant. Upon 120 days of written notice to the Contractor of the City's intent for to procure a public education and outreach consultant, the Contractor shall provide funds to the City to retain a public education and outreach consultant of the City's choosing. The minimum term of the public education and outreach consultant's contract shall be 12 months and any subsequent contract extensions shall be in increments of 12 months. Upon selection of the public education and outreach consultant by the City, the Contractor shall remit quarterly payments to the City for the cost of the public education and outreach consultant (i.e. if the contract amount was \$100,000, the Contractor would remit quarterly payments to the City of \$25,000 for the term of the engagement). The City will direct the work efforts of the public education and outreach consultant. During the term of the consultant's engagement, the Contractor shall cooperate with the consultant to provide customer service and operations data to the consultant, implement Recycling and Organics programs at Customer sites as requested by the consultant, and to meet with the City and the consultant periodically to assess program progress. The City and

the Contractor shall confer annually to assess the City's outreach/education progress, compliance status, and to determine if the public education and outreach consultant's contract shall be extended by an additional 12 months.

#### **4.4.8 Battery Recycling Program**

Contractor shall provide and service as many battery Recycling containers as requested by City, to City facilities for no additional cost. Contractor shall Collect and replace containers upon City's request for proper Recycling of batteries.

#### **4.4.9 Procurement of Recovered Organic Waste Products**

Contractor shall procure sufficient California derived compost, mulch, and/or renewable natural gas (RNG) to meet the City's requirement for recovered organic waste products of .08 tons per capita per year as specified in SB 1383. Contractor may meet this obligation by one or a combination of the following activities:

- Bulk Compost and/or Mulch Reserved for Jurisdiction - Contractor shall make available for City Compost or Mulch in an amount requested by City for use at City parks and facilities at no cost to the City. Contractor shall be responsible for finding end-users for any remaining Compost or Mulch.
- Compost Giveaway as described in Section -4.5.4.
- Use of renewable natural gas in Collection vehicles.

Contractor shall ensure sufficient capacity of California recovered organics waste products to meet the mandatory procurement requirements for jurisdictions contained in SB 1383, as may be amended, during the term of this Agreement including Agreement extensions granted by the City.

##### **4.4.9.1 Contractor Warranty of Recovered Organic Waste Products**

Contractor shall provide assurance through the execution of a liability waiver stating that all organic waste products provided by the Contractor and used within the City are free from pathogens and inorganic waste material that may be harmful to the health and welfare of the City and its constituents, and also in accordance with standards of CalRecycle and subject to the United States Composting Council guidelines requiring testing demonstrating that fecal coliform levels of <1000 MPN/gram of dry compost or Salmonella < 3MPN/ 4 grams of dry compost. The Contractor shall indemnify and hold

harmless the City against any claims arising from contaminated recovered organic waste products provided by the Contractor as set forth in Section 9.1.

## **4.5 Community Services**

### **4.5.1 Neighborhood Cleanups**

Contractor shall supply Roll-off Containers for City sponsored neighborhood cleanups at no additional cost to City. The number of Roll-off Containers shall not exceed a maximum total number of three hundred (300) Containers annually.

Notwithstanding the above, at any time that the City determines that the number of Collections and/or the number of Roll-off Containers provided for in this section is not adequately meeting the City's needs, the City and Contractor will meet and confer regarding these provisions, and may, by mutual agreement, modify the number of Collections and/or Roll-off Containers.

### **4.5.2 Household Hazardous Waste Drop-Off Events**

Contractor to sponsor an annual Household Hazardous Waste Drop-Off Event at a site selected by the City. Contractor to provide Collection and safe Disposal of all Household Hazardous Waste brought to the event by residents of City at no additional charge. Contractor shall coordinate with selected site to determine the date and time of event and will advertise the event in local newspapers, through a direct-mail postcard to residents, on the City's website, and through additional print media as requested by the City.

### **4.5.3 Shredding Service Event**

Contractor shall provide an on-site mobile shredding service for use by City residents (a "Shredding Event") one (1) time per calendar year at no additional charge. The Shredding Event shall be provided at a date, time, and location designated and approved by the Executive Director, in his or her reasonable discretion, and should be for a minimum of three (3) hours in duration. In the event inclement weather prevents a Shredding Event from occurring, Contractor shall reschedule the Shredding Event to a date, time and location designated and approved by the Executive Director. The Shredding Event shall be conducted at Contractor's sole cost and expense, utilizing equipment, personnel, and methods appropriate for such event, as approved by the

Executive Director. Prior to each Shredding Event, Contractor shall coordinate with City staff and/or public safety personnel to make arrangements for safe, convenient, and effective access to and participation by City residents in the Shredding Event, and shall procure all necessary insurance coverage. Each Shredding Event shall be designed to accommodate up to a maximum of five (5) "Bankers" boxes of paper or other media suitable for shredding from each Residential and Multi-Family Premises Customer within the City that is participating in the Shredding Event. Residents participating in the Shredding Event must be able to visually observe the materials they delivered to the Shredding Event. Contractor shall publicize each Shredding Event through methods, and using materials, approved by the Executive Director, at no cost to the City.

#### **4.5.4 Compost Giveaway**

Contractor shall provide one compost giveaway event per calendar year at no additional charge. Santa Ana residents will be allowed to fill up their containers on a first-come, first-serve basis. Contractor shall provide sixty (60) tons of compost material, generated in the State of California, delivered to a location designated by the City. Any compost material remaining after event shall be removed by Contractor. The compost giveaway event will be coordinated with the City and can be held in conjunction with other City events.

#### **4.5.5 Medication Takeback Program**

Contractor will assist the City in increasing awareness of medication takeback programs provided by local pharmacies, or programs offered by other government entities. Promotional activities will include: posting on Contractor's website, inclusion in the Annual Brochures/Mailings mailed to each Residential Customer, quarterly newsletters, social media targeted outreach, and press releases to local news outlets.

#### **4.5.6 Environmental Ambassador Program**

Contractor must establish an annual recognition program for commercial businesses in the City. The Environmental Ambassador Program will be a voluntary program managed entirely by Contractor, and certification may include refuse, water and energy conservation, pollution prevention, and reduction of toxic substances in the workplace. Businesses certified will be honored by Contractor at a City Council Meeting.

#### **4.5.7 Response to Requests From City's Work Order Application**

Upon the Effective Date of this Agreement, Contractor shall work with the City's information technology personnel to ensure that Contractor is able to receive and respond to requests for service via the City's Work Order Application. Contractor shall respond to service requests received via the City's Work Order Application within forty-eight (48) hours of receipt.

#### **4.5.8 Santa Ana Clean City Initiatives**

Contractor shall provide the Santa Ana Clean City Initiatives at the level of service and implementation schedule included in Exhibit 10 of this Agreement. By mutual agreement of the City and the Contractor, City may redirect the level of service among the Santa Ana Clean City Initiative tasks where the service level hours do not exceed the total hours included in Exhibit 10.

#### **4.5.9 Section Reserved**

#### **4.5.10 Community Event Contribution**

At no cost to the City or its ratepayers, Contractor shall provide up to two-hundred thousand dollars (\$200,000) per Rate Year as monetary contributions to support community events and charitable institutions located within the City. Contractor shall collaborate with City to determine which events and institutions will receive the annual contributions.

#### **4.5.11 Facility Tours**

Contractor shall offer and promote to the community and Santa Ana K-12 schools free educational tours of the Contractor's local facilities.

#### **4.5.12 Dumpsters on Parade Event**

Contractor shall support local artists by providing materials and space to paint twenty (20), three (3) cubic yard Bins for use and display throughout the City. Prior to the deployment of the painted dumpsters, Contractor shall organize an event to showcase the Bins at no additional cost to the City or ratepayers.

#### **4.5.13 Eco Job-Fairs**

Contractor shall host six (6) Eco Job-Fairs per Rate Year for Santa Ana middle school and high school students to provide information on career opportunities in the solid waste industry. Contractor shall provide an environmental curriculum program to attendees.

#### **4.5.14 Summer Internship Program**

Contractor shall work with the City to select two (2) Santa Ana students per Rate Year to participate in a two-month summer internship program for Contractor. Selected students must be 18 years of age or older, and each selected student will receive a one-thousand dollar (\$1,000) scholarship.

#### **4.5.15 Support Santa Ana College Foundation**

At no additional cost to City or its ratepayers, Contractor shall provide an annual five-thousand dollar (\$5,000) donation to the Santa Ana College Foundation's scholarship programs per Rate Year.

#### **4.5.16 Support Local Assistance League Back to School Program**

At no additional cost to City or its ratepayers, Contractor shall assist the Local Assistance League's Project School program by assisting with the collection, advertising, and distribution of backpacks, uniforms, materials and supplies for school children. Contractor shall work with suppliers to donate to Santa Ana school children and assist with the transportation and logistics for delivery of supplies.

### **4.6 Diversion and Processing Requirements**

#### **4.6.1 Minimum Recycling Requirements**

Contractor shall Divert from landfilling a minimum of twenty percent (20%) of all Solid Waste it Collects under this Agreement excluding Construction and Demolition Debris. Compliance will be measured on a calendar year basis, except that compliance will be measured during the first compliance period for the eighteen (18) months ending December 31, 2023, and compliance during the final year will be based on a partial year if the term ends before December 31 in the final year. Solid Waste Collected shall only be considered to have been Recycled or diverted as required under this Agreement if it

is deemed to be Diversion by CalRecycle in connection with efforts to meet City's Diversion goals. Contractor shall provide documentation to the City within 45 days of the end of each calendar year stating and supporting that calendar year's Diversion rate. Diversion from sources other than Contractor's Collection and Diversion efforts (such as source reduction, reuse, or Recyclable Materials diverted by other Solid Waste enterprises, Collection of materials that are not the subject of this Agreement, or the efforts of self-haulers) is not to be counted as Diversion achieved by Contractor. Failure to achieve the minimum diversion requirement may result in liquidated damages as described in Section 11.4.B.9 of this Agreement.

In the event that the minimum Diversion requirement is not met, and, no sooner than three (3) years after the start of services under this Agreement, and not more often than once every two (2) years thereafter, the Parties agree to meet and confer regarding adjustments to the minimum Diversion rate, based on factors including waste characterization data provided by Contractor, trends in source reduction and reuse, trends in third party Diversion, the availability of permitted Facilities that are capable of processing material to achieve the required levels of Diversion, emerging methods of processing and Recycling/reusing new waste materials, the availability of markets, and the impact of scavenging. City shall consider such information provided by Contractor and other industry data and shall, at its sole discretion, determine if any adjustments to the minimum Diversion requirements shall be made, and such changes must be approved by the City Council before becoming effective.

If these Diversion requirements are not met, City may instruct Contractor to initiate new programs at Contractor's expense in order for this goal to be met on a consistent basis.

#### **4.6.2 Organic Materials Processing**

Contractor shall process recovered Organic Materials in a manner that maximizes diversion credit for City in accordance with CalRecycle regulations.

#### **4.6.3 End Uses for Organic Materials**

Contractor shall Divert from landfilling Organic Material Collected through weekly Cart, bag, Bin and Roll-off Box Collection, and holiday tree Collection from Disposal. Contractor must provide end uses for Organic Material that maximize Diversion credits for City in accordance with regulations established by AB 1594. Contractor is

responsible for monitoring how the Organic Material will be diverted at selected facilities and for selecting alternative facilities if necessary to ensure full Diversion credit. Failure to do so places the Contractor in default. City has the option, but not obligation, to direct Contractor where to deliver the material, and if City directs Contractor to an alternative Facility then Contractor may request a rate adjustment in accordance with Section 2.10.2.

#### **4.6.4 Bulky Item Diversion**

Bulky Items Collected by Contractor in accordance with Sections 4.2.10 and 4.3.14, or otherwise Collected under this Agreement, may not be landfilled or disposed of until the following hierarchy of Diversion efforts has been followed by Contractor:

- 1) Reuse as is
- 2) Transport Bulky Items and reusable items to the appropriate facility for reuse, or processing
- 3) Disassemble for reuse or Recycling
- 4) Recycle or market and sell Recyclable Materials for Recycling
- 5) Transport Yard Waste to the appropriate facility for Processing
- 6) 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, unless they have been designated for Disposal.

#### **4.6.5 Construction and Demolition Debris Diversion**

Contractor will bring all loads of mixed Construction and Demolition Debris to a properly permitted construction and demolition debris processing Facility selected by Contractor for separation and recovery of this material. Contractor may deliver separated loads of Construction and Demolition Debris, such as clean dirt, concrete or rebar, to facilities specializing in the reuse of such materials, provided this material is Diverted from landfilling. Contractor shall Divert from landfilling a minimum of the State-mandated Construction and Demolition Diversion percentage of all Construction and Demolition Debris Collected.

#### **4.6.6 Diversion of Electronic, Universal and Other Special Wastes**

Contractor shall Divert waste requiring special handling, such as Electronic Waste, or “e-waste” Collected in accordance with Sections 4.2.10 and 4.3.14, or by other means under this Agreement, by taking these goods to a properly permitted Facility, and not by landfilling.

Contractor may encourage Customers through public education materials to bring small items requiring special handling, such as fluorescent bulbs or batteries, to a local HHW drop-off center.

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

Contractor shall be responsible for marketing and sale of all Recyclable Materials Collected pursuant to this Agreement. Contractor may retain revenue from the sale of Recyclable Materials, and shall report the amount of such revenues to City upon request. In the event that Contractor is unable, after reasonable diligence, to sell or donate certain Recyclable Materials due to the lack of a market for them, Contractor may request, and City may authorize Contractor, in its sole discretion, to dispose of said Recyclable Materials without sale, subject to on-going review by the City. In the event market conditions for said Recyclable Materials change such that they can, once again, be sold by Contractor, City may withdraw its consent for Contractor to dispose of said Recyclable Materials and may, again, require Contractor to sell said Recyclable materials as otherwise provided in this Agreement.

### **4.7 Operations**

#### **4.7.1 Schedules**

To preserve peace and quiet, Solid Waste shall only be Collected from Residential areas between 6:00 A.M. and 6:00 P.M. Monday through Friday. Solid Waste may be Collected from Commercial and industrial locations between 3:00 A.M. and 9:00 P.M. Monday through Saturday, provided that said Commercial and industrial locations are at least one hundred (100) feet away from Residential units. Commercial and industrial locations which are less than one hundred (100) feet away from Residential units shall be treated as Residential areas and Solid Waste may only be collected from those locations between 6:00 A.M. and 6:00 P.M. Monday through Friday. Further, if complaints are received from Residential units which are at least one hundred (100) feet

away from Commercial and industrial locations, the Executive Director may direct that collections in such Commercial or industrial areas shall be made between the hours of 6:00 A.M. and 6:00 P.M., and in that event Contractor agrees to comply with such order. Contractor may not make exceptions to these Collection days and times without advanced written approval from the City. If the regularly scheduled Collection day falls on New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, or Christmas Day, Collection days for the remainder of that week shall all be postponed one Collection day and Residential Collection is permitted on Saturday during the make-up week.

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

#### **4.7.2 Missed Pickups**

When notified of a missed pickup prior to noon, Contractor shall Collect the Refuse, Recyclable Materials, and/or Organic Materials that was not Collected the same day. If notified after noon, Collection must take place no later than the next Collection day (excludes only Sundays and holidays listed in Section 4.7.1 and, for Residential Cart Customers, Saturday).

#### **4.7.3 Vehicles**

**A. General.** Contractor shall provide Collection vehicles sufficient in number and capacity to efficiently perform the work required by the Agreement in strict accordance with its terms as described in Contractor's Proposal. Any additional vehicles/routes that may be required to meet the service standards during the term of this Agreement, above the number included in Contractor's Proposal shall be done so at Contractor's sole expense. Contractor 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.** All route Collection vehicles shall be new (model year

2021 or later) upon initiation of services under this Agreement. Contractor shall operate no vehicles within the City over 10-years in age during the initial ten-year term of this Agreement and no older than 15-years in age during any future extensions of this Agreement.

All Collection vehicles, excluding spares, scout vehicles, supervisor vehicles, Container delivery and other specialty vehicles used on a sporadic basis, used by Contractor under this Agreement shall be powered by compressed natural gas (CNG), renewable natural gas (RNG), or alternatively Contractor may utilize electric vehicles (EV).

All vehicles used by Contractor for providing services in the City must be registered with the California Department of Motor Vehicles and shall have water-tight bodies designed to prevent leakage, spillage or overflow. At all times during the term of this Agreement, Contractor's Collection vehicles shall comply with Department of Transportation requirements, South Coast Air Quality Management District Requirements and the California Air Resource Board requirements as they are currently in force and as they may be approved for Refuse removal vehicles, as well as other Federal, State and local laws and regulations that may be enacted during the term of this Agreement.

**C. Vehicle Identification.** Contractor's name, local telephone number, and a unique vehicle identification number designed by Contractor for each vehicle shall be prominently displayed on all vehicles, in letters and numbers no less than two and one-half (2 1/2) inches high. No advertising shall be permitted other than the name of the Contractor except promotional advertisement of the Recyclable Materials and Organic Materials programs, other programs specific to the City, or information requested by City. All advertisement must be approved by the City. Contractor shall not place City's name and/or any City logos on Contractor vehicles.

**D. Cleaning and Maintenance**

- 1) Contractor 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.
- 2) Vehicles used in the Collection of Refuse, Recyclable Materials, and Organics shall be painted, thoroughly washed, and thoroughly steam cleaned on a regular basis so as to present a clean appearance. City may inspect vehicles at any time

to determine compliance with this Agreement. Contractor shall also make vehicles available to the Orange County Health Department for inspection, at any frequency it requests. Contractor agrees to replace or repair to the City's satisfaction, any vehicle which City determines to be of unsightly appearance, leaking, or in unsatisfactory operating condition.

- 3) Contractor shall repaint all vehicles used in the Collection of Refuse, Recyclable Materials and Organics at least every five years, and within thirty (30) days' notice from City, if City determines that their appearance warrants painting.
- 4) Contractor shall inspect each vehicle daily to ensure that all equipment is operating properly. Vehicles which are not operating properly shall be removed from service until repaired and operating properly. Contractor shall perform all scheduled maintenance functions in accordance with the manufacturer's specifications and schedule. Contractor shall keep accurate records of all vehicle maintenance, recorded according to date and mileage and shall make such records available to City upon request.
- 5) Contractor shall repair, or arrange for the repair of, all of its vehicles and equipment for which repairs are needed because of accident, breakdown or any other cause so as to maintain all equipment in a safe and operable condition. Contractor shall maintain accurate records of repair, which shall include the date and mileage, nature of repair and the verification by signature of a maintenance supervisor that the repair has been properly performed.
- 6) Contractor shall clean up any leaks or spills from its vehicles per the National Pollutant Discharge Elimination System (NPDES) permit in effect at the time. No fluids shall be washed into storm drains at any time. All NPDES dry-cleaning measures shall be complied with. All Collection Vehicles must be equipped with absorbent for such cleanup efforts.
- 7) Upon request, Contractor shall furnish City a written inventory of all equipment, including Collection vehicles, used in providing service. The inventory shall list all equipment by manufacturer, ID number, date of acquisition, type, and capacity.

**E. Operation.** Vehicles shall be operated in compliance with the California Vehicle Code, and all applicable safety and local ordinances. Contractor shall not load

vehicles in excess of the manufacturer's recommendations or limitations imposed by state or local weight restrictions on vehicles.

Contractor equipment used for Refuse, Recycling, and Organics services shall be registered with the California Department of Motor 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. Noise levels of equipment used for Collection shall comply with City ordinance and in no event shall the noise level exceed 75 dba when measured at a distance of 25 feet from the vehicle, five feet from the ground. Contractor shall store all equipment in safe and secure locations in accordance with City's applicable zoning regulations.

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

**F. City Inspection Per Code.** 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 provisions of the State Vehicle Code, including, but not limited to, California Vehicle Code Sections 27000(b), 23114, 23115, 42030, 42032, and all Vehicle Code Sections regarding smog equipment requirements. 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 shall be returned to service until it conforms with the provisions set forth in this section, and its return to service has been approved by the City.

**G. Vehicle Inspections.** Upon City request, Contractor shall submit the Safety Compliance Report/Terminal Record Update from its Biennial Inspection of Terminal, or BIT. If Contractor receives a terminal rating below satisfactory, the Contractor is in violation of the Agreement. The Contractor 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 Contractor shall be considered in default of the contract and the City may terminate the Agreement as provided in Section 11.3.

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

**I. City Informational Displays.** Contractor shall equip all vehicles which Collect Solid Waste within the City with informational displays. The City shall advise Contractor as to the messages which should be displayed while vehicles are operating for the City. The City may, at its option, have the messages to be displayed changed once per year at no additional cost.

#### **4.7.4 Containers**

##### **4.7.4.1 Contractor-Provided Carts**

**A. Cart Selection, Distribution and Exchanges.** Contractor shall provide Customers with new Refuse, Recycling and Organics Carts at the start of service under this Agreement, at no additional charge.

In advance of initial new Cart distribution, Contractor shall mail a notice of rates, and provide Customers the opportunity to request service changes. If no response is received by Customer by specified date, Customer will retain the same level of service currently provided as reported by the previous waste hauler.

**B. Cart Design Requirements.** The Carts shall be manufactured by injection or rotational molding and meet the Cart design and performance requirements as specified below. All Carts selected shall be subject to City approval. The City will not permit Carts in poor condition to be used in the City at any time during the term of this Agreement, and may require Contractor to replace such Carts. Contractor shall ensure that all Carts in service during the terms of this Agreement comply with CalRecycle's Cart lid color requirements under SB 1383. In the event that Cart bodies are not the same color as Cart lids, Cart bodies must be one consistent color for all waste streams.

**C. Capacity.** References to Cart sizes of 35, 64, or 96 gallons are approximate. Acknowledging the different sizes provided by the various Cart manufacturers, the Carts shall be uniform in appearance and must conform to the following ranges in size:

- 30 to 40 gallons,
- 60 to 70 gallons, and
- 90 to 101 gallons.

**D. Cart Handles.** The Cart handles and handle mounts may be an integrally molded part of the Cart body or molded as part of the lid. The Cart handles will provide comfortable gripping area for pulling or pushing the Cart or lifting the lid. Pinch points are unacceptable.

**E. Cart Lid.** Each Container shall be provided with a lid that continuously overlaps and comes in contact with the Container body or otherwise causes an interface with the Container body that simultaneously:

- Prevents the intrusion of rainwater, rodents, birds, and flies;
- Prevents the emission of odors;
- Enables the free and complete flow of material from the Container during the dump cycle without interference with the material already deposited in the truck body or the truck body itself and its lifting mechanism;
- Permits users of the Container to conveniently and easily open and shut the lid throughout the serviceable life of the Container;
- The lid handle shall be an integrally molded part of the lid;
- The lid (and body) must be of such design and weight that would prevent an empty Container from tilting backward when flipping the lid open; and,
- The lid shall be hinged to the Cart body in such a manner so as to enable the lid to be fully opened, free of tension, to a position whereby it may rest against the backside of the Container body.

**F. Cart Colors.** The Refuse, Recycling and Organics Carts or Cart lids will be differentiated by color. The colors shall be colorfast and resistant to fading as a result of weathering or ultraviolet degradation. Cart and Cart lid colors shall be consistent throughout the City, and shall comply with CalRecycle requirements under SB 1383.

**G. Cart Labeling and Hot Stamping.** All Carts shall include a high-quality educational information label using in-mold technology, such that all labeling shall be integral to the outside of the lid, through the use of injection molding, and shall not be affixed to any part of the Cart or lid using adhesives. Notwithstanding the provisions of this Section, or the requirements of SB 1383, the in-mold lid label shall, at a minimum, include for each Container: primary materials accepted; a clear indication of Prohibited Container Contaminants for that Container type, notification forbidding Hazardous Waste and describing proper Disposal thereof. Design for the in-mold labels must be approved by City prior to ordering labels or Carts.

Lids shall be replaced when in-mold labels become worn, but no later than 90 days of request from City. Information on the Refuse Carts shall include the telephone number to call for Contractor for Bulky Item pickups and for general Customer service. All Carts shall be labeled in accordance with CalRecycle requirements under SB 1383 throughout the term of this Agreement.

In-mold labels shall be designed to include English, Spanish, and Vietnamese.

Hot stamps shall be on the top of the lid and/or on the body of the Cart and shall be reviewed and approved by the City.

**H. Cart Performance Requirements.** All Carts shall be designed and manufactured to meet the minimum performance requirements described below.

**I. Cart Load Capacity.** Depending on the capacity, the Carts shall have a minimum load capacity as noted below without Container distortion, damage, or reduction in maneuverability or any other functions as required herein.

<b>Cart Size (Gallons)</b>	<b>Minimum Load Capacity (LBS)</b>
<b>90-101</b>	<b>200</b>
<b>60-70</b>	<b>130</b>
<b>30-40</b>	<b>70</b>

**J. Cart Durability.** Carts shall remain durable, and at a minimum, shall meet the following durability requirements to satisfy its intended use and performance, for the term of this Agreement:

- Maintain its original shape and appearance;
- Be resistant to kicks and blows;
- Require no routine maintenance and essentially be maintenance free;
- Not warp, crack, rust, discolor, or otherwise deteriorate over time in a manner that will interfere with its intended use;
- Resist degradation from ultraviolet radiation;
- Be incapable of penetration by biting or clawing of household pets (i.e., dogs and cats);
- The bottoms of Cart bodies must remain impervious to any damage, that would interfere with the Cart's intended use after repeated contact with gravel, concrete, asphalt or any other rough and abrasive surface;
- All wheel and axle assemblies are to provide continuous maneuverability and mobility as originally designed and intended; and,
- Resist degradation by other airborne gases or particulate matter currently present in the ambient air of the City.

**K. Chemical Resistant.** Carts shall resist damage from common household or Residential products and chemicals. Carts, also, shall resist damage from human and animal urine and feces.

**L. Stability and Maneuverability.** The Carts shall be stable and self-balancing in the upright position, when either empty or loaded to its maximum design capacity with an evenly distributed load, and with the lid in either a closed or open position.

The Carts shall be capable of maintaining an upright position in sustained or gusting winds of up to 25 miles per hour as applied from any direction.

The Carts shall be capable of being easily moved and maneuvered, with an evenly distributed load equal in weight to its maximum design capacity on a level, sloped or stepped surface.

**M. Lid Performance.** Cart lid assemblies shall meet the following minimum requirements:

- Prevent damage to the Cart body, the lid itself or any component parts through repeated opening and closing of the lid by residents or in the dumping process as intended;
- Remain closed in winds up to 25 miles per hour from any direction. All lid hinges must remain fully functional and continually hold the lid in the original designed and intended positions when either opened or closed or any position between the two extremes; and,
- Lid shall be designed and constructed such that it prevents physical injury to the user while opening and closing the Container.

#### **4.7.4.2 Cart Reparability or Replacement**

Contractor shall be responsible for Cart repair and maintenance, and replacing lost, stolen or damaged Carts within two (2) business days of notification (excluding Saturday, Sunday and holidays listed in Section 4.7.1), at no additional charge to the Customer or to City, unless Contractor can demonstrate to the Executive Director that the damage or loss was due exclusively to the Customer's intentional or wanton destruction. Executive Director shall make the final determination. All repairs must restore the Cart to its full functionality. If City permits a Cart replacement charge to be assessed against Customer, Contractor may charge the Customer the Cart Replacement Fee in the approved rate schedule. Unsightly/worn-out/broken Carts shall be replaced by Contractor upon Customer request at no additional cost to Customer.

Customers are responsible for the cleanliness and sanitation of Carts. Contractor shall steam clean Carts upon request of Customers at the rates shown in the approved rate schedule. Contractor may replace carts in lieu of steam cleaning Carts, but may only charge the Customer the steam cleaning rate in the approved rate schedule.

All Carts in service for the duration of this Agreement shall comply with color and labeling requirements specified by CalRecycle under SB 1383.

#### **4.7.4.3 Bins**

**A. Cleaning and Maintenance.** Contractor shall provide Customers with new Refuse, Recycling and Organics Bins at the start of service under this Agreement at no additional charge, and shall maintain Containers in safe working condition throughout the Term of this Agreement and any extensions. The size of Contractor-provided Bins shall be determined by mutual agreement of Customer and Contractor, and shall be subject to City approval. All Bins in use shall be constructed of heavy metal, or other suitable, durable material, and shall be watertight and well painted. Wheels, forklift slots, and other apparatuses, which were designed for movement, loading, or unloading of the Bin shall be maintained in good repair.

Contractor shall clean and sanitize Bins at Customer locations once per Rate Year at no additional cost upon Customer or City request, or if required to maintain the Containers in a clean condition. Contractor shall perform cleaning, repainting, or replacement of Bins as necessary to prevent a nuisance caused by odors or vector harborage. When a Bin is removed for cleaning, Contractor shall replace the Bin, either temporarily or as a change-out, with another Container at no additional charge to Customer. Additional cleanings beyond one cleaning per Rate Year per Customer shall be provided at the rates included in the approved rate schedule.

**B. Bin Identification and Color.** Each Bin placed in City by Contractor shall have the name of Contractor and phone number in letters not less than three (3) inches high on the exterior of the Bin so as to be visible when the Bin is placed for use. Bins shall be labeled to include bilingual (English and Spanish) and graphic instruction on what materials should and should not be placed in each Bin. Contractor shall repaint Bins upon City's request if the City deems it necessary to maintain a neat appearance.

All Bins in service for the duration of this Agreement shall comply with color and labeling requirements specified by CalRecycle under SB 1383.

C. **Bin Exchanges.** Contractor may charge the Bin exchange fee included in the approved rate schedule for each of two or more Bin exchanges in a twelve (12) month period, due to Bin size change requested by a Customer.

#### **4.7.4.4 Roll-off Boxes**

Contractor shall provide sufficient Roll-off Boxes to meet Customer demand throughout the Term of the Agreement, and will keep all Roll-off Boxes clean, free from graffiti, equipped with reflectors, and with the name and phone number of Contractor in letters not less than three (3) inches high on the exterior of the Roll-off Box so as to be visible when the Roll-off Box is placed for use. Contractor shall properly cover all open Roll-off Boxes during transport as required by the State Vehicle Code.

#### **4.7.4.5 Graffiti Removal**

Contractor shall remove graffiti from any Cart or Bin within two (2) business days (excluding Saturday, Sunday and holidays listed in Section 4.7.1) of request by City or Customer at no additional charge. Contractor shall remove graffiti from any Roll-Off Box within five (5) business days of request by City or Customer at no additional charge. Contractor is required to proactively look for graffiti when Collecting Containers, with all graffiti removed from Containers as stated above after any Collection without notification.

#### **4.7.4.6 Overflowing Containers**

Multi-Family Premises with Refuse Bin Service, and Commercial Customers that regularly produce more Refuse than their current level of service can accommodate may have their service level increased in accordance with the following procedure:

First Incident in Six-Month Period – If more material is placed for Collection than fits in a Container Contractor shall photograph the overflowing Container and send to the Customer (at both the service and billing addresses) the picture and a letter instructing that the next instance of an overflowing Container may result in a charge.

Second Incident in Six-Month Period – Upon the second event of an overfilled Container in a six-month period, Contractor shall photograph the overflowing Container and send to the Customer the picture and a letter instructing that a third incident in that same six-month period may result in an increase in the level of service.

If the Container overflowed sufficiently to require the driver to leave the Collection vehicle to clean around the Container, Contractor may charge the Container Overage fee in the approved rate schedule.

Third Incident in Six-Month Period – Upon the third event of an overfilled Container in a six-month period, Contractor shall photograph the overflowing Container and send to the Customer the picture and a letter notifying Customer of an increase in its service level. If the Container overflowed sufficiently to require the driver to leave the Collection vehicle to clean around the Container, Contractor may charge the Container Overage fee in the approved rate schedule.

In the event that this Section gives rise to a dispute between Contractor and a Customer, City shall settle the dispute in accordance with Section 5.2.3.

#### **4.7.4.7 Litter Abatement**

**A. Minimization of Spills.** Contractor 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, Contractor shall promptly clean up all such materials. Each Collection vehicle shall carry a broom and shovel at all times for this purpose.

Contractor 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 City.

**B. Clean Up.** Contractor shall clean up litter in the immediate vicinity of any Solid Waste storage area if Contractor has caused the litter during the Collection process. Customer shall be responsible for cleanup of litter in Solid Waste storage area not caused by Contractor. Contractor shall identify instances of repeated spillage not caused by it directly with the Waste Generator responsible and will report such instances to City. Contractor may address habitual offenders in accordance with Section 4.7.4.6.

**C. Covering of Loads.** Contractor shall properly cover all open debris boxes during transport to the Disposal Site.

#### **4.7.4.8 Collection of Former Contractor's Containers**

If any Solid Waste enterprise providing Solid Waste Handling Services to Customers prior to the start of Collection services under this Agreement does not remove the Containers it had in use prior to the start of Collection services under this Agreement, Contractor shall Collect and recycle/dispose of all such Containers at no additional charge to City or Customers.

#### **4.7.5 Personnel**

**A. Qualified Drivers.** Contractor 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.

**B. Hazardous Material Employee Training.** Contractor also agrees to establish and implement an educational program which will train Contractor's employees in the identification of Hazardous Material. Contractor's employees shall not knowingly place such Hazardous Material in the Collection vehicles, nor knowingly dispose of such Hazardous Materials at the Processing Facility or Disposal Site.

**C. Customer Courtesy.** Contractor 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. Contractor 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, Contractor shall take all necessary corrective measures including, but not limited to, transfer, discipline or termination. If City has notified Contractor of a complaint related to discourteous or improper behavior, Contractor will consider reassigning the employee to duties not entailing contact with the public while Contractor is pursuing its investigation and corrective action process.

**D. Training.** Contractor shall provide suitable operations, health and safety training on an ongoing basis for all of its drivers and other employees who use or

operate equipment or who are otherwise directly involved in Collection or other related operations.

**E. Unauthorized Material Removal.** Contractor shall dismiss or discipline employees who remove documents or any other material from Containers, other than specifically for the purposes of Disposal and Diversion as described in this Agreement.

#### **4.7.5.1 Employment of Former Contractor Employees**

Contractor shall comply with the provisions of Santa Ana Municipal Code sections 16-40 through 16-42 with respect to the employment of all employees of the previous hauler to be displaced by the transition of Solid Waste Collection under this Agreement.

#### **4.7.5.2 Job Fair**

Contractor shall hold, at a minimum, one job fair in the City prior to the start of services under this Agreement. The purpose of the job fair is to provide City residents with the opportunity to apply for positions with the Contractor. Contractor shall make offers of employment to all such applicants qualified for available positions with Contractor.

#### **4.7.5.3 Identification Required**

Contractor shall provide its employees, companies and Subcontractors with identification for all individuals who may make personal contact with residents or businesses in City. Contractor shall provide a list of current employees, companies, and Subcontractors to City upon request.

The City reserves the right to perform a security and identification check through the Orange County Sheriff's Department upon Contractor and all its present and future employees, in accordance with accepted procedures established by the City, or for probable cause.

#### **4.7.5.4 Fees and Gratuities**

Contractor 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 services authorized to be performed under this Agreement except as described in this Agreement, in accordance with Exhibit 1 as updated and approved by City throughout the Term of the Agreement.

#### **4.7.6 Non-Discrimination**

Contractor 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.

#### **4.7.7 Coordination with Street Sweeping Services**

Contractor shall coordinate with the Executive Director to ensure that Solid Waste Collection is compatible with the City's street sweeping operations. Contractor will be required to complete their designated routes each day so as not to interfere with the City's street sweeping operations.

#### **4.7.8 Change in Collection Schedule**

Contractor shall notify City forty-five (45) days prior to, and Customers not later than thirty (30) days prior to, any change in Collection operations which results in a change in the day on which Solid Waste Collection occurs. Contractor will not permit any Customer to go more than seven (7) days without service in connection with a Collection schedule change. City's approval of any change in 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. City may require reasonable changes in the route map or Collection schedule, to improve service, to resolve complaints or for other reasons. Prior to the change of a route schedule, Contractor shall provide written notice of the change to affected Customers ninety (90) days in advance.

#### **4.7.9 Report of Accumulation of Solid Waste**

Contractor shall direct its drivers to note (1) the addresses of any private property Premises at which they observe that Solid Waste is accumulating and is not being delivered for Collection. Contractor shall deliver the address or description to City within five (5) working days of such observation.

#### **4.8 Contingency Plan**

Contractor shall submit to City on or before the start of Collection services under this Agreement, a written contingency plan demonstrating Contractor's arrangements to provide vehicles and personnel and to maintain uninterrupted service during breakdowns, and in case of natural disaster or other emergency including labor disputes and the events described in Section 11.5.

#### **4.9 Transfer, Processing, and Disposal**

##### **4.9.1 Designated Facility**

###### **4.9.1.1 Designated Disposal Facility**

City has entered into a waste Disposal agreement with the County of Orange. Contractor agrees to deliver to the Designated Disposal Facility designated by the County of Orange all Refuse Collected pursuant to this Agreement which cannot be Recycled or otherwise Diverted from landfill Disposal. In the event the City's Solid Waste Disposal agreement with the County is declared to be invalid and is otherwise not in effect, and all applicable appeals have been exhausted, or the time of appeal for any related court decision has expired, then Contractor may select a Disposal Facility for Refuse Collected pursuant to this Agreement which cannot be Recycled or otherwise Diverted from landfill Disposal.

###### **4.9.1.2 Use of Alternative Facilities**

If public health, safety, and/or fiscal interest requires, or compliance with Applicable Law necessitates, the City may designate an Alternative Facility at any time during the term of this Agreement. Prior to designating an Alternative Facility, City shall give Contractor at least thirty (30) days' advance written notification of its intention to do so, except in cases of emergency resulting in an imminent threat to public health and safety. As to any Alternative Facility designation by the City which results in increased expense to Contractor, Contractor shall be entitled to recover through a corresponding rate adjustment the full amount of the additional expense. In that event, the rate adjustment shall be implemented no later than thirty (30) days from the effective date of the designation, and shall be applied retroactive to the date the Contractor commenced use of the Alternative Facility. Notwithstanding the foregoing, Contractor shall not be entitled to a rate increase following the City's exercise of any Alternative Facility designation rights hereunder where City's decision to designate an Alternative Facility results solely from the closure of a Facility owned and operated by Contractor.

City may designate an Alternative Facility for Contractor's use for a short or extended period of time. Such a change shall be considered a City-directed change in scope and handled in accordance with provisions in Section 2.9.

#### **4.9.2 Approved Facilities**

Contractor shall Transport all Solid Waste, with the exception of Refuse which is Transported to the Designated Disposal Facility, to the Approved Facility(ies) specified in Exhibit 8 and shall Transfer and Process Solid Waste, with the exception of Refuse Collected, in accordance with this Section and Exhibit 8. If the Approved Facilities change during the Term of this Agreement, and the Contractor does not own or operate one or more of the Approved Facilities, Contractor shall enter into a subcontract agreement with the owner or Facility operator of such Approved Facility(ies) and the requirements of this Section and Exhibit 8 shall pertain to the Subcontractor. In addition, Subcontractor requirements or obligations related to indemnification (Article 9) and insurance requirements (Section 9.4) shall apply, as well as any other Subcontractor requirements or obligations stated in other sections of this Agreement.

The Approved Facilities shall comply with the following requirements.

- A. **Approved Transfer Facility.** Contractor's Approved Transfer Facility shall be a Transfer Facility or operation that Transfers Residential, Multi-Family, and Commercial Premises Source Separated Recyclable Materials, Source Separated Organic Materials, Mixed Waste, and/or Refuse Collected in accordance with this Agreement.
- B. **Approved Source Separated Recyclable Materials Processing Facility.** Contractor's Approved Recyclables Processing Facility shall be a Facility or operation that Processes Residential, Multi-Family, and Commercial Premises Source Separated Recyclable Materials to recover materials designated for Collection in the Source Separated Recyclable Materials Containers.
- C. **Approved Organic Waste Processing Facility.** Contractor's Approved Organic Waste Processing Facility shall be a Facility that Processes Residential, Multi-Family, and Commercial Premises Source Separated Organic Materials to recover Source Separated Organic Materials.
- D. **Approved C&D Processing Facility.** Contractor's Approved C&D Processing Facility shall be a Facility that Processes and recovers Construction and Demolition Debris in accordance with this Agreement and Applicable Law.

#### **4.9.3 Processing Facility Temporary Equipment or Operational Failure Waiver**

- A. Notification to the City. The Contractor, or their Subcontractor (such as a Facility operator), shall notify the City of any unforeseen operational restrictions that have been imposed upon the Approved Facility by a regulatory agency or any unforeseen equipment or operational failure that will temporarily prevent the Approved Facility from Processing and recovering Source Separated Recyclable Materials, Source Separated Organic Waste, or Mixed Waste. The Contractor or Subcontractor shall notify the City as soon as possible and no later than two (2) business days from the time of the incident. The notification shall include the following: (i) name of Approved Facility; (ii) the Recycling and Disposal Reporting System Number of the Approved Facility; (iii) date the Approved Facility became unable to Process Source Separated Recyclable Materials or Source Separated Organic Waste; (iv) description of the operational restrictions that have been imposed upon the Approved Facility by a regulatory agency or unforeseen equipment failure or operational restriction that occurred; (v) the period of time the Contractor anticipates the temporary inability of the Approved Facility to Process Source Separated Recyclable Materials, Source Separated Organic Waste, or Mixed Waste; (vi) Contractor's proposed action plan to deliver materials to an Alternative Facility for Processing (refer to Section 8.1.H of Exhibit 8) or Contractor's request for waiver to deliver Source Separated Recyclable Materials, Source Separated Organic Waste, or Mixed Waste to the Designated Disposal Facility.
- B. Use of Alternative Facility or Waiver for Disposal of Materials. Upon notification by Contractor or Subcontractor of the Approved Facility's inability to Process materials, City shall evaluate the notification and determine if City shall require Contractor to use an Alternative Facility or allow the Contractor to Transport the Source Separated Recyclable Materials, Source Separated Organic Waste, or Mixed Waste to the Designated Disposal Facility for Disposal on a temporary basis for a time period specified by the City. Upon City's decision, the City shall notify the Contractor of its requirement to use an Alternative Facility for Processing or to use the Designated Disposal Facility for Disposal, and the period of time that the City will allow the Source Separated Recyclable Materials, Source Separated Organic Waste, or Mixed Waste to be redirected to the Alternative Facility or Designated Disposal Facility. Pursuant to 14 CCR Section 18984.13, the approved Disposal period shall not exceed ninety (90) days from the date the Approved Facility's Processing restriction or failure commenced. In such case, the Contractor must receive written permission from the City prior to depositing any Discarded Material in a Landfill.

- C. Record Keeping and Reporting. Contractor shall maintain a record of any Approved Facility incidents and report this information to the City in accordance with Article 8.

#### **4.9.4 Transportation to Non-Approved Facilities Prohibited**

If Contractor Transports Discarded Materials to a Facility other than the Approved Facility(ies) or an Alternative Facility without prior City approval, Contractor's failure to comply shall be a breach of this Agreement and may result in assessment of liquidated damages as described in Section 11.4.

#### **4.10 Disposal of Refuse**

- a) Contractor shall be required to dispose of any and all Solid Waste which is not Recycled or Diverted by means of composting, mulching and/or transforming pursuant to the terms of this Agreement, at the Designated Disposal Facility(ies). Unless and until the City otherwise obtains ownership of the Solid Waste stream, the designated Disposal Site shall be the Orange County Disposal System. If Contractor is directed to dispose of said Solid Waste at a location other than the Orange County Disposal System, both parties agree to meet and confer regarding any potential rate adjustments which may be necessitated thereby. Should Disposal Sites become unavailable in Orange County at any time during the term of this Agreement, both parties agree to meet and confer regarding any potential rate adjustments which may be necessitated thereby. Contractor hereby agrees and guarantees to the City that the City will be indemnified for CERCLA liability for any Solid Waste Collected by Contractor in the City.

Contractor will act as the contracting body and lead agency with the MRF and composting facility with respect to this Agreement and shall be responsible for, and ensure that both facilities act so as to meet the requirements of both this Agreement, AB 939 and SB 1383.

#### **4.11 Flow Control Option**

City shall have the absolute ability to choose the location for the delivery and/or Disposal of all Solid Waste (including residue Refuse from Recyclables, Organic Materials, and Construction and Demolition Debris Collected pursuant to this Agreement (hereinafter City's "Flow Control Option"). Contractor expressly consents to City's ability to direct the location for disposal of Solid Waste hereunder, and waives

any and all rights to challenge City's ability to do so, including without limitation any rights under the Commerce Clause of the United States Constitution. As of the effective date, City shall be deemed to have exercised its Flow Control Option so as to require delivery of all Solid Waste Collected hereunder to the Orange County Disposal System in a manner consistent with its obligations under the County Agreement (Exhibit 6) (including, without limitation, its obligations related to Solid Waste that is delivered to a processing/transfer facility prior to being delivered to a landfill for disposal), and Contractor has agreed to handle all Solid Waste Collected hereunder in a manner consistent with City's exercise of its Flow Control Option as noted above. At any time during the Term of this Agreement the Executive Director may notify Contractor in writing that City no longer desires to exercise its Flow Control Option. In the event City so notifies Contractor of its desire to cease exercising its Flow Control Option, Contractor shall have the absolute discretion to utilize any Disposal facility, Transfer Station, Recycling facility, Material Recovery Facility, landfill, or other facility of its choosing to retain, Recycle, process, and dispose of Solid Waste generated within the City, provided the use of such facility by Contractor enables it to meet all other requirements of this Agreement.

#### **4.12 County Agreement**

Contractor expressly acknowledges its awareness and understanding of the County Agreement which has been adopted and entered into by the City. Moreover, Contractor acknowledges that it has had an opportunity to review the County Agreement, and is aware of the provisions thereof that require all Solid Waste Collected in the City limits to be disposed of in the Orange County Disposal System. Contractor further acknowledges that the County of Orange is an intended third party beneficiary of Contractor's obligations relating in any way to the disposal of Solid Waste pursuant to this Agreement and the County Agreement. Contractor hereby adopts as its obligations hereunder such provisions of the County Agreement that require action or inaction by it as City's Solid Waste franchisee. Contractor represents and warrants that it can and will perform its duties in connection with this Agreement in such a manner as to ensure that the City does not breach the terms of the County Agreement as a result of Contractor's actions or inactions. In the event City advises Contractor in writing that the County Agreement has been terminated, or that it no longer wishes to exercise its Flow Control Option in a manner consistent with the County Agreement, then Contractor's obligations pursuant to this paragraph will be terminated.

#### **4.13 Status of Disposal Site**

Any Disposal Site chosen and utilized by Contractor, shall have been issued all permits from federal, state, regional, county and City agencies necessary for it to operate as a Class III Sanitary Landfill.

#### **4.14 Solid Waste Facility Capacity Guarantee**

Contractor shall provide City with guaranteed capacity for the following Solid Waste facilities for the Term of this Agreement:

Transfer Stations and Processing Facilities

- CVT Regional MRF - 2775 East Gretta Lane, Anaheim, CA. Owned and operated by Contractor.
- Kochergen Farms Composting, Avenal Cutoff Rd. and Omaha Ave., Avenal, CA 93239
- Agromin Chino - 8100 Chino-Corona Road, Chino, CA. Co-owned and operated by Agromin OC LLC, co-owned by Rainbow Disposal Co., Inc.
- Copper Mountain Landfill - 34853 East County 12th Street, Wellton, AZ 85356
- Rainbow Environmental Services, Huntington Beach, CA, owned by Rainbow Disposal Co., Inc.
- Recology: 6061 North Wheeler Ridge Rd, Lamont, CA

#### **4.15 Commingling of Refuse Collection Routes**

Contractor shall not commingle City Refuse Collection routes with other city or county routes. If this is not feasible, upon approval by the City, Contractor may commingle routes, but must submit to City a detailed monthly report setting forth the breakdown of tonnage Collected from the commingled routes within thirty (30) days after the end of each month. Contractor shall have the methodology used to segregate the loads between jurisdictions approved in advance by the City.

#### **4.16 Route Audit**

Once during the first year or at City request (but not more than once every three years), Contractor shall conduct an audit of its Collection routes in the City. City may use information from the audit to develop a request for proposals for a new service

provider. City may instruct Contractor when to conduct the audit in order for the results to be available for use in preparation of a request for proposals or for other City uses. City may also instruct Contractor to conduct an audit at a time that would produce the most accurate Customer service information for a new service provider to use in establishing service with Customers. In setting these audit dates, City will establish due dates for Contractor providing routing and account information, and later, the report, to City.

The route audit, at minimum, shall consist of an independent physical observation by Person(s) other than the route driver of each Customer in City. This Person(s) is to be approved in advance by City. The route audit information shall include, as a minimum, the following information for each account:

For Residential Curbside Service Unit and Multi-Family Customers with Cart Service:

- Route Number;
- Truck Number;
- Number and size of Carts by waste stream (Refuse, Recycling, Organics)
- Cart condition;

For Bin and Roll-Off Customers:

- Route Number;
- Truck Number;
- Account Name;
- Account Number;
- Account Service Address;
- Account Type (Residential, Commercial, Roll-Off);
- Service Level per Contractor Billing system (Quantity, Size, Frequency, Waste Stream);
- Observed Containers (Quantity, Size, Frequency, Waste Stream).
- Container condition;
- Proper signage; and,
- Graffiti.

Within thirty (30) days after the completion of the route audit, Contractor shall submit to City a report summarizing the results of the audit. This summary shall include:

- Identification of the routes;
- Route map;
- Truck numbers;
- Number of accounts, by route and in total (Residential, Commercial and Roll-off);
- Confirmation that all Refuse routes are dedicated exclusively to City Customers;
- Number and type of exceptions observed;
- Total monthly service charge (Residential, Commercial and Roll-off Box), pre-audit;
- Total monthly service charge (Residential, Commercial and Roll-off), post-audit (subsequent to corrections of identified exceptions); and,

The report shall include a description of the procedures followed to complete the 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.

The report shall also include a description of the changes and Contractor's plans to resolve the exceptions. The results of the audit, and supporting back-up data, shall be available for review by City or its representative.

#### **4.17 Service Exceptions; Hazardous Material Notifications**

**A. Failure to Collect.** When Solid Waste is not Collected from any Solid Waste service recipient, Contractor shall notify its service recipient 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 Material Inspection and Reporting.** Contractor reserves the right to reject Solid Waste observed to be contaminated with Hazardous Material and the right not to Collect Hazardous Material put out with Solid Waste. Contractor shall notify all agencies with jurisdiction, if appropriate, including the California Department of Toxic Substances Control and Local Emergency Response Providers and the National Response Center of reportable quantities of Hazardous Material, found or observed in Solid Waste anywhere within the City. In addition to other required notifications, if Contractor observes any substances which it or its employees reasonably believe or suspect to contain Hazardous Materials unlawfully Disposed of or released on any City property, including storm drains, streets or other public rights of way, Contractor will immediately notify the Executive Director or the Executive Director's designee. Contractor shall implement and maintain a training program that will assist its

employees in identifying and properly disposing of any Hazardous Material that may come into their possession.

**C. Hazardous Material Diversion Records.** Contractor shall maintain records showing the types and quantities, if any, of Hazardous Material found in Solid Waste and which was inadvertently Collected from service recipients within the City, but diverted from landfilling.

**4.18 Contractor/City Meetings**

Contractor and City will meet monthly for the term of this Agreement, to discuss concerns and comments. City reserves the right to increase or reduce the number of Contractor/City Meetings at any time during the term of this Agreement.

**4.19 Large Venue and Event Assistance, Event Recycling**

Contractor shall assist City planners of Large Venue events with reporting and planning needs to provide Recycling and Organics Materials Diversion as may be useful in meeting the requirements of AB 2176 and SB 1383, and in lowering Disposal quantities generated at such events at no additional charge.

**ARTICLE 5**  
**OTHER SERVICES**

**5.1 Services and Customer Billing**

**5.1.1 Residential Curbside Service Unit Billing**

Contractor shall establish rates for its provision of services for Residential Curbside Service Unit Customers pursuant to this Agreement. Such rates shall in no case exceed those set forth in the approved rate schedule. The City shall collect on behalf of the Contractor the rates established by the Contractor for said services. Rates collected and paid to the Contractor shall be based on the total number of Residential Curbside Service Units billed by the City for curbside service during that month, less City fees described in Sections 3.2, 3.3., and 3.4. City shall make billing records available to Contractor upon reasonable notice for the purpose of auditing such records.

Remittance to Contractor of payments collected by the City for curbside service shall be on a monthly basis.

**5.1.2 Senior and Mobile Home Low Generator Rate**

Seniors 65 years of age and older and residents living in mobile home communities, both of which must live in households with no more than two persons, are low trash generators, and be the person named on the Municipal Utility Services account receiving Cart Service shall be provided one (1) 35-gallon Cart for Refuse, one (1) 35-gallon Cart for Recycling, and one (1) 35-gallon Cart for Organics for the monthly rate included in the approved rate schedule. Customers receiving the senior and mobile home low generator rate may not request additional Carts.

**5.1.3 Multi-Family and Commercial Cart Service, and Multi-Family and Commercial/Industrial Bin Services Billing**

Contractor shall be responsible for billing for Commercial Cart, and Multi-Family and Commercial/Industrial Bin services and other special charges as permitted in the approved rate schedule on a monthly basis.

Bills must be itemized by Container size, frequency of service, and period billed for.

#### **5.1.4 Roll-Off Billing**

Contractor shall bill for Roll-off services and other special charges as permitted in the approved rate schedule on a monthly basis.

Bills must be itemized by Container size, frequency of service, tons, per ton fees, and period billed for.

#### **5.1.5 Special Bin Services and Customer Service Requirements**

Contractor may enter into agreements with Bin Service Customers for special Collection services different from, in addition to, or greater than the minimum collection services required in this Agreement. Minimum Container capacity requirements are described in Section 16-37 of the City of Santa Ana's Municipal Code.

#### **5.1.6 Other Optional Services**

Contractor may offer on a subscription basis other optional services for which a rate is not provided in the approved rate schedule, at a rate negotiated between Contractor and a Residential Curbside Service Unit Customer or other Customers, subject to approval by the Executive Director. Contractor may not charge a fee for moving its vehicles in reverse for the purposes of emptying a Bin. Contractor must notify Executive Director of service type, and negotiated rate prior to initiating service.

#### **5.1.7 Review of Billings**

Contractor shall review its Billings to Customers under Sections 5.1.3 and 5.1.4. The purpose of the review is to determine that the amount which Contractor is billing each Customer is correct in terms of the level of service being provided to such Customer by Contractor. Contractor shall review Customer accounts annually, and submit to City a written report of that review annually on the anniversary of the Effective Day of this Agreement.

#### **5.1.8 Suspension of Service Due to Non-Payment**

Contractor may charge a delinquency fee of not more than ten (10%) percent per month on accounts billed by Contractor which have not remitted required payments within thirty (30) days after the date of billing. Should payment not be received within forty-five (45) days of billing, Contractor shall notify said Customer on forms approved by

the City that service may be discontinued fifteen (15) days from the date of the notice if payment is not made before that time. Upon payment by the Customer of all amounts due, including delinquent fees, Contractor shall resume collection on Contractor's next regularly scheduled collection day. Contractor may charge a re-start fee in accordance with the approved rate schedule for re-establishing service that was discontinued due to non-payment. At City's request, Contractor shall provide the City with a list indicating the Customers which have had service ceased due to nonpayment.

## **5.2 Customer Service**

### **5.2.1 Local Office**

Contractor shall maintain an office within the City of Santa Ana. Office hours shall be, at a minimum, from 8:00 A.M. to 5:00 P.M., Monday through Friday and from 8:00 A.M. to noon on Saturdays, exclusive of holidays. A responsible and qualified representative of Contractor shall be available during office hours for communication with the public at the local office, and to receive payments from Customers. Normal office hour telephone numbers shall be a toll free call. Contractor's telephone system shall be adequate to handle the volume of calls typically experienced on the busiest days. Contractor shall also maintain a toll free telephone number for use during other than normal business hours. Contractor shall have a representative, answering or message providing/receiving (voice-mail) service available at said after-hours telephone number. After-hour calls shall be responded to on the next business day (excluding Saturday, Sunday and holidays listed in Section 4.7.1). Contractor shall have the capability of responding to the public in English, Spanish, and Vietnamese during office hours.

### **5.2.2 Complaint Documentation**

All service complaints shall be directed to Contractor. Daily logs of complaints shall be retained for a minimum of twenty-four (24) months and shall be available to City at all times upon request, and included in Contractor's monthly reports as described in Section 8.3.2.

Contractor 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

Contractor to respond to and remedy complaint. Missed pickups shall be included in this log.

All Customer complaints and inquiries shall be date-stamped when received and shall be initially responded to within one (1) business day (excluding Saturday, Sunday and holidays listed in Section 4.7.1) of receipt. Contractor shall log action taken by Contractor to respond to and remedy the complaint.

All Customer service records and logs kept by Contractor shall be available to City upon request and at no cost to City. City shall, at any time during regular Contractor business hours, have access to Contractor'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**

Disputes between Contractor and its Customers regarding the services provided in accordance with this Agreement may be resolved by the City. The City's decision shall be final and binding.

Should Contractor and Customers not be able to establish a mutually acceptable fee to be charged for special hauling services, the matter shall also 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 Contractor. Nothing in this section is intended to affect the remedies of third parties against Contractor. To the extent that remedies are warranted through this Agreement, this section shall apply.

### **5.2.4 City Liaison**

The Contractor shall designate a person to serve as agent and liaison between the Contractor and the City and shall maintain a telephone and a means for contact at all times including during periods of strike or other emergencies. Contractor shall not change this designation without prior approval of the City, excluding cases of termination of the employee. City may request that Contractor change City Liaison, and shall have the right to approve the City Liaison. The Contractor's City Liaison shall meet with the City as necessary to effectuate the purposes of the Agreement.

### **5.2.5 Route Supervisor**

Contractor shall designate in writing a route supervisor that shall be assigned exclusively to the City, and who shall be responsible for working with City's Executive Director to resolve Customer service related complaints. Route supervisor shall be accessible via cell phone or radio in the field at all times. City shall be notified in advance of any change in Route Supervisor and shall have the right of approval. City may request that Contractor change Route Supervisor.

## **5.3 Education and Public Awareness**

### **5.3.1 General**

Contractor acknowledges and agrees that education and public awareness are critical, key and essential elements of any efforts to achieve AB 939 requirements. Accordingly, Contractor agrees to take direction from City to exploit opportunities to expand public and Customer knowledge concerning needs and methods to reduce, reuse and recycle Solid Waste and to cooperate fully with City in this regard.

Contractor shall maintain its own program of providing information relevant to billing and Solid Waste services, issues and needs with its bills. All public education materials shall be approved in advance by City, and produced in English, Spanish and Vietnamese. Additional languages may be required during the Term of this Agreement.

City may request Contractor to perform a maximum of six (6) mailing services for Customers direct-billed by Contractor per Rate Year, and if so able, provide not less than thirty (30) days' notice to Contractor prior to the mailing date of any proposed mailing to permit Contractor to make appropriate arrangements for inclusion of City's materials. City will provide Contractor the mailers at least fifteen (15) days prior to the mailing date. Contractor shall be responsible for all costs associated with the printing and distribution of mailers.

### **5.3.2 AB 341, AB 1826, and SB 1383 Implementation Plan**

Contractor shall ensure the City's compliance with AB 341, AB 1826, and SB 1383 by initiating the planned tasks, procedures, proposed staffing assignments, and schedules for AB 341, AB 1826, and SB 1383 included in Sections 4.3.5.1 and 4.3.6.1 and more fully documented in the implementation plan included in Exhibit 7. The implementation

plan includes a timeline for conducting on-site compliance audits to all AB 341, AB 1826, and SB 1383 non-compliant Commercial and Multi-family Customers; a proposal template as described in Section 4.3.5.1 and 4.3.6.1; written protocols for conducting on-site compliance audits and documenting internal compliance programs; proposed staffing assignments for implementing compliance audits at Commercial and Multi-family non-compliant Customers; specifications of the proposed internal Collection receptacle for distribution during the AB 1826/SB 1383 outreach; an education and outreach plan for a SB 1383 Residential Curbside Unit Organics program including the use of any strategic marketing or social media; an operations plan for delivering new Residential Curbside Unit Organics carts, re-stickering or augmenting existing Residential Curbside Unit Carts; a plan for providing in-home kitchen pails to Residential Curbside Unit Customers who request them; a plan for community workshops to educate Customers about the Residential Curbside Unit Organics program; a plan for door-to-door Residential Curbside Unit Organics outreach for neighborhoods (if any); a plan for conducting route reviews and/or waste characterization studies to assess compliance with SB 1383 monitoring requirements; a plan for notifying Customers of unacceptable levels of contamination and a template hang-tag; proposed drafts of written 'welcome letters' and other outreach materials to Residential, Multi-family, and Commercial Customers to notify them of the transition and the new program offerings; a plan and timeline for how the Contractor will implement Multi-Family Organics Recycling programs at all Multi-Family Customers as required by SB 1383; templates for compliance reporting documents; etc. It is the responsibility of the Contractor to develop an implementation plan for SB 1383 based on the final approved regulatory requirements. Within 30 days of receiving the written implementation plan, the City will review the plan and provide further direction to the Contractor to ensure the plan is satisfactory in complying with AB 341, AB 1826, and SB 1383. The Contractor shall have 30 days to incorporate the requests of the City into the plan.

### **5.3.3 Implementation and On-going Education Requirements**

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

- **Initial Mailing** – Contractor will prepare and mail an initial mailing to Customers explaining the transition from the existing program to the new program. The

mailing will describe program changes, route changes, dates of program implementation, and other necessary information.

- **Workshops** – Contractor will conduct a minimum of five public workshops describing program changes, route changes, dates of program implementation, and other necessary information.
- **Instructional Packet Accompanying Contractor-Provided Containers** – An information packet shall be attached to each set of Carts distributed to a Customer. At a minimum, packet should describe available services, including how to place Carts for Collection, which materials should be placed in each Cart, Collection holidays, and a Customer service phone number.
- **Cart Instruction Markings** – Contractor will place labels and hot stamps on Carts, in accordance with Section 4.7.4.1. . All Carts shall be labeled in accordance with CalRecycle requirements under SB 1383 throughout the term of this Agreement.
- **How-To Brochure** – Contractor will prepare and distribute a brochure packet to new Customers when they start service. Packet will contain updated information on how to use the Contractor-provided Containers, when, where and how to place Solid Waste for Collection, and who to contact with service or billing questions.
- **Annual Brochures/Mailings** – Not less than once per year during each Rate Year, Contractor shall prepare and distribute to each Customer a mailing to update Customers regarding program basics, program changes, holiday schedules and other service-related information. Separate brochures shall be developed for Residential, Multi-family, and Commercial Customers, reflecting the different services provided to each group. Mailings should promote and explain: all Solid Waste programs offered by City and Contractor (such as Recycling, Organics, Holiday Tree and Bulky Item Collections) describe in detail; the environmental, regulatory, and other benefits of participating in Recycling; how to properly dispose of Household Hazardous Material such as syringes, paint, etc.; Collection schedules, including holiday schedules; Customers service numbers; State-mandated program requirements; and the procedures to begin and terminate services. This brochure shall be at least two (2) pages, and printed in full color in English, Spanish and Vietnamese. Contractor is responsible for all associated costs.

The Contractor may allow Customers to request mailings electronically in lieu of

hardcopies. Contractor shall be required to provide an annual report to the City of customers that have requested to receive mailings electronically. Customers will be provided the option to request electronic mailings annually.

- **Billing Inserts** – Upon request by the City, Contractor shall include information developed by the City, or developed by Contractor at request of City, with invoices for Customers direct-billed by Contractor.
- **Santa Ana Green Quarterly Newsletter** – Not less than four times per year during each Rate Year, Contractor shall be responsible for twenty-five percent (25%) of all costs incurred by City for the production and mailing of the City’s quarterly newsletter. The City reserves the right to direct the production of the quarterly newsletter to a contractor of the City’s choosing. The Contractor shall be required to coordinate distribution via U.S. Mail of the quarterly newsletter with a local mailing house, including furnishing Residential Curbside Service Unit, and Multi-Family Premises Customers’ mailing addresses.
- **Corrective Action Notice** – For use in instances where the Customer sets out inappropriate materials.
- **Recycling Coordinator** - To achieve a high level of Recycling public education and awareness, the Contractor shall dedicate three (3) or more full-time Recycling Coordinators to the City to complete outreach to Residential, Multi-family and Commercial customers, and develop and implement all public education and outreach activities required under the Agreement. The Recycling Coordinators shall conduct outreach, promote waste reduction, recycling, diversion programs, and provide technical assistance to Multi-family and Commercial Customers.
  - The Recycling Coordinators shall work exclusively on the City programs and services and shall not have other, non-City responsibilities or other City responsibilities not related to Recycling Coordinator responsibilities in the City.
  - The Recycling Coordinators shall visit each school located within the City each Rate Year to discuss environmental issues with students, read books and facilitate craft activities.

- Contractor shall provide fully trained and experienced Recycling Coordinators on or before the start of services under this Agreement. In the event of resignation of a Coordinator, Contractor shall have a maximum of ninety (90) calendar days to replace the Coordinator. Contractor shall notify City, in writing, of the name, education, background and experience, including a resume, and a list of three (3) references for each Coordinator prior to commencing operations and whenever there is a change in the staffing of the positions.
- Upon City request, Contractor shall designate a different Coordinator if the City is dissatisfied with the performance of the designated Coordinator.
- The Contractor shall allow the City a reasonable opportunity to review, request modifications to, and approve all materials including, but not limited to: print, radio, television, or internet media before publication, distribution, and/or release. The Recycling Coordinators shall also work cooperatively with a City-selected outreach and education consultant.
- **Technical Assistance** – Contractor is responsible for providing technical assistance to Customers to promote participation in the diversion programs included in this Agreement, and future regulatory requirements. Contractor may utilize the services of a consultant to provide these services upon approval by the City using the procurement protocols set forth in Section 4.4.7.
- **Web Site Page** – Contractor shall dedicate one page of a Contractor web site to City services, including, at a minimum, listing contact names and numbers for Customer Service and information on Bulky Item Collection and other service-related information. The Contractor shall assist the City in establishing a link to this web page from the City’s web site. The web site page shall host Recycling- and Solid Waste related content as directed by the City.
- **Integrated Waste Management Video** – Contractor shall cooperate in the production of a video for use by the City with an approximate length of three (3) minutes describing the SB 1383-mandated Residential Curbside Organics program as well as Residential Curbside Recycling procedures to reduce contamination.

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.

#### **5.3.4 Community Events**

At the direction of City, Contractor shall participate in and promote Recycling and other Diversion techniques at a minimum of four (4) community events per calendar year. Such participation would normally include providing, without cost, Collection and educational and publicity information promoting the goals of City's Solid Waste program. The City reserves the right to modify the required events and Contractor's participation requirements.

#### **5.3.5 Media Relations**

Contractor shall notify the City of all requests for news media interviews related to the City's Solid Waste Handling Services within twenty-four (24) hours. Before responding to any inquiries, Contractor will discuss the proposed response with the City. Copies of draft news releases or proposed trade journal articles shall be submitted to City for prior review and approval at least two (2) working days in advance of release. Copies of articles resulting from media interviews or news releases shall be provided to the City within five (5) days after publication.

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

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

### **5.5 Contamination Monitoring**

#### **5.5.1 Contamination Inspection Methods**

Contractor shall implement an inspection method in compliance with the requirements of SB 1383 (14 CCR Section 18984.5), as described below. Contractor shall include the contamination inspection method that will be utilized in the "AB 341, AB 827, AB 1826,

and SB 1383 Implementation Plan,” in Exhibit 7.

Physical Container Inspections. When Contractor’s personnel dismounts from Collection vehicles to empty a Container, such personnel shall lift the Container lid and observe the contents. Upon finding Contaminants in a Container, Contractor shall follow the contamination noticing procedures set forth in Section 5.5.1.1.

#### **5.5.1.1 Actions upon Identification of Prohibited Container Contaminants**

- A. Record Keeping. The driver or other Contractor representative shall record each event of identification of Prohibited Container Contaminants in a written log or in the on-board computer system including date, time, Customer’s address, type of Container (Refuse, Source Separated Recyclable Materials, Source Separated Organic Waste, Mixed Waste); and maintain photographic evidence, if required. Contractor shall submit this record to the Contractor’s Customer service department, and Contractor’s Customer service department shall update the Customer’s account record to note the event, if the documentation of the on-board computer system did not automatically update the Customer’s account record.
- B. Identification of Excluded Waste. If Contractor’s personnel observe Excluded Waste in an uncollected Container, the Contractor’s personnel shall record that observation in accordance with Section 5.5.1.3 and immediately inform their route supervisor. Contractor shall follow protocols specified in Section 5.5.1.1.C. The route supervisor shall investigate and initiate applicable action within one (1) business day or sooner if the Hazardous Waste may cause immediate danger.
- C. Courtesy Pick-Up Notices. Upon identification of Prohibited Container Contaminants in a Customer’s Container, Contractor shall provide the Customer a courtesy pick-up notice. The courtesy pick-up notification shall: (i) inform the Customer of the observed presence of Prohibited Container Contaminants; (ii) include the date and time the Prohibited Container Contaminants were observed; (iii) include information on the Customer’s requirement to properly separate materials into the appropriate Containers, and the accepted and prohibited materials for Collection in the Source Separated Recyclables Container, Source Separated Organics Container, and/or the Refuse Container; (iv) inform the Customer of the courtesy pick-up of the contaminated materials on this occasion

with information that following three (3) instances of contaminated materials; Contractor may assess contamination fees; and, (v) shall include photographic evidence. Contractor shall leave the courtesy pick-up notice attached to or adhered to the Customers' contaminated Containers; at the Premises' door or gate; or, subject to City's approval, may deliver the notice by mail, e-mail, or text message.

Contractor shall Collect the contaminated Source Separated Recyclable Materials, and Source Separated Organic Waste, and Transport the material to the appropriate Approved Facility for Processing; or, Contractor may Collect the contaminated materials with Refuse Container Waste/Mixed Waste and Transport the contaminated materials to the appropriate Designated/ Approved Facility for Disposal/Processing.

- D. Notice of Assessment of Contamination Fees. If the Contractor observes Prohibited Container Contaminants in a Customer's Source Separated Organic Waste Container or Source Separated Recyclables Container on more than three (3) occasions and issued courtesy pick-up notices on each of those occasions, the Contractor may impose a contamination fee. Contractor shall notify the City in its monthly or quarterly report of Customers for which contamination fees were assessed. Contractor shall leave a contamination fee notice attached to or adhered to the Customers' contaminated Containers; at the Premises' door or gate; or, subject to City's approval, may deliver the notice by mail, e-mail or text message. The contamination fee notice shall describe the specific material(s) of issue, explain how to correct future set outs, and indicate that the Customer will be charged a contamination fee on its next bill. The format of the contamination fee notice shall be approved by the City Contract Manager.

Contractor shall Collect the contaminated Source Separated Recyclable Materials, Source Separated Organic Waste, and Transport the material to the appropriate Approved Facility for Processing.

- E. Communications with Customer. Whenever a Container is not Collected because of Prohibited Container Contaminants, a Customer service representative shall contact the Customer to discuss and encourage the Customer to adopt proper

Discarded Materials preparation and separation procedures.

- F. Disposal of Contaminated Materials. If the Contractor observes visible Prohibited Container Contaminants in a Customer's Source Separated Organic Waste Container or Source Separated Recyclable Materials Container, Contractor may Dispose of the Container's contents at the Designated Disposal Facility provided Contractor complies with the noticing requirements in Section 5.5.1.1.C above.

#### **5.5.1.2 On-Going Contamination Monitoring by Route Personnel**

Contractor shall assist on an ongoing basis in minimizing contamination by helping to educate Customers on acceptable and non-acceptable materials through ongoing education and outreach efforts and through on-going monitoring of the contents of Collection Containers. The ongoing Container monitoring shall be performed by Contractor using the method described in Section 5.5.1.

Contractor may refuse Collection of Refuse, Recyclables, or Organic Waste from Customers under the following circumstances: (i) the material is not Source Separated from other Discarded Materials or Excluded Waste; (ii) access is blocked or inhibited by vehicles or other obstacles; or, (iii) the material is commingled with Prohibited Container Contaminants. In the event Contractor does not Collect the Refuse, Recyclable Materials, or Organic Waste from a Customer for any of these reasons, Contractor shall leave a non-collection notice for the Customer recording at a minimum the date, Customer location, and an explanation as to why the materials were not Collected. Contractor is required to retain photographic evidence of all instances of non-collection.

#### **5.5.1.3 Prescribed Contamination Monitoring**

- A. Methodology and Frequency

Commencing on July 1, 2022, the Contractor shall, at its sole expense, conduct Contractor route reviews for Prohibited Container Contaminants in Containers in a manner that is deemed safe by the Contractor; is approved by the City; and is conducted in a manner that results in all Contractor routes being reviewed annually or more frequently.

The Contractor shall conduct Contractor route reviews that include inspection of the contents of the Source Separated Recyclable Material, Source Separated Organic Waste, and Refuse Containers for Prohibited Container Contaminants in a manner that a minimum of ten percent (10%) of Containers on each and every Contractor route are randomly inspected annually.

Contractor shall develop a Contractor route review methodology to accomplish the above Container inspection requirements and such methodology shall comply with the requirements of 14 CCR Section 18984.5(b). Contractor shall submit its proposed Contractor route review methodology for the coming year to the City no later than January 15 of each year describing its proposed methodology for the calendar year and schedule for performance of each Contractor route's annual review. Contractor's proposed Contractor route review methodology shall include not only its plan for Container inspections, and shall also include its plan for prioritizing the inspection of Customers that are more likely to be out of compliance. City and/or CalRecycle will review and approve the proposed methodology. Contractor may commence with the proposed methodology upon approval.

If the City and/or CalRecycle notifies the Contractor that the methodology is inadequate to meet the requirements of 14 CCR Section 18984.5(b), Contractor shall, at its sole expense, revise the methodology and, after obtaining City or CalRecycle approval, conduct additional Contractor route reviews, increased Container inspections, or implement other changes using the revised procedure. If the Contractor's proposed methodology meets the requirements of 14 CCR Section 18984.5(b), but has been deemed inadequate by the City, the Contractor shall, at the expense of the City, revise the methodology and implement the necessary changes using the revised procedure.

The City may request, and Contractor shall accept, modifications to the schedule to permit observation of the Contractor route reviews by the City. In addition, Contractor shall provide an email notice to the City no less than ten (10) business days prior to each scheduled Contractor route review that includes the specific time(s), which shall be within the City's normal business hours, and location(s).

B. Noticing of Customers with Contamination, and Disposal of Materials.

Upon finding Prohibited Container Contaminants in a Container, Contractor shall follow the contamination noticing procedures and contaminated Container handling protocols set forth in Section 5.5.1.1.C.

C. **Reporting Requirements.**

Contractor shall maintain records and report to the City on contamination monitoring activities and actions taken, in accordance with Article 8.

Within fifteen (15) business days of the waste evaluation, notify all Customers on the sampled Contractor route of their requirement to properly separate materials into the appropriate Containers. The Contractor may provide this information by placing a written notice on the Customers' Containers or the gate or door of the Premises; and/or by mailing, emailing, or texting the notice to the Customers. The format of the warning notice shall be approved by the City.

**5.5.1.4 Section Reserved**

**5.5.1.5 Noticing of Customers with Contamination, and Disposal of Materials**

Upon finding Prohibited Container Contaminants in a Container, Contractor shall follow the contamination noticing procedures and contaminated Container handling protocols set forth in Section 5.5.1.1.C.

**5.5.1.6 Reporting Requirements**

In accordance with Article 8, Contractor shall maintain records and report to the City on contamination monitoring activities and actions taken.

**5.6 Inspection and Enforcement**

**A. Annual Compliance Reviews**

1. **General.** Contractor shall perform compliance reviews described in this Section commencing July 1, 2022, and at least annually thereafter, unless otherwise noted.
2. **Commercial Customer Compliance Reviews** The Contractor shall complete a compliance review of all Multi-Family and Commercial Premises Customers that generate two (2) cubic yards or more per week of Solid Waste, including Organic

Waste to determine their compliance with: (i) Customer requirements under the City's Collection program; and, (ii) if applicable for the Customer, Self-Hauling requirements per 14 CCR Section 18988.3, including whether a Commercial Business is complying through Back-Hauling of Source Separated Organic Waste, Source Separated Container Organic Waste, and Organic Waste. The compliance review shall mean a "desk" review of records to determine Customers' compliance with the above requirements and does not necessarily require on-site observation of service; however, the City may request that the Contractor perform an on-site observation of service in addition to or in lieu of the desk review if needed to obtain the required information.

3. **Annual Hauler Route Review.** Beginning July 1, 2022 and annually thereafter, the Contractor shall conduct annual Contractor route reviews of Commercial, Multi-Family, and Residential Premises Customers for compliance with the City's Discarded Materials Collection program and Container contamination monitoring. These Contractor route reviews may be performed concurrently with the contamination monitoring Contractor route reviews, provided that Contractor documents a reasonable sampling of Customers for which compliance with the City's Discarded Materials Collection program during the Contractor route review was assessed.
  4. **Food Recovery Compliance Reviews.** Commencing July 1, 2022 and at least annually thereafter, Contractor shall conduct inspections of Tier One Commercial Edible Food Generators, Food Recovery Organizations, and Food Recovery Services to assess compliance with the requirements of 14 CCR Chapter 12 Article 10. Commencing January 1, 2024 and at least annually thereafter, Contractor shall expand its Food Recovery compliance reviews to include inspections of Tier Two Commercial Edible Food Generators.
- B. Customer Waiver Inspections.** Contractor shall verify Commercial Customer de minimis and physical space constraint waivers, if applicable, at least once every five (5) years from the date of issuance of the waiver and provide findings and recommendations to City for approval.
- C. Compliance Review Process**
1. **Number of Reviews.** The Contractor shall conduct a sufficient number of

compliance reviews, Contractor route reviews, and inspections of entities described in this Section 5.6, to adequately determine the entities' overall compliance with SB 1383, AB 1826, and AB 341. The City reserves the right to require additional inspections, if the City determines that the amount of inspections conducted by the Contractor is insufficient. City may require the Contractor to prioritize inspections of entities that the City determines are more likely to be out of compliance.

2. **Non-Compliant Entities.** From July 1, 2022 through December 31, 2023, when compliance reviews are performed by Contractor pursuant to Section 5.6.A, Contractor shall provide educational materials in response to violations. Contractor shall provide these educational materials to the non-compliant Customers within five (5) working days of determination of non-compliance or immediately upon determination of non-compliance if such non-compliance is determined during an inspection or Contractor route review. Contractor shall document the non-compliant Customers and the date and type of education materials provided and report such information to the City in accordance with Article 8. Beginning January 1, 2024, the Contractor shall document non-compliant Customers determined through Contractor's compliance reviews pursuant to Section 5.6.A, and shall report all Customers with SB 1383 violations to the City in accordance with Article 8. The City shall be responsible for subsequent enforcement action against the Customer.
3. **Documentation of Inspection Actions.** The Contractor shall generate a written and/or electronic record and maintain documentation for each inspection, Contractor route review, and compliance review conducted, including the information described in Article 8.

## 5.7 Service Complaints

### A. Documentation of Complaints

1. **General.** The Contractor agrees to maintain a computer database log of all oral and written complaints received by Contractor from Customers or other Persons. Contractor shall be responsible for the prompt and courteous attention to, and prompt and reasonable resolution of, all Customer complaints. Contractor agrees to document and maintain for a period of at least five (5) years on a form or log

all Complaints registered by Customers and Persons, in accordance with this Section and Article 8. Contractor shall record complaints received related to SB 1383-noncompliance in its log in a manner further described in subsection A.2 below.

2. **SB 1383-Noncompliance Complaints.** For complaints received in which the Person alleges that an entity is in violation of SB 1383 requirements, Contractor shall document the information listed in Article 8. Contractor shall provide this information in a summary report in accordance with Article 8.

**B. Investigation of SB1383-Noncompliance Complaints**

1. **Investigation.** Contractor shall commence an investigation, within ninety (90) days of receiving a complaint in the following circumstances: (i) upon Contractor receipt of a complaint that an entity may not be compliant with SB 1383 and if City determines that the allegations against the entity, if true, would constitute a violation of SB 1383; and, (ii) upon City request to investigate a complaint received by City, in which City determines that the allegations against the entity, if true, would constitute a violation of SB 1383. Contractor is required to investigate complaints against Customers, and not against Food Recovery Organizations, Food Recovery Services, and other entities regulated by SB 1383.

Contractor shall investigate the complaint using one or more of the methods:

- a. Reviewing the service level of the entity that may not be compliant with SB 1383;
  - b. Reviewing the waiver list to determine if the entity has a valid de minimis, or space constraint;
  - c. Inspecting Premises of the entity identified by the complainant, if warranted; and/or,
  - d. Contacting the entity to gather more information, if warranted.
2. **Reporting.** Within ten (10) days of completing an investigation of an SB 1383-noncompliance complaint, Contractor shall submit an investigation complaint report that documents the investigation performed and recommends to City on whether or not the entity investigated is in violation of SB 1383 based on the

Contractor's investigation. The City shall make a final determination of the allegations against the entity.

#### **5.8 Universal Enrollment Monitoring**

Contractor shall assist the City in ensuring that the enrollment of Customers occurs in a timely and efficient manner. City and Contractor shall cooperatively develop and agree to a process no later July 1, 2022. In accordance with Section 8.3, Contractor shall maintain records and provide reports necessary for the City to verify the enrollment of Customers.

At least one (1) time per year, Contractor shall reconcile and confirm universal enrollment of Customers by comparing its Customer list to parcel information and calculating the percentage of total Customers enrolled in City's Collection program. As part of this analysis, Contractor shall provide the City with a summary of any discrepancies found between the Customer list and parcel information, including the names and addresses of all Customers that were found to be the subject of a discrepancy. Contractor shall also provide a list of Customers that are not enrolled in the City's Collection program due to the provision and approval of a waiver including the name, address, and type of waiver for each Customer. In accordance with Article 8, Contractor shall maintain records and provide reports on the Customers' service level and list of non-enrolled Customers, and other information necessary for the City to verify the universal enrollment of Customers.

## **ARTICLE 6 COMPANY COMPENSATION AND RATES**

### **6.1 General**

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

Contractor will perform the responsibilities and duties described in this Agreement in consideration of the right to receive compensation for services rendered at maximum rates approved by City from time-to-time.

### **6.2 Initial Rates**

The rates for the Rate Year beginning July 1, 2022, and ending June 30, 2023, shall not exceed those set forth in Exhibit 1 hereto, unless amended by a written amendment to this Agreement entered into by and between the City and the Contractor. Contractor has reviewed these maximum rates and agrees they are reasonably expected to generate sufficient revenues to provide adequate Contractor Compensation. Unless and until the maximum rates set forth on Exhibit 1 are adjusted, Contractor will provide the services required by this Agreement, charging no more than the maximum rates authorized by Exhibit 1, except as provided herein and in Section 6.3.

### **6.3 Schedule of Future Adjustments**

Beginning with Rate Year 2 (July 1, 2023) and for all subsequent Rate Years, Contractor is to submit the annual rate adjustment calculation (increase or decrease) to the maximum rates shown in Exhibit 1. The Contractor shall submit its calculation to be received by City, by March 1 of the same year based on the method of adjustment described in Section 6.4. Failure to submit a written request by March 1, shall result in Contractor waiving the right to request such an increase for the subsequent year. If in any year, the Contractor does not request the annual adjustment, and the adjustment would have been a decrease, the next year's adjustment will be offset to the extent of the waived decrease or the City may choose to notify the Contractor that it will implement the decrease.

## 6.4 Method of Adjustments

### 6.4.1 General

Pursuant to Section 6.3, Contractor may request an annual adjustment to the Total Rate according to the formula shown in Exhibit 2, subject to review and approval of the City and subject to any limitations of Proposition 218, in compliance with California Constitution Article XIII D (Proposition 218) and the Proposition 218 Omnibus Implementation Act (Govt. Code Sections 53750 et. seq.). All future adjustments to be effective July 1 shall be based on the rates described in the Contractor's Proposal.

### 6.4.2 Cost Component and Rate Adjustment Indexes

The approved rates consist of the following cost components, followed by the initial weightings of each component. Each cost component may be adjusted by the change in the corresponding index as provided below. See Sections 6.4.3 through 6.4.6 for detailed rate adjustment procedures and Exhibit 2 for examples of rate adjustment procedures.

RESIDENTIAL CURBSIDE, MULTI-FAMILY AND COMMERCIAL SERVICES COST COMPONENTS				
	Cost Component	% of Costs (1)		Rate Adjustment Index
		Curbside Service	Bin Service	
A.	Service	72%	78%	Consumer Price Index for All Urban Consumers (CUUR0000AOL1E), all items less food and energy – U.S. City Average (2)
B.	Fuel	5%	5%	Producer Price Index WPU05522101, Fuels and related products and power - Commercial natural gas (2)
C.	Disposal	23%	17%	Waste Disposal Agreement per ton gate rate at Orange County Landfill System
	Total	100%	100%	

(1) Weightings may be adjusted annually based on the adjustment process described in this Article 6.

(2) Average annual change for the 12 months ending December of the previous Calendar Year compared to the 12 months ending in December of year prior.

**ROLL-OFF COST COMPONENTS**

<b>ROLL-OFF PULL FEE PER LOAD - ALL TYPES AND SIZES</b>			
	Cost Component	% of Costs (1)	Rate Adjustment Index
A.	Service	90%	Consumer Price Index for All Urban Consumers (CUUR0000A0L1E), all items less food and energy – U.S. City Average (2)
B.	Fuel	10%	Producer Price Index WPU05522101, Fuels and related products and power - Commercial natural gas
	Total	100%	
<b>ROLL-OFF TONNAGE CHARGE</b>			
	Cost Component	Rate Adjustment Index	
C.	Tonnage Charge	Consumer Price Index for All Urban Consumers (CUUR00000SA0), All Items, not seasonally adjusted – U.S. City Average (2)	

(1) Weightings may be adjusted annually based on the adjustment process described in this Article 6.

(2) Average annual change for the 12 months ending December of the previous Calendar Year compared to the 12 months ending in December of year prior.

**OTHER SERVICES**

	Cost Component	Rate Adjustment Index
A.	Used Motor Oil and Used Motor Oil Filter Collection: Monthly Collection Charge	Consumer Price Index for All Urban Consumers (CUUR0000A0L1E), all items less food and energy – U.S. City Average (1)
B.	Emergency Services: Hourly Rate	Consumer Price Index for All Urban Consumers (CUUR0000A0L1E), all items less food and energy – U.S. City Average (1)
C.	Grant Administration: Hourly Rate	Consumer Price Index for All Urban Consumers (CUUR0000A0L1E), all items less food and energy – U.S. City Average (1)

(1) Average annual change for the 12 months ending December of the previous Calendar Year compared to the 12 months ending in December of year prior.

**CONSTRUCTION AND DEMOLITION SERVICES**

Rate Category	Rate Adjustment Index
All Customer C&D Rates	Consumer Price Index for All Urban Consumers (CUUR0000SA0), all items, U.S. city average, not seasonally adjusted <sup>(1)</sup>

(1) Average annual change for the 12 months ending December of the previous Calendar Year compared to the 12 months ending in December of the year prior.

### **6.4.3 Rate Adjustment Steps for Curbside Services and Bin Services**

Curbside Services rates and Bin Services rates (excluding roll-off) will be adjusted using the same method, but will be calculated separately due to the differences in the weightings of the service and disposal components for each Customer type, as listed in Section 6.4.2.

Step One – Calculate the percentage increase or decrease in Service, Fuel, and Disposal component indices listed in Section 6.4.2. The increase or decrease in the Service and Fuel component indices will be for the change in the average annual published indices for the twelve (12) month period ending December prior to the July 1 when the rate change will take effect.

The Disposal component will be based on the actual percentage change in the waste disposal agreement per ton gate rate at the Orange County Landfill System as of July 1 of each Rate Period.

Step Two – The first rate adjustment cost components as a percentage of total costs are provided in Section 6.4.2 above, 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 component by that component's weighting and add these resulting percentages together to get the total weighted change to the rates.

Step Three – Multiply the total weighted percent change from Step Two by the existing maximum Curbside Services rates and Bin Services rates to determine the increase or decrease in maximum rates. Then add (subtract) the changes in rates to (from) the existing maximum rates to determine the new maximum rates.

Step Four – Recalculate weightings for the following year based on these changes.

### **6.4.4 Rate Adjustment for Permanent Roll-Off Box**

This Section shall apply exclusively to the adjustment of Roll-off Box rates that are billed as "pull plus dump" and consist of a pull rate, or service component, plus a tonnage cost. See Exhibit 2 for example rate adjustment procedures.

### **Service or "Pull" Component**

**Step One** – Calculate the percentage increase or decrease in the Service and Fuel components for "Pull Fee Per Load - All Types and Sizes" listed in Section 6.4.2. The increase or decrease in the rate adjustment indices for Service and Fuel components will be for the change in the average annual published indices for the twelve (12) month period ending December prior to the July 1 when the rate change will take effect.

**Step Two** – The first rate adjustment cost components as a percentage of total costs are provided in Section 6.4.2 above, 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 component by that component's weighting and add these resulting percentages together to get the total weighted change to the rates.

**Step Three** – Multiply the total weighted percent change from Step Two by the existing Pull Per Load - All Types and Sizes rate to calculate the increase or decrease to the maximum rate. Then add (subtract) the change in rates to (from) the existing maximum rates to determine the new maximum rates.

**Step Four** – Recalculate weightings for the following year based on these changes.

### **Roll-Off Tonnage Charge**

**Step One** – Calculate the percentage increase or decrease in the tonnage component for "Roll-Off Tonnage Charge" listed in Section 6.4.2. The increase or decrease in the rate adjustment indices for the tonnage component will be for the change in the average annual published indices for the twelve (12) month period ending December prior to the July 1 when the rate change will take effect.

**Step Two** – Multiply the percent change from Step One by the existing tonnage rate to calculate the increase or decrease to the maximum rate. Then add (subtract) the change in rates to (from) the existing maximum rates to determine the new maximum rates.

Note: Under the Waste Disposal Agreements (WDA) with Orange County Waste and Recycling, the per ton gate rate, which is a portion of the "Roll-Off Tonnage Charge, is adjusted annually based on the increase or decrease in the Consumer Price Index for All

Urban Consumers (CUUR0000SA0), all items, U.S. city average, not seasonally adjusted, until the WDAs expire in 2025. In the event that there is an extraordinary adjustment to the Orange County Landfill per ton gate rates during or after the term of the WDAs, Contractor may request an extraordinary rate adjustment to the Roll Off Tonnage Charge as provided in this Agreement in Section 6.5.

#### **6.4.5 Adjustment for Contractor's Monthly Compensation for Other Services**

Step One - Calculate the percentage increase or decrease in the CPI. The increase or decrease in the maximum monthly compensation for other services will be for the change in the average annual published indices for the twelve (12) month period ending December prior to the July 1 when the rate change will take effect.

Step Two - Multiply the percent change from Step One by the existing compensation to calculate the increase or decrease to the maximum rate. Then add (subtract) the change in compensation to (from) the existing maximum compensation to determine the new compensation.

#### **6.4.6 Rate Adjustment for Construction and Demolition Roll-Off Box and Bin Services**

Step One - Calculate the percentage increase or decrease in the index listed in Section 6.4.2. The increase or decrease in the rate adjustment index will be for the change in the average annual published indices for the twelve (12) month period ending December prior to the July 1 when the rate change will take effect.

Step Two - Multiply the total percent change from Step One by the existing rates to calculate the increase or decrease to the maximum rates. Then add (subtract) the change in rates to (from) the existing maximum rates to determine the new maximum rates.

#### **6.4.7 Rate Years Two through Four Special Rate Adjustments**

In an effort to reduce the initial rate impact to ratepayers, the Contractor shall receive the following compensation in addition to the rate adjustment methodologies included in Sections 6.4.2 through 6.4.6:

Rate Year Two (July 1, 2023 - June 30, 2024)      1.0%

Rate Year Three (July 1, 2024 – June 30, 2025) 2.25%

Rate Year Four (July 1, 2025 – June 30, 2026) 2.25%

Beginning with Rate Year Five (July 1, 2026 – June 30, 2027), and throughout the remaining term of this Agreement and any extensions thereof, Contractor shall only receive annual rate adjustments based on Sections 6.4.2 through 6.4.5, unless the City approves an extraordinary rate adjustment as described in Section 6.5.

## **6.5 Extraordinary Adjustments**

Contractor or City may request an adjustment to maximum rates at reasonable times other than that allowed under Section 6.3 in the event of extraordinary changes in the cost of providing service under this Agreement. Such changes shall not include changes in the market value of Recyclables from the values assumed in Contractor's Proposal, inaccurate estimates by the Contractor of its proposed cost of operations, unionization of Contractor's work force, or change in wage rates or employee benefits. Contractor may request an extraordinary adjustment based on changes in a direct per ton fee assessed at the Disposal Site by federal, state or local regulatory agencies after the effective date. Extraordinary rate adjustments shall only be effective after approval by City Council in compliance with California Constitution Article XIID (Proposition 218) and the Proposition 218 Omnibus Implementation Act (Govt. Code Sections 53750 et. seq.) and may not be applied retroactively.

For each request for an adjustment to the maximum rates that Contractor may charge Customers brought pursuant to this section, Contractor shall prepare a schedule documenting the extraordinary costs. Such request shall be prepared in a form acceptable to City with support for assumptions made by Contractor in preparing the estimate. Contractor shall also submit a schedule showing how its total costs and total revenues have changed over the past three years for the services provided under this Agreement.

Contractor shall provide to City a report of its annual revenues and expenses for the services provided in the City, and City shall have right to audit this information in connection with the City's review of Contractor's rate adjustment request. City shall review the Contractor's request and conduct a duly-noticed public hearing as required by California Constitution Article XIID (Proposition 218) and the Proposition 218 Omnibus Implementation Act (Govt. Code Sections 53750 et. seq.). If, after closing the

public hearing, there is not a "majority protest" to the extraordinary adjustment, as defined in Proposition 218, the City may, in its sole judgment and absolute, unfettered discretion, make the final determination as to whether an adjustment to the maximum rates will be made, and, if an adjustment is permitted, the appropriate amount of the adjustment. City may consider increases or decreases in the Contractor's total revenues and total cost of services when reviewing an extraordinary rate adjustment request. A rate adjustment request made in response to a new service requested by City will be determined in accordance with Section 2.10.

## ARTICLE 7

### REVIEW OF SERVICES AND PERFORMANCE

#### 7.1 Performance Hearing

City may hold a public hearing on or about the two-year anniversary of the start of this Agreement, and each 12 months thereafter, at which time Contractor shall be present and shall participate, to review the Solid Waste Collection, source reduction, processing and other Diversion services and overall performance. The purpose of the 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 with adequate quality, effectiveness and economy.

Forty-five (45) days after receiving notice from City of a Solid Waste Services and Performance Review Hearing, Contractor shall, at a minimum, submit a report to City indicating the following:

- a) Changes recommended and/or new services to improve City's ability to meet the recycling/waste diversion goals.
- b) Any specific plans and proposed costs for provision of changed or new services by Contractor.
- c) Results of the most recent route audit as described in Section 4.16.

The records required by this Agreement regarding Customer complaints may be used as one basis for review. Contractor may submit other relevant performance information and reports for consideration. City may request Contractor to submit specific information for the hearing. In addition, any Customer may submit comments or complaints during or before the hearing, either orally or in writing, and these shall be considered.

Topics for discussion and review at the Solid Waste Services and Performance Review Hearing shall include, but shall not be limited to, services provided, route audit results 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 AB 939's goals, regulatory constraints and Contractor performance. City and Contractor may each select additional topics for discussion at any Solid Waste Services and Performance Review Hearing.

Not later than sixty (60) days after the conclusion of each Solid Waste Services and Performance Review Hearing, City may issue a report. As a result of the review, City may require Contractor to provide expanded or new services within a reasonable time and for reasonable rates and compensation and City may direct or take corrective actions for any performance inadequacies.

## **ARTICLE 8**

### **RECORDS, REPORTS AND INFORMATION REQUIREMENTS**

#### **8.1 General**

Contractor 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, Contractor agrees to conduct data collection, information and record keeping, and reporting activities needed to comply with Applicable Laws and regulation and to meet the reporting and Solid Waste program management needs of 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 City, the records and reports to be maintained and provided by Contractor 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**

Contractor shall maintain records required to conduct its operations, to support requests it may make to City, and to respond to requests from City in the conduct of 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, and shall continue to be available for five (5) years after the expiration of this Agreement. After minimum holding periods are met, Contractor will notify City ninety (90) days before destroying records.

Contractor agrees that the records of any and all companies conducting operations addressed in the Agreement shall be provided or made available to City and its official representatives during normal business hours. Account histories shall be accessible to the City by computer for a minimum of five (5) years. 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 City shall be segregated from other areas served by Contractor.

Contractor shall maintain at least the following records:

- Audited financial statements for Contractor or, if a guarantee was provided, for the parent company guarantor as a whole;
- Financial statements (compiled, reviewed or audited) of revenue and expense for this Agreement segregated from the other operations of Contractor (including without limitation those operations of Contractor in City and surrounding jurisdictions which are not covered by this Agreement), including a description of segregation methodology; and,
- Complete descriptions of related party transactions (corporate and/or regional management fees, inter-company profits from transfer, processing or Disposal operations and supporting data).

### **8.2.3 Solid Waste Records**

Records shall be maintained by Contractor for City relating to:

- Customer services and billing;
- Tons Collected, processed, diverted and disposed by waste stream (Refuse, Recycling, Organics), by Customer type (Cart, Residential Bin, Commercial and Roll-off Box) and Facilities (Transfer Station, MRF, Organic Material Processing Facility, Transformation Facility or landfill) where such material was taken (Residential Bin versus Commercial Bin tonnage may be estimated based upon Container distribution or other method approved by City);
- Quantity of Recyclable Materials recovered by material type;
- Bulky Item, results including tons disposed and diverted;
- Annual cleanup event results, including tons disposed and diverted;
- Routes;

- Facilities, equipment and personnel used;
- Facilities and equipment operations, maintenance and repair;
- Number of Refuse, Recycling and Organics Contractor-owned Containers in service;
- Complaints; and,
- Missed pickups.

Contractor shall maintain copies of said Billings and receipts, each in chronological order, for a period of five (5) years after the date of service and shall make said documents available for inspection by City upon request. Contractor may, at its option, maintain those records in computer form, on microfiche, 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 any 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.

#### **8.2.4 CERCLA Defense Records**

City views the ability to defend against the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), State Hazardous Substance Law, and related litigation as a matter of great importance. For this reason, the City regards the ability to prove where Solid Waste Collected in the City was taken for Disposal, as well as where it was not taken, to be matters of concern. Contractor shall maintain data retention and preservation systems which can establish where Solid Waste Collected in the City was landfilled (and therefore establish where it was not landfilled) and provide a copy or summary of the reports required in Section 8.3 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 City. Contractor agrees to notify City's Risk Manager and City Attorney before destroying such records and to offer records to the City. 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**

Contractor shall maintain records of Disposal of all Solid Waste Collected in City for the period of this Agreement and all extensions to this Agreement or successor

Agreements. In the event Contractor discontinues providing Solid Waste services to City, Contractor shall provide all records of Disposal or processing of all Solid Waste Collected in 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 Audit**

City may conduct an audit of Contractor at any time. The scope of the audit, and auditing party, will be determined by City and the scope may include, but is not limited to:

- Extraordinary rate adjustment requests;
- Compliance with terms of this Agreement;
- Customer service levels and Billing;
- Fee payments;
- Receipts;
- Tonnage;
- Complaint log;
- Compliance with Mandatory Commercial Recycling, Mandatory Commercial Organics Recycling, and SB 1383; and,
- Verification of Diversion rate.

The first audit, to be performed during 2024, will be based on the Contractor's reports and records for the period of July 1, 2022 through June 30, 2023. Audits will be

performed every third year thereafter (the triennial audit). Contractor will reimburse to the City the cost of such audits as shown in the table below:

Audit Performed In:	Audit Amount
2024	\$95,000
2027	\$102,000
2030	\$110,000
2033*	\$119,000
2036*	\$128,000
2039*	\$138,000

\* Optional extension term

Should the Agreement be extended beyond the extension terms as described in Section 2.5, the audits shall continue every third year, and each additional audit amount shall be increased by ten-thousand dollars (\$10,000) per audit period for audits conducted after 2039.

Should an audit by the City disclose that Franchise or other fees payable by the Contractor were underpaid by two percent (2%) or more, or that more than 2% of the Customers were inaccurately billed, for the period under review, Contractor shall pay for additional audit costs, if the initial audit findings determine it is necessary to expand the scope of the audit.

### **8.2.8 Payments and Refunds**

Should an audit by the City disclose that any of the City fees payable by the Contractor were underpaid or that Customers were overcharged for the period under review, Contractor shall pay to City any underpayment of City fees and/or refund to Contractor's Customers any overcharges within thirty (30) days following the date of the audit. Should an audit disclose that City fees were overpaid, the amount of the over-payment shall be credited to Contractor against future franchise fee payments, with any such credits limited to overpayments for the prior three (3) years.

## 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 toward achieving AB 939 goals and objectives;
- c) Determine needs for adjustment to programs; and,
- d) Evaluate Customer service and complaints.

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

If requested, Contractor's complaint summary, shall be sent to the Executive Director within five days of request. Reports are to be submitted in Microsoft Excel, or another software as requested by City and shall be submitted electronically to City, as directed, and to:

Executive Director (or designated representative)  
Public Works Agency  
City of Santa Ana  
20 Civic Center, Plaza M-21  
Santa Ana, CA 92701

### 8.3.2 Monthly Reports

Monthly reports shall be submitted within 30 calendar days after the end of each month.

The information listed shall be the minimum reported:

1. Solid Waste Collected, Transferred, Processed, and Disposed by Contractor for each month, all of which shall be based on actual certified scale weights for each load, if available, or similarly accurate methodology pursuant to weighing protocols in Section 8.3 of Exhibit 8. Tonnage shall be reported separately by:
  - a. Material type, which shall include, at a minimum, separate reporting of Source Separated Recyclable Materials, Source Separated Organic Materials, Refuse, and any other type of Solid Waste separately Collected by Contractor (including, but not limited to: Bulky Items, mixed C&D Materials, etc.);
  - b. Customer/sector type (Residential Premises, Multi-Family Premises, Commercial Premises, Roll-off, C&D Debris); and,
  - c. Approved Facility and Facility type.
2. Report Residue level and tonnage for all Solid Waste Processed, listed separately by material type Collected and Approved/Designated Facility(ies) used.
3. Tonnage Collected by month separately for each C&D project site and other data as it relates to the C&D Debris services described in this Agreement.
4. HHW Collected.
5. If Contractor is directed by City to retain a consultant to provide public education and outreach activities as required by Section 4.4.7, Contractor shall submit consultant services performed and payments made by Contractor for the preceding month and year-to-date.
6. Customer complaint logs as described in Section 5.2.2.

### **8.3.3 Quarterly Reports**

Contractor shall submit quarterly reports to the City, including, at a minimum, the following information. The City reserves the right to request the following information on a monthly basis:

1. Copies of promotional and public education materials sent during the quarter.
2. Commercial recycling and organics site visits summary, 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, and reason provided for not establishing a recycling or organics program, in accordance with Sections 4.3.5.1 and 4.3.6.1. The site visit summary will be completed on forms approved by the City.

3. List of Customers that are required to participate in an Organics Recycling program per Public Resources Code Section 42649.81.
4. Documentation of the universal service enrollment process, including a copy of the City-wide Customer enrollment level evaluation conducted pursuant to Section 5.8 of this Agreement.
5. List of all Commercial and Multi-Family Premises Customers with a Solid Waste service level of two (2) cubic yards of service capacity per week or more. Such list shall include each such Customer's service address and Refuse, Source Separated Recyclable Materials, and Source Separated Organic Materials service levels.
6. The total number of de minimis waivers, and physical space constraint waivers granted in the quarter (by month), if any, including the Customer name and address for each waiver.
7. The number of waiver reverifications performed by the Contractor pursuant to Section 5.6.B of this Agreement in the quarter (by month), if any, including a copy of documentation for each reverification inspection, which shall include, at a minimum: the Customer's name, address, and Customer type; the type of waiver being verified; any photographic or other evidence collected during the inspection; and the resulting recommended conclusion by the Contractor regarding the validity of the waiver. The Contractor shall provide a summary of recommendations to the City of all waivers which the Contractor concludes to no longer be warranted.
8. List of Commercial and Multi-Family Premises Customers that do and do not participate in an Organics program, whether the Organics program is provided by Contractor or another party, and whether the program is for Food Waste and/or Yard Waste (such as a landscaper that composts or otherwise diverts Organic Materials).
9. Commercial and Multi-Family Customers participating in food recovery programs.
10. Commercial and Multi-Family Customers using third-party recycling.

11. Documentation of all Solid Waste exported out of State, as provided in 14 CCR Sections 18800 through 18813.
12. Additional information that may be requested by CalRecycle or City related to Recycling and Organics programs.
13. Other information or reports that City may reasonably request or require.
14. Contamination Monitoring Report  
Hauler Route Reviews (Section 5.5.1.3)

The Contractor shall submit the following information regarding contamination monitoring hauler route reviews conducted pursuant to Section 5.5.1.3 of this Agreement:

- A. The number of hauler route reviews conducted pursuant to Section 5.5.1.3 of this Agreement;
- B. Description of the Contractor's process for determining the level of contamination;
- C. Summary report of non-Collection notices and/or contamination processing fee assessment notices issued, which for each notice shall include the date of issuance, Customer name, and service address;
- D. A record of each inspection and contamination incident, which shall include, at a minimum:
  - a. Name of the Customer
  - b. Address of the Customer
  - c. The date the contaminated Container was observed
  - d. The staff who conducted the inspection
  - e. The total number of violations found and a description of what action was taken for each
  - f. Copies of all notices, and enforcement orders issued or taken against Generator with Prohibited Container Contaminants
  - g. Any photographic documentation or supporting evidence.
- E. Documentation of the total number of Containers Disposed of due to observation of Prohibited Container Contaminants;

- F. A list of all Customers assessed contamination processing fees reported separately by Residential, Multi-Family, and Commercial Premises Customers and including the Customer name, Customer address, and reason for the assessment of the contamination processing fee, and the total number of instances contamination processing fees were assessed in the month and the total amount of fees collected in the month.
  - G. Any other information reasonably requested by the City or specified in contamination monitoring provisions of this Agreement.
15. Customer Service Report
- A. Number of Customer calls listed separately by complaints and inquiries (where inquiries include requests for service information, rate information, etc.). For Complaints, list the number of calls separately by category (e.g., missed pickups, scheduled cleanups, billing concerns, damage claims). These complaints and inquiries shall be documented and reported separately from SB 1383 noncompliance complaints or other regulatory noncompliance complaints.
  - B. Number of new service requests for each Customer type and requested service(s).
  - C. Contractor shall report all SB 1383 noncompliance complaints and responses pursuant to Section 5.7.A.2 of this Agreement and submit the following information:
    - a. Total number of complaints received and total number of complaints investigated
    - b. Copies of documentation recorded for each complaint received, which shall at a minimum include the following information:
      - i. The complaint as received;
      - ii. The name and contact information of the complainant, if the complaint is not submitted anonymously;
      - iii. The identity of the alleged violator, if known;
      - iv. A description of the alleged violation, including location(s) and all other relevant facts known to the complainant;

- v. Any relevant photographic or documentary evidence submitted to support the allegations in the complaint; and,
  - vi. The identity of any witnesses, if known.
- c. Complaint reports, pursuant to Section 5.2.2 of this Agreement.
  - d. Copies of all review reports submitted to the City pursuant to Section 5.2.2 of this Agreement, which shall include at a minimum:
    - i. The complaint as received;
    - ii. The date the Contractor investigated the complaint;
    - iii. Documentation of the findings of the investigation;
    - iv. Any photographic or other evidence collected during the investigation; and,
    - v. Contractor's recommendation to the City on whether or not the entity investigated is in violation of SB 1383 based on the Contractor's investigation.
16. **Customer Waivers.** Contractor shall provide a report that documents each Customer waiver request reviewed by Contractor, which are required by Section 5.6.B. Identify in the report the Customer name and service address, the type of waiver requested, the status of the waiver (accepted, denied, pending), and other information reasonably requested by the City.
17. **Solid Waste Evaluation Reports.** In accordance with Section 8.5 of Exhibit 8, Contractor shall provide reports of evaluations of Solid Waste conducted at Approved Facilities, as applicable.

#### **8.3.4 Annual Report**

Annual reports shall be submitted within sixty (60) days following the reporting year. The Annual Report is to be essentially in the form and content of the monthly and quarterly reports combined, but shall also include:

- 1. **Processing Facility Report**
  - A. **Temporary Equipment or Operations Failure:** If the Contractor is granted a Processing Facility temporary equipment or operational failure waiver, in accordance with Section 4.9.3 of the Agreement, the Contractor shall

include the following documents and information:

- a. The number of days the Processing Facility temporary equipment waiver or operation failure waiver was in effect;
  - b. Copies of any notifications sent to the City and copies of City notices to Contractor, pursuant to Section 4.9.3.A of the Agreement;
  - c. Documentation setting forth the date of issuance of the waiver and, the timeframe for the waiver; and,
  - d. A record of the tons of Source Separated Recyclable Materials, Source Separated Organic Materials, and/or Refuse redirected to an Alternative Facility or Disposed at a Designated Disposal Facility as a result of the waiver, recorded by Collection vehicle or Transfer vehicle number/load, date, and weight.
- B. Quarantined Organic Waste: A record of all compliance agreements for quarantined Organic Waste that are Disposed of, including the name of Customer, date issued, location of final disposition, and the amount of quarantined Organic Waste that was required to be Disposed at a landfill.
- C. Compostable Plastics in Source Separated Organic Materials Containers: Written notification that the Approved Organic Waste Processing Facility has and will continue to have the capabilities to Process and recover the Compostable Plastics included with the Source Separated Organic Materials Transported to the Approved Organic Waste Processing Facility.
- D. Plastic Bags in Source Separated Organic Materials Containers: Written notification to the City that the Approved Organic Waste Processing Facility has and will continue to have the capabilities to Process and recover plastic bags when it recovers Source Separated Organic Materials.
- E. Any other Approved Facility incidents as deemed necessary to comply with Section 4.9.
2. Public Education and Outreach Report
- A. A copy of all education and outreach materials provided to Customers, or otherwise used for education and outreach efforts in accordance with Section 5.3 of the Agreement, including, but not limited to: flyers, brochures, newsletters, invoice messaging/billing inserts, and website

and social media postings.

- B. A record of the date and to whom the information was disseminated or direct contact made, in the form of a list that includes: the Customer's name or account name, the type of education or outreach received; the distribution date, and the method of distribution.
  - C. The number of Organic Waste Customers and Commercial Edible Food Generators that received information and the type of education and outreach used.
  - D. For any mass distribution through mailings or Bill inserts, the Contractor shall maintain a record of the date, a copy of the information distributed, and the type and number of accounts that received the information.
  - E. A copy of electronic media, including the dates posted of: social media posts, e-mail communications, or other electronic messages.
  - F. Contractor shall maintain a record of all technical assistance efforts conducted pursuant to Section 5.3 of the Agreement, including:
    - a. The name and address of the Customer/Generator receiving technical assistance, and account number, if applicable.
    - b. The date of any technical assistance conducted and the type of technical assistance, including, but not limited to: site visits, waste assessments, compliance assessments, direct outreach, workshops, meetings, events, and follow-up communications.
    - c. A copy of any written or electronic educational materials distributed during the technical assistance process.
    - d. A copy of all special event reports submitted to the City in accordance with Section 4.19 of the Agreement.
3. Compliance Monitoring and Enforcement Report
- A A summary of the total number of SB 1383 non-compliance complaints that were received and investigated, including copies of the recommendation reports submitted to the City based on investigation of those complaints, in accordance with Section 5.7.A.2 and Section 8.3.3.15.C of the Agreement.

- B. The total number of route reviews conducted pursuant to Section 5.6.A.3 of the Agreement.
  - C. A copy of written and/or electronic records and documentation for all audits, studies, compliance reviews, and all other inspections conducted pursuant to Section 5.6 of the Agreement.
  - D. The number of Commercial businesses that were included in a compliance review performed by the Contractor, and the number of violations found and corrected through compliance reviews, if different from the number reported in subsection 4 of this Section; including a list with each Customer's name or account name, address, and Customer type.
  - E. The total number of notices of violation issued, categorized by type of Customer.
  - F. The number of enforcement actions that were resolved, categorized by type of Customer.
  - G. Copies of all written notices or educational materials, both written or electronic, issued to noncompliant Customers.
4. Capacity Planning Support. Any information or documentation requested by the City in support of Organic Waste or Edible Food Recovery Capacity Planning studies.
  6. The total amount of Compost or Mulch procured on behalf of the City, as applicable,
  7. Customer Revenue and City Fee Payment Report. Provide a statement detailing Gross Revenue from all operations conducted or permitted pursuant to this Agreement and report of all City fees paid in accordance with Article 3 of this Agreement.
  8. 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).
  9. Results of route audits.
  10. Number of routes and route hours per day by type of service.
  11. Copy of Hazardous Waste diversion records showing types and quantities, if

any, of Hazardous Waste that was inadvertently Collected, but Diverted from landfilling.

12. Copies of all public education and outreach distributed during the reporting year including the date of distribution.
13. A narrative summary of all City-sponsored, civic, and school events attended.
14. Copies of invoices documenting the amount of RNG used to provide services in the City. If routes are commingled with other jurisdictions, Contractor must use an allocation method to quantify the City's allocated amount.

### **8.3.5 Financial Report**

The City may, at City's option, request the Contractor's audited financial reports/statements (or parent company, if parent company submits Corporate Guaranty of Performance), and Contractor's internally prepared supplemental statement of income and expenses related specifically to the City of Santa Ana operations, for the most recently completed fiscal year in connection with an extraordinary rate adjustment request, billing audit, Franchise Fee audit, or verification of other information required under this Agreement.

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 Contractor as a direct cost of service. In addition, Contractor shall provide to City the supplemental schedule on a compiled basis showing Contractor'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.

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

### **8.3.6 Compilation of Information for State Law Purposes**

Contractor shall maintain accurate records for its operation, including, but not limited to, Solid Waste quantities Collected and quantities Transported to or Transferred to each Approved or Designated Facility, listed separately by material type, Customer type, and Facility. Records shall be maintained in such form by methods that facilitate the use of data for the production of reports as needed. Contractor will make these records available and provide to the City, or its designee, any record or documentation necessary for the City to fulfill obligations under Applicable Law and regulations including, but not limited to, AB 939, AB 341, AB 1826, AB 876, AB 901, AB 1594, SB 1383, and other current or future federal, State, or local regulations, as amended. Contractor shall retain these records for a period of at least five (5) years after termination of this Agreement.

### **8.4 Reporting Adverse Information**

Contractor shall provide City two copies (one to the Executive Director, one to the City Attorney) of all reports, pleadings, applications, notifications, Notices of Violation, communications or other material relating specifically to Contractor's performance of services pursuant to this Agreement, submitted by Contractor to, or received by Contractor 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 City simultaneously with Contractor's filing or submission of such matters with said agencies. Contractor's routine correspondence to said agencies need not be routinely submitted to City, but shall be made available to City promptly upon City's written request.

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

City shall have the right to inspect or review the specific documents or records required expressly or by inference pursuant to this Agreement, or any other similar records or reports of Contractor or its related party entities that City shall deem, in its reasonable discretion, necessary to evaluate annual reports, compensation applications provided for in this Agreement and Contractor's performance provided for in this Agreement. Contractor shall make all records and documents to be reviewed and inspected by the City as a part of any audit or other record review conducted by the City, available for

the City's review, inspection and copying within five business days (excluding Saturday, Sunday and holidays included in Section 4.7.1) of receiving written notice from the City requesting the same.

#### **8.6 Failure to Report**

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

## ARTICLE 9

### INDEMNIFICATION, INSURANCE AND BOND

#### 9.1 Indemnification

To the maximum extent permitted by law, and without regard to the limits of any insurance coverage, Contractor agrees to indemnify, defend with counsel appointed by the City, protect and hold harmless the City, its representatives, officers, agents and employees against any and all fines, response costs, assessments, actions, suits, injunctive relief, claims, damages to persons or property, losses, costs penalties, obligations, errors, omissions or liabilities, ("claims or liabilities") that may be asserted or claimed by any person, firm or entity arising out of or in connection with (i) violations of the commerce clause of the U.S. Constitution, AB 939, the Comprehensive Environmental Response, Compensation and Liability Act, Title 42 U.S.C. §9601 *et seq.* ("CERCLA"), HSAA, RCRA, any other Hazardous Waste laws, other federal, state or local statutes or regulations, or municipal ordinances, which arise from, challenge any validity of, or relate to the award of, this Agreement; (ii) the negligent performance of the work or services of Contractor, its agents, employees, Subcontractors, or invitees, provided for in this Agreement; (iii) the negligent acts or omissions of Contractor hereunder, or arising from Contractor's negligent performance of or failure to perform any term, provision, covenant or condition of this Agreement, whether or not there is concurrent passive or active negligence, on the part of the City, its representatives, officers, agents or employees but excluding such claims or liabilities arising from the sole negligence or willful misconduct of the City, its representatives, officers, agents or employees, who are directly responsible to the City, (iv) actions or proceedings to attack, set aside, void, annul or seek monetary damages resulting from an approval by the City of this Agreement, including but not limited to any challenge brought by referendum or under Proposition 218 (Calif. Const. Art. XIIIID) to challenge the City's entry into this Agreement or the setting of Solid Waste rates as set forth in this Agreement; and in connection therewith:

A. Contractor will defend any action or actions filed in connection with any of said claim or liabilities and will pay all costs and expenses, including legal costs and attorneys' fees incurred in connection therewith;

B. Contractor will promptly pay any judgment rendered against the City, its officers, agents or employees for any such claims or liabilities arising out of or in connection with

the negligent performance of or failure to perform such work or services of Contractor hereunder; and Contractor agrees to save and hold the City, its officers, agents and employees harmless therefrom;

C. In the event the City, its officers, agents or employees is made a party to any action or proceeding filed or prosecuted against Contractor for such damages or other claims arising out of or in connection with the negligent performance of or failure to perform the work or services of Contractor hereunder, Contractor agrees to pay to the City, its officers, agents or employees, any and all costs and expenses incurred by the City, its officers, agents or employees in such action or proceeding, including but not limited to, legal costs and attorneys' fees.

Contractor's obligations hereunder shall survive the termination or expiration of this Agreement.

**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.**

## **9.2 Hazardous Material Indemnification**

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

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

2. relates to material Collected, transported, recycled, processed, treated or disposed of by Contractor.

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

1. any Claims brought pursuant to or based on the provisions of any Environmental Law;
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 Contractor 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 Contractor;
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 Contractor or any Affiliate of Contractor.

**D.** For purposes of this section, the term "Hazardous Contaminant" shall mean any Hazardous Material 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 any referenced statutory or regulatory provisions made before or after the date of execution of this Agreement.

**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.**

### **9.3 CalRecycle Indemnification and Guarantee**

Contractor's duty to defend and indemnify herein include all fines and/or penalties

imposed by CalRecycle, if the requirements of AB 939, AB 341, AB 1826, and/or SB 1383 are determined by CalRecycle to have not been met with respect to the Contractor's obligations under this Agreement, and such failure is: (i) due to the failure of Contractor to meet its obligations under this Agreement; or, (ii) due to Contractor's delay in providing information to City that prevents Contractor or City from submitting reports to CalRecycle in a timely manner.

## 9.4

### Insurance

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

#### A. Worker's Compensation Policy. Contractor shall maintain in full force and effect during the term of this Agreement, a workers' compensation policy in

accordance with the provisions and requirements of the Labor Code of the State of California and such other forms of insurance as shall be required by law. The policy providing coverage shall provide that the insurance shall not be suspended, voided, canceled, or reduced in coverage or in limits except after thirty (30) days prior written notice by certified mail has been given to the City. Waivers of Subrogation shall be in effect for any claims asserted against the City which arise out of Contractor's operations and Contractor shall have this clause endorsed on their Workers' Compensation

policies.

#### B. Public Liability Insurance. Contractor shall obtain, at its sole cost, and file

with the Clerk of City, prior to exercising any right or performing any obligation pursuant to this Agreement, and maintain for the period covered by this Agreement, a policy or policies of liability insurance satisfactory to the City Attorney of City, naming City, its officers, agents and employees, as insured or additional insured, which provides coverage for liability for any and all claims and suits for damages or injuries to persons or property resulting from or arising out of the performance by Contractor, its officers, agents, or employees, or by City, its officers, agents, or employees pursuant to Section 2.1 of this Agreement, of Contractor's covenants hereunder, or any failure or omission thereof.

Said policy or policies of insurance shall provide coverage for both bodily injury and property damage in not less than the following minimum amount: One Hundred Million Dollars (\$100,000,000.00) combined single limit and, in addition, Ten Million Dollars (\$10,000,000.00) of Environmental Impairment Liability coverage for bodily injury, property damage and cleanup costs as it relates to the transportation of Solid Waste. Said insurance shall protect Contractor and City from any claim for damages for bodily injury, including accidental death, as well as from any claim for property damage which may arise from operations performed pursuant to this Agreement, whether such operations be by Contractor itself, or by its agents, employees, and/or Subcontractor. Such policy or policies shall contain severability of interests clauses so that the rights and duties of the City are clearly separate from Contractor interests. Said policy or policies shall also contain a provision that no termination, cancellation or change of coverage of insured or additional insured shall be effective until after thirty (30) days prior written notice by certified mail thereof has been given to City. Contractor shall give City prompt and timely notice of any claim made or suit instituted.

#### **9.5 Faithful Performance Bond**

The Contractor shall, within ten (10) days of execution of this Agreement, execute and file with the Clerk of the Council a surety bond in the penal sum of two-million, five-hundred thousand dollars (\$2,500,000), similar to the form provided in Exhibit 4, conditioned upon the faithful performance of this Agreement by the Contractor and its Subcontractors, if any. Said bond may be written for a term of one year, and may thereafter be renewed by certificate, provided however, that the Contractor agrees to maintain such bond or bonds in force for the complete term 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.

#### **9.6 Faithful Performance Letter of Credit**

In addition to a faithful performance bond as noted in Section 9.5 above, Contractor shall furnish an irrevocable letter of credit in the amount of five-hundred thousand dollars (\$500,000), from a financial institution acceptable to the City and 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 Contractor, and shall remain in force until released in accordance with Section 9.9. Alternatively, Contractor may

furnish an irrevocable letter of credit in the amount of three-million dollars (\$3,000,000) in lieu of the separate letter of credit of \$500,000 and separate performance bond of \$2,500,000 described in Section 9.5.

#### **9.7 Forfeiture of Performance Bond**

In the event Contractor shall for any reason become unable to, or fail in any way to, perform as required by this Agreement, City may declare a portion or all of the performance bond which is necessary to recompense and make whole the City, forfeited to the City. Upon partial or full forfeiture of the performance bond, Contractor 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 the Agreement.

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

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

- a. Payment of sums due under the terms of this Agreement which Contractor has failed to timely pay to City
- b. Reimbursement of costs borne by City to correct violations of this Agreement not corrected by Contractor, including but not limited to the liquidated damages described in Section 11.4.

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

#### **9.9 Performance Security Beyond Service Term**

Some Agreement requirements extend beyond the Term of this Agreement and will not be substantiated until after the final service date. Therefore, the Contractor shall not terminate the performance bond or letter of credit, and will renew them to ensure continuous availability to the City, until receiving a written release from the City. City will provide such a release when City, in its reasonable judgment, is fully satisfied that all requirements have been met, but may not withhold such a release later than four (4)

years after expiration of the term of this Agreement. However, permission from the City to discontinue holding these performance securities does not relieve Contractor of payments to the City that may be due, or may become due.

## ARTICLE 10

### CITY'S RIGHT TO PERFORM SERVICE

#### 10.1 General

In the event that Contractor, 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 two business days, excluding Saturday, Sunday and holidays listed in Section 4.7.1, and if, as a result thereof, Solid Waste should accumulate in City to such an extent, in such a manner, or for such a time that such accumulation endangers or menaces the public health, safety or welfare, then City shall have the right, but not the obligation, upon twenty-four (24) hour prior written notice to Contractor during the period of such emergency as determined by City, (1) to perform, or cause to be performed, such services itself with its own or other personnel without liability to Contractor; and/or (2) to take possession of any or all of Contractor'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 City which Contractor would otherwise be obligated to Collect, transport and properly dispose of or process pursuant to this Agreement. Further, the City shall have access to the MRF and composting facilities used by the Contractor for the processing, Recycling and Organics Diversion of Solid Waste produced or accumulated with the City. The right of the City to enter upon and use facilities and equipment as specified herein shall extend following the date of cancellation of this Agreement for a period of ninety (90) consecutive calendar days.

Notice of Contractor's failure, refusal or neglect to Collect, transport and properly dispose of or process Solid Waste may be given orally by telephone to Contractor at its principal office and shall be effective immediately. Written confirmation of such oral notification shall be sent to Contractor within one business day, excluding Saturday, Sunday and holidays listed in Section 4.7.1 of the oral notification.

Contractor further agrees that in such event:

A. It will take direction from City to effect the transfer of possession of equipment and property to City for City's use, or for use by any Person or entity designated by the City.

**B.** It will, if 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.** City may immediately engage all or any personnel necessary or useful for the Collection and transportation of Solid Waste, including, if City so desires, employees previously or then employed by Contractor, Contractor further agrees, if City so requests, to furnish City the services of any or all management or office Personnel employed by Contractor 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.

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 11.5, City shall pay to Contractor the reasonable rental value of the equipment and facilities, possession of which is taken by City, for the period of City's possession, if any, which extends beyond the period of time for which Contractor has rendered bills in advance of service, for the class of service involved.

## **10.2 Temporary Possession of Contractor's Property**

If City suffers an interruption or discontinuance of service (including interruptions and discontinuance due to events described in Section 11.5), City may take possession of and use all of Contractor's property described above until other suitable arrangements can be made for the provision of Solid Waste Services which may include the grant of a Franchise to another waste hauling company.

## **10.3 Billing and Compensation to City During City's Possession**

During such time that City is providing Solid Waste services, as above provided, Contractor shall bill and Collect payment from all users of the above-mentioned services as described in Section 5.1 with the exception of Residential Curbside Service Units which are billed by the City. Contractor further agrees that, in such event, it shall reimburse City for any and all costs and expenses incurred by City beyond that billed and received by 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 Contractor under the Terms of this Agreement. Such reimbursement shall be made from time to time after submission by City to Contractor of each statement listing such costs and expenses, but in no event later than ten (10) business days from and after each such submission.

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

It is further mutually agreed that City may at any time at its discretion relinquish possession of any or all of the above-mentioned property to Contractor and thereupon demand that Contractor resume the Solid Waste services as provided in this Agreement, whereupon Contractor shall be bound to resume the same.

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

Except as otherwise expressly provided in the previous paragraph, City's exercise of its rights under this Article (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 City to Contractor, and (3) does not exempt Contractor from any of the indemnity and insurance provisions of this Agreement, which are meant to extend to circumstances arising under this Section provided that the Contractor is not required to indemnify the City against claims and damages arising from the active negligence of the City, its elected and appointed boards, commissions, officers, employees and agents in the operation of Collection vehicles during the time the City has taken possession of such vehicles.

#### **10.6 Duration of City's Possession**

City's right pursuant to this Article to retain temporary possession of Contractor's facilities and equipment, and to render Collection services, shall terminate when City determines that such services can be resumed by Contractor, or when City no longer reasonably requires such property or equipment. In any case, City has no obligation to maintain possession of Contractor'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 Contractor.

## ARTICLE 11

### DEFAULT, REMEDIES AND LIQUIDATED DAMAGES

#### 11.1 Events of Default

Contractor's breach of each and any provision of the Franchise or this Agreement may constitute a default hereunder to the extent Contractor's performance, services or obligations under this Agreement are materially and adversely impacted. Events of default by the Contractor include, but are not limited to, the following:

**A. Fraud or Deceit or Misrepresentation.** If the Contractor engages in, or attempts to practice, any fraud or deceit upon City or makes a misrepresentation regarding material information to City.

**B. Insolvency or Bankruptcy.** If Contractor 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 Contractor fails to provide or maintain in full force and effect the Workers' Compensation, liability, performance bond, letter of credit, or indemnification coverage as required by this Agreement.

**D. Violations of Regulation.** If Contractor violates any orders or filings of any regulatory body having jurisdiction over Contractor relative to this Agreement, provided that Contractor 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 Contractor is entered.

**E. Suspension or Termination of Service.** If Contractor ceases to provide all or a portion of the Collection, processing or Recycling services, or any other Solid Waste Handling Services as required under this Agreement, if not excused pursuant to Section 11.5, for a period of two (2) consecutive days or more, for any reason within the control of Contractor.

**F. Failure to Pay.** If Contractor fails to make any payments required under this Agreement and/or refuses to provide City, within ten (10) days of the demand, with required information, reports, and/or records in a timely manner as provided for

in the Agreement.

**G. Failure to Cooperate with Audits.** Failure to complete, perform or cooperate with any audit as described by this Agreement.

**H. Failure to Submit Reports or Documentation.** Failure to complete or to provide required reports or documents to City as required by this Agreement.

**I. Acts or Omissions.**

A. Any act or omission by Contractor relative to the services provided under this Agreement which violates the terms, conditions, or requirements of this Agreement, the California Integrated Waste Management Act of 1989, as it may be amended from time to time (AB 939), or any law, statute, ordinance, order, directive, rule, or regulation issued pursuant to AB 939 shall constitute a default by the Contractor. Any failure to correct or remedy any such violation within the time set in the written notice of the violation or, if Contractor cannot reasonably correct or remedy the breach within the time set forth in such notice, Contractor's failure to commence to correct or remedy such violation within the time set forth in such notice and diligently effect such correction or remedy thereafter shall constitute a default by Contractor.

B. Any situation in which Contractor 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 shall constitute a default by Contractor. The term "found guilty" shall be deemed to include any judicial determination that Contractor or any of Contractor's officers, directors or employees is guilty as well as any admission of guilt by Contractor or any of Contractor's officers, directors or employees including, but not limited to, the plea of "guilty", "nolo contendere", "no contest", and "guilty to a lesser charge."

**J. False or Misleading Statements.** Any representation or disclosure made to City by Contractor 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.

**K. Attachment.** The seizure of, attachment of, or levy on, the operating equipment of Contractor, including, without limits, its equipment, maintenance or office facilities, or any part thereof.

**L. Failure to Provide Assurance of Performance.** If Contractor fails to provide reasonable assurances of performance as required under Section 11.7.

**M. Commingling of Recyclables With Refuse/Landfilling of Recyclables.** If Contractor negligently or willfully empties Containers of properly set out Recyclable Materials or Organics into a Refuse load, or transports a load of Recyclable Materials or Organics to a landfill or other location at which the material will not be diverted from landfilling.

**N. Diversion Requirement.** If Contractor does not reach Diversion requirement of 20% of all tonnage Collected by Contractor under this Agreement per Section 4.6.1 for two consecutive Rate Years.

**O. Failure to Provide Processing Capacity.** Contractor fails to provide adequate Processing capacity in accordance with Exhibit 8.

**P. Failure to Achieve Processing Standards.** Contractor fails to achieve the Processing standards specified in Exhibit 8, including achievement of minimum Organic Waste recovery rates.

**Q. Failure to Comply with Requirements of SB 1383 Set Forth in this Agreement.** Contractor fails to comply with requirements of the Agreement including, but not limited to, public education, reporting, contamination monitoring, recordkeeping and reporting, or other obligations of this Agreement.

**R. Failure to Implement Collection Program.** Contractor fails to implement a Collection program as required by this Agreement that complies with the requirements of Article 4 and SB 1383 regulations.

Contractor shall have two business days, excluding Saturdays, Sundays and holidays included in Section 4.7.1, from the time it is given notification by City to cure any default arising under subsections E, F, G, H, K, L and M provided, however, that City shall not be obligated to provide Contractor with a notice and cure opportunity if the

Contractor has committed the same or similar breach within a twenty-four (24) month period. It is expressly understood that Contractor is not entitled to receive notice of default, or to cure such default, with respect to those matters listed in subsections A, B, C, D, I, J, N, O, P, Q, and R above.

For other actions not listed above, or included in 11.2 below, City will provide Contractor with a written notice setting forth the nature of the breach or failure and the actions, if any, required by Contractor to cure such a breach or failure. Contractor shall be deemed in default where: (1) breach or failure can be cured but Contractor fails to cure within thirty (30) days unless an alternative period of time is agreed to by the Parties.

### **11.2 Criminal Activity of Contractor**

Should the Contractor or any of its officers, directors or employees be found guilty of felonious conduct related to the performance of this Contract, or of felonious conduct related to anti-trust activities, illegal transport or Disposal of hazardous or toxic materials, or bribery of public officials, the City reserves the right to unilaterally terminate this Contract or impose other such sanctions (which may include financial sanctions, temporary suspensions or any other condition deemed appropriate short of termination) as it shall deem proper. Such action shall be taken after Contractor has been given notice and opportunity to present evidence in mitigation. The term "found guilty" shall be deemed to include any judicial determination that Contractor or any of Contractor's officers, directors or employees is guilty and any admission of guilt by Contractor or any of Contractor's officers, directors or employees including, but not limited to, the plea of "guilty", "nolo contendere", "no contest", and "guilty to a lesser charge" entered as part of any plea bargain.

### **11.3 Notice, Hearing and Appeal of Contractor Breach;**

Upon a default by Contractor, City may, at its discretion, provide Contractor with a written notice of intent to terminate this Agreement that includes the following:

- a. A description of the evidence upon which the decision to terminate is based
- b. That Contractor has a right to a hearing prior to the City's termination of the Agreement

This hearing is to be scheduled as an open public hearing item at a City Council meeting within thirty (30) days of the Termination Notice, subject to any legal requirements including but not limited to the Ralph M. Brown Act, Government Code Sections 54950-54963. At this hearing Contractor shall have the right to present evidence to demonstrate that it is not in default and to rebut any evidence presented in favor of termination. Based upon substantial evidence presented at this hearing, the Council may, by adopted resolution, act as follows:

1. Decide to terminate this Agreement; or,
2. Determine that Contractor is innocent of a default and, accordingly, dismiss the Termination Notice of any charges of default; or,
3. Impose conditions on a finding of default and a time for cure, such that Contractor's fulfillment of said conditions will waive or cure any default.

This right of termination is in addition to any other rights of City upon a failure of Contractor to perform its obligations under this Agreement.

City's right to terminate this Agreement and to take possession of Contractor's facility are not exclusive, and 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 City may have, including without limitation the provision for Liquidated Damages in Section 11.4 below.

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 City to Contractor, the remedy of money damages for a breach hereof by Contractor is inadequate and City shall be entitled to injunctive relief.

#### **11.4 Liquidated Damages**

**A. General.** City finds, and Contractor 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 City as a result of a breach by Contractor of certain specific 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) that the services that are the subject of 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 specific 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 Handling Service is of utmost importance to City and that City has considered and relied on Contractor's representations as to its quality of service commitment in entering this Agreement. 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 Contractor fails to achieve the performance standards, or fails to submit required documents in a timely manner, 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 City will suffer. Therefore, without prejudice to City's right to treat such breaches 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 for such specific breaches, considering all of the circumstances existing on the date of this Agreement, including the relationship of the sums to the range of harm to 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.

Contractor  
Initial Here \_\_\_\_\_

City  
Initial Here \_\_\_\_\_

Contractor agrees to 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 exceeds five (5) such failures annually:  
\$100.00 per occurrence
- 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 and not Collected within the period described in this Agreement which exceeds ten (10) such failures annually:  
\$100.00 per occurrence
- c) For each failure to correct and collect a missed service the same day if notified by noon, and by the next Collection if notified after noon:\$100.00 per occurrence

2. Collection Quality

- a) For each occurrence of failure to properly return empty Containers to avoid pedestrian or vehicular traffic impediments or to place Containers upright which exceeds ten (10) such occurrences annually: \$50.00 per occurrence
- b) For each occurrence of excessive noise or discourteous behavior which exceed ten (10) occurrences annually: \$100.00 per occurrence
- c) For each occurrence of Collecting Solid Waste during unauthorized hours which exceeds ten (10) such occurrences annually: \$100.00 per occurrence
- d) For each occurrence of damage to private property which exceeds five (5) such occurrences annually: \$100.00 per occurrence
- e) For each failure to clean up Solid Waste spilled from Solid Waste Containers within ninety (90) minutes that exceeds ten (10) such failures annually:  
\$100.00 per occurrence

3. Customer Responsiveness

- a) For each failure to initially respond to a Customer complaint within one (1) business day (excluding Saturday, Sunday and holidays listed in Section

- 4.7.1), and for each additional day in which the complaint is not addressed, which exceed five (5) annually: \$50.00 per day
- b) For each failure to process Customer complaints as required by Article 5, which exceed five (5) annually: \$50.00 per occurrence
  - c) For each failure to respond to a written inquiry from the City's Solid Waste contract manager regarding service requests or requests for information within two (2) business days (excluding Saturday, Sunday and holidays listed in Section 4.7.1), and for each additional day in which the inquiry is not addressed, which exceed five (5) occurrences annually:  
\$100 per occurrence
  - d) For each failure to carry out responsibilities for establishing service to an individual resident: \$100.00 per occurrence
  - e) For each failure to remove graffiti from Containers, or to replace with Containers bearing no graffiti, within the time prescribed in Section 4.7.4.5:  
\$ 50.00 per day
  - f) For each failure to repair or replace a damaged or missing Container within two (2) business days (excluding Saturday, Sunday and holidays listed in Section 4.7.1) of request from City or Customer: \$ 50.00 per day
  - g) For each failure to process a claim for damages within thirty (30) days from the date submitted to Contractor: \$100.00 per occurrence
  - h) For every Recycling Cart Collected as Refuse without issuing a Warning Notice per Section 4.2.7 which exceeds ten (10) such occurrences annually:  
\$50 per Cart
  - i) For every Organics Waste Cart Collected as Refuse without issuing a Warning Notice per Section 4.2.7 which exceeds ten (10) such occurrences annually:  
\$50 per Cart
  - j) For each failure to issue a Warning Notice to a Customer for materials not collected due to improper set out which exceeds ten (10) such occurrences annually: \$100 per day per occurrence

4. Remittance of City Fees

- a) For each failure to remit City fees by the thirtieth (30) of the month following each calendar quarter:

10% of the amount owed for the month, and an additional 10% for each additional thirty (30) day period thereafter in accordance with Article 3.

5. Timeliness of Submissions to City

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

- |                       |               |
|-----------------------|---------------|
| a) Monthly Reports:   | \$50 per day  |
| b) Quarterly Reports: | \$50 per day  |
| c) Annual Reports:    | \$100 per day |

6. Accuracy of Billing

- a) Each Customer invoice that is not prepared in accordance with the City's approved rate schedule, in excess of ten (10) annually:

\$25 per invoice not to exceed \$2,500 per billing run

7. Public Education and Outreach

- a) For each day that the Public Education and Outreach requirements contained in Section 5.3 are not adhered to after written notice provided to Contractor and Contractor does not cure within 30 days: \$100/day

8. Cooperation with Service Provider Transition

- a) For each day routing information requested by City in accordance with Section 12.9 is received after City-established due dates, both for preparation of a request for proposals and for new service provider's implementation of service: \$1,000/day
- b) For each day delivery of keys, access codes, remote controls, or other means of access to Solid Waste Containers is delayed beyond one (1) day prior to

new service provider servicing Customers with access issues, as described in Section 12.9: \$1,000/day

- c) For delay in not meeting the requirements contained in Section 12.9 in a timely manner, in addition to the daily liquidated damages for breach under 8(a) and 8(b) above, liquidated damages of: \$35,000

9. Diversion Efforts

For each Rate Year (July 1, 2022 through June 30, 2023 considered the first Rate Year) in which Contractor fails to provide support to the City within forty-five (45) days of year-end, documenting that it diverted at least 20% of the Solid Waste Contractor Collected under this Agreement per Section 4.6.1:

\$25 for each ton below tonnage level necessary to meet 20% Diversion goal

10. General Contract Adherence

For each day that Contractor fails to provide services required under the Agreement, or comply with terms of the Agreement, five (5) business days after receipt of written notification from City that such services are not being provided or terms are not being met: \$500.00/day

11. SB 1383 Compliance

Failure to meet SB 1383 requirements set forth below (beginning July 1, 2022):

- a) Use of Unauthorized Facilities. For each individual occurrence of delivering Recyclable Materials, Organic Materials, or Refuse to a Facility other than an Approved Facility(ies) or Designated Disposal Facility for each respective material type under this Agreement. Liquidated damage is \$100 per ton per offense.
- b) Failure to Perform Contamination Monitoring Requirements. For each failure to conduct contamination monitoring in accordance with Section 5.5 of this Agreement. Liquidated damage is \$100 per route per occurrence.
- c) Failure to Conduct Compliance Tasks. For each failure to conduct any compliance review, Solid Waste evaluations pursuant to Section 8.5 of Exhibit

8, and/or other inspection required by this Agreement. Liquidated damage is \$100 per occurrence.

- d) Failure to Issue Contamination Notices. For each failure of Contractor Collection personnel to issue contamination notices and contamination Processing fee notices and maintain documentation of issuance as required by Section 5.5 of this Agreement. Liquidated damage is \$100 per route per day.
- e) Failure to Conduct Follow-Up Inspections. For each failure to conduct a follow-up inspection as required by Section 5.6 of this Agreement. Liquidated damage is \$100 per occurrence.

12. Compensation Reduction During Strike Period

In the event that there occurs any period in which Contractor fails to maintain substantially complete regular Collection services pursuant to this Agreement and the Collection schedules then in effect, by reason of a strike or Contractor's failure to pay their employees, and only if such period includes more than ten (10) normal Collection days (weekdays), then the following shall apply:

- a) The City Council may assess damages against the Contractor in an amount which does not exceed the sum of the following:
  - i. The expenses incurred by the City in providing Collection, Recycling, Organics Diversion and/or Disposal services pursuant to Section 10; and,
  - ii. One-Hundred percent (100%) of the amount by which City revenue from fees collected for Residential Curbside Service Units by the City from the public is reduced due to any reduction or refund of such fees granted by the City Council to compensate such fee payers for the inconvenience experienced by them due to Contractor's failure to furnish full performance during such period.
- b) In assessing damages, the City Council shall take into account the Contractor's efforts to mitigate the inconvenience to the public receiving curbside service. In particular, Contractor shall be given credit for Residential Curbside Service Unit Collections made by Contractor by having

damages assessed, subject to the above said maximum, in approximately the same proportion to the compensation due Contractor, for curbside service during the subject period as the number of Residential Curbside Service Unit Collections which Contractor failed to make bears to the total number of Residential Curbside Service Unit Collections which should have been made pursuant to this Agreement.

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.

Prior to assessing liquidated damages, City shall give Contractor notice of its intention to do so. The notice will include a brief description of the incident(s)/non-performance. Contractor may review (and make copies at its own expense) all information in the possession of City relating to incident(s)/non-performance. Contractor may, within ten (10) days after receiving the notice, request a meeting with City. Contractor may present evidence in writing and through testimony of its employees and others relevant to the incident(s)/non-performance. City will provide Contractor with a written explanation of its determination on each incident(s)/non-performance prior to authorizing the assessment of liquidated damages. The decision of City shall be final.

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

**D. Timing of Payment.** Contractor shall pay any liquidated damages assessed by City within ten (10) days after they are assessed. If they are not paid within the ten (10) day period, City may proceed against the performance bond required by the Agreement or find Contractor in default and terminate this Agreement pursuant to Section 11.1, or both.

### **11.5 Excuse from Performance**

The parties shall be excused from performing their respective obligations hereunder 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 Contractor's employees or directed at Contractor is excused from performance only to the extent that the following requirements are met:

- Contractor provides a contingency plan to the City within ninety (90) days of commencement of services under this Agreement demonstrating how services will be provided during the period of labor unrest. The contingency plan is subject to City approval and Contractor shall amend the plan until it meets City requirements, including reasonably demonstrating how City's basic Collection and sanitary needs will be met to the City's satisfaction.
- Contractor shall meet all requirements of this plan or City may revoke this excuse from performance offered under this Agreement and may choose to use enforcement provisions under this Agreement, including Sections 11.1, 11.2 and 11.3, in which case Contractor is not excused from performance and Contractor 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 Contractor's services caused by one or more of the events excused shall not constitute a default by Contractor under this Agreement. Notwithstanding the foregoing, however, if Contractor is excused from performing its full obligations under this Agreement for any of the causes listed in this section for a period of forty five (45) days or more, 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 Contractor's land, equipment and other property and engaging Contractor's Personnel in Article 10 and this Article 11 will apply.

#### **11.6 Notice, Hearing and Appeal of City Breach**

Should Contractor contend that City is in breach of this Agreement, it shall file with the Executive Director of Public Works a written request with City for an administrative hearing. Said request shall be made within ninety (90) days of the event or incident

which allegedly gave rise to the breach. City shall notify Contractor of the time and date said hearing shall be held within thirty (30) days of receipt of Contractor's request. Contractor shall present its position and all relevant facts after City staff has made its presentation. Contractor shall be notified of City's ruling in writing within fourteen (14) days of the administrative hearing. The City's administrative ruling shall be final.

Contractor understands and agrees that if it fails to timely and properly exhaust the administrative remedies set forth in this Section, it has no right of action or other claim against the City for breach of this Agreement or otherwise.

#### **11.7 Assurance of Performance**

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

#### **11.8. Contractor's Claim of Default by City.**

If Contractor claims default by the City in the payment of any money due or alleged to be due to Contractor pursuant to this Agreement, Contractor shall not be entitled to cancel this Agreement if the City, within fifteen (15) days after receipt of notice of the claimed default, deposits the amount in controversy into an interest bearing account in a commercial bank or lending institution and maintains such deposit until such time as a final judicial decision of agreement between the parties determines the rightful disposition of the said amount in controversy; provided that Contractor shall be deemed to have waived all claims to the said amount if no agreement is reached nor any legal proceeding initiated within one (1) year of the Contractor's service of written notice of default on the City.

## ARTICLE 12

### OTHER AGREEMENTS OF THE PARTIES

#### 12.1 Relationship of Parties

The parties intend that Contractor shall perform the services required by this Agreement as an independent Contractor engaged by City and not as an officer or employee of City nor as a partner of or joint venture with City. No employee or agent or Contractor shall be or shall be deemed to be an employee or agent of City. Except as expressly provided herein, Contractor 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. Contractor shall be solely responsible for the acts and omissions of its officers, employees, Companies, Subcontractors and agents. Neither Contractor nor its officers, employees, Companies, Subcontractors and agents shall obtain any rights to retirement benefits, workers' compensation benefits, or any other benefits which accrue to City employees by virtue of their employment with City.

#### 12.2 Compliance with Law

In providing the services required under this Agreement, Contractor shall at all times, at its sole cost, comply with all Applicable Laws.

#### 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

Except for those matters where Federal Courts have exclusive 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 Contractor, "assignment" shall include, but not be limited to (i) a sale, exchange or other transfer of substantially all of Contractor's assets dedicated to service under this Agreement to a third party; (ii) a sale, exchange or other transfer of outstanding common stock of Contractor to a third party provided said sale, exchange or transfer may result in a change of control of Contractor; (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 Contractor; (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 Contractor's property, or transfer occurring in the event of a probate proceeding; and (v) any combination of the foregoing (whether or not in related or contemporaneous transactions) which has the effect of any such transfer or change of Ownership, or change of control of Contractor.

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

If Contractor requests City's consideration of and consent to an assignment, City may deny or approve such request in its complete discretion. No request by Contractor for

consent to an assignment need be considered by City unless and until Contractor has met the following requirements:

- a) Contractor shall pay to City in advance of consideration of any assignment a flat fee of \$250,000 for expenses for City staff costs, consultant and 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) Contractor 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 (based on actual rate revenues for the prior 12-months), plus the City's costs of processing and evaluating the assignment request;
- c) Contractor shall furnish City with audited financial statements of the proposed assignee's operations for the immediately preceding three (3) operating years;
- d) A proforma financial statement (income statement and balance sheet) for the proposed assignee with the projected results of operations assuming that the assignment is completed. Such proforma financial statement shall reflect any debt to be incurred by the assignee as part of the acquisition of Contractor's operations; and,
- e) Contractor shall furnish 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 Contractor 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 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 Material; and, (v) of any other information required by City to ensure

the proposed assignee can fulfill the Terms of this Agreement in a timely, safe and effective manner.

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

#### **12.6 Affiliated Companies**

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

If Contractor enters into any financial transactions with a Related Party Entity 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 City, and in the financial reports submitted to City. In such event, City's rights to inspect records, and obtain financial data shall extend to such Related Party Entity or entities.

#### **12.7 Contracting or Subcontracting**

This Agreement, or any portion thereof, shall not be subcontracted except with the prior written consent of the City, which consent shall not be unreasonably withheld. No such consent shall be construed as making the City a party to such subcontract, or subject the City to liability of any kind to any Subcontractor. Contractor shall submit all subcontracts for review and approval by the City and any permitted subcontract shall terminate on or before the termination of this Agreement. All Subcontractors shall be licensed as required under State, Federal and local laws and regulations to perform their subcontracted work and obtain and maintain a City business license if required. Contractor shall remain otherwise liable for the full and complete performance of its obligations hereunder.

#### **12.8 Binding on Assigns**

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

## **12.9 Transition to Next Contractor**

Prior to, and at, the end of the Term or in the event this Agreement is terminated for cause prior to the end of the Term, Contractor shall cooperate fully with City and any subsequent Solid Waste enterprise it designates to assure a smooth transition of Solid Waste Handling Services. Contractor's cooperation shall include, but not be limited to, providing route lists, Billing information and other operating records needed to service all Premises covered by this Agreement. In recognition of the difficulty inherent in Customer's difficulty or inability to store two sets of Containers, Contractor shall remove its Containers in coordination with the distribution of Containers by the incoming service provider. Contractor shall cooperate with the City and incoming service provider in agreeing to the timing of Container removal; if parties cannot agree on a phase-out schedule and Contractor does not remove Containers in a timely manner that requires Customers to store two Containers, City, incoming service provider, or another entity may remove Contractor's Containers and seek cost reimbursement from Contractor through its performance bond, letter of credit or other means. The failure to cooperate with City following termination shall be conclusively presumed to be grounds for specific performance of this covenant and/or other equitable relief necessary to enforce this covenant.

Contractor shall, to the maximum extent feasible, provide a new service provider with all keys, security codes and remote controls used to access garages and Bin enclosures. Contractor shall be responsible for coordinating transfer immediately after Contractor's final pickups, so as not to disrupt service. Contractor shall provide City with detailed route sheets containing service names and addresses, billing names and addresses, monthly rate and service levels (quantity, material type, and size of Containers and pickup days) at least 90 days prior to the transition date, and provide an updated list two weeks before the transition and a final list of changes the day before the transition. Contractor shall provide means of access to the new service provider at least one full calendar day (excluding Saturday, Sunday and holidays listed in Section 4.7.1) prior to the first day of Collection by another party, and always within sufficient time so as not to impede in any way the new service provider from easily servicing all Containers. Contractor to provide documentation to City of any Customer declining request to provide keys, security codes, and/or remote controls used to access garages and Bin enclosures.

**12.10 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.

**12.11 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.

**12.12 Contractor's Investigation**

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

**12.13 Condemnation**

City fully reserves the rights to acquire Contractor'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.

**12.14 Notice**

All notices, demands, requests, 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 City:                    Executive Director of Public Works  
   City of Santa Ana  
   20 Civic Center Plaza  
   Santa Ana, CA 92701

If to Contractor:

General Manager  
Republic Services  
1131 N. Blue Gum Street  
Anaheim, CA 92806

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.

#### **12.15 Representatives of the Parties**

References in this Agreement to the "City" shall mean the City Council and all actions to be taken by 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. Contractor may rely upon actions taken by such delegates if they are within the scope of the authority properly delegated to them.

Contractor shall, by the effective date, designate in writing a responsible officer who shall serve as the representative of Contractor in all matters related to the Agreement and shall inform City in writing of such designation and of any limitations upon his or her authority to bind Contractor. City may rely upon action taken by such designated representative as actions of Contractor unless they are outside the scope of the authority delegated to him/her by Contractor as communicated to City.

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

City may investigate all options for the Collection, transporting, Recycling, processing and Disposal of Solid Waste for periods commencing after the expiration of the initial Term. Without limiting the generality of the foregoing, City may solicit proposals from Contractor and from third parties for the provision of Collection services, Disposal services, Recycling services, Organics 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 of this Agreement.

#### **12.17 Compliance with Municipal Code**

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

#### **12.18 Privacy**

Contractor 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 Contractor 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 Contractor.

#### **12.19 Cooperation Following Termination**

At the end of the Term or in the event this Agreement is terminated for cause prior to the end of the Term, Contractor shall cooperate fully with City and any subsequent Contractor to assure a smooth transition of Solid Waste management services. Contractor'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.

#### **12.20 Compliance with Immigration Laws.**

Contractor shall be knowledgeable of and comply with all local, state and federal laws which may apply to the performance of this Agreement. Contractor warrants and represents that all of its employees, including any and all prospective employees hired to perform services for the City under this Agreement and the employees of any Subcontractor retained by the Contractor to perform a portion of the services under this

Agreement, are and will be authorized to perform the services contemplated by this Agreement in full compliance with all applicable state and federal laws, rules and regulations, including, but not limited to, the Immigration Nationality Act of 1952 (commencing with Section 1101 of Title 8 of the United States Code), and the Immigration Nationality and the Immigration Reform and Control Act of 1986 (commencing with Section 1324a of Title 8 of the United States Code), as amended. Contractor agrees to verify the legal status of all of its employees and provide documentation of such verification whenever requested by the City. If Contractor discovers that any employee it has retained is not in compliance with Immigration Laws, Contractor agrees to terminate such employee.

#### **12.21 Proprietary Information, Public Records**

The City acknowledges that a number of the records and reports of the Contractor are proprietary and confidential. Contractor is obligated to permit City inspection of its records on demand and to provide copies to City where requested. City will endeavor to maintain the confidentiality of all proprietary information provided by Contractor. Notwithstanding the foregoing, any documents provided by Contractor to City that are public records may be disclosed pursuant to a proper public records request. Upon receipt of a valid public records request, City shall promptly notify Contractor of said request and, if Contractor elects to pursue legal action to prevent disclosure of any Contractor records and reports, City shall reasonably cooperate in said defense. City may, but shall not be obligated to, file legal action on its own behalf to prevent disclosure of such records and reports.

#### **12.22 Guarantee of Contractor's Performance**

Pursuant to a guarantee in substantially the form attached as Exhibit 3, Republic Services, Inc., a corporation which owns all of the issued and outstanding common stock of Contractor, has agreed to guarantee Contractor's performance of this Agreement. The Guarantee is being provided concurrently with Contractor's execution of this Agreement.

## ARTICLE 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 herein. 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 herein contained nor such verbal agreement or conversation entitle the Contractor 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 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 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 herein.

### **13.7 Exhibits**

Each of the Exhibits identified as Exhibit "1" through "10" is attached hereto and incorporated herein 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 herein 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 Attorneys' Fees**

If either party to this Agreement is required to initiate or defend or made a party to any action or proceeding in any way connected with this Agreement, the prevailing party in such action or proceeding, in addition to any other relief which may be granted, whether legal or equitable, shall be entitled to reasonable attorney's fees. Attorney's fees shall include attorney's fees on any appeal, and in addition a party entitled to attorney's fees shall be entitled to all other reasonable costs for investigating such action, taking depositions and discovery and all other necessary costs the court allows which are incurred in such litigation. All such fees shall be deemed to have accrued on commencement of such action and shall be enforceable whether or not such action is prosecuted to judgment.

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

CITY OF SANTA ANA

("City")

ATTEST: *Sonia R. Carvalho*  
CITY CLERK 

By *Tom Bida*  
CITY MANAGER

By *Mamill Saba*  
EXECUTIVE DIRECTOR OF PUBLIC WORKS

APPROVED AS TO FORM:  
Sonia R. Carvalho, City Attorney

(CONTRACTOR)

By: *John M. Funk*  
John M. Funk  
Senior Assistant City Attorney

By: *Daniel J. Lapener*  
Name: *Daniel J. Lapener*  
Title: *General Manager*

("CONTRACTOR")

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

Name:

Title:

**EXHIBIT 1**  
**INITIAL MAXIMUM RATES**

## RESIDENTIAL CURBSIDE SERVICE UNIT RATES

Service Description	Total Rate
<b>Base Curbside Service Unit Rates</b>	
Curbside Service (Includes 1 Refuse, 1 Recycling, and 1 Organics Cart, Any Size)	\$ 22.94
Senior/Mobile Home Low-Volume Curbside Service (35-Gallon Carts)	\$ 17.82
<b>Additional Curbside Service Unit Rates</b>	
Additional Refuse Cart - Above One	\$ 5.85
Additional Recycling Cart - Above One	\$ 2.00
Additional Organics Cart - Above One	\$ 2.00
Contamination Fee (4th and Subsequent Event)	\$ 10.77
Damaged Cart Penalty	\$ 48.46
Steam Cleaning of Curbside Carts	\$ 26.92
Walk-Out Service (For Other Than Disabled Individuals)	\$ 26.92
Residential Extra Pick-Up Per Container Charge	\$ 37.42
Bulky Item Pickup Fee (In Excess of 4 Free Pickups per Year and/or 4 items per pickup)	\$ 47.44

## COMMERCIAL CURBSIDE CART RATES

Service Description	Total Rate
<b>Base Curbside Service Unit Rates</b>	
Cart Services (Includes 1 Refuse and 1 Recycling Cart, Any Size, Collected Once Per Week)	\$ 175.00
Organics Cart (Any Size. Collected Once Per Week)	\$ 75.00
<b>Additional Curbside Service Unit Rates</b>	
Additional Refuse Cart - Above One	\$ 100.00
Additional Recycling Cart - Above One	\$ 75.00
Additional Organics Cart - Above One	\$ 75.00

## RESIDENTIAL/MULTI-FAMILY AND COMMERCIAL BIN REFUSE RATES

Service Description	Total Rate
1 Yard Refuse Bin x 1/Week	\$ 113.54
1 Yard Refuse Bin x 2/Week	\$ 199.11
1 Yard Refuse Bin x 3/Week	\$ 284.84
1 Yard Refuse Bin x 4/Week	\$ 370.61
1 Yard Refuse Bin x 5/Week	\$ 456.26
1 Yard Refuse Bin x 6/Week	\$ 569.73
2 Yard Refuse Bin x 1/Week	\$ 129.48
2 Yard Refuse Bin x 2/Week	\$ 231.24
2 Yard Refuse Bin x 3/Week	\$ 332.86
2 Yard Refuse Bin x 4/Week	\$ 434.47
2 Yard Refuse Bin x 5/Week	\$ 536.13
2 Yard Refuse Bin x 6/Week	\$ 679.58
3 Yard Refuse Bin x 1/Week	\$ 187.32
3 Yard Refuse Bin x 2/Week	\$ 346.82
3 Yard Refuse Bin x 3/Week	\$ 506.25
3 Yard Refuse Bin x 4/Week	\$ 665.68
3 Yard Refuse Bin x 5/Week	\$ 825.12
3 Yard Refuse Bin x 6/Week	\$ 1,054.12
4 Yard Refuse Bin x 1/Week	\$ 245.17
4 Yard Refuse Bin x 2/Week	\$ 448.40
4 Yard Refuse Bin x 3/Week	\$ 651.71
4 Yard Refuse Bin x 4/Week	\$ 855.12
4 Yard Refuse Bin x 5/Week	\$ 1,054.43
4 Yard Refuse Bin x 6/Week	\$ 1,358.25
6 Yard Refuse Bin x 1/Week	\$ 350.87
6 Yard Refuse Bin x 2/Week	\$ 664.83
6 Yard Refuse Bin x 3/Week	\$ 979.59
6 Yard Refuse Bin x 4/Week	\$ 1,294.73
6 Yard Refuse Bin x 5/Week	\$ 1,609.62
6 Yard Refuse Bin x 6/Week	\$ 2,085.25

**RESIDENTIAL/MULTI-FAMILY AND COMMERCIAL  
BIN RECYCLING RATES  
(75% of Refuse Rates)**

<b>Service Description</b>	<b>Total Rate</b>
1 Yard Recycling Bin x 1/Week	\$ 85.16
1 Yard Recycling Bin x 2/Week	\$ 149.33
1 Yard Recycling Bin x 3/Week	\$ 213.63
1 Yard Recycling Bin x 4/Week	\$ 277.96
1 Yard Recycling Bin x 5/Week	\$ 342.20
1 Yard Recycling Bin x 6/Week	\$ 427.30
2 Yard Recycling Bin x 1/Week	\$ 97.11
2 Yard Recycling Bin x 2/Week	\$ 173.43
2 Yard Recycling Bin x 3/Week	\$ 249.65
2 Yard Recycling Bin x 4/Week	\$ 325.85
2 Yard Recycling Bin x 5/Week	\$ 402.10
2 Yard Recycling Bin x 6/Week	\$ 509.69
3 Yard Recycling Bin x 1/Week	\$ 140.49
3 Yard Recycling Bin x 2/Week	\$ 260.12
3 Yard Recycling Bin x 3/Week	\$ 379.69
3 Yard Recycling Bin x 4/Week	\$ 499.26
3 Yard Recycling Bin x 5/Week	\$ 618.84
3 Yard Recycling Bin x 6/Week	\$ 790.59
4 Yard Recycling Bin x 1/Week	\$ 183.88
4 Yard Recycling Bin x 2/Week	\$ 336.30
4 Yard Recycling Bin x 3/Week	\$ 488.78
4 Yard Recycling Bin x 4/Week	\$ 641.34
4 Yard Recycling Bin x 5/Week	\$ 790.82
4 Yard Recycling Bin x 6/Week	\$ 1,018.69

**RESIDENTIAL/MULTI-FAMILY AND COMMERCIAL ORGANICS  
BIN RATES  
(75% of Refuse Rate)**

<b>Service Description</b>	<b>Total Rate</b>
2 Yard Organics Bin x 1/Week	\$ 97.11
2 Yard Organics Bin x 2/Week	\$ 173.43
2 Yard Organics Bin x 3/Week	\$ 249.65
2 Yard Organics Bin x 4/Week	\$ 325.85
2 Yard Organics Bin x 5/Week	\$ 402.10
2 Yard Organics Bin x 6/Week	\$ 509.69

## RESIDENTIAL/MULTI-FAMILY AND COMMERCIAL ORGANICS AND RECYCLING CART RATES FOR BIN CUSTOMERS

Service Description	Total Rate
<b>Any Size Organics Cart Rates for Bin Customers</b>	
Any Size Organics Cart x 1/Week	\$ 75.00
Any Size Organics Cart x 2/Week	\$ 157.50
Any Size Organics Cart x 3/Week	\$ 232.50
Any Size Organics Cart x 4/Week	\$ 307.50
Any Size Organics Cart x 5/Week	\$ 382.50
Any Size Organics Cart x 6/Week	\$ 457.50
<b>Any Size Recycling Cart Rates for Bin Customers</b>	
Any Size Recycling Cart x 1/Week	\$ 75.00
Any Size Recycling Cart x 2/Week	\$ 157.50
Any Size Recycling Cart x 3/Week	\$ 232.50
Any Size Recycling Cart x 4/Week	\$ 307.50
Any Size Recycling Cart x 5/Week	\$ 382.50
Any Size Recycling Cart x 6/Week	\$ 457.50

## ADDITIONAL SERVICE RATES

Service Description	Total Rate
<b>Additional Services</b>	
Extra Pickup	\$ 94.92
Enclosure Charge 1/Week	\$ 4.13
Enclosure Charge 2/Week	\$ 8.26
Enclosure Charge 3/Week	\$ 12.39
Enclosure Charge 4/Week	\$ 16.52
Enclosure Charge 5/Week	\$ 20.65
Enclosure Charge 6/Week	\$ 24.78
25' to 50' Push-Out Charge 1/Week	\$ 12.46
25' to 50' Push-Out Charge 2/Week	\$ 24.93
25' to 50' Push-Out Charge 3/Week	\$ 37.39
25' to 50' Push-Out Charge 4/Week	\$ 49.85
25' to 50' Push-Out Charge 5/Week	\$ 62.32
25' to 50' Push-Out Charge 6/Week	\$ 74.78
>50" Push-Out Charge 1/Week	\$ 18.69
>50" Push-Out Charge 2/Week	\$ 37.39
>50" Push-Out Charge 3/Week	\$ 56.08
>50" Push-Out Charge 4/Week	\$ 74.78
>50" Push-Out Charge 5/Week	\$ 93.47
>50" Push-Out Charge 6/Week	\$ 112.17
Bin Overage Fee	\$ 39.88
Restart Fee	\$ 22.18
Commercial Exchange Fee	\$ 63.22
Roll-Off Trip Charge (Dry Run)	\$ 75.85
Return Trip Fee	\$ 75.85
Commercial Bulky Item Pickup Fee	\$ 47.44
Multi-Family: Additional Bulky Item pickups/items:	
10 items per dwelling unit per quarter (unused items do not roll-over to next quarter)	No charge
Up to 2 items per pickup in excess of 10 free items per dwelling unit per quarter	\$ 54.31
Per item per pickup above 2	\$ 7.24
Cleaning Fee - Commercial/Roll-Off	\$ 31.97
Bin Relocation Fee	\$ 53.85
Commercial and Roll-Off Contamination Penalty (4th and Subsequent Events)	\$ 53.85
Locking Bin 1/Week	\$ 3.33
Locking Bin 2/Week	\$ 3.33
Locking Bin 3/Week	\$ 3.33
Locking Bin 4/Week	\$ 3.33
Locking Bin 5/Week	\$ 3.33
Locking Bin 6/Week	\$ 3.33
Scout Service 1/Week	\$ 45.00
Scout Service 2/Week	\$ 90.00
Scout Service 3/Week	\$ 135.00
Scout Service 4/Week	\$ 180.00
Scout Service 5/Week	\$ 225.00
Scout Service 6/Week	\$ 270.00
Emergency Services Rate Per Hour (one crew and one truck)	\$ 145.00
Grant Administration Rate Per Hour	\$ 61.44

**PERMANENT ROLL-OFF, COMPACTOR ROLL-OFF,  
AND TEMPORARY BIN RATES**

<b>Service Description</b>	<b>Total Rate</b>
Any Size Permanent Refuse Roll-Off	\$ 336.00
Any Size Permanent Recycling Roll-Off	\$ 336.00
Any Size Permanent Organics Roll-Off	\$ 336.00
Any Size Compactor	\$ 403.20
3-Yard Temp Bin	\$ 151.76
Refuse Rate Per Ton	\$ 82.97
Recycling Rate Per Ton	\$ 87.97
Organics Rate Per Ton	\$ 125.00

## TEMPORARY C&D ROLL-OFF BOX AND BIN RATES

Service Description	Total Rate
Mixed C&D Roll-Off Any size - Up to 8 Tons Per Load Included	\$ 670.29
3-Yard Temp C&D Bin	\$ 175.00
Mixed C&D Processing/Disposal - Per Ton in Excess of 8 Tons Per Load	\$ 104.73

## EXHIBIT 2A

### EXAMPLE RATE ADJUSTMENT CALCULATION CURBSIDE SERVICE

**Step One: Calculate Percentage Change In Indices**

Row	Adjustment Factor	Index	A	B	C
			Old Index Value	New Index Value	Percent Change In Index ((Column B/Column A) -1)
1	Service	(1)	247.602	252.169	1.8%
2	Fuel	(2)	172.1	189.1	9.9%
3	Disposal	(3)	\$ 33.50	\$ 34.18	2.0%

**Step Two: Determine Weighted Increase**

Row	Adjustment Factor	Index	D	E	F
			Cost Component Weighted as a % of Component Total (4)	Percent Change In Index (from Column C)	Total Weighted Change (Column D x Column E)
4	Service	(1)	72.0%	1.8%	1.3%
5	Fuel	(2)	5.0%	9.9%	0.5%
6	Disposal	(3)	23.0%	2.0%	0.5%
7	Total		100.0%		2.3%

**Step Three: Apply Percentage Change to Rates**

Row	Rate Category	G	H	I	J
		Existing Customer Rate	Total Weighted Percentage Change (Row 7, Column F)	Rate Increase or Decrease (Column G x Column H)	Adjusted Rate (Column I + Column G)
8	Residential Cart Service	\$ 21.32	2.3%	\$ 0.49	\$ 21.81
9	Senior / Mobile Home Cart Service	\$ 18.85	2.3%	\$ 0.43	\$ 19.28
10	Additional Refuse Cart	\$ 10.00	2.3%	\$ 0.23	\$ 10.23
11	Additional Recycling Cart	\$ 10.00	2.3%	\$ 0.23	\$ 10.23
12	Additional Yard Waste Cart	\$ 10.00	2.3%	\$ 0.23	\$ 10.23
13	Curbside Extra Pickup	\$ 36.49	2.3%	\$ 0.84	\$ 37.33
14	Curbside Contamination Fee	\$ 10.50	2.3%	\$ 0.24	\$ 10.74
15	Damaged Cart Penalty	\$ 47.25	2.3%	\$ 1.09	\$ 48.34
16	Curbside Steam Cleaning	\$ 26.25	2.3%	\$ 0.60	\$ 26.85
17	Walk-Out Service (Non-Disabled)	\$ 26.25	2.3%	\$ 0.60	\$ 26.85
18	Additional Bulky Item Fee - Curbside	\$ 46.25	2.3%	\$ 1.06	\$ 47.31

**Step Four: Re-weight Cost Components**

Row	Adjustment Factor	Index	K	L	M	N	O
			Cost Component Weighting (Column D)	Percent Change In Index (Column C)	Change In Cost Component Weighting (Column K x Column L)	Adjusted Cost Component Weighting (Column K + Column M)	Cost Components Reweighted to Equal 100%
19	Service	(1)	72.0%	1.8%	1.3%	73.3%	71.7%
20	Fuel	(2)	5.0%	9.9%	0.5%	5.5%	5.4%
21	Disposal	(3)	23.0%	2.0%	0.5%	23.5%	23.0%
22	Total		100%			102.3%	100.1%

(1) Consumer Price Index for All Urban Consumers (CUUR0000SA011E), all Items less food and energy index - average annual change.

(2) Producer Price Index, WPU0552101 not seasonally adjusted, Fuels and related products and power, Commercial Natural Gas - average annual change.

(3) Per ton disposal rate at Orange County Landfill System.

(4) First year based on Section 6.4.2 of this Agreement. After the first adjustment, weightings come from Column O of the previous year's rate adjustment worksheet.

## EXHIBIT 2B

### EXAMPLE RATE ADJUSTMENT CALCULATION BIN SERVICE

**Step One: Calculate Percentage Change in Indices**

Row	Adjustment Factor	Index	A	B	C
			Old Index Value	New Index Value	Percent Change in Index ((Column B/Column A) -1)
1	Service	(1)	247.602	252.169	1.8%
2	Fuel	(2)	172.1	189.1	9.9%
3	Disposal	(3)	\$ 33.50	\$ 34.18	2.0%

**Step Two: Determine Weighted Increase**

Row	Adjustment Factor	Index	D	E	F
			Cost Component Weighted as a % of Component Total (4)	Percent Change in Index (from Column C)	Total Weighted Change (Column D x Column E)
4	Service	(1)	78.0%	1.8%	1.4%
5	Fuel	(2)	5.0%	9.9%	0.5%
6	Disposal	(3)	17.0%	2.0%	0.3%
7	Total		100.0%		2.2%

**Step Three: Apply Percentage Change to Rates**

Row	Rate Category	G	H	I	J
		Existing Customer Rate	Total Weighted Percentage Change (Row 7, Column F)	Rate Increase or Decrease (Column G x Column H)	Adjusted Rate (Column I + Column G)
8	3 Cubic Yard Bin - 1 Time Per Week	\$ 174.26	2.2%	\$ 3.83	\$ 178.09
9	3 Cubic Yard Bin - 2 Time Per Week	\$ 303.71	2.2%	\$ 6.68	\$ 310.39
10	3 Cubic Yard Bin - 3 Time Per Week	\$ 433.03	2.2%	\$ 9.53	\$ 442.56
11	3 Cubic Yard Bin - 4 Time Per Week	\$ 562.60	2.2%	\$ 12.38	\$ 574.98
12	3 Cubic Yard Bin - 5 Time Per Week	\$ 692.01	2.2%	\$ 15.22	\$ 707.23
13	3 Cubic Yard Bin - 6 Time Per Week	\$ 877.51	2.2%	\$ 19.31	\$ 896.82

**Step Four: Re-weight Cost Components**

Row	Adjustment Factor	Index	K	L	M	N	O
			Cost Component Weighting (Column D)	Percent Change in Index (Column C)	Change in Cost Component Weighting (Column K x Column L)	Adjusted Cost Component Weighting (Column K + Column M)	Cost Components Reweighted to Equal 100%
14	Service	(1)	78.0%	1.8%	1.4%	79.4%	77.7%
15	Fuel	(2)	5.0%	9.9%	0.5%	5.5%	5.4%
16	Disposal	(3)	17.0%	2.0%	0.3%	17.3%	16.9%
17	Total		100%			102.2%	100.0%

(1) Consumer Price Index for All Urban Consumers (CUUR0000SA0L1E), all items less food and energy index - average annual change.

(2) Producer Price Index, WPU0552101 not seasonally adjusted, Fuels and related products and power, Commercial Natural Gas - average annual change.

(3) Per ton disposal rate at Orange County Landfill System.

(4) First year based on Section 5.4.2 of this Agreement. After the first adjustment, weightings come from Column O of the previous year's rate adjustment worksheet.

## EXHIBIT 2C

### EXAMPLE RATE ADJUSTMENT CALCULATION ROLL-OFF SERVICE

Step One: Calculate Percentage Change In Indices for "Pull" Component

Row	Adjustment Factor	Index	A	B	C
			Old Index Value	New Index Value	Percent Change In Index ((Column B/Column A) -1)
1	Service	(1)	247.602	252.169	1.8%
2	Fuel	(2)	172.1	189.1	9.9%

Step Two: Determine Weighted Increase for "Pull" Component

Row	Adjustment Factor	Index	D	E	F
			Cost Component Weighted as a % of Component Total	Percent Change In Index (from Column C)	Total Weighted Change (Column D x Column E)
3	Service	(1)	90.0%	1.8%	1.6%
4	Fuel	(2)	10.0%	9.9%	1.0%
5	Total		100.0%		2.6%

Step Three: Apply Percentage Change to to "Pull" Rates

Row	Rate Category	G	H	I	J
		Existing Customer Rate	Total Weighted Percentage Change (Row 5, Column F)	Rate Increase or Decrease (Column G x Column H)	Adjusted Rate (Column G + Column I)
6	10 Cubic Yard Roll-Off	\$ 268.16	2.6%	\$ 6.97	\$ 275.13
7	20 Cubic Yard Roll-Off	\$ 268.16	2.6%	\$ 6.97	\$ 275.13
8	40 Cubic Yard Roll-Off	\$ 268.16	2.6%	\$ 6.97	\$ 275.13
9	10 Cubic Yard Compactor	\$ 324.04	2.6%	\$ 8.43	\$ 332.47
10	20 Cubic Yard Compactor	\$ 324.04	2.6%	\$ 8.43	\$ 332.47
11	40 Cubic Yard Compactor	\$ 324.04	2.6%	\$ 8.43	\$ 332.47

Step Four: Re-weight Cost Components for "Pull" Rates

Row	Adjustment Factor	Index	K	L	M	N	O
			Cost Component Weighting (Column D)	Percent Change In Index (Column C)	Change in Cost Component Weighting (Column K x Column L)	Adjusted Cost Component Weighting (Column K + Column M)	Cost Components Reweighted to Equal 100%
12	Service	(1)	90.0%	1.8%	1.6%	91.6%	89.3%
13	Fuel	(2)	10.0%	9.9%	1.0%	11.0%	10.7%
14	Total		100%			102.6%	100.0%

Step Five: Calculate Adjustment to Tonnage Charge

Row	Adjustment Factor	Index	P	Q	R	S
			Existing Rate Per Ton (4)	Percent Change In Index (Row 3, Column C)	Rate Increase or Decrease (Column P x Column Q)	Adjusted Rate (Column P + Column R)
15	Tonnage Charge	(5)	\$71.49	1.8%	\$1.29	\$72.78

(1) Consumer Price Index for All Urban Consumers (CUUR0000SA0L1E), all items less food and energy Index - average annual change.

(2) Producer Price Index, WPU0552101 not seasonally adjusted, Fuels and related products and power, Commercial Natural Gas - average annual change.

(3) For the first rate adjustment the existing rate per ton will be based on the rate proposed by the contractor. In subsequent years the existing rate per ton will come from Row 15, Column S of the prior year's rate adjustment.

(4) First year based on Section 6.4.2 of this Agreement. After the first adjustment, weightings come from Column O of the previous year's rate adjustment worksheet.

(5) Consumer Price Index for All Urban Consumers (CUUR0000SA0), all items, U.S. city average, not seasonally adjusted - average annual change.

**EXHIBIT 2D**  
**EXAMPLE RATE ADJUSTMENT CALCULATION**  
**OTHER SERVICES**

**Collection and Recycling of Used Motor Oil and Used Motor Oil Filters**

Row	Contractor Compensation Rate Adjustment	
1	Existing Contractor Monthly Compensation	\$ 2,750
2	Percent Change in CPI <sup>(1)</sup>	<u>1.8%</u>
3	Compensation Increase or Decrease	<u>\$ 50</u>
4	Adjusted Monthly Compensation	\$ 2,800

<sup>(1)</sup> Consumer Price Index for All Urban Consumers (CUUR0000SA0L1E)  
all items less food and energy - average annual change.

**Emergency Services**

Row	Contractor Compensation Rate Adjustment	
1	Hourly Rate for One Crew, One Vehicle	\$ 110
2	Percent Change in CPI <sup>(1)</sup>	<u>1.8%</u>
3	Compensation Increase or Decrease	<u>\$ 2</u>
4	Adjusted Monthly Compensation	\$ 112

<sup>(1)</sup> Consumer Price Index for All Urban Consumers (CUUR0000SA0L1E)  
all items less food and energy - average annual change.

**Grant Administration**

Row	Contractor Compensation Rate Adjustment	
1	Hourly Rate	\$ 50
2	Percent Change in CPI <sup>(1)</sup>	<u>1.8%</u>
3	Compensation Increase or Decrease	<u>\$ 1</u>
4	Adjusted Monthly Compensation	\$ 51

<sup>(1)</sup> Consumer Price Index for All Urban Consumers (CUUR0000SA0L1E)  
all items less food and energy - average annual change.

**EXHIBIT 2E**  
**EXAMPLE RATE ADJUSTMENT CALCULATION**  
**CONSTRUCTION AND DEMOLITION SERVICES**

**Step One: Calculate Percentage Change In Indices**

Row	Rate Category	Index	A	B	C
			Old Index Value	New Index Value	Percent Change In Index ((Column B/Column A) -1)
1	All C&D Customer Rates	(1)	240.007	245.120	2.1%

**Step Two: Apply Percentage Change to Customer Rates**

Row	Rate Category	D	E	F	G
		Existing Customer Rate (2)	Total Percentage Change (Row 5, Column C)	Rate Increase or Decrease (Column D x Column E)	Adjusted Rate (Column D + Column F)
2	Mixed C&D Roll-Off Any Size (8 tons Included)	\$ 650.00	2.1%	\$ 13.65	\$ 663.65
3	3- Yard Temp C&D Bin	\$ 95.00	2.1%	\$ 2.00	\$ 97.00
4	Mixed C&D Processing/Disposal Per Ton - In excess of 8 tons per load	\$ 90.00	2.1%	\$ 1.89	\$ 91.89

(1) Consumer Price Index for All Urban Consumers (CUUR0000SA0), all items, U.S. city average, not seasonally adjusted - average annual change.

(2) For the first rate adjustment will be based on the customer rate proposed by the contractor. In subsequent years the customers rates will come from Column G of the prior year's rate adjustment.

**EXHIBIT 2F**  
**EXAMPLE CALCULATION FOR**  
**AVERAGE ANNUAL CHANGE IN PUBLISHED INDICES**

**Consumer Price Index – All Urban Consumers, U.S. City Average**

**All Items Less Food and Energy, CUUR0000SA0L1E** The CPI rate adjustment index is calculated using the “average annual change” as demonstrated in the example below, measured for the 12 months ending December prior to the Rate Year anniversary date compared to the 12 months ending December in the previous year. The Bureau of Labor Statistics publishes the Consumer Price Index for All Urban Consumers for All Items Less Food and Energy – US City Average.

In the example below, the average annual index for the 12 months ended December 2017 of 252.169 is entered in Column B, Row 1, “New Index Value,” of the example rate adjustment formula in Exhibit 2A, and the average annual index for the 12 months ended December 2016 of 247.602 is entered in Column A, Row 1, “Old Index Value” in Exhibit 2A. This would have resulted in a 1.8% increase to the service component of the rates as calculated in Column C, Row 1 of Exhibit 2A.

**Consumer Price Index – All Urban Consumers, U.S. City Average**  
**All Items Less Food and Energy, CUUR0000SA0L1E**

CPI-All Urban Consumers (Current Series)  
Original Data Value

Series Id: CUUR0000SA0L1E  
Not Seasonally Adjusted  
Series Title: All items less food and energy in U.S. city average, all  
Area: U.S. city average  
Item: All items less food and energy  
Base Period: 1982-84=100  
Years: 2008 to 2018  
Source: <https://data.bls.gov/timeseries/CUUR0000SA0L1E>

Year	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	HALF1	HALF2	Annual Average
2008	213.138	213.866	214.866	215.059	215.180	215.553	216.045	216.476	216.862	217.023	216.690	216.100	214.610	216.533	215.572
2009	216.719	217.685	218.639	219.143	219.128	219.283	219.350	219.596	220.137	220.731	220.384	220.025	218.433	220.037	219.235
2010	220.086	220.602	221.059	221.166	221.193	221.265	221.268	221.551	221.907	222.079	222.077	221.795	220.895	221.778	221.337
2011	222.177	223.011	223.690	224.118	224.534	224.891	225.164	225.874	226.289	226.743	226.859	226.740	223.737	226.278	225.008
2012	227.237	227.865	228.735	229.303	229.602	229.879	229.893	230.196	230.780	231.276	231.263	231.033	228.770	230.740	229.755
2013	231.612	232.432	233.052	233.236	233.462	233.640	233.792	234.258	234.782	235.162	235.243	235.000	232.906	234.706	233.806
2014	235.367	236.075	236.913	237.509	238.029	238.157	238.138	238.296	238.841	239.413	239.248	238.775	237.008	238.785	237.897
2015	239.248	240.083	241.067	241.802	242.119	242.354	242.436	242.651	243.359	243.985	244.075	243.779	241.112	243.381	242.247
2016	244.528	245.680	246.358	246.992	247.544	247.794	247.744	248.278	248.731	249.218	249.227	249.134	246.483	248.722	247.602
2017	250.083	251.143	251.290	251.642	251.835	252.014	251.936	252.460	252.941	253.638	253.492	253.558	251.335	253.004	252.169
Percent Change in Index: (252.169 - 247.602) ÷ 247.602															1.8%

## Fuel Index

The fuel rate adjustment index is calculated using the “average annual change” as demonstrated in the example below, measured for the 12 months ending December prior to the Rate Year anniversary date compared to the 12 months ending December in the previous year. The Bureau of Labor Statistics publishes the Producer Price Index for Fuels and Related Products and Power – Commercial Natural Gas.

In the example below, the average annual index for the 12 months ended December 2017 of 189.1 is entered in Column B, Row 2, “New Index Value,” of the example rate adjustment formula in Exhibit 2A, and the average annual index for the 12 months ended December 2016 of 172.1 is entered in Column A, Row 2, “Old Index Value” in Exhibit 2A. This would have resulted in a 9.9% increase to the fuel component of rates as calculated in Column C, Row 2 of Exhibit 2A.

### Producer Price Index – Fuels and Related Products and Power – Commercial Natural Gas, WPU05522101

**PPI Commodity Data**  
**Original Data Value**

**Series Id:** WPU05522101  
**Not Seasonally Adjusted**  
**Series Title:** PPI Commodity data for Fuels and related products  
**Group:** Fuels and related products and power  
**Item:** Commercial natural gas  
**Base Date:** 199012  
**Years:** 2011 to 2017

Year	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Annual Average
2011	203.9	206.1	202.2	201.2	197.6	200.4	206.0	201.4	198.0	194.4	196.1	193.9	200.1
2012	190.0	184.8	180.2	173.8	165.5	169.4	172.9	176.2	174.2	176.5	184.4	184.7	177.7
2013	184.3	185.4	183.2	187.5	190.8	189.7	186.2	184.3	181.9	183.6	190.3	189.3	186.4
2014	195.0	202.2	216.3	209.1	206.2	201.6	203.1	197.1	195.3	191.4	193.6	198.3	200.8
2015	196.6	189.8	183.1	175.0	169.3	173.6	173.5	174.9	171.0	170.4	171.1	171.1	176.6
2016	173.1	171.4	164.2	163.2	161.4	161.7	170.3	176.5	176.6	178.5	183.4	184.5	172.1
2017	192.1	190.7	188.5	188.8	188.1	190.2	187.4	187.3	186.8	184.8	190.9	194.0	189.1
													9.9%

**Consumer Price Index for All Urban Consumers (CUUR0000SA0), All Items, U.S. City Average**

The CPI rate adjustment index is calculated using the “average annual change” as demonstrated in the example below, measured for the 12 months ending December prior to the Rate Year anniversary date compared to the 12 months ending December in the previous year. The Bureau of Labor Statistics publishes the Consumer Price Index for All Urban Consumers (CUUR0000SA0), All Items, U.S. City Average.

In the example below, the average annual index for the 12 months ended December 2017 of 245.120 is entered in Column B, Row 1, “New Index Value,” of the example rate adjustment formula in Exhibit 2E, and the average annual index for the 12 months ended December 2016 of 240.007 is entered in Column A, Row 1, “Old Index Value” in Exhibit 2E. This would have resulted in a 2.1% increase to the service component of the rates as calculated in Column C, Row 1 of Exhibit 2E.

**Consumer Price Index for All Urban Consumers (CUUR0000SA0), All Items, U.S. City Average**

CPI for All Urban Consumers (CPI-U)  
Original Data Value

Series Id: CUUR0000SA0  
Not Seasonally Adjusted  
Series Title: All Items in U.S. city average, all urban consumers,  
Area: U.S. city average  
Item: All Items  
Base Period: 1982-84=100  
Years: 2011 to 2017

Year	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Annual Average
2011	220.223	221.309	223.467	224.906	225.984	225.722	225.922	226.545	226.889	226.421	226.230	225.672	224.939
2012	226.665	227.663	229.392	230.085	229.815	229.478	229.104	230.379	231.407	231.317	230.221	229.601	229.594
2013	230.280	232.166	232.773	232.531	232.945	233.504	233.596	233.877	234.149	233.546	233.069	233.049	232.957
2014	233.916	234.781	236.293	237.072	237.900	238.343	238.260	237.852	238.031	237.433	236.151	234.812	236.736
2015	233.707	234.722	236.119	236.599	237.805	238.638	238.654	238.316	237.945	237.838	237.336	236.525	237.017
2016	236.916	237.111	238.132	239.261	240.229	241.018	240.628	240.849	241.428	241.729	241.353	241.432	240.007
2017	242.838	243.603	243.801	244.524	244.733	244.955	244.786	245.519	246.819	246.663	246.669	246.524	245.120
Percent Change in Index													2.1%

**EXHIBIT 3  
CORPORATE GUARANTY**

**Guaranty**

THIS GUARANTY (the "Guaranty") is given as of the \_\_\_\_ day of \_\_\_\_\_, 2020.

THIS GUARANTY is made with reference to the following facts and circumstances:

A. \_\_\_\_\_, hereinafter ("Owner") is a \_\_\_\_\_ organized under the laws of the State of \_\_\_\_\_, which is wholly owned by \_\_\_\_\_. (Guarantor).

B. Owner and the City have negotiated an Agreement for Collection, processing, and Disposal of Solid Waste dated as of \_\_\_\_\_, (hereinafter "Agreement"). A copy of this Agreement is attached hereto.

C. It is a requirement of the Agreement, and a condition to the City entering into the Agreement, that Guarantor guaranty Owner's performance of the Agreement.

D. Guarantor is providing this Guaranty to induce the City to enter into the Agreement.

NOW, THEREFORE, in consideration of the foregoing, Guarantor agrees as follows:

1. **Guaranty of the Agreement.** Guarantor hereby irrevocably and unconditionally guarantees to the City the complete and timely performance, satisfaction and observation by Owner of each and every term and condition of the Agreement which Owner is required to perform, satisfy or observe. In the event that Owner fails to perform, satisfy or observe any of the terms and conditions of the Agreement, Guarantor will promptly and fully perform, satisfy or observe them in the place of the Owner or cause them to be performed, satisfied or observed. Guarantor hereby guarantees payment to the City of any damages, costs or expenses which might become recoverable by the City from Owner due to its breach of the Agreement.

2. **Guarantor's Obligations Are Absolute.** The obligations of the Guarantor hereunder are direct, immediate, absolute, continuing, unconditional and unlimited, and with respect to any payment obligation of Owner under the Agreement, shall constitute a guarantee of payment and not of collection, and are not conditional upon

the genuineness, validity, regularity or enforceability of the Agreement. In any action brought against the Guarantor to enforce, or for damages for breach of, its obligations hereunder, the Guarantor shall be entitled to all defenses, if any, that would be available to the Owner in an action to enforce, or for damages for breach of, the Agreement (other than discharge of, or stay of proceedings to enforce, obligations under the Agreement under bankruptcy law).

3. **Waivers.** Except as provided herein the Guarantor shall have no right to terminate this Guaranty or to be released, relieved, exonerated or discharged from its obligations under it for any reason whatsoever, including, without limitation: (1) the insolvency, bankruptcy, reorganization or cessation of existence of the Owner; (2) the actual or purported rejection by a trustee in bankruptcy of the Agreement, or any limitation on any claim in bankruptcy resulting from the actual or purported termination of the Agreement; (3) any waiver with respect to any of the obligations of the Agreement guaranteed hereunder or the impairment or suspension of any of the City's rights or remedies against the Owner; or (4) any merger or consolidation of the Owner with any other corporation, or any sale, lease or transfer of any or all the assets of the Owner. Without limiting the generality of the foregoing, Guarantor hereby waives the rights and benefits under California Civil Code Section 2819.

The Guarantor hereby waives any and all benefits and defenses under California Civil Code Section 2846, 2849, and 2850, including without limitation, the right to require the City to (a) proceed against Owner, (b) proceed against or exhaust any security or collateral the City may hold now or hereafter hold, or (c) pursue any other right or remedy for Guarantor's benefit, and agrees that the City may proceed against Guarantor for the obligations guaranteed herein without taking any action against Owner or any other guarantor or pledgor and without proceeding against or exhausting any security or collateral the City may hold now or hereafter hold. City may unqualifiedly exercise in its sole discretion any or all rights and remedies available to it against Owner or any other guarantor or pledgor without impairing the City's rights and remedies in enforcing this Guaranty.

The Guarantor hereby waives and agrees to waive at any future time at the request of the City to the extent now or then permitted by Applicable Law, any and all rights which the Guarantor may have or which at any time hereafter may be conferred upon it, by statute, regulation or otherwise, to avoid any of its obligations under, or to terminate, cancel, quit or surrender this Guaranty. Without limiting the generality of

the foregoing, it is agreed that the occurrence of any one or more of the following shall not affect the liability of the Guarantor hereunder: (a) at any time or from time to time, without notice the Guarantor, performance or compliance herewith is waived; (b) any other of any provision of its Agreement indemnification with respect to Owner's obligations under the Agreement or any security therefore is released or exchanged in whole or in part or otherwise dealt with; or (c) any assignment of the Agreement is effected which does not require the City's approval.

The Guarantor hereby expressly waives diligence, presentment, demand for payment or performance, protest and all notices whatsoever, including, but not limited to, notices of non-payment or non-performance, notices of protest, notices of any breach or default, and notices of acceptance of this Guaranty. If all or any portion of the obligations guaranteed hereunder are paid or performed, Guarantor's obligations hereunder shall continue and remain in full force and effect in the event that all or any part of such payment or performance is avoided or recovered directly or indirectly from the City as a preference, fraudulent transfer or otherwise, irrespective of (a) any notice of revocation given by Guarantor or Owner prior to such avoidance or recovery, and (b) payment in full of any obligations then outstanding.

4. **Term.** This Guaranty is not limited to any period of time, but shall continue in full force and effect until all of the terms and conditions of the Agreement have been fully performed or otherwise discharged and Guarantor shall remain fully responsible under this Guaranty without regard to the acceptance by the City of any performance bond or other collateral to assure the performance of Owner's obligations under the Agreement. Guarantor shall not be released of its obligations hereunder so long as there is any claim by the City against Owner arising out of the Agreement based on Owner's failure to perform which has not been settled or discharged.

5. **No Waivers.** No delay on the part of the City in exercising any rights under this Guaranty or failure to exercise such rights shall operate as a waiver of such rights. No notice to or demand on Guarantor shall be a waiver of any obligation of Guarantor or right of the City to take other or further action without notice or demand. No modification or waiver of any of the provisions of this Guaranty shall be effective unless it is in writing and signed by the City and by Guarantor, nor shall any waiver be effective except in the specific instance or matter for which it is given.

6. **Attorney's Fees.** In addition to the amounts guaranteed under this Guaranty,

Guarantor agrees in the event of Guaranty's breach of its obligations to pay reasonable attorney's fees and all other reasonable costs and expenses incurred by the City in enforcing this Guaranty, or in any action or proceeding arising out of or relating to this Guaranty, including any action instituted to determine the respective rights and obligations of the parties hereunder.

7. **Governing Law: Jurisdiction.** This Guaranty is and shall be deemed to be a contract entered into in and pursuant to the laws of the State of California and shall be governed and construed in accordance with the laws of California without regard to its conflicts of laws, rules for all purposes including, but not limited to, matters of construction, validity and performance. Guarantor agrees that any action brought by the City to enforce this Guaranty may be brought in any court of the State of California and Guarantor consents to personal jurisdiction over it by such courts. Guarantor appoints the following person as its agents for service of process in California:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

With a copy by certified mail to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

8. **Severability.** If any portion of this Guaranty is held to be invalid or unenforceable, such invalidity will have not have an effect upon the remaining portions of this Guaranty, which shall be severable and continue in full force and effect.

9. **Binding On Successors.** This Guaranty shall inure to the benefit of the City and its successors and shall be binding upon Guarantor and its successors, including transferee(s) of substantially all of its assets and its shareholder(s) in the event of its dissolution or insolvency.

10. **Authority.** Guarantor represents and warrants that it has the corporate power and authority to give this Guaranty, that its execution of this Guaranty has been authorized by all necessary action under its Article of Incorporation and By-Laws, and



**EXHIBIT 4**  
**CONTRACTOR'S FAITHFUL PERFORMANCE BOND**

KNOW ALL MEN BY THESE PRESENTS:

That \_\_\_\_\_, a California \_\_\_\_\_, 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 two-million, five-hundred thousand dollars (\$2,500,000) 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 "COLLECTION AND HANDLING OF SOLID WASTE GENERATED, PRODUCED AND/OR ACCUMULATED IN THE CITY OF SANTA ANA" 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 the event suit is brought by OBLIGEE to enforce the provisions of this bond, said Surety will pay to OBLIGEE a reasonable attorney's fee, plus costs of suit, in an amount to be fixed by the court.

IN WITNESS WHEREOF, said PRINCIPAL and said SURETY have caused these presents to be duly signed and sealed this \_\_\_\_\_ DAY OF \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
a California Corporation

\_\_\_\_\_  
SURETY

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

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

(PRINCIPAL)

(ATTORNEY IN FACT)

(SEAL)

(SEAL)

**EXHIBIT 5  
NOTARY CERTIFICATION**

STATE OF CALIFORNIA)

COUNTY OF \_\_\_\_\_) ss:

On \_\_\_\_\_, \_\_\_\_\_, before me, the undersigned, a Notary Public in and for the State of California, personally appeared \_\_\_\_\_, known to me to be the \_\_\_\_\_ of Contractor that executed the within instrument on behalf of the Contractor therein named, and acknowledged to me that such Contractor executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal in the County of \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_

Notary Public

My Commission Expires:

\_\_\_\_\_

**EXHIBIT 6**  
**COUNTY WASTE DISPOSAL AGREEMENT**

AMENDMENT TO WASTE DISPOSAL AGREEMENT

Between

THE COUNTY OF ORANGE, CALIFORNIA

and the

CITY OF SANTA ANA

April 28 2016

County Amendment Authorization Date:

April 28, 2016

City Amendment Authorization Date:

February 16, 2016

County Notice Address:

Director  
OC Waste and Recycling  
300 N. Flower, Suite 400  
Santa Ana, CA 92703

City Notice Address

Clerk of the City Council  
City of Santa Ana  
20 Civic Center Plaza (M-30)  
P.O. Box 1988  
Santa Ana, CA 92702-1988  
FAX 714-647-6956

With courtesy copies:

City Attorney  
City of Santa Ana  
20 Civic Center Plaza (M-29)  
P.O. Box 1988  
Santa Ana, CA 92702  
FAX 714-647-6515

City of Santa Ana  
Public Works Agency  
20 Civic Center Plaza (M-21)  
P.O. Box 1988  
Santa Ana, CA 92702  
FAX 714-647-5622

2016 Amendment to Waste Disposal Agreement

Section 1. Amendment to Original Waste Disposal Agreement.

(a) Sections 3.6(C) and 3.6(E) of the Original Waste Disposal Agreement are deleted and replaced in their entirety, as set forth below:

“(C) Receipt of Imported Acceptable Waste on a Contract Basis. Throughout the Term hereof, the County shall have the right to enter into a contract or other agreement with any municipal or private non-County entity for the delivery of Imported Acceptable Waste on terms and conditions that the County determines to be necessary to ensure and enhance the viability of the Disposal System for the benefit of the County and the Participating Cities and to generate Net Import Revenues. The County certifies that in its good faith judgment the contract or other agreement for the delivery of such waste will not materially and adversely affect the ability of the County to receive and dispose of Acceptable Waste from the Participating Cities in accordance with the applicable Disposal Agreements throughout the Term thereof. ”

“(E) Application and Use of Revenues From Other Users. (1) Throughout the term hereof, all revenues received by the County from the disposal of County Acceptable Waste by the Disposal System, and all revenues received by the County from the disposal of Imported Acceptable Waste by the Disposal System (including amounts received by the County as a result of the failure of contract counterparties to deliver minimum required amounts of Imported Acceptable Waste) , shall be deposited by the County in the County OC Waste & Recycling Enterprise Fund and shall constitute revenues of the Disposal System. Pursuant to the County’s Plan of Adjustment, the County is entitled to receive net revenues (after payment of all costs attributable to the acceptance of such Imported Acceptable Waste at the Disposal System) (“Net Import Revenues”) from the disposal of Imported Acceptable Waste by the Disposal System. Costs attributable to the disposal of Imported Acceptable Waste include deposits to the Environmental Fund, deposits to closure and postclosure reserves, City host fees (if applicable), operating costs (such as manpower expenditures, equipment, services and supplies expenditures), state surcharges, and a pro rata share of capital project costs. Net Import Revenues shall be used for the payment of bankruptcy related obligations until payment in full of such bankruptcy related obligations required to be paid from such Net Import Revenues pursuant to the Plan of Adjustment. It is estimated that payment in full of such bankruptcy related obligations required to be paid from such Net Import Revenues pursuant to the Plan of Adjustment will occur by the end of Fiscal Year 2017-18.

(2) Until the County’s obligation to apply Net Import Revenues for the payment of bankruptcy related obligations in accordance with the Plan of Adjustment has been satisfied in full, Net Import Revenues shall be calculated as provided in Section (3.6)(E)(1). For any period after the County’s obligation to apply Net Import Revenues for the payment of bankruptcy related obligations in accordance with the Plan of Adjustment has been satisfied in full, Net Import Revenues shall be calculated as follows:

(i) in Fiscal Year 2017-18, Net Import Revenues for each ton of Imported Acceptable Waste received shall be equal to the revenues received for the disposal of such ton of Imported Acceptable Waste (excluding any newly established per-ton fees or increases to existing per-ton fees with respect to Imported Acceptable Waste payable to the State, other regulatory agencies or cities in which facilities in the Disposal System are located) in excess of \$17.57 per ton;

(ii) in Fiscal Year 2018-19, Net Import Revenues for each ton of Imported Acceptable Waste received shall be equal to the revenues received for the disposal of such ton of Imported

**"SECTION 6.1 EFFECTIVE DATE AND TERM.**

(A) **Initial Term.** This Agreement shall continue in full force and effect until June 30, 2025, unless earlier terminated in accordance with its terms, in which event the Term shall be deemed to have expired as of the date of such termination.

(B) **Option to Renew.** This Agreement shall be subject to renewal by mutual agreement of the parties, on or before June 30, 2023, for an additional term of ten years (the "Renewal Term") on the same terms and conditions as are applicable during the Initial Term hereof. The City shall give the County written notice of its irrevocable election to renew this Agreement on or before June 30, 2022. If the parties do not renew this Agreement by June 30, 2023, the Agreement shall expire on June 30, 2025."

(d) The first sentence of Section 6.1(C) of the Original Waste Disposal Agreement is deleted in its entirety and replaced with the following:

"In connection with the parties' right to renew this Agreement for an additional ten-year term pursuant to Section 6.1(B), the parties shall, on or before June 30, 2023, negotiate an applicable change in the Contract Rate for such renewal term."

(e) Appendix 2 of the Original Waste Disposal Agreement is deleted in its entirety and replaced with the form attached hereto.

(f) Appendix 5 shall be added to the Original Waste Disposal Agreement as a new appendix, in the form attached hereto.

(g) All other terms and conditions of the Original Waste Disposal Agreement shall remain in full force and effect.

Section 2. **Initial Payment.** As consideration for the execution of this Amendment by all of the Participating Cities, and subject to the occurrence of the Amendment Effective Date pursuant to Section 3, the County agrees to pay, from the County OC Waste & Recycling Enterprise Fund, the Amendment Payment to the Participating Cities listed in Appendix 5. The aggregate Amendment Payment shall be \$5,400,000, and shall be distributed to the individual Participating Cities (including the City) in the percentages set forth in Appendix 5 by September 30, 2016.

Section 3. **Effectiveness of Amendment.** The provisions of this Amendment shall not become effective unless and until the Amendment has been executed by the County and all of the Participating Cities. The date on which the County and all of the Participating Cities have executed the Amendment shall be the "Amendment Effective Date." The County shall give written notice of the Amendment Effective Date to the City. In the event that the Amendment Effective Date does not occur by June 30, 2016, this Amendment shall be automatically terminated and the County shall have no obligation to make the Amendment Payment.

Section 4. **REPRESENTATIONS AND WARRANTIES OF THE PARTIES.** Each of the parties to this Amendment represent and warrant that it is a political subdivision of the State of California validly existing under the Constitution and laws of the State and (ii) it has duly authorized the execution and delivery of this Amendment, and has duly executed and delivered the Amendment.

**APPENDIX 2**

**County Acceptable Waste Tonnage Target to be Used  
for Purposes of Section 4.2(b)**

<u>Fiscal Year</u>	<u>Tonnage</u>	<u>Cumulative</u>
FY 2015-16	2,724,250	2,724,250
FY 2016-17	2,681,153	5,405,403
FY 2017-18	2,638,746	8,044,149
FY 2018-19	2,597,017	10,641,166
FY 2019-20	2,558,522	13,199,688
FY 2020-21	2,520,605	15,720,293
FY 2021-22	2,483,256	18,203,549
FY 2022-23	2,483,256	20,686,805
FY 2023-24	2,483,256	23,170,061
FY 2024-25	2,483,256	25,653,317

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**WASTE DISPOSAL AGREEMENT**

**Between**

**THE COUNTY OF ORANGE, CALIFORNIA**

**and  
the**

**CITY OF SANTA ANA**

**Dated May 4, 2009**

---

---

**County Authorization Date:**

**March 24, 2009**

**County Notice Address:**

**Director  
Integrated Waste Management Department  
320 N. Flower Street, Suite 400  
Santa Ana, CA 92703**

**City Authorization Date:**

**May 4, 2009**

**City Notice Address:**

**Executive Director  
Public Works Agency  
20 Civic Center Plaza M-21  
Santa Ana, CA 92701**

COPY

INSURANCE NOT REQUIRED  
WORK MAY PROCEED  
CLERK OF COUNCIL

DATE: JUN 17 2009

WASTE DISPOSAL AGREEMENT

Between

THE COUNTY OF ORANGE, CALIFORNIA

and  
the

CITY OF SANTA ANA

Dated May 4, 2009

C: 3origs  
to PWA  
(C. Kindig)

County Authorization Date:

March 24, 2009

County Notice Address:

Director  
Integrated Waste Management Department  
320 N. Flower Street, Suite 400  
Santa Ana, CA 92703

City Authorization Date:

May 4, 2009

City Notice Address:

Executive Director  
Public Works Agency  
20 Civic Center Plaza M-21  
Santa Ana, CA 92701

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**FORM OF HAULER ACKNOWLEDGEMENT**

## WASTE DISPOSAL AGREEMENT

THIS WASTE DISPOSAL AGREEMENT is made and dated as of the date indicated on the cover page hereof between the County of Orange, a political subdivision of the State of California (the "County"), and the City designated on the cover page of this Agreement, a general law or charter city and political subdivision of the State of California (the "City").

### RECITALS

The County owns, manages and operates a sanitary landfill system for the disposal of municipal solid waste generated by the cities and the unincorporated area within the County (the "Disposal System"). The Disposal System includes three active landfills and four regional household hazardous waste collection centers.

The Disposal System is used for the disposal of municipal solid waste which is not reused, recycled or otherwise diverted from landfill disposal, pursuant to the California Integrated Waste Management Act of 1989 (Division 30 of the California Public Resources Code) (the "Act").

The City, in the exercise of its police power and its powers under the Act, has entered into a franchise or other agreement with or issued permits or licenses to one or more private haulers for the collection and disposal of municipal solid waste generated within the City.

A significant portion of municipal solid waste generated within the City historically has been and currently is delivered by such hauler or haulers to the County for disposal in the Disposal System.

In 1997, the City and the County entered in a waste disposal agreement (the "Original WDA"), pursuant to which the County agreed to provide disposal capacity for waste generated in the City, and the City agreed to deliver or cause the delivery of waste generated in the City to the Disposal System, as more specifically set forth in, and subject to the terms and conditions of, the Original WDA.

The Original WDA, as amended, will expire by its terms on June 30, 2010, unless the City and the County agree to renew the Original WDA.

The City and the County desire to enter into this agreement to extend, amend and restate the Original WDA, on the terms and conditions set forth herein. The County and City acknowledge that the Original WDA shall remain in full force and effect until the Commencement Date.

The City has determined that the execution of this Agreement by the City will serve the public health, safety and welfare of the City by providing greater disposal rate stability, more predictable and reliable long-term disposal service, and the continuation of sound environmental management.

The County has determined that the execution by the County of this Agreement will serve the public health, safety and welfare by providing a more stable, predictable and reliable supply of municipal solid waste and the resulting service payment revenue to the Disposal System, thereby enabling the County to plan, manage, operate and finance improvements to the Disposal System on a more prudent and sound long term, businesslike basis consistent with its obligations to the State and the holders of obligations secured by its Disposal System.

Official action approving this Agreement and determining it to be in the public interest and authorizing its execution and delivery was duly taken by the County on the County authorization date indicated on the cover page hereof.

Official action approving this Agreement and determining it to be in the public interest and authorizing its execution and delivery was duly taken by the City on the City authorization date indicated on the cover page hereof.

It is, therefore, agreed as follows:

Execution Copy

ARTICLE I  
DEFINITIONS AND INTERPRETATION

SECTION 1.1 DEFINITIONS. As used in this Agreement, the following terms shall have the meanings set forth below.

"Acceptable Waste" means all garbage, refuse, rubbish and other materials and substances discarded or rejected as being spent, useless, worthless or in excess to the owners at the time of such discard or rejection and which are normally disposed of by or collected from residential (single family and multi-family), commercial, industrial, governmental and institutional establishments and which are acceptable at Class III landfills under Applicable Law.

"Act" means the California Integrated Waste Management Act of 1989 (Division 30 of the California Public Resources Code), as amended, supplemented, superseded and replaced from time to time.

"Agreement" means this Waste Disposal Agreement between the County and the City as the same may be amended or modified from time to time in accordance herewith.

"Appendix" means an appendix to this Agreement, as the same may be amended or modified from time to time in accordance with the terms hereof

"Applicable Law" means the Act, the Orange County Code, CERCLA, RCRA, CEQA, any Legal Entitlement and any federal or state rule, regulation, requirement, guideline, permit, action, determination or order of any Governmental Body having jurisdiction, applicable from time to time to the siting, design, permitting, acquisition, construction, equipping, financing, ownership, possession, operation or maintenance of the Disposal System, the transfer, handling, transportation and disposal of Acceptable Waste, Unacceptable Waste, or any other transaction or matter contemplated hereby (including any of the foregoing which concern health, safety, fire, environmental protection, mitigation monitoring plans and building codes).

"Board" means the California Integrated Waste Management Board.

"Capital Costs" means all costs of the Disposal System that are classified as capital costs for purposes of the budget of the Department in accordance with procedures established by the County of Orange Auditor-Controller in compliance with the California State Controller's Manual, including but not limited to all of the categories of costs of the Disposal System reported as "Buildings and Improvements, and Infrastructure" (Object Code 4200) or "Equipment" (Object Code 4000) in the County of Orange - Chart of Accounts, or any successor accounting or reporting system utilized by the County.

"CEQA" means the California Environmental Quality Act, codified at Cal. Pub. Res. Code Section 21000 *et seq.* as amended or superseded, and the regulations promulgated thereunder.

"CERCLA" means the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C.A. Section 9601 *et seq.*, as amended or superseded, and the regulations promulgated thereunder.

"Change in Law" means any of the following events or conditions which has a material and adverse effect on the performance by the parties of their respective obligations under this Agreement (except for payment obligations), or on the siting, design, permitting, acquisition, construction, equipping, financing, ownership, possession, operation or maintenance of the Disposal System or other matters to which Applicable Law applies:

(1) the enactment, adoption, promulgation, issuance, material modification or written change in administrative or judicial interpretation on or after the Commencement Date of any Applicable Law (other than Applicable Law enacted by the County);

(2) the order or judgment of any Governmental Body (other than the County), on or after the Commencement Date, to the extent such order or judgment is not the result of willful or negligent action, error or

omission or lack of reasonable diligence of the County or of the City, whichever is asserting the occurrence of a Change in Law; provided, however, that the contesting in good faith or the failure in good faith to contest any such order or judgment shall not constitute or be construed as such a willful or negligent action, error or omission or lack of reasonable diligence; or

(3) the denial of an application for, delay in the review, issuance or renewal of, or suspension, termination, interruption, imposition of a new or more stringent condition in connection with the issuance, renewal or failure of issuance or renewal on or after the Commencement Date of any Legal Entitlement to the extent that such denial, delay, suspension, termination, interruption, imposition or failure materially and adversely interferes with the performance of this Agreement, if and to the extent that such denial, delay, suspension, termination, interruption, imposition or failure is not the result of willful or negligent action, error or omission or a lack of reasonable diligence of the County or of the City, whichever is asserting the occurrence of a Change in Law; provided, however that the contesting in good faith or the failure in good faith to contest any such denial, delay, suspension, termination, interruption, imposition or failure shall not be construed as such a willful or negligent action, error or omission or lack of reasonable diligence.

A "Change in Law" shall include but not be limited to any new or revised requirements relating to the funding or provision of disposal services, including but not limited to any regulations for disposal operations or activities associated with the remediation, closure, funding or monitoring of closed sites with respect to facilities comprising the Disposal System, or facilities which the County previously utilized to provide waste disposal, transfer, recycling, processing or other waste related activities.

"City" means, as applicable, the city or Sanitary District designated on the cover page of this Agreement and party to this Agreement.

"City Acceptable Waste" means all Acceptable Waste which was originally discarded by the first generator thereof within the geographical limits of the City, and Residue from the foregoing wherever produced, whether within or outside the City (or Tonnage equivalencies of such Residues, as and to the extent provided in subsection 3.1(C) hereof).

"Commencement Date" means the date on which the obligations of the parties hereto commence, established as provided in Section 6.2(B) hereof.

"Contract Date" means the first date on which this Agreement has been executed by both parties hereto.

"Contract Rate" has the meaning specified in Section 4.2 hereof.

"Contract Year" means the fiscal year commencing on July 1 in any year and ending on June 30 of the following year.

"Controllable Waste" means all City Acceptable Waste with respect to which the City has the legal or contractual ability to determine the disposal location therefor and which is:

- (1) Non-Recycled City Acceptable Waste;
- (2) not generated from the operations of the Governmental Bodies which, under Applicable Law, have the independent power to arrange for the disposal of the waste they generate; and
- (3) collected and hauled by Franchise Haulers.

"County" means the County of Orange, a political subdivision of the State of California and party to this Agreement.

"County Plan" means the integrated waste management plan of the County approved by the Board pursuant to the Act as in effect from time to time.

"County Acceptable Waste" means Acceptable Waste generated in the County.

"County OC Waste & Recycling Enterprise Fund" means the waste management enterprise fund established and managed by the County pursuant to Section 25261 of the Government Code separate from its other funds and accounts for receipts and disbursements in connection with the Disposal System.

"County-wide Recycling Services" has the meaning set forth in subsection 3.7(A) hereof.

"Cumulative Tonnage Target" for any given Contract Year means the amount specified in Appendix 2 hereto with respect to such Contract Year.

"Department" means OC Waste & Recycling, and any agency, department or other Governmental Body which succeeds to the duties and powers thereof.

"Disposal Agreements" means each of the waste disposal agreements entered into between the County and any city within the County, Sanitary District or operator of any Transfer Station located in the County in accordance herewith.

"Disposal Services" means the solid waste disposal services to be provided by the County pursuant to the Service Covenant and otherwise hereunder.

"Disposal System" means the Orange County Waste Disposal System which includes solid waste disposal operations at three active landfills (Olinda Alpha, Frank R. Bowerman and Prima Deshecha); four regional Household Hazardous Waste Collection Centers; as well as services, such as monitoring and other activities, at closed refuse stations formerly operated by the County, as appropriate under Applicable Law.

"Environmental Fund" means the fund or funds held by the County to pay unanticipated costs of environmental mitigation, remediation or liability.

"Franchise Hauler" means any hauler or collector who provides Acceptable Waste collection services within the City pursuant to, or under authority granted by, a permit, contract, franchise or other agreement with the City. The term Franchise Hauler includes the City itself if Acceptable Waste collection and transportation services are provided directly by City operated municipal collection service.

"Governmental Body" means any federal, State, county, city or regional legislative, executive, judicial or other governmental board, agency, authority, commission, administration, court or other body, or any officer thereof acting within the scope of his or her authority.

"Hazardous Substance" has the meaning given such term in CERCLA, the Carpenter-Presley-Tanner Hazardous Substance Account Act (California Health and Safety Code Section 25300 *et seq.*), and Titles 22 and 26 of the California Code of Regulations and other regulations promulgated thereunder.

"Hazardous Waste" means (a) any waste which by reason of its quality, concentration, composition or physical, chemical or infectious characteristics may do either of the following: cause, or significantly contribute to, an increase in mortality or an increase in serious irreversible, or incapacitating reversible, illness, or pose a substantial threat or potential hazard to human health or the environment, or any waste which is defined or regulated as a hazardous waste, toxic substance, hazardous chemical substance or mixture, or asbestos under Applicable Law, as amended from time to time including, but not limited to: (1) the Resource Conservation and Recovery Act and the regulations contained in 40 CFR Parts 260-281; (2) the Toxic Substances Control Act (15 U.S.C. Sections 2601 *et seq.*) and the regulations contained in 40 CFR Parts 761-766; (3) the California Health and Safety Code, Section 25117 (West 1992 & Supp. 1996); (4) the California Public Resources Code, Section 40141 (West 1996); and (5) future additional or substitute Applicable Law pertaining to the identification, treatment, storage or disposal of toxic substances or hazardous wastes; or (b) radioactive materials which are source, special nuclear or by-product material as defined by the Atomic Energy Act of 1954 (42 U.S.C. Section 2011 *et seq.*) and the regulations contained in 10 CFR Part 40.

"Imported Acceptable Waste" means Acceptable Waste that is generated outside of the geographical boundaries of the County and delivered to the Disposal System.

"Independent Haulers" means those waste collection/hauler companies primarily engaged as a principal business in the collection and transportation of municipal solid waste generated in the County of Orange which are not obligated to deliver County Acceptable Waste to the Disposal System pursuant to a franchise, contract, permit or other authorization with a city in the County.

"Initial Term" has the meaning specified in Section 6.1(A) hereof.

"Legal Entitlement" means all permits, licenses, approvals, authorizations, consents and entitlements of whatever kind and however described which are required under Applicable Law to be obtained or maintained by any person with respect to the Disposal System or the performance of any obligation under this Agreement or the matters covered hereby.

"Legal Proceeding" means every action, suit, litigation, arbitration, administrative proceeding, and other legal or equitable proceeding having a bearing upon this Agreement.

"Loss-and-Expense" means any and all loss, liability, obligation, damage, delay, penalty, judgment, deposit, cost, expense, claim, demand, charge, tax, or expense, including all fees and costs.

"Net Import Revenues" has the meaning ascribed thereto in Section 3.6(E).

"Non-Recycled City Acceptable Waste" means all City Acceptable Waste other than Recycled City Acceptable Waste.

"Overdue Rate" means the maximum rate of interest permitted by the laws of the State, if applicable, or the prime rate established from time to time by the Bank of America, N.A. or its successors and assigns, plus 2%, whichever is lower.

"Participating City" means any city or Sanitary District executing a Disposal Agreement in accordance with Section 3.6(A) hereof and meeting all requisite conditions to the Commencement Date thereof.

"Plan of Adjustment" means the County's Modified Second Amended Plan of Adjustment, confirmed by the United States Bankruptcy Court Central District of California in that Conformed Order Confirming Modified Second Amended Plan of Adjustment, filed May 17, 1996.

"Posted Disposal Rate" means the per ton tipping fee charged by the County for the disposal of solid waste at the Disposal System by parties which are not entitled to disposal service at the Contract Rate pursuant to this Agreement.

"Prohibited Medical Waste" means any medical or infectious waste prohibited or restricted under Applicable Law from being received by or disposed at the Disposal System.

"Qualified Household Hazardous Waste" means waste materials determined by the Board, the Department of Health Services, the State Water Resources Control Board, or the Air Resources Board to be:

- (1) Of a nature that they must be listed as hazardous in State statutes and regulations;
- (2) Toxic/ignitable/corrosive/reactive; and
- (3) Carcinogenic/mutagenic/teratogenic;

which are discarded from households as opposed to businesses. Qualified Household Hazardous Waste shall not include Unacceptable Waste.

"Recycled City Acceptable Waste" means any otherwise Controllable Waste which is separated from Acceptable Waste by the generator thereof or by processing and which is "recycled" within the meaning of Section 40180 of the Public Resources Code.

"Renewal Term" has the meaning specified in Subsection 6.1(B) hereof.

"Residue" means any material remaining from the processing, by any means and to any extent, of City Acceptable Waste or Recycled City Acceptable Waste; provided, however, that Residue shall not include minimal amounts of material remaining after such processing (which minimal amounts shall in no event exceed 10% of the amount of such City Acceptable Waste or Recycled City Acceptable Waste prior to processing).

"Resource Conservation and Recovery Act" or "RCRA" means the Resource Conservation and Recovery Act, 42 U.S.C.A. Section 6901 *et seq.*, as amended and superseded.

"Restricted Reserves" has the meaning specified in Section 4.5.

"Sanitary Districts" means the sanitary districts in the County formed pursuant to the Sanitary District Act of 1923, codified at Cal. Ann. Health & Safety Code Section 6400 *et seq.*, as amended, supplemented, superseded and replaced from time to time.

"Self-Hauled Waste" means City Acceptable Waste collected and hauled by Self-Haulers.

"Self-Hauler" means any person not engaged commercially in waste haulage who collects and hauls Acceptable Waste generated from residential or business activities conducted by such person.

"Service Coordinator" means the service coordinator for either party designated pursuant to subsection 3.5(C) hereof.

"Service Covenant" means the covenants and agreements of the County set forth in Sections 3.2 and 3.3 hereof.

"Source-Separated Household Hazardous Waste" means Qualified Household Hazardous Waste which has been segregated from Acceptable Waste originating or generated within the geographical jurisdiction of the City at the source or location of generation.

"Source-Separated Household Hazardous Waste Disposal System" means the collection centers, facilities, contracts and other arrangements owned or administered by the County for the receipt, handling and disposal of Source-Separated Household Hazardous Waste.

"State" means the State of California.

"Term" shall mean the Term of this Agreement.

"Ton" means a "short ton" of 2,000 pounds.

"Transfer Station" means any materials recovery facility, composting facility, intermediate processing facility, recycling center, transfer station or other waste handling or management facility to which solid waste collected for the City is delivered for processing before disposal in the Disposal System.

"Unacceptable Waste" means Hazardous Waste; Hazardous Substances; Prohibited Medical Waste; Qualified Household Hazardous Waste separated from Acceptable Waste; explosives, ordnance, highly flammable substances, and noxious materials and lead-acid batteries (except if delivered in minimal quantities); drums and closed containers; liquid waste, oil, human wastes; machinery and equipment from commercial or industrial sources, such as hardened gears, shafts, motor vehicles or major components thereof, agricultural equipment, trailers, marine

vessels and steel cable; hot loads; and any waste which the Disposal System is prohibited from receiving under Applicable Law.

"Uncontrollable Circumstance" means any act, event or condition affecting the Disposal System, the County, the City, or any of their Franchise Haulers, contractors or suppliers to the extent that it materially and adversely affects the ability of either party to perform any obligation under the Agreement (except for payment obligations), if such act, event or condition is beyond the reasonable control of and is not also the result of the willful or negligent act, error or omission or failure to exercise reasonable diligence on the part of the party relying thereon as justification for not performing an obligation or complying with any condition required of such party under the Agreement; provided, however, that the contesting in good faith or the failure in good faith to contest such action or inaction shall not be construed as willful or negligent action or a lack of reasonable diligence of either party. Examples of Uncontrollable Circumstances are:

- (1) an act of God, landslide, lightning, earthquake, fire, explosion, flood, sabotage or similar occurrence, acts of a public enemy, extortion, war, blockade or insurrection, riot or civil disturbance; and
- (2) a Change in Law.

"Unincorporated Area" means those portions of the County which are not contained within the jurisdictional boundaries of incorporated cities.

"Unincorporated Area Acceptable Waste" means Acceptable Waste originating from or generated within the Unincorporated Area.

"Unrestricted Reserves" means cash and other reserves of the Disposal System which are not Restricted Reserves.

"Waste Disposal Covenant" means the covenants and agreements of the City set forth in Section 3.1 hereof.

SECTION 1.2 INTERPRETATION. In this Agreement, unless the context otherwise requires:

(A) References Hereto. The terms "hereby", "hereof", "herein", "hereunder" and any similar terms refer to this Agreement, and the term "hereafter" means after, and the term "heretofore" means before, the Contract Date.

(B) Gender and Plurality. Words of the masculine gender mean and include correlative words of the feminine and neuter genders and words importing the singular number mean and include the plural number and vice versa.

(C) Persons. Words importing persons include firms, companies, associations, general partnerships, limited partnerships, trusts, business trusts, corporations and other legal entities, including public bodies, as well as individuals.

(D) Headings. The table of contents and any headings preceding the text of the Articles, Sections and subsections of this Agreement shall be solely for convenience of reference and shall not constitute a part of this Agreement, nor shall they affect its meaning, construction or effect.

(E) No Third Party Beneficiaries. Nothing in this Agreement is intended to confer on haulers or any other person other than the parties hereto and their respective permitted successors and assigns hereunder any rights or remedies under or by reason of this Agreement.

(F) Counterparts. This Agreement may be executed in any number of original counterparts. All such counterparts shall constitute but one and the same Agreement.

(G) Applicable Law. This Agreement shall be governed by and construed in accordance with the Applicable Laws of the State of California.

(H) Severability. If any clause, provision, subsection, Section or Article of this Agreement shall be ruled invalid by any court of jurisdiction, then the parties shall: (1) promptly meet and negotiate a substitute for such clause, provision, subsection, Section or Article which shall, to the greatest extent legally permissible, effect the intent of the parties therein; (2) if necessary or desirable to accomplish item (1) above, apply to the court having declared such invalidity for a judicial construction of the invalidated portion of this Agreement; and (3) negotiate such changes in, substitutions for or additions to the remaining provisions of this Agreement as may be necessary in addition to and in conjunction with items (1) and (2) above to effect the intent of the parties in the invalid provision. The invalidity of such clause, provision, subsection, Section or Article shall not affect any of the remaining provisions hereof, and this Agreement shall be construed and enforced as if such invalid portion did not exist, unless such invalidity frustrates the underlying primary purpose of the Agreement.

(I) Integration: Preservation of Certain Agreements. This Agreement contains the entire agreement between the parties with respect to the transactions contemplated hereby. This Agreement shall completely and fully supersede all prior understandings and agreements between the Parties with respect to such transactions; provided, however, that this Agreement shall not supersede the following agreements:

- 1) MOU, dated March 10, 1992, between the City of Brea and the County of Orange regarding the Olinda Alpha Landfill as amended on April 6, 1993 and November 29, 1994;
- 2) MOU, dated May 11, 1995, between the City of Brea and the County of Orange regarding importation of out-of-County waste to the Olinda Alpha Landfill;
- 3) Settlement Agreement, dated August 1, 1984, between the City of Irvine and the County of Orange regarding the Bee Canyon Landfill (currently called Frank R. Bowerman Landfill);
- 4) MOU, dated May 16, 1995, between the City of Irvine and the County of Orange regarding importation of out-of-County waste to the Frank R. Bowerman Landfill;
- 5) MOU, dated September 12, 1995, and amended November 21, 1995, between the City of San Juan Capistrano and the County of Orange regarding importation of out-of-County waste to the Prima Deshecha Landfill;
- 6) MOU, dated July 1, 1997, between the City of San Clemente[, the Orange County Flood Control District] and the County of Orange regarding the Prima Deshecha Landfill; and
- 7) Cooperative Agreement, dated August 15, 2006, between the County and the City of Irvine.

(J) Recitals. The recitals to this Agreement are not intended to bind the parties hereto. In the event of a conflict between the recitals and the operative provisions of this Agreement, the operative provisions shall prevail. The recitals shall not be used to interpret the provisions of the Agreement.

## ARTICLE II REPRESENTATIONS AND WARRANTIES

SECTION 2.1 REPRESENTATIONS AND WARRANTIES OF THE CITY. The City represents and warrants that:

(A) Existence. The City is a general law or charter city validly existing under the Constitution and laws of the State.

(B) Due Authorization. The City has duly authorized the execution and delivery of this Agreement, and this Agreement has been duly executed and delivered by the City.

SECTION 2.2 REPRESENTATIONS AND WARRANTIES OF THE COUNTY. The County represents and warrants that:

(A) Existence. The County is a political subdivision of the State of California validly existing under the Constitution and laws of the State.

(B) Due Authorization. The County has duly authorized the execution and delivery of this Agreement, and this Agreement has been duly executed and delivered by the County.

ARTICLE III  
DELIVERY AND ACCEPTANCE OF WASTE  
AND PROVISION OF DISPOSAL SERVICE

SECTION 3.1 DELIVERY OF WASTE.

(A) Waste Disposal Covenant. Subject to the occurrence of the Commencement Date and throughout the Term of this Agreement, the City shall exercise all legal and contractual power and authority which it may possess from time to time to deliver or cause the delivery of all Controllable Waste to the Disposal System in accordance herewith.

(B) Recycled City Acceptable Waste. The parties hereto acknowledge the responsibility of the City to meet the recycling and landfill diversion goals contained in the Act. Nothing in this Agreement is intended or shall be interpreted to prohibit or impair the ability of the City to meet such responsibilities, or to restrict the right of the residents, businesses or organizations in the City to practice source separation, recycling, composting or other materials recovery activities, or to restrict the right of the City to conduct, sponsor, encourage or require such activities in any form. No reduction in the amount of Controllable Waste generated in the City and delivered to the Disposal System by or on behalf of the City which may result from any such source separation or recycling program shall cause the City any liability hereunder (other than potential adjustment to the Contract Rate to the extent provided in Article IV hereof) and shall not constitute a breach of this Agreement.

(C) Waste Delivered to Transfer Station. All Residue from any processing of Controllable Waste by materials recovery, composting, recycling or other means, wherever performed, shall constitute Controllable Waste and be subject to the Waste Disposal Covenant. Where City Acceptable Waste is processed at a facility which concurrently processes other Acceptable Waste in a manner which produces commingled residue which cannot be traced to a geographic source, generic residues from such facility in Tonnage equal to the residues that would have been produced had City Acceptable Waste only been processed at the facility shall constitute Controllable Waste and be subject to the Waste Disposal Covenant. Any City Acceptable Waste or material derived or segregated therefrom which is held in storage and asserted by the possessor thereof to constitute Recycled City Acceptable Waste awaiting sale or distribution to the secondary materials markets shall constitute Controllable Waste if, when and to the extent that the storage or diversion thereof can be reasonably deemed to constitute an evasion of the Waste Disposal Covenant rather than generally recognized, accepted and prevailing practice in the Southern California materials recovery and recycling industry conducted in accordance with Applicable Law. In order for the owner and/or operator of a transfer station to be entitled to deliver Acceptable Waste from a Participating City to the Disposal System for the Contract Rate as provided in Article IV, such owner and/or operator must execute a direct agreement with the County, acknowledging and agreeing to comply with the obligation of the Participating City to cause the delivery of all Controllable Waste to the Disposal System pursuant to this Agreement. In addition, the County shall be authorized to implement procedures to determine if Acceptable Waste delivered by the owners or operators of Transfer Stations is entitled to utilize the Disposal System for the Contract Rate. Such procedures may include requiring Transfer Stations to certify, under penalty of perjury, the source of any such Acceptable Waste. If necessary, the County may require that, in order to qualify for use of the Disposal System for the Contract Rate, Transfer Stations must deliver Controllable Waste in loads containing only Controllable Waste, and not commingled with Acceptable Waste from entities which are not Participating Cities or Participating Independent Haulers.

(D) Power to Obligate Waste Disposal and Comply with this Agreement. On or before the Commencement Date, (i) any City franchise, contract, lease, or other agreement which is lawfully in effect relating to or affecting Controllable Waste shall provide, or shall have been amended to provide, that the City shall have the right without material restriction on and after the Commencement Date to direct the delivery of all Controllable Waste to a disposal location selected by the City (whether or not such Controllable Waste is delivered to a transfer station as an intermediate step prior to landfill disposal) and otherwise to comply with its obligations under this Agreement with respect to Controllable Waste and Franchise Haulers, and (ii) the City shall designate the Disposal System as the disposal location pursuant to such franchise, contract, lease or other agreement. On and after the Commencement Date and throughout the Term of this Agreement the City (a) shall not enter into any franchise, contract, lease, agreement or obligation, issue any permit, license or approval, or adopt any ordinance, resolution or law which is materially inconsistent with the requirements of the Waste Disposal Covenant, and (b) shall maintain non-exclusive or exclusive franchises or other contractual arrangements over any City Acceptable Waste which, as of the Contract Date, is subject to non-exclusive or exclusive franchise or other contractual arrangements. The City agrees that the County shall be a third party beneficiary of the obligation of Franchise Haulers to deliver Controllable Waste to the Disposal System, and may directly enforce such obligation through any legal means available. The City shall notify in writing each Franchise Hauler of the County's third party beneficiary rights.

(E) Waste Flow Enforcement. (1) The City, in cooperation with the Department, shall establish, implement, carry out and enforce a waste flow enforcement program which is sufficient to assure the delivery of all Controllable Waste to the Disposal System pursuant to and in accordance with the Waste Disposal Covenant for disposal at the times and in the manner provided herein. The waste flow enforcement program shall consist of amending City franchises, permits or authorizations with all Franchise Haulers, to the extent required by this Section and to the extent allowed by law, and shall include in addition, to the extent necessary and appropriate in the circumstances to assure compliance with the Waste Disposal Covenant, but shall not be limited to: (i) licensing or permitting Franchise Haulers, upon the condition of compliance with the Waste Disposal Covenant, (ii) providing for and taking appropriate enforcement action under any such franchise, license, or permit, such as but not limited to the suspension, revocation and termination of collection rights and privileges, the imposition of fines or collection of damages, and the exercise of injunctive relief against non-complying Franchise Haulers and (iii) causing any Transfer Station to which Controllable Waste is delivered for processing to deliver certification, under the penalty of perjury, of the amounts of Controllable Waste received and Residue remaining from processing at such Transfer Station.

(2) The City acknowledges and agrees that in the event of a breach of the Waste Disposal Covenant by the City, the City shall pay the County an amount equal to the amount that the City would have been required to pay to the County had the Waste Disposal Covenant not been breached, which shall be calculated by (x) subtracting the number of tons actually delivered during the month(s) of the breach from the number of tons that were delivered during the same month(s) closest in time when there was no such breach, even if such month(s) closest in time was prior to the Term, and (y) multiplying such amount by the Contract Rate in effect at the time of such breach (or any higher rate with respect to which the County has provided notice pursuant to Section 4.2). In the event that the County terminates the Waste Disposal Agreement as a result of such breach, the damages due as a result of such termination shall be equal to (aa) the average monthly deliveries by the City for the twelve months prior to the commencement of the breach multiplied by (bb) the Contract Rate in effect at the time of such breach (or any higher rate with respect to which the County has provided notice pursuant to Section 4.2), multiplied by (cc) the number of months that would have remained in the Term of the Agreement had the termination not occurred. The parties recognize that if the City fails to meet its obligations hereunder, the County will suffer damages and that it is and will be impracticable and extremely difficult to ascertain and determine the exact amount of such damages. Therefore, the parties agree that the damages specified above represent a reasonable estimate of the amount of such damages, considering all of the circumstances existing on the date hereto, including the relationship of the sums to the range of harm to the County that reasonably could be anticipated and anticipation that proof of actual damages would be costly or inconvenient. In signing this Agreement, each party specifically confirms the accuracy of the statements made above and the fact that each party had ample opportunity to consult with legal counsel and obtain an explanation of this liquidated damage provision at the time that this Agreement was made.

(F) Legal Challenges to Franchise System. The City shall use its best efforts to preserve, protect and defend its right to exercise and comply with the Waste Disposal Covenant against any challenge thereto, legal or otherwise (including any lawsuits against the City or the County, whether as plaintiff or defendant), by a

Franchise Hauler or any other person, based upon breach of contract, violation of law or any other legal theory. The City shall bear the cost and expense of any such Legal Proceeding or other challenge. In the event any such Legal Proceeding relating to the Waste Disposal Covenant or the City's exercise thereof establishes in a final determination that such covenant or exercise thereof is void, unlawful or unenforceable, or if any Franchise Hauler fails to deliver Controllable Waste to the Disposal System in breach of its franchise with the City on the grounds that a judicial determination made by any court or other Applicable Law has rendered its obligation to deliver Controllable Waste to the Disposal System void, unlawful or unenforceable on any legal grounds, with the result that actual waste deliveries to the Disposal System fall below the Cumulative Tonnage Targets, the County shall be entitled to avail itself of the remedies described in Section 4.2(B) hereof.

(G) Franchise Haulers. The City shall compile and provide the Department with the following information concerning all Franchise Haulers: name, address and phone number; identification number; area of collection and transportation; and franchise and permit terms.

(H) Waste Information System. The City shall cooperate with the Department in collecting information and otherwise monitoring Franchise Haulers in order to assure compliance with this Agreement. Such information may include, to the extent practicable, data pertaining to Controllable Waste collected, transported, stored, processed and disposed of, Recycled City Acceptable Waste collected, transported, stored, processed and marketed or disposed of, Franchise Haulers' franchise, permit or license terms, collection areas, transportation routes and compliance with Applicable Law; and all other information which may reasonably be required by the Department in connection with this Agreement. The City agrees to include in any revised franchise, contract, license or permit or other authorization granted to Franchise Haulers an obligation of the Franchise Hauler to provide to the County information relating to the Controllable Waste collected by such Franchise Hauler, including origins from which such Controllable Waste was collected, tonnage by type of load (residential, commercial, roll-off box), customer service levels, tonnage delivered by transfer station or material recovery facility utilized, and other related information.

(I) City Actions Affecting County. The City agrees to carry out and fulfill its responsibilities under this Agreement and Applicable Law so as to permit full and timely compliance by the County with its covenants and agreements with the State. In particular, the City agrees not to conduct, authorize or permit any disposal services for Controllable Waste to be provided in competition with the Disposal Services provided by the County hereunder, and not to take or omit to take any action with respect to Controllable Waste or its collection, transportation, transfer, storage, treatment or disposal that may materially and adversely affect the County's ability to achieve such timely compliance. Notwithstanding the foregoing, the City shall not be required to deny any permit or license or refuse to grant any approval while exercising its police powers.

(J) No Right of Waste Substitution. Nothing in this Agreement shall authorize or entitle the City to deliver or cause the delivery to the Disposal System of Acceptable Waste originating from or generated outside the jurisdiction of the City, nor obligate the County to receive or dispose of any such Acceptable Waste. The City shall not assign in whole or in part its right to deliver or cause to be delivered Controllable Waste to the County hereunder, and shall not permit any Acceptable Waste originating from or generated outside the jurisdiction of the City to be substituted for Controllable Waste for any purpose hereunder.

(K) Annexations and Restructuring. It is the intention of the parties that this Agreement and the obligations and rights of the City hereunder, including particularly the Waste Disposal Covenant and the Contract Rate, shall, to the extent permitted by Applicable Law, extend to any territory annexed by the City (or any territory with respect to which the City assumes, after March 30, 2008, solid waste management responsibility from a Sanitary District or other public entity) and shall bind any successor or restructured Governmental Body which shall assume or succeed to the rights of the City under Applicable Law.

### SECTION 3.2 PROVISION OF DISPOSAL SERVICES BY THE COUNTY.

(A) Service Covenant. Commencing on the Commencement Date, the County shall provide or cause the provision of the service of (1) receiving and disposing of all Controllable Waste at the Disposal System (or such other facilities, including transfer stations, as the County may determine to use), (2) disposing in accordance with subsection 3.2(C) hereof of Controllable Waste which, at any time and for any reason, is in excess

of the disposal capacity of the Disposal System, and (3) in accordance with subsection 3.3(C) hereof, disposing of Unacceptable Waste inadvertently accepted at the Disposal System. The County, to the maximum extent permitted under Applicable Law, shall use its best efforts to keep the Olinda Alpha, Prima Deshecha and Frank R. Bowerman Landfills open for the receipt of waste for disposal or transfer of Controllable Waste pursuant to this Agreement. The County shall do and perform all acts and things which may be necessary or desirable in connection with its covenants in this subsection, including without limitation all planning, development, administration, implementation, construction, operation, maintenance, management, financing and contract work related thereto or undertaken in connection therewith. The County shall exercise all reasonable efforts to minimize the costs incurred in complying with the Service Covenant consistent with its responsibilities hereunder and under this Agreement, Applicable Law and prudent solid waste management practice and environmental considerations.

(B) Particular Facilities. The Department and the City shall consult and cooperate in determining whether and to what extent from time to time other landfills other than that primarily used by the City shall be utilized to receive Controllable Waste. The Department shall immediately advise the City by telephone of any situation, event or circumstance which results in the partial or complete inability of the County to receive Controllable Waste at any particular landfill within the Disposal System, its effect on the County's ability to perform its obligations hereunder, and the County's best estimate of the probable duration. The Department shall confirm such advice in writing within 24 hours of the occurrence of any such inability. The County shall use its best efforts to resume normal operation of the landfill primarily used by the City as soon as possible. In the event of a temporary material increase in average daily deliveries of Controllable Waste from the City which the County reasonably believes could result in the permitted daily disposal capacity limit to be exceeded with respect to a particular landfill within the Disposal System, the County shall have the right to redirect the increased Controllable Waste to another landfill within the Disposal System for the duration of the increase in average daily deliveries; provided, however, that in such circumstances the County shall utilize reasonable efforts to first redirect waste which is not Controllable Waste.

(C) Compliance with Service Covenant Not Excused for any Reason. Commencing on the Commencement Date, the obligations of the County to duly observe and comply with the Service Covenant shall apply continuously and without interruption for the Term of this Agreement. In the event that any Change in Law or other Uncontrollable Circumstance impairs or precludes compliance with the Service Covenant by the means or methods then being employed by the County, the County shall implement alternative or substitute means and methods to enable it to satisfy the terms and conditions of the Service Covenant. In the event that a Change in Law precludes the County from complying with such covenants with the means or methods then being employed and from utilizing any alternate or substitute means or methods of compliance, the County shall continuously use all reasonable efforts to effectuate executive, legislative or judicial change in or relief from the applicability of such law so as to enable the County lawfully to resume compliance with such covenants as soon as possible following the Change in Law.

### SECTION 3.3 COUNTY RIGHT TO REFUSE WASTE.

(A) Right of Refusal. Notwithstanding any other provision hereof, the County may refuse delivery of:

- (1) Hazardous Waste;
- (2) Controllable Waste delivered at hours other than those provided in Section 3.5 hereof;
- (3) Waste that does not constitute Acceptable Waste;
- (4) Waste that is delivered by any party which has not executed a Waste Disposal Agreement; and
- (5) Controllable Waste consisting primarily of construction and demolition debris or inerts which may cause a particular facility's daily tonnage limit to be exceeded.

(B) Identification of Unacceptable Waste. The Department shall have the right (but not the duty or the obligation) to inspect the vehicles of all Franchise Haulers delivering material to the Disposal System, and may require that the Franchise Hauler remove any Unacceptable Waste from such vehicle before it is unloaded. If the Department determines that it is impractical to separate Controllable Waste from Unacceptable Waste in any vehicle, or if the Franchise Hauler delivering such waste is unwilling to make such separation, or if any vehicle is carrying waste which may spill or leak, then the Department may reject the entire vehicle, and the City shall forthwith remove or cause the removal of the entire delivery from the Disposal System. The Department may take all reasonable measures to prevent waste from being blown or scattered before and during unloading. The City shall cause the Franchise Haulers to observe and comply with Applicable Law, the operating rules and regulations of the Department, and the provisions of this Agreement prohibiting the delivery of Unacceptable Waste to the Disposal System.

(C) Hazardous Waste and Hazardous Substances. The parties acknowledge that the Disposal System has not been designed or permitted, and is not intended to be used in any manner or to any extent, for the handling, transportation, storage or disposal of Hazardous Waste or Hazardous Substances. Neither the County nor the City shall countenance or knowingly permit the delivery of Hazardous Waste or Hazardous Substances to the Disposal System.

(D) Disposal of Unacceptable Waste and Hazardous Waste. If Unacceptable Waste or Hazardous Waste is discovered in a vehicle at any landfill within the Disposal System, the driver of the vehicle will not be permitted to discharge the load. If a vehicle is observed unloading Unacceptable Waste or Hazardous Waste in the tipping area of a landfill within the Disposal System Department personnel will use reasonable efforts to assure that such material has been characterized, properly secured and its disposition resolved. The return or reloading onto the delivery vehicle of any Hazardous Waste, Prohibited Medical Waste or other waste requiring handling or transportation shall be conducted in accordance with Applicable Law. Whenever Hazardous Waste is detected at any landfill within the Disposal System, the Department shall take immediate action in accordance with Applicable Law.

(E) Source-Separated Household Hazardous Waste. The County shall maintain, as part of the Disposal System, a Source-Separated Household Hazardous Waste Disposal System for the disposal of Source-Separated Household Hazardous Waste. The disposal service provided by such system shall constitute part of the Disposal Services, and shall be available to Participating Cities as part of the Contract Rate. The County may impose additional fees and charges for services relating to Source-Separated Household Hazardous Waste with respect to cities which are not parties to a Disposal Agreement. The County may provide for the expansion, contraction or modification of the Source-Separated Household Hazardous Waste Disposal System and its services to the extent necessary to ensure the Disposal System's viability; provided, however, if the County chooses to reduce services, the County shall nonetheless continue to expend funds for the Source-Separated Household Hazardous Waste Disposal System each year during the term of this Agreement in an amount at least equal to the amount of funds expended for the Source-Separated Household Hazardous Waste Disposal System during fiscal year 2006-07 as adjusted by changes in the Producer Price Index.

SECTION 3.4 UNINCORPORATED AREA ACCEPTABLE WASTE. Commencing on the Commencement Date, the County in accordance with Applicable Law shall provide or cause to be provided the service of disposing of non-recycled Acceptable Waste originating or generated within the Unincorporated Area and, with respect to such waste, shall comply with the Waste Disposal Covenant as if the County constituted a City subject to the Waste Disposal Covenant hereunder. Rates charged by the County for the disposal of each class of non-recycled Acceptable Waste generated in the Unincorporated Area shall be the same as the Contract Fee charged for the disposal of each class of Controllable Waste. The County shall use its best efforts to preserve, protect and defend its right to exercise and comply with the Waste Disposal Covenant (with respect to non-recycled Acceptable Waste generated in the Unincorporated Area) against any challenge thereto, legal or otherwise, by a Franchise Hauler or any other person, based upon breach of contract, violation of law or any other legal theory. The County shall bear the cost and expense of any such Legal Proceeding or other challenge (with respect to non-recycled Acceptable Waste generated in the Unincorporated Area).

SECTION 3.5 MISCELLANEOUS OPERATIONAL MATTERS.

(A) Operating Hours. The County shall keep the Disposal System open for the receiving of Controllable Waste during such regular operating hours as may be established by the Department in the operating rules and regulations applicable to the Disposal System. The County shall utilize best efforts to maintain substantially similar hours, as were in effect on January 2, 2009, for the receipt of waste through the term of this Agreement (subject to Applicable Law).

(B) Scales and Weighing. The Department shall operate and maintain permanent scales at the Disposal System. The Department shall weigh all vehicles delivering waste by or on behalf of the City (whether or not the County accepts such waste) and prepare a daily weight record with regard to such delivery.

(C) Service Coordinator. The County and the City each shall designate in writing thirty days prior to the expected Commencement Date a person to transmit instructions, receive information and otherwise coordinate service matters arising pursuant to this Agreement (each a "Service Coordinator"). Either party may designate a successor or substitute Service Coordinator at any time by notice to the other party.

(D) Review of Records. Each party may review the other party's books and records with respect to matters relevant to the performance by either party under this Agreement or otherwise related to the operation of the Disposal System to the extent allowed under the California Public Records Act (interpreted as if the parties to this Agreement were natural persons for purposes of the Public Records Act).

SECTION 3.6 OTHER USERS OF THE DISPOSAL SYSTEM.

(A) On or Before [ \_\_\_\_\_, 2009]. On or before [120 DAYS AFTER BOARD APPROVAL], the County shall have the right to enter into waste disposal agreements with Orange County entities with respect to Acceptable Waste which was originally discarded by the first generator thereof within the geographical limits of the County, including other cities in the County, Sanitary Districts, Transfer Stations and Independent Haulers, which waste disposal agreements shall have terms and provisions substantially identical to the terms and provisions of this Agreement; provided, however, that in no event shall such agreements have terms and provisions more favorable than the terms and provisions of this Agreement (including but not limited to the Contract Rate and availability of disposal capacity).

(B) After [ \_\_\_\_\_, 2009]. After [120 DAYS AFTER BOARD APPROVAL], the County shall have the right to enter into waste disposal agreements with Orange County entities, including any city, Sanitary District, Transfer Station and Independent Hauler, or otherwise accept Acceptable Waste from such parties, but only within the limitations contained in this Section. Any such agreement or waste acceptance agreement must provide that the party delivering waste shall pay a Posted Disposal Rate at least 10% higher than the Contract Rate unless the County determines it is in the best interest of the Disposal System to establish a Posted Disposal Rate less than 10% higher than the Contract Rate. In no event shall the Posted Disposal Rate be equal to or less than the Contract Rate. In addition, the County shall reserve the right in any such waste disposal agreement at any time, to the extent permitted by Applicable Law, to refuse to receive and dispose of Acceptable Waste from any city, County Sanitary District, Transfer Station and Independent Hauler if and to the extent that such receipt and disposal may materially and adversely affect the ability of the County to comply with its obligations to the Participating Cities under the Disposal Agreements to which each is a party.

(C) Receipt of Imported Acceptable Waste on a Contract Basis. The County shall have the right to enter into a contract or other agreement with any municipal or private non-County entity for the delivery of Imported Acceptable Waste on terms and conditions that the County determines to be necessary to ensure and enhance the viability of the Disposal System for the benefit of the County and the Participating Cities and to generate Net Import Revenues. The County certifies that in its good faith judgment the contract or other agreement for the delivery of such waste will not materially and adversely affect the ability of the County to receive and dispose of Acceptable Waste from the Participating Cities in accordance with the applicable Disposal Agreements throughout the Term thereof. The term of any such agreement for the disposal of Imported Acceptable Waste shall end by the later to occur of (i) December 31, 2015 or (ii) the date on which County general purpose revenues are no longer expended to pay debt service on the Orange County Public

Financing Authority Lease Revenue Refunding Bonds Series 2005, but in no event later than the last day of the fiscal year commencing July 1, 2015.

(D) Self Haulers. The City and the County acknowledge that Self-Haulers shall be entitled to deliver Self-Hauled Waste to the Disposal System, on a non-contract basis, at the Posted Disposal Rate. Such Self-Haulers shall not be entitled to dispose of Acceptable Waste for the Contract Rate.

(E) Application and Use of Revenues From Other Users. All revenues received by the County from the disposal of County Acceptable Waste by the Disposal System, and all revenues received by the County from the disposal of Imported Acceptable Waste by the Disposal System, shall be deposited by the County in the County OC Waste & Recycling Enterprise Fund and shall constitute revenues of the Disposal System. Pursuant to the County's Plan of Adjustment, the County is entitled to receive net revenues (after payment of all costs attributable to the acceptance of such Imported Acceptable Waste at the Disposal System) ("Net Import Revenues") from the disposal of Imported Acceptable Waste by the Disposal System, and such Net Import Revenues may be used for the payment of bankruptcy related obligations in accordance with the Plan of Adjustment. Costs attributable to the disposal of Imported Acceptable Waste include deposits to the Environmental Fund, deposits to closure and postclosure reserves, City host fees (if applicable), incremental operating costs (such as manpower expenditures, equipment, services and supplies expenditures), state surcharges, and a pro rata share of capital project costs. The parties acknowledge that their intention in determining to allow the importation of Imported Acceptable Waste for disposal by the Disposal System is to stabilize the Contract Rate at rates below those which would otherwise prevail in the absence of such importation.

#### SECTION 3.7 COUNTY PROVISION OF WASTE DIVERSION SERVICES.

(A) County-Wide Recycling Services. This Agreement does not require the County to provide for any source reduction, materials recovery, recycling, composting, or other waste diversion services by the County nor any payment therefor by the City, by Franchise Haulers or by ratepayers; provided, however, any County-Wide Recycling Services may be funded through the County OC Waste & Recycling Enterprise Fund. Any such recycling services may be expanded, contracted or modified by the County at any time in its sole discretion.

(B) Separate City-County Diversion Service Agreements. Nothing in this Agreement is intended to limit the right of the County to enter into a separate agreement with the City or any other person to provide source reduction, materials recovery, recycling, composting or other waste diversion services. Any such program conducted by the County, whether in participation with the City, any other of the Participating Cities, other Cities, Sanitary Districts, Transfer Stations, Independent Haulers, Unincorporated Area or non-County entity, shall be operated, managed and accounted for as a program separate and distinct from the Disposal Services program contemplated by the Disposal Agreements and shall not be funded through the general revenues of the Disposal System.

### ARTICLE IV CONTRACT RATE

SECTION 4.1 CHARGING AND SECURING PAYMENT OF CONTRACT RATE. The City acknowledges that the County shall have the right to charge and collect a Contract Rate for the acceptance and disposal of Controllable Waste delivered to the System by any Franchise Hauler. The Contract Rate shall be calculated and established, and may be modified, as provided in Section 4.2 hereof. In addition, the City acknowledges that the County shall have the right to establish as part of the operating rules and regulations reasonable measures to secure the payment of all Contract Rates.

#### SECTION 4.2 CONTRACT RATE.

(A) Establishment of Contract Rate. The Contract Rate payable by each Franchise Hauler shall be (x) \$22.00 per ton from the Commencement Date through June 30, 2010, and (y) \$29.95 per ton on and after July 1, 2010, in both cases contingent on the delivery to the Disposal System of an amount of Acceptable Waste at

least equal to the Cumulative Tonnage Targets identified in Appendix 2, and subject to adjustment necessary to reflect the circumstances set forth in this Section 4.2:

- (i) increased costs incurred by the County (in excess of available insurance proceeds) due to the occurrence of one or more Uncontrollable Circumstances, other than Changes in Law;
- (ii) costs incurred by the County (in excess of available insurance proceeds and amounts available in the Environmental Fund for such purposes) remediating environmental conditions at the Disposal System or inactive or closed disposal sites in the County, which, if uncorrected, could give rise to potential claims under CERCLA or related federal or state statutes, including costs incurred providing indemnification to any Participating City pursuant to subsection 7.3; or
- (iii) tonnage shortfalls to the extent permitted by Sections 4.2(B);
- (iv) average annual inflation prior to July 1, 2010 in excess of the levels set forth in Section 4.2(H) and escalation pursuant to Section 4.2(F) ;
- (v) increased costs incurred by the County (in excess of available insurance proceeds) due to the occurrence of one or more Changes in Law; or
- (vi) Capital Costs in excess of the Capital Costs at any point in time during the term hereof exceeding the Cumulative Capital Costs set forth in Appendix 3.

Prior to adjusting the Contract Rate as a result of any of the circumstances described in clauses (i), (ii) or (iii) above, the County shall utilize the following remedies in the following order of priority:

- (x) reduce the costs of operating the Disposal System to the extent practicable; and
- (y) utilize Unrestricted Reserves to pay costs of the Disposal System.

The County will not be required to utilize such remedies prior to adjusting the Contract Rate as a result of any of the circumstances described in clauses (iv), (v) or (vi) above.

Any adjustments to the Contract Rate permitted by this Section shall be calculated by the County to reflect the actual costs or expenses of addressing the circumstance or circumstances pursuant to which the adjustment is authorized. The County agrees that it will evaluate the feasibility of long term financing for significant capital costs where appropriate.

(B) County Acceptable Waste Shortfall. In the event that the actual amount of County Acceptable Waste delivered to the Disposal System at the end of any Contract Year is less than the Cumulative Tonnage Target for such Contract Year for County Acceptable Waste, as specified in Appendix 2, the County shall utilize the following options, in the following order of priority, in order to remedy any adverse effects of such tonnage shortfall:

- (i) reduce the costs of operating the Disposal System to the extent practicable;
- (ii) utilize Restricted Reserves described in clause (iii) of Section 4.5 to pay costs of the Disposal System;
- (iii) utilize Unrestricted Reserves to pay costs of the Disposal System; and
- (iv) adjust the Contract Rate.

In the event that implementation of the steps described above does not result in sufficient revenues to satisfactorily address the shortfall in tonnage, the County shall have the right to terminate the Agreement on 60 days written

notice to the City. In addition, in the event that actual deliveries to the Disposal System exceed the Cumulative Tonnage Target as of the end of any Contract Year, the City acknowledges the County shall have the right to establish reserves intended to reflect the potential for lower than expected annual waste deliveries in subsequent years, and that any such reserves shall constitute "Restricted Reserves".

(C) [RESERVED]

(D) Interim Use of Remedies. In the event that, during any Contract Year, waste deliveries to the Disposal System are 25% or more below delivery projections for such Contract Year with the result that the County determines it is unlikely that the Cumulative Tonnage Target will be achieved as of the end of such Contract Year, the County may utilize the remedies described in Section 4.2(B) prior to the end of such Contract Year; provided, however, that if at the end of such Contract Year, the Cumulative Tonnage Target is actually met, the County shall reimburse any adjustments to the Contract Rate made pursuant to this Section to Participating Cities. Such reimbursement may be given as a credit or adjustment to the Contract Rate for future deliveries, rather than a lump sum payment.

(E) Special Charges. Notwithstanding Section 4.2(A), the County shall have the right to impose special charges for the receipt of hard to handle materials, such as bulky materials, construction and demolition debris, tree stumps and sludge. Such special charges shall be calculated to reflect the reasonable incremental costs to the County of accepting such hard to handle materials. In addition, in the event that the Board of Supervisors of the County makes a determination to implement a facility (including but not limited to a transfer station, landfill, conversion technology facility, or a materials recovery or processing facility), which facility would be intended to provide for disposal alternatives after the closure of one or more of the landfills currently operating within the Disposal System, the County may impose an additional charge of \$0.50 per ton of Acceptable Waste in order to pay the costs of the study, development, planning, construction and/or operation of such facility.

Adjustments pursuant to this Section 4.2(E) shall not require compliance with the provisions of Section 4.2(1).

(F) Escalation. The Contract Rate shall be adjusted each July 1, beginning July 1, 2011. The change will be equal to the positive percentage change in the Consumer Price Index – All Urban Consumers, U.S. city average, All items, Not Seasonally Adjusted, Series ID CUUR0000SA0 ("CPI") as measured from the October 21 months prior to the rate adjustment to the October immediately preceding the rate adjustment. For example: The July 1, 2011 rate adjustment shall be based upon the index change from October 2009, to October 2010, referred to as year 1 and year 2 respectively in the following example .

Formula to calculate percentage change in the Contract Rate:

Step 1:

$$\left[ \frac{\text{October Year 2 CPI}}{\text{October Year 1 CPI}} \right] - 1 = \% \text{ increase in Contract Rate}$$

Step 2: Current Contract Rate x (1+ % increase in Contract Rate) = Contract Rate as of July 1 Year 2

On each April 1, commencing April 1, 2011, the County shall provide the City with notice of the adjustment to the Contract Rate to be effective the following July 1. Such notice shall contain the calculation of the adjustment set forth above. The County will calculate the new Contract Rate each year.

In the event that the change in the CPI is negative, no rate adjustment will be made for that year. No adjustment under this Section 4.2(F) will take place until the October CPI index surpasses the index level as of the October immediately preceding the last annual rate adjustment pursuant to this Section 4.1(F), which will be considered "year 1" in calculating the change in the Contract Rate.

For example, if the CPI is measured as follows: October 2009 = 205, October 2010 = 204, October 2011 = 201, October 2012 = 208, then there would be no adjustment in July 2011, or July 2012, and an adjustment equal to the change from 205 to 208 would be implemented on July 1, 2013.

Adjustments pursuant to this Section 4.2(F) shall not require compliance with the provisions of Section 4.2(I).

(G) Adjustment Resulting from Increased Fees. In addition to the other adjustments specified herein, the Contract Rate shall be adjusted to reflect the imposition of new fees or increase in existing fees relating to the disposal of Controllable Waste imposed by state, federal or other agencies (i.e., the State's Integrated Waste Management fee, which is currently \$1.40 per ton). The adjustment shall be equal to the amount of any new or increased fee, and the adjustment shall take effect so as to coincide with the imposition of the new or increased fee. The County shall provide notice of any increase pursuant to this Section 4.2(G) as soon as practicable after becoming aware of the imposition of any fees described above.

Adjustments pursuant to this Section 4.2(G) shall not require compliance with the provisions of Section 4.2(I).

(H) Calculation of Cumulative Inflation Rate. For purposes of Section 4.2(A)(iv) for adjustments prior to July 1, 2011, the inflation shall be calculated as the change in the CPI between July of the year of calculation and July 1, 2008. Inflation shall be deemed to exceed the levels set forth below if the ratio between the CPI for July for the year of calculation (calculated in accordance with the formula below) and July 2008 exceeds the ratio corresponding to such year of calculation on the table below. The ratio shall be calculated in accordance with the following formula:

(July CPI of calculation year / CPI for July 2008)

<i>Year of Calculation</i>	<i>Ratio</i>
July 1, 2008	1.0000
July 1, 2009	1.0356
July 1, 2010	1.0723

In the event the CPI is no longer published during the term of this Agreement, such other index identified by the Bureau of Labor Statistics or otherwise generally accepted as a replacement for CPI shall be used for purposes of this Agreement. In the event of an adjustment to the Contract Rate pursuant to this section 4.2(H), such adjustment shall be applied to the Contract Rate effective until June 30, 2010, and the Contract Rate effective July 1, 2010.

Adjustments pursuant to this Section 4.2(H) shall not require compliance with the provisions of Section 4.2(I).

(I) Procedure for Rate Adjustments. In the event the County determines that it is entitled to an adjustment of the Contract Rate pursuant to Section 4.2(A) (other than 4.2(A)(iv)) or Section 4.2(B), it shall utilize the procedures described in this Section 4.2(I). The County shall be required to provide the City with at least 90 days prior written notice of the adjustment, which notice shall identify the specific event(s) or circumstances which require the adjustment. The notice shall also specify the earliest date on which the County Board of Supervisors shall consider the proposed adjustment. At least 45 days prior to such meeting of the Board of Supervisors, the County shall provide the City with a report which shall contain the following information: a description of the specific event(s) or circumstances which require the adjustment; a description (including cost estimates) of any activities (which may include, but not be limited to capital improvements to the Disposal System) required in order to remedy such event or circumstance; certification by the County that it has implemented the remedies described in Section 4.2(A) or (B) prior to requiring the rate adjustment; and a description of the methodology used by the County to calculate the adjustment to the Contract Rate (hereinafter the "County Report"). In the event the City disputes the adjustment, it shall provide the County with a written description of the reason for the dispute at least 10 days prior to the meeting of the Board of Supervisors identified in the initial notice of the County (hereinafter the "City Report"). The City Report shall be provided to the Board of Supervisors for

consideration at such meeting in connection with the proposed rate adjustment. At any time from and after the date that the County provides the City with the County Report, upon the request of either party, the City and County shall meet and confer in good faith to resolve any dispute that may arise regarding the proposed adjustment to the Contract Rate. In any such meeting, the County shall be represented by the Director of the Department or his or her designee. In the event the Board of Supervisors approves all or a portion of the proposed rate adjustment, such rate adjustment shall become effective on the date identified in the initial notice sent by the County regardless of whether or not the procedures in Section 4.2(J) are utilized, but subject to potential reimbursement pursuant to clause (11) of Section 4.2(J).

(J) Procedure for Expedited Judicial Review of Contested Rate Adjustment. In the event that, within 30 days after the effective date of any Contract Rate adjustment made pursuant to Section 4.2(I), Participating Cities which, in the aggregate, accounted for more than 50% of the County Acceptable Waste delivered to the County System in the twelve months preceding the Contract Rate adjustment, provide notice to the County of their election to utilize the procedures described in this Section 4.2(J), then the provisions of this Section 4.2(J) shall be utilized by such Participating Cities and the County to resolve the dispute over the Contract Rate Adjustment. In the event that Participating Cities which have delivered the amount of waste contemplated in the preceding sentence do not provide notice to the County of such election, the County shall have no obligation to participate in or cooperate in the implementation of the procedures described below in this Section 4.2(J).

(1) In order to pursue the expedited judicial determination described in this Section (the "Expedited Rate Determination"), the Participating Cities which have made the election described in the paragraph above (the "Challenging Cities") must commence a civil action for breach of contract (the "Action") in the Orange County Superior Court within 45 days of the date on which the Board of Supervisors approves the challenged adjustment to the Contract Rate.

(2) Within two (2) days of filing the Action, the Challenging Cities shall personally serve on the County Counsel both the summons and complaint, and a stipulation and request for the entering of an order incorporating all of the procedural provisions relating to the Expedited Rate Determination as set forth in this Section 4.2(J) (such stipulation and request for order is hereinafter referred to as the "Expedited Rate Determination Stipulation"). The Expedited Rate Determination Stipulation shall be signed by each of the Challenging Cities.

(3) Within fifteen (15) days of the date of service upon the County of the summons and complaint, and Expedited Rate Determination Stipulation, the County Counsel shall execute the Expedited Rate Determination Stipulation and personally serve upon the Challenging Cities through their counsel of record the Expedited Rate Determination Stipulation and its answer to the complaint in the Action. The Stipulation shall also include a waiver by each of the parties of their right to a jury trial of the issues raised in the Action. The City and the County mutually agree that the duty to execute the Expedited Rate Determination Stipulation and comply with the procedures set forth for Expedited Rate Determination in this Section 4.2(J) shall be, and are hereby deemed to be, ministerial duties which the law specifically enjoins upon each of them, and shall be subject to enforcement by the parties herein pursuant to Code of Civil Procedure Section 1085, *et seq.*, or by means of a complaint for specific performance.

(4) Within three (3) days of the date of service by the County upon the Challenging Cities of the fully signed Expedited Rate Determination Stipulation, the County and the Challenging Cities shall jointly make *ex parte* application to the Orange County Superior Court in the Action for the issuance of the order contained in the Expedited Rate Determination Stipulation. At such *ex parte* application, the County and the Challenging Cities shall also seek to confirm with the Orange County Superior Court the briefing schedule, and request a hearing date in accordance with the procedures set forth in this Section 4.2(J).

(5) Within ten (10) days of the date of service by the County upon the Challenging Cities of the answer in the Expedited Rate Determination, the Challenging Cities shall file with the court and personally serve upon the County the Challenging Cities' opening brief and the Record in the Expedited Rate Determination. The opening brief shall not exceed 15 pages in length. The Record shall consist of, and be limited to, the record of the proceedings before the Board of Supervisors with respect to the adjustment of the Contract Rate, including but not limited to the County Report and the City Report prepared by each or any of the Challenging Cities pursuant to Section 4.2(I), any materials filed or lodged with the Board of Supervisors and the Orange County

Waste Commission, the transcript of the proceedings of the Board of Supervisors meeting and the Orange County Waste Commission, the minutes of the Board of Supervisors and the Orange County Waste Commission meeting, and the resolution and/or other documentation evidencing action by the Board of Supervisors and the Orange County Waste Commission to adjust the Contract Rate pursuant to Section 4.2(A) or (B). The record shall also include the most recent reports prepared pursuant to Sections 4.6 and 4.7. The Expedited Rate Determination shall be decided solely on the evidence in the Record, and no extrinsic evidence shall be submitted to or considered by the court.

(6) Within ten (10) days of service by the Challenging Cities of their opening brief and the Record, the County shall file and personally serve upon the Challenging Cities the County's opposition brief. The opposition brief shall not exceed 15 pages in length.

(7) Within five (5) days of service by the County upon the Challenging Cities of the opposition brief, the Challenging Cities may file and personally serve upon the County a rebuttal brief, which shall not exceed 10 pages in length.

(8) The trial of the Expedited Rate Determination shall be conducted as a hearing which shall be conducted at the date set by the court in the *ex parte* hearing conducted pursuant to Section 4.2(J)(4), or such other date and time ordered by the court. If the court requests the parties to prepare supplemental briefs in response to any question or issue raised by the court, the parties may do so.

(9) The standard of review for the Expedited Rate Determination shall be the preponderance of the evidence based upon the Record. The burden of proof shall be borne by the Challenging Cities, and the burden of proof shall be the same as with respect to a plaintiff in a damages action for breach of contract. Both parties have participated in the drafting of this Agreement. Accordingly, nothing set forth in this Agreement shall be interpreted or construed for or against either of the parties as a consequence of their participation in the drafting of this Agreement.

(10) The court shall issue its written statement of decision and enter judgment within thirty (30) days of the date of the hearing in the Expedited Rate Determination.

(11) If the court determines that any portion of the County's adjusted Contract Rate which is the subject of the Expedited Rate Determination was improperly imposed, the County shall, within 30 days of the date of the statement of decision, reimburse to the City the amount improperly imposed, together with interest calculated at the highest percentage rate that does not constitute usury under California laws. Such reimbursement may be made in the form of a reduction in the Contract Rate for a future period (not to exceed twelve months) reasonably calculated to provide full reimbursement of the amounts described above.

(12) If for any reason the court does not sign the order contained in the Expedited Rate Determination Stipulation, the City shall, within 30 days of the court's denial of such requested order, file with the court and personally serve upon the County a motion for summary judgment and/or motion for judgment on the pleadings, in accordance with Code of Civil Procedure Section 437(c) and 438. By executing this Agreement, the parties hereby stipulate that, in the event that the Challenging Cities file such summary judgment motion and/or motion for judgment on the pleadings, the Record shall be deemed to have been incorporated into the complaint and answer filed by the Challenging Cities and the County, and no evidence outside of the Record is relevant or material to the dispute raised in the Expedited Rate Determination. The briefing schedule and hearing on such motion for summary judgment and/or motion for judgment on the pleadings shall be in accordance with Code of Civil Procedure Section 437(c). The Challenging Cities and the County shall be bound by all of the requirements and restrictions set forth in Section 4.2(J) that are not in conflict with this paragraph (12).

(13) In the event that the court both does not sign the order contained in the Expedited Rate Determination Stipulation and either does not hear or does not issue a ruling on the merits on the motion for summary judgment and/or judgment on the pleadings which is dispositive of the issues, claims and causes of action in the complaint filed by the Challenging Cities, the County and the Challenging Cities shall, within twenty days following the issuance of the Court's order or decision not to honor the parties' stipulation or not to hear the parties' motion for summary judgment, make application to the Presiding Judge of the Orange County

Superior Court for an expedited hearing or trial date. The Challenging Cities and the County shall be bound by all of the requirements and restrictions set forth in Section 4.2(J) that are not in conflict with this paragraph (13). In this regard, and without limiting the foregoing, the only evidence to be presented at the hearing or trial shall be the Record, no testimony shall be presented at the hearing or trial; and both the County and the Challenging Cities waive all rights to a jury trial, to any reconsideration of the decision of the court, to a new trial after the court renders a decision, and to any appeal or review of the decision of the court.

**SECTION 4.3 RESPONSIBILITY FOR PAYMENT OF THE CONTRACT RATE.**

(A) Payment by City. In the event and to the extent (1) the City uses municipal collection forces directly for the haulage of Controllable Waste to the Disposal System or (2) the City uses non-municipal Franchise Haulers for collection but nonetheless elects to pay the Contract Rate from City revenues, the City, as its own Franchise Hauler, shall have direct responsibility for payment of the Contract Rate, and shall take all such budgetary, appropriation and other action as may be necessary to provide for the timely payment of the Contract Rate. Such action may include, depending upon the means authorized by the City to provide for such payment, the levy and collection of general or special taxes, the imposition of benefit assessments, or the collection of user fees, generator charges or other similar impositions for municipal solid waste disposal. The City shall use best efforts in accordance with Applicable Law to levy and impose all such taxes, assessments, fees or charges, and will take all steps, actions and proceedings for the enforcement, collection and payment of all such amounts which shall become delinquent, to the full extent permitted by Applicable Law. To the extent provided in Section 7.5 hereof, the obligation of the City for such Contract Rates shall be limited to amounts in the City's Solid Waste Enterprise Fund. From the Commencement Date to the date of expiration or termination of this Agreement, the obligation to the City to pay the Contract Rate, to the extent the City rather than Franchise Haulers is responsible directly for payment and provided that the Service Covenant has been complied with, shall be absolute and unconditional and shall not be subject to delay or diminution by reason of set-off, abatement, counterclaim, existence of a dispute or otherwise.

(B) Payment by Franchise Haulers. With respect to Controllable Waste delivered by Franchise Haulers other than City municipal collection forces, the obligation to pay the Contract Rate shall rest with such Franchise Haulers and not with the City and, unless the City has agreed with the County to be responsible for Franchise Hauler payments, the City shall not be financially responsible for any delay or failure by such Franchise Hauler to pay the Contract Rate or any portion thereof when due. In the event of any such failure, the County and the City shall cooperate with each other and use their best efforts to obtain timely payment. Such efforts by the County may include, as appropriate, requiring cash payments for disposal rights from such Franchise Hauler and bringing a legal proceeding for payment and damages. Such efforts by the City may include, as appropriate, legal proceedings to suspend, revoke or terminate the Franchise Hauler's franchise, permit or license rights.

(C) Disputes. If the City or the Franchise Hauler disputes any amount billed by the County in any Billing Statement, the City or the Franchise Hauler shall nonetheless pay the billed amount and shall provide the County with written objection within 30 days of the receipt of such Billing Statement indicating the amount that is being disputed and providing all reasons then known to the City or the Franchise Hauler for any objection to or disagreement with such amount. If the City or the Franchise Hauler and the County are not able to resolve such dispute within 30 days after the City's or the Franchise Hauler's objection, either party may pursue appropriate legal remedies.

**SECTION 4.4 BILLING OF THE CONTRACT RATE.** The County shall continue to bill Contract Rates after the Commencement Date, in the same manner as it has customarily billed tipping fees. Subject to the other provisions of this Agreement, the County shall have the right to modify or amend such manner of billing on reasonable notice to affected parties.

**SECTION 4.5 RESTRICTED RESERVES.** For purposes of this Agreement, "Restricted Reserves" means cash and other reserves of the Disposal System which are restricted to specific uses or are otherwise being reserved by the County to meet its obligations hereunder throughout the term of the Agreement with respect to the Disposal System pursuant to any Applicable Law, contract, adopted budget, budgetary policy of the County with respect to the Disposal System, or other arrangement. Such cash and other reserves are not required to be deposited in separate accounts or funds in order to constitute "Restricted Reserves" hereunder, and may be commingled with

Unrestricted Reserves or other funds of the County attributable to the Disposal System. "Restricted Reserves" shall include, but not be limited to, the following:

- (i) reserves for closure of components of the Disposal System to the extent required by Applicable Law;
- (ii) amounts reserved by the County for funding of post closure maintenance and monitoring with respect to components of the Disposal System;
- (iii) reserves established to protect the Disposal System against the adverse financial impact of potential decreases in waste deliveries pursuant to Section 4.2(B);
- (iv) amounts reserved to pay the costs of capital improvements with respect to the Disposal System;
- (v) amounts funded from revenues during the early years of the term of the Agreement reserved to enable the County to provide disposal services for the Contract Rate during the later years of the Agreement;
- (vi) amounts temporarily held by the County prior to payment to the State or other Governmental Bodies pursuant to Applicable Law (including any fees or charges payable to the State Integrated Waste Management Board);
- (vii) reserves required to meet bond covenants pursuant to financing agreements for Disposal System assets to the extent such amounts must be legally separate and distinct from other reserves identified in this Section;
- (viii) security deposits from landfill deferred payment program users;
- (ix) amounts held by the County in the Environmental Fund (provided, however, that such amounts in the Environmental Fund will be made available and used by the County if required to pay costs relating to environmental remediation or other related costs);
- (x) AB939 surcharges;
- (xi) amounts held by the County in the Corrective Action Fund held pursuant to CCR Title 27 to demonstrate financial assurance to pay for potential groundwater contamination; and
- (xii) an amount equal to three months of budgeted expenses for the Disposal System for the current fiscal year, representing working capital of the Disposal System.

**SECTION 4.6 AUDITED FINANCIAL STATEMENTS.** The County shall annually, on or before January 1 each year, prepare or cause to be prepared and have on file for inspection an annual report for the preceding Contract Year, accompanied by a certificate of an independent public accountant or of the County Auditor and Controller as to the examination of the financial statements therein (describing such statements as fairly presenting the information therein in conformity with generally accepted accounting principles) relating to the Disposal System, the Disposal Services, and the fiscal activities of the County OC Waste Disposal Enterprise Fund, and including statements in reasonable detail of the financial condition of the County OC Waste Disposal Enterprise Fund as of the end of the Contract Year and revenue and expenses for the Contract Year.

**SECTION 4.7 ANNUAL UPDATE OF TEN-YEAR FINANCIAL PROJECTION.** The County shall annually, on or before May 1 of each year, prepare or cause to be prepared, an updated Ten-Year Financial Projection for the Disposal System. Said Financial Projection shall include at least two full years of prior actual data and ten years of future projections including the following elements:

1. County Acceptable Waste, in tons;
2. Imported Acceptable Waste, in tons;
3. Revenues and expenditures;
4. Cash fund balances, including all monies in the County Solid Waste Enterprise Fund, with specific delineation of monies in the Environmental Fund, Restricted Reserves, Unrestricted Reserves, and all other funds of the System.
5. Projected liabilities for closure and post closure as well as reasonable reserves for other environmental costs.

The purpose of the Ten-Year Financial Projection is to keep the City fully informed about the future financial condition of the Disposal System. The County shall cause a copy of the Ten-Year Financial Projection to be delivered to the City Manager of the City no later than May 1 of each year. Upon request, the County shall make available to the Cities supporting information related to the ten-year financial projection

#### ARTICLE V BREACH, ENFORCEMENT AND TERMINATION

**SECTION 5.1 BREACH.** The parties agree that in the event either party breaches any obligation under this Agreement or any representation made by either party hereunder is untrue in any material respect, the other party shall have the right to take any action at law or in equity (including actions for injunctive relief, mandamus and specific performance) it may have to enforce the payment of any amounts due or the performance of any obligations to be performed hereunder. Neither party shall have the right to terminate this Agreement except as provided in Section 5.2 and Section 5.3 hereof or as otherwise provided in this Agreement.

**SECTION 5.2 CITY CONVENIENCE TERMINATION.** The City shall have the right to terminate this Agreement in its sole discretion, for its convenience and without cause at any time during the Term hereof upon 90 days' written notice to the County. If the City exercises its rights to terminate the Agreement pursuant to this Section, the City shall pay the County a termination fee equal to the Contract Rate in effect at the time of such termination (or any higher rate with respect to which the County has provided notice pursuant to Section 4.2) multiplied by the number of tons of City Acceptable Waste delivered to the Disposal System during the preceding twelve months (or, if the City had been in breach of the Waste Disposal Covenant during such prior months, such amount as would have been delivered if the City had complied with the Waste Disposal Covenant), multiplied by the number of years remaining in the Term of the Agreement.

#### SECTION 5.3 TERMINATION.

(A) **By City.** Except as expressly provided herein, the City shall have no right to terminate this Agreement for cause except in the event of the repeated failure or refusal by the County substantially to perform any material obligation under this Agreement unless such failure or refusal is excused by an Uncontrollable Circumstance; except that no such failure or refusal shall give the City the right to terminate this Agreement for cause under this subsection unless:

(1) The City has given prior written notice to the County stating that a specified failure or refusal to perform exists which will, unless corrected, constitute a material breach of this Agreement on the part of the County and which will, in its opinion, give the City the right to terminate this Agreement for cause under this subsection unless such breach is corrected within a reasonable period of time, and

(2) The County has neither challenged in an appropriate forum (in accordance with Section 5.5) the City's conclusion that such failure or refusal to perform has occurred or constitutes a material breach of this Agreement nor corrected or diligently taken steps to correct such breach within a reasonable period of time not more than 90 days from the date of the notice given pursuant to clause (1) of this subsection (but if the

County shall have diligently taken steps to correct such breach within such reasonable period of time, the same shall not constitute a breach giving rise to the right of termination for as long as the County is continuing to take such steps to correct such breach).

(B) By County. Except as expressly provided herein, the County shall have no right to terminate this Agreement for cause except in the event of the repeated failure or refusal by the City substantially to perform any material obligation under this Agreement unless such failure or refusal is excused by an Uncontrollable Circumstance; except that no such failure or refusal shall give the County the right to terminate this Agreement for cause under this subsection unless:

(1) The County has given prior written notice to the City stating that a specified failure or refusal to perform exists which will, unless corrected, constitute a material breach of this Agreement on the part of the City and which will, in its opinion, give the County right to terminate this Agreement for cause under this subsection unless such breach is corrected within a reasonable period of time, and

(2) The City has neither challenged in an appropriate forum (in accordance with Section 5.5) the County's conclusion that such failure or refusal to perform has occurred or constitutes a material breach of this Agreement nor corrected or diligently taken steps to correct such breach within a reasonable period of time not more than 90 days from the date of the notice given pursuant to clause (1) of this subsection (but if the City shall have diligently taken steps to correct such breach within such reasonable period of time, the same shall not constitute a breach giving rise to the right of termination for as long as the City is continuing to take such steps to correct such breach).

SECTION 5.4 NO WAIVERS. No action of the County or the City pursuant to this Agreement (including, but not limited to, any investigation or payment), and no failure to act, shall constitute a waiver by either party of the other party's compliance with any term or provision of this Agreement. No course of dealing or delay by the County or the City in exercising any right, power or remedy under this Agreement shall operate as a waiver thereof or otherwise prejudice such party's rights, powers and remedies. No single or partial exercise of (or failure to exercise) any right, power or remedy of the County or the City under this Agreement shall preclude any other or further exercise thereof of the exercise of any other right, power or remedy.

SECTION 5.5 FORUM FOR DISPUTE RESOLUTION. It is the express intention of the parties that all legal actions and proceedings related to this Agreement or to the Disposal System or to any rights or any relationship between the parties arising therefrom shall be solely and exclusively initiated and maintained in courts of the State of California having appropriate jurisdiction.

## ARTICLE VI TERM

### SECTION 6.1 EFFECTIVE DATE AND TERM.

(A) Initial Term. This Agreement shall become effective, shall be in full force and effect and shall be legally binding upon the City and the County from the Contract Date and shall continue in full force and effect until June 30, 2020, unless earlier terminated in accordance with its terms, in which event the Term shall be deemed to have expired as of the date of such termination.

(B) Option to Renew. This Agreement shall be subject to renewal by mutual agreement of the parties, on or before June 30, 2018, for an additional term of ten years (the "Renewal Term") on the same terms and conditions as are applicable during the Initial Term hereof. The City shall give the County written notice of its irrevocable election to renew this Agreement on or before June 30, 2017. If the parties do not renew this Agreement by June 30, 2018, the Agreement shall expire on June 30, 2020.

(C) Contract Rate During Renewal Term. In connection with the parties' right to renew this Agreement for an additional ten-year term pursuant to Section 6.1(B), the parties shall, on or before June 30, 2018, negotiate an applicable change in the Contract Rate for such renewal term. In determining any revisions to the

Contract Rate to be applicable during any renewal period, in addition to the circumstances described in Section 4.2(A), the parties may take into consideration the following parameters, including but not limited to:

- (i) actual cost of operations;
- (ii) population growth;
- (iii) increase or decrease in available tonnage;
- (iv) economic and disposal market conditions in the Southern California region;
- (v) changes in transportation and technology;
- (vi) closure and expansion of nearby landfills;
- (vii) capacity of the Disposal System; and
- (viii) available reserves which are in excess of the amount reasonably required as reserves.

(D) Survival; Accrued Rights. The rights and obligations of the parties hereto pursuant to Sections 3.1(E)(2), 5.1, 5.3, 5.5, 7.2, 7.3, 7.5, 7.7, 7.8, 7.9, and 7.10 hereof shall survive the termination or expiration of this Agreement, and no such termination or expiration shall limit or otherwise affect the respective rights and obligations of the parties hereto accrued prior to the date of such termination or expiration. At the end of the Term of this Agreement, all other obligations of the parties shall terminate.

#### SECTION 6.2 COMMENCEMENT DATE.

(A) Obligations of the Parties Prior to the Commencement Date. The parties acknowledge that the Disposal Agreements may be executed and delivered on different dates and that, except as provided in this subsection, neither the County nor the City shall be obligated to perform its obligations hereunder until the participation threshold provided herein has been met and the other conditions to the occurrence of the Commencement Date have occurred. Prior to the Commencement Date, each party hereto shall at its own expense exercise good faith and due diligence and take all steps within its reasonable control in seeking to satisfy the conditions to the Commencement Date set forth herein as soon as reasonably practicable. The County and the City, each at its own expense, shall cooperate fully with each other and the other Participating Cities in connection with the foregoing undertaking. Until the Commencement Date occurs, the Original WDAs shall remain in full force and effect.

(B) Condition to the Commencement Date. The Commencement Date for the Agreement shall be the date on which the percentage of the County's Acceptable Waste attributable to Participating Cities which have executed and delivered Disposal Agreements shall exceed 85% percent (using the percentage rates attributed to such Cities in Appendix 1). Unincorporated County is assumed to be a Participating City for the purposes of determining the Commencement Date in accordance with this Section 6.2(b) and Appendix 1 of this Agreement.

(C) Satisfaction of Condition and Commencement Date. Upon the satisfaction or waiver of the condition to the Commencement Date, the County shall give written notice thereof to the cities which have theretofore executed Disposal Agreements. The parties shall thereupon hold a formal closing acknowledging the satisfaction or waiver of the condition to the Commencement Date, certifying that the Commencement Date has occurred and designating the Participating Cities. Copies of all of the documents or instruments constituting or evidencing satisfaction of the Commencement Date conditions shall be furnished to each party prior to or on the Commencement Date.

(D) Newly Incorporated Cities. Any city within Orange County which becomes incorporated after the Commencement Date shall upon request be offered the opportunity by the County to become a Participating City. If any such City executes a Disposal Agreement and meets the applicable condition provided in subsection 6.2(B) hereof within 180 days following the date of its municipal incorporation, then such City shall be entitled to execute a Waste Disposal Agreement on substantially the same terms and conditions as this Agreement (including the Contract Rate), notwithstanding the limitations contained in Section 3.6(B).

(E) Failure of Condition. If by \_\_\_\_\_ [120 DAYS AFTER BOARD APPROVAL], or such later date as the County may agree, the condition to the Commencement Date specified in this Section is not satisfied, either party hereto may, by notice in writing to the other party, terminate this Agreement. Neither party shall be liable to the other for the termination of this Agreement pursuant to this subsection, and each of the parties shall bear its respective costs and expenses incurred in seeking to satisfy the condition to the Commencement Date. Notwithstanding anything in this Agreement to the contrary, in the event that this Agreement is terminated pursuant to this Section, the provisions of the Original WDA shall remain in full force and effect on the terms and conditions set forth therein.

## ARTICLE VII GENERAL PROVISIONS

SECTION 7.1 OPERATION AND MAINTENANCE OF THE DISPOSAL SYSTEM. The County, at its cost and expense through the County Solid Waste Enterprise Fund, shall at all times operate, or caused to be operated, the Disposal System in accordance with Applicable Law and the operating rules and regulations of the Department.

### SECTION 7.2 UNCONTROLLABLE CIRCUMSTANCES GENERALLY.

(A) Performance Excused. Except as otherwise specifically provided in this Agreement, neither the County nor the City shall be liable to the other for any failure or delay in the performance of any obligation under this Agreement (other than any payment at the time due and owing) to the extent such failure or delay is due to the occurrence of an Uncontrollable Circumstance.

(B) Notice, Mitigation. The party experiencing an Uncontrollable Circumstance shall notify the other party by telecommunication or telephone and in writing, on or promptly after the date the party experiencing such Uncontrollable Circumstance first knew of the commencement thereof, followed within 15 days by a written description of (1) the Uncontrollable Circumstance and the cause thereof (to the extent known), (2) the date the Uncontrollable Circumstance began and the cause thereof, its estimated duration, the estimated time during which the performance of such party's obligations hereunder will be delayed, (3) the estimated amount, if any, by which the Contract Rate may need to be adjusted as a result of such Uncontrollable Circumstance, (4) its estimated impact on the other obligations of such party under this Agreement and (5) potential mitigating actions which might be taken by the County or City and any areas where costs might be reduced and the approximate amount of such cost reductions. Each party shall provide prompt written notice of the cessation of such Uncontrollable Circumstance. Whenever such act, event or condition shall occur, the party claiming to be adversely affected thereby shall, as promptly as reasonably possible, use its best efforts to eliminate the cause therefor, reduce costs and resume performance under this Agreement. In addition, with respect to Changes in Law, the County shall diligently contest any such changes the imposition of which would have a material adverse impact on the Disposal System. While the delay continues, the County or City shall give notice to the other party, before the first day of each succeeding month, updating the information previously submitted.

(C) Impact on Contract Rate. If and to the extent that Uncontrollable Circumstances interfere with, delay or increase the cost to the County of meeting its obligations hereunder and providing Disposal Services to the Participating Cities in accordance herewith, the County shall be entitled to an increase in the Contract Rate as provided in Section 4.2 herein or an extension in the schedule for performance equal to the amount of the increased cost or the time lost as a result thereof. The proceeds of any insurance available to meet any such increased cost shall be applied to such purpose prior to any determination of cost increases payable under this subsection. Any cost reductions achieved through the mitigating measures undertaken by the County pursuant to subsection 7.2(B) hereof upon the occurrence of an Uncontrollable Circumstance shall be reflected in a reduction of the amount by which the

Contract Rate would have otherwise been increased or shall serve to reduce the Contract Rate to reflect such mitigation measures, as applicable.

**SECTION 7.3 INDEMNIFICATION.** To the extent permitted by law, the County agrees that, it will protect, indemnify, defend and hold harmless the City from and against all Loss-and-Expense arising from the City's activity as an "arranger" (for purposes of and as such term is defined under CERCLA or comparable state statutes) of municipal solid waste disposal pursuant to this Agreement. In the event the City shall determine that because of conflict or any other reason that it wishes to be defended by legal counsel other than the legal counsel provided by the County, the cost of providing such legal counsel shall be the City's sole responsibility. The City acknowledges the County's legitimate interest in actively participating in any defense, litigation or settlement whether the County or the City provides legal counsel. Any costs incurred by the County pursuant to this Section shall be considered an Uncontrollable Circumstance cost and the County shall be entitled to adjust the Contract Rate as provided in subsection 4.2(A) herein. The County shall not, however, be required to indemnify or defend the City from and against all Loss-and-Expense arising from any willful, knowing, illegal or negligent disposal of hazardous waste (other than incidental amounts of Household Hazardous Waste commonly found in municipal solid waste and permitted to be disposed in Class III landfills under RCRA) which violates the County's landfill permits or Applicable Law. The parties agree that this provision constitutes an indemnity under CERCLA (to the extent of the specific provisions of this Section). The parties acknowledge that this subsection is not intended to and does not create any obligation on the part of the County to provide any indemnification or defense to any Franchise Hauler, whether franchised or not, or any Independent Hauler or Transfer Station, under any circumstances. The City acknowledges the County's legitimate interest in actively participating in any defense, litigation or settlement, and shall, as a condition to this indemnity, coordinate fully with the County in the defense.

**SECTION 7.4 RELATIONSHIP OF THE PARTIES.** Neither party to this Agreement shall have any responsibility whatsoever with respect to services provided or contractual obligations or liabilities assumed by the other party hereto, whether accrued, absolute, contingent or otherwise, or whether due or to become due. The County is an independent contractor of the City and nothing in this Agreement shall be deemed to constitute either party a partner, agent or legal representative of the other party or to create any fiduciary relationship between the parties.

**SECTION 7.5 LIMITED RECOURSE.**

(A) **To the City.** Except in the event the City has not established or maintained a City Solid Waste Enterprise Fund, no recourse shall be had to the general funds or general credit of the City for the payment of any amount due the County hereunder, or the performance of any obligation incurred hereunder, including any Loss-and-Expense of any nature arising from the performance or non-performance of the City's obligations hereunder. The sole recourse of the County for all such amounts shall be to the funds held in any such Solid Waste Enterprise Fund. All amounts held in any City Solid Waste Enterprise Fund shall be held for the uses permitted and required thereby, and no such amounts shall constitute property of the County. The City shall make adequate provision in the administration of any City Solid Waste Enterprise Fund for the payment of any amount or the performance of any obligation which may be due hereunder.

(B) **To the County.** No recourse shall be had to the general funds or general credit of the County for the payment of any amount due the City hereunder, or the performance of any obligation incurred hereunder, including any Loss-and-Expense of any nature arising from the performance or non-performance of the County's obligations hereunder. The sole recourse of the City for all such amounts shall be to the funds held in the County Solid Waste Enterprise Fund in accordance with the terms of this Agreement. All amounts held in the County Solid Waste Enterprise Fund shall be held for the uses permitted and required thereby, and no such amounts shall constitute property of the City. The County shall make adequate provision in the administration of the County Solid Waste Enterprise Fund for the payment of any amount or the performance of any obligation which may be due hereunder.

**SECTION 7.6 PRE-EXISTING RIGHTS AND LIABILITIES.** Nothing in this Agreement is intended to affect, release, waive or modify any rights, obligations or liabilities which any party hereto may have to or against the other party as of the Contract Date relating to the disposal of waste in the Disposal System or any other related matter.

SECTION 7.7 NO VESTED RIGHTS. The City shall not acquire any vested property, license or other rights in the Disposal System by reason of this Agreement.

SECTION 7.8 LIABILITY FOR COLLECTION, TRANSPORTATION AND PROCESSING. Any liability incurred by the City as a result of collecting Acceptable Waste or processing it for diversion from landfill, or as a result of causing, franchising, permitting, licensing, authorizing or arranging any of the foregoing, shall be its sole liability, except as expressly otherwise provided herein.

SECTION 7.9 NO CONSEQUENTIAL OR PUNITIVE DAMAGES. In no event shall either party hereto be liable to the other or obligated in any manner to pay to the other any special, incidental, consequential, punitive or similar damages based upon claims arising out of or in connection with the performance or non-performance of its obligations or otherwise under this Agreement, or the material inaccuracy of any representation made in this Agreement, whether such claims are based upon contract, tort, negligence, warranty or other legal theory.

SECTION 7.10 AMENDMENTS. Neither this Agreement nor any provision hereof may be changed, modified, amended or waived except by written agreement duly authorized and executed by both parties.

SECTION 7.11 NOTICE OF LITIGATION. Each party shall deliver written notice to the other of any Legal Proceeding to which it is a party and which questions the validity or enforceability of this Agreement executed by the City or the County or any Legal Entitlement issued in connection herewith.

SECTION 7.12 FURTHER ASSURANCES. At any and all times the City and the County so far as may be authorized by law shall pass, make, do, execute, acknowledge and deliver any and every such further resolutions, acts, deeds, conveyances, instruments, assignments, transfers and assurances as may be necessary or reasonably requested by the other in order to give full effect to this Agreement.

SECTION 7.13 ASSIGNMENT OF AGREEMENT. (A) Assignment. Neither this Agreement nor any of the rights or obligations hereunder may be assigned by either party hereto without the prior written consent of the other party, which may be withheld in the other party's sole discretion. Notwithstanding the foregoing, either party may assign this Agreement to another public entity, subject to the reasonable consent of the other party. In such circumstances the party not requesting the assignment shall have the right to demand assurances of the financial, technical and legal ability of the proposed assignee to undertake the responsibilities and obligations of the assigning party.

(B) Sale. The County shall not enter into any agreement for the sale of the Disposal System which provides for an effective date for such sale prior to the termination of this Agreement.

SECTION 7.14 INTEREST ON OVERDUE OBLIGATIONS. Except as otherwise provided herein, all amounts due hereunder, whether as damages, credits, revenue or reimbursements, that are not paid when due shall bear interest at the Overdue Rate on the amount outstanding from time to time, on the basis of a 365-day year, counting the actual number of days elapsed, and all such interest accrued at any time shall, to the extent permitted by Applicable Law, be deemed added to the amount due, as accrued.

SECTION 7.15 BINDING EFFECT. This Agreement shall bind and inure to the benefit of the parties hereto and any successor or assignee acquiring an interest hereunder consistent with the provisions of Section 7.13 hereof.

SECTION 7.16 NOTICES. Any notice or communication required or permitted hereunder shall be in writing and sufficiently given if delivered in person or sent by certified or registered mail, postage prepaid, to the notice address of the respective parties set forth on the cover page of this Agreement. Changes in the respective addresses to which such notices may be directed may be made from time to time by any party by notice to the other party.

IN WITNESS WHEREOF, COUNTY and CITY have caused this Agreement to be executed by their duly authorized officers or representatives as of the day and year first above written.

COUNTY OF ORANGE

Date 7/1/09

By [Signature]  
Director, OC Waste & Recycling

ATTEST:

By [Signature]  
PATRICIA E. HEALY  
Clerk of the Council

CITY OF SANTA ANA

By [Signature]  
DAVID N. REAM  
City Manager

RECOMMENDED FOR APPROVAL:

By [Signature]  
JAMES G. ROSS  
Executive Director of the  
Public Works Agency

APPROVED AS TO FORM:  
COUNTY COUNSEL  
ORANGE COUNTY, CALIFORNIA

By [Signature]  
Date 07.27.09

APPROVED AS TO FORM:  
JOSEPH W. FLETCHER  
City Attorney

By [Signature]  
Laura Sheedy  
Assistant City Attorney

**APPENDIX 3  
CUMULATIVE CAPITAL COSTS  
to be Used  
for Purposes of Section 4.2(A)vi**

<b>Fiscal Year (ending June 30)</b>	<b>Annual Capital Costs</b>	<b>Cumulative Capital Costs</b>
2009	\$37,939,538	\$37,939,538
2010	\$59,343,405	\$97,282,943
2011	\$10,433,978	\$107,716,921
2012	\$13,678,113	\$121,395,034
2013	\$17,525,040	\$138,920,074
2014	\$11,259,518	\$150,179,592
2015	\$37,682,758	\$187,862,350
2016	\$5,068,800	\$192,931,150
2017	\$10,662,265	\$203,593,415
2018	\$29,397,698	\$232,991,113
2019	\$8,263,795	\$241,254,908
2020	\$45,103,805	\$286,358,713

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**APPENDIX 4**  
**FORM OF HAULER ACKNOWLEDGMENT**

Execution Copy

August 17, 2021

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City of Santa Ana

FRANCHISE HAULER ACKNOWLEDGMENT

THIS FRANCHISE HAULER ACKNOWLEDGMENT, dated as of May 4, 2009 (the "Acknowledgment"), by and between the City of Santa Ana (the "City") and USA Waste of California Inc. (the "Franchise Hauler").

WITNESSETH

[WHEREAS, the City and the Franchise Hauler have heretofore entered into an agreement entitled Third Amended and Restated Agreement for Collection and Handling of Solid Wastes Generated, Produced and/or Accumulated in the City of Santa Ana, dated as of April 3, 2005 (the "Franchise"); and

[WHEREAS, the City has issued to the Franchise Hauler a permit, license, approval or other authorization the "Authorization") which allows the Franchise Hauler to provide solid waste collection services within the City; and]

[WHEREAS, the Franchise authorizes the collection and disposal of certain municipal solid waste as described therein ("Franchise Waste") generated within the City; and]

WHEREAS, Orange County (the "County") owns, manages and operates a sanitary landfill disposal system for municipal solid waste generated within the County; and

WHEREAS, the City and the County have heretofore entered into a Waste Disposal Agreement, dated as of May 4, 2009 (the "Disposal Agreement") determining that the execution of such Disposal Agreement will serve the public health, safety and welfare of the residents of the City and County, by maintaining public ownership and stewardship over the Orange County Landfill Disposal System (the "Disposal System"); and

WHEREAS, under the Disposal Agreement, the County has agreed to provide long-term disposal of all municipal solid waste generated within the City and the City has agreed to exercise all legal, and contractual power which it possesses from time to time to deliver or cause the delivery of such waste to the Disposal System; and

WHEREAS, the provisions of the Waste Disposal Agreement which guarantee capacity for the long term disposal of waste at specified rates generated in the City provide significant benefits to the Franchise Hauler;

WHEREAS, notwithstanding any Franchise provisions to the contrary, the Franchise Hauler explicitly acknowledges the aforementioned benefits to the City, the County and the Franchise Hauler in providing for the disposal of all Franchise Waste to the Disposal System; and

WHEREAS, the City and the Franchise Hauler desire to enter into this Acknowledgment to assure that the City and the Franchise Hauler will be entitled to the benefits of the Waste Disposal Agreement and to assure conformity with the waste delivery obligations which have been agreed to by the City under the Disposal Agreement through the delivery of waste by the Franchise Hauler to the Disposal System; and

WHEREAS, the Franchise Hauler's agreement to deliver Franchise Waste to the Disposal System under this Acknowledgment is given in consideration of the Franchise Hauler's right to receive the Contract Rate for such disposal as provided in the Disposal Agreement.

NOW, THEREFORE, in consideration of the premises and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto, intending to be legally bound hereby, agree as follows:

1. Capitalized terms used and not otherwise defined herein are used as defined in the Disposal Agreement.

Execution Copy

2. The Franchise Hauler hereby waives any right which it may possess under applicable law to contest on any ground, constitutional, statutory, case law, administrative or otherwise, (a) the right, power or authority of the County or the City to enter into or perform their respective obligations under the Disposal Agreement, (b) the enforceability against the County or the City of the Disposal Agreement, or (c) the right, power or authority of the City to deliver or cause the delivery of all Controllable Waste to the Designated Disposal Facility in accordance with this Acknowledgment.

3. The City and the Franchise Hauler each hereby represent that this Acknowledgment has been duly authorized by all necessary action of their respective governing bodies.

4. The Franchise Hauler shall deliver or cause to be delivered all Controllable Waste (including all residue from the processing by any means, wherever conducted, of Controllable Waste), to the Disposal System, and shall otherwise assist the City in complying with its obligations under the Waste Disposal Covenant in Section 3.1 of the Disposal Agreement.

5. The Franchise Hauler shall not haul Controllable Waste to any materials recovery facility, composting facility, intermediate processing facility, recycling center, transfer station or other waste handling or management facility unless the contract or other agreement or arrangement between the Franchise Hauler and the operator of such facility is sufficient in the opinion of the County to assure that the Residue from such facility constituting City Acceptable Waste (or Tonnage equivalencies) and the City Acceptable Waste transferred by such facility shall be delivered to the Designated Disposal Facility in compliance with the Waste Disposal Covenant.

6. The Franchise Hauler shall pay the Contract Rate imposed by the County at the Designated Disposal Facility for the disposal of all Controllable Waste, which rate shall be subject to potential adjustment necessary to reflect the circumstances set forth in the Disposal Agreement.

7. Nothing in this Acknowledgment is intended to restrict any right or responsibility explicitly given the Franchise Hauler in the Franchise to recycle City Acceptable Waste, except as provided in paragraph 5 above with respect to Residue from any such recycling operations.

8. The obligations of the Franchise Hauler under this Acknowledgment shall apply notwithstanding any provision of the Franchise which may conflict herewith.

9. This Acknowledgment may be enforced by the City by any available legal means. In any enforcement action by the City, the burden of proof shall be on the Franchise Hauler to demonstrate compliance herewith.

10. This Acknowledgment shall be in full force and effect and shall be legally binding upon the City and Franchise Hauler from the dated hereof and shall continue in full force and effect until the earlier of (i) the end of the term of the Franchise or (ii) the end of the term of the Disposal Agreement.

11. The City and Hauler agree that the County shall be an express third party beneficiary of this Acknowledgment, and shall be entitled to independently enforce the obligations of the Franchise Hauler hereunder.

12. The Hauler agrees to assist the County in verifying tonnage collected by the Franchise Hauler and providing information required by the County. Hauler will provide upon request refuse tonnage collected within the County, and outside the County (if relevant to confirming tonnage origination), separated by jurisdiction, by load type (residential, commercial, roll-off box), and by facility to which it was delivered (specify which landfill or transfer station). Hauler will provide customer service levels and route lists. Hauler will cooperate with County audits to verify reported origin of tonnage by making records and personnel available to the County and/or its auditors.

IN WITNESS WHEREOF, the parties have caused this Acknowledgment to be executed by their duly authorized officers or representatives as of \_\_\_\_ day of \_\_\_\_\_, 2009.

CITY OF SANTA ANA

Signature: *Catherine Standiford*  
Printed Name: Catherine Standiford  
Title: Assistant City Manager

USA WASTE OF CALIFORNIA INC.

Signature: *[Signature]*  
Printed Name: Jason Rose  
Title: Vice - President

APPENDIX 1

PERCENTAGE OF COUNTY ACCEPTABLE WASTE ATTRIBUTABLE TO PARTICIPATING CITIES FOR PURPOSE OF SECTION 6.2(b)

Jurisdiction	Percentage of County Acceptable Waste
Anaheim	13.4%
Santa Ana	10.6%
Irvine	7.5%
Huntington Beach	6.0%
Orange	5.8%
Garden Grove	5.1%
Fullerton	4.5%
Unincorporated Orange County <sup>(1)</sup>	4.3%
Costa Mesa	3.6%
Newport Beach	3.0%
Lake Forest	2.6%
Buena Park	2.5%
Mission Viejo	2.3%
Westminster	2.3%
Yorba Linda	2.3%
Brea	2.1%
Tustin	2.0%
Cypress	1.9%
La Habra	1.8%
San Clemente	1.7%
Fountain Valley	1.6%
Laguna Niguel	1.6%
Placentia	1.6%
San Juan Capistrano	1.6%
Laguna Beach	1.4%
Dana Point	1.2%
Stanton	1.1%
Rancho Santa Margarita	1.0%
Laguna Hills	0.9%
Seal Beach	0.8%
Aliso Viejo	0.7%
Los Alamitos	0.5%
La Palma	0.3%
Laguna Woods	0.2%
Villa Park	0.2%
Total	100%

(1) Unincorporated County is assumed to be a Participating City for the purposes of determining the Commencement Date in accordance with Section 6.2(b) of this Agreement.

(2) A Participating City will only be included for purposing of determining the Commencement Date upon (i) execution of a Waste Disposal Agreement by that Participating City and (ii) execution of a Hauler Acknowledgement(s) by the Franchise Hauler(s) operating within such Participating City

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**APPENDIX 2**  
**CUMULATIVE TONNAGE TARGETS**

Execution Copy

August 17, 2021

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City of Santa Ana

**EXHIBIT 7**  
**AB 341, AB 1826, AND SB 1383 IMPLEMENTATION PLAN**



City of Santa Ana: AB 341, AB 1826, and SB1383 Implementation Plan \*

Row	Contract Reference	Description	Target Start Date	Target End Date
1	4.3.5.1 & 4.3.6.1	<b>Site Visits, Education and Outreach</b> Visit commercial and multifamily non-compliant recycling and organics customers to enroll in programs, right size, resolve detriments, generate proposals, capture data, photo document, document contamination, and track.	3/1/2022	annually
2				
3	4.3.8	<b>Food Recovery Assistance</b>		
4		Identify all commercial customers that meet the definition of Tier One and Tier Two	1/1/2022	6/1/2022
5		Tier 1 Inspections (5.6.A.4)	7/1/2022	annually
6		Tier 2 Inspections (5.6.A.4)	1/1/2024	annually
7		Provide information to all edible food generators	7/1/2022	annually
8		Provide collection and processing of organic materials at no additional cost to food recovery organization	7/1/2022	ongoing
9	4.3.9	<b>Recyclist Software</b>		
10		Meet with Recyclist, EcoNomics, HF&H, and City	10/18/2021	10/30/2021
11		Review Recyclist data tracking standards for EcoNomics, HF&H, and City approval	10/21/2021	11/5/2021
12		Contract with Recyclist	12/1/2021	12/30/2021
13		Provide initial data from EcoNomics & WM to Recyclist	1/31/2022	2/15/2022
14		Recyclist data transition complete and ready for use	2/15/2022	3/31/2022
15		Use Recyclist in the field for SB 1383 data collection	4/1/2022	annually
16	4.5.7	<b>Response to Requests From City's Work Order Application</b>		
17		Coordination with City's Work Order App	3/1/2022	ongoing
18	4.7.4	<b>Cart and Container Procurement</b>		
19		Select design and colors of carts compliant with SB 1383	10/1/2021	10/20/2021
20		Coordinate with City on container requirements - Submit to City for approval	10/1/2021	10/20/2021
21		City approval of container requirements	10/21/2021	10/22/2021
22		HF&H and EcoNomics review of labels and hotstamping	10/10/2021	10/18/2021
23		City approval for proposed labels and hotstamping for carts	10/18/2021	10/19/2021
24		Artwork due to vendor	10/22/2021	10/28/2021
25		Coordinate space to house carts and metal containers for storage	9/20/2021	11/30/2021
26		Order new residential totes SB 1383	10/22/2021	10/28/2021
27		Order new commercial/industrial containers SB 1383	10/22/2021	10/28/2021
28		Provide Fleet Genius all info	10/5/2021	10/5/2021
29		Obtain quote from Fleet Genius for removal of WM carts and delivery of Republic carts	10/5/2021	11/1/2021



City of Santa Ana: AB 341, AB 1826, and SB1383 Implementation Plan \*

Row	Contract Reference	Description	Target Start Date	Target End Date
30		Contract with vendor for cart delivery (Fleet Genius)	10/7/2021	11/1/2021
31		Contract with vendor for metal container delivery (Container Pros)	10/7/2021	11/1/2021
32		Receipt and storage of containers	2/1/2022	2/28/2022
33		Cart and container rollout to customers	3/1/2022	6/30/2022
34	<b>4.7.4.1</b>	<b>Residential Service Level Notification with Rates, and Option to Change</b>		
35		Request and receive WM service level list	10/4/2021	10/15/2021
36		Request and receive City utility billing and service list	10/13/2021	10/13/2021
37		Develop text - Submit to City for approval	10/11/2021	10/20/2021
38		City approval of text	10/20/2021	10/22/2021
39		Print	10/22/2021	10/30/2021
40		Mail to customers - based on operational Republic decision	11/1/2021	11/15/2021
41		Process responses (change sizes after city wide transition)	11/16/2021	1/15/2022
42	<b>5.3.2</b>	<b>AB 341, AB 1826, and SB 1383 Implementation Plan</b>		
43		Provide proposal template and written protocols to City for conducting on-site compliance audits to commercial and multi-family customers - Submit to City for approval	11/1/2021	11/30/2021
44		Provide proposed staffing assignments for implementing compliance audits at commercial and multi-family non-compliant customers - Submit to City for approval	11/1/2021	11/30/2021
45		Specifications of the proposed internal collection receptacle for distribution - Submit to City for approval	11/1/2021	11/30/2021
46		City approval of proposed template, written protocols, staffing, and internal collection receptacle	12/1/2021	12/5/2021
47		<b>Kitchen Pails</b>		
48		Source quotes for kitchen pails	10/1/2021	10/30/2021
49		Design label - Submit to City for approval	10/1/2021	10/30/2021
50		City approval of label	11/1/2021	11/5/2021
51		Order kitchen pails for single-family and duplex customers	11/5/2021	11/30/2021
52		Submit plan for conducting route reviews and/or waste characterization studies to assess compliance with SB 1383 monitoring requirements for City approval (5.5.1.3 A)	1/15/2022	annually
53		Submit plan for notifying customers of unacceptable levels of contamination and a template hang-tag for City	4/1/2022	4/30/2022
54		Submit plan and timeline for how the contractor will implement multi-family organics recycling programs at all multi-family customers as required by SB 1383 for City approval	11/1/2021	11/30/2021
55		<b>Compliance Reporting Templates</b>		
56		Receive data from Economics on non compliant accounts with AB 341, 1826, 1383; develop weekly outreach targets	10/20/2021	ongoing



City of Santa Ana: AB 341, AB 1826, and SB1383 Implementation Plan \*

Row	Contract Reference	Description	Target Start Date	Target End Date
57		Site visits to non-compliant accounts to right size service level. Changes to take place after July 1, 2022	3/1/2022	7/1/2022
58	5.3.3	<b>Implementation and Ongoing Education Requirements</b>		
59		<b>Initial Mailing - Individual mailings for residential, multifamily, and commercial customers</b>		
60		Develop Text - Initial Mailing explains transition and includes program and route changes, implementation date, etc. - Submit to City for approval	11/1/2021	11/30/2021
61		City approval of text	12/1/2021	12/10/2021
62		Translation	12/10/2021	12/20/2021
63		Print	2/1/2022	2/28/2022
64		Mailing	3/1/2022	3/15/2022
65		<b>Workshops - Minimum of 5 Public Workshops</b>		
66		Create PowerPoint - Submit to City for approval	11/1/2021	12/31/2021
67		City approval of PowerPoint	1/1/2022	1/15/2022
68		Send notice to all associations	3/1/2022	6/30/2022
69		Schedule and hold workshops	12/31/2021	6/30/2022
70		Ongoing community workshops to neighborhood associations on SB 1383 programs	3/1/2022	7/1/2022
71		<b>Instructional Packet Attached to Residential Carts</b>		
72		Design Welcome Packet - Submit to City for approval	11/1/2021	11/30/2021
73		City approval of welcome packets	12/1/2021	12/10/2021
74		Print Packets	1/1/2022	2/15/2022
75		Attach to carts for delivery	3/1/2022	7/1/2022
76		<b>How-To Brochure Packet &amp; Distribution to all customers</b>		
77		Develop text - Submit to City for approval	11/1/2021	11/30/2021
78		City approval of brochure packet	12/1/2021	12/10/2021
79		Print	4/1/2022	5/31/2022
80		Mail to customers	6/1/2022	6/15/2022
81		<b>Annual Brochures/Mailings</b>		
82		Develop text, submit to City for approval, print, and mail	9/1/2022	annually
83		<b>Billing Inserts</b>		
84		Develop text, submit to City for approval, print, and insert in invoicing	TBD by City	TBD by City
85		<b>Santa Ana Green Quarterly Newsletter</b>		
86		Coordinate distribution with City's contractor, local mailhouse, and provide mailing list for residential curbside and multifamily	4/1/2022	4/15/2022



City of Santa Ana: AB 341, AB 1826, and SB1383 Implementation Plan \*

Row	Contract Reference	Description	Target Start Date	Target End Date
87		Mailing	7/1/2022	quarterly
88		<b>Recycling Coordinators</b>		
89		Provide job description - Submit to City for approval	10/20/2021	10/31/2021
90		City approval of job description	11/1/2021	11/5/2021
91		Identify & Develop outlets for job outreach	10/15/2021	11/1/2021
92		Develop flyers	10/31/2021	11/5/2021
93		Promote jobs at local colleges and workforce development agencies	11/6/2021	12/31/2021
94		Hire three Recycling Coordinators and three Customer Service Specialists	12/1/2021	3/1/2022
95		Onboard and train (Republic and EcoNomics to assist)	3/1/2022	3/31/2022
96		<b>Technical Assistance</b>		
97		To promote participation and diversion program	7/1/2022	ongoing
98		<b>Website</b>		
99		Create contractor website for Santa Ana - Submit to City for approval	11/1/2021	12/30/2021
100		City approval of website contents	1/15/2022	1/31/2022
101		Publish online	2/1/2022	2/28/2022
102		<b>Integrated Waste Management Video</b>		
103		Assist City with development of script	11/1/2021	12/31/2021
104		Identify footage for City use	12/1/2021	12/31/2021
105		<b>New Service Provider Announcements</b>		
106		Develop artwork and text for neighborhood associations announcements - Submit to City for approval	11/1/2021	11/30/2021
107		City approval of announcements	12/1/2021	12/15/2021
108		Visit all neighborhood associations	1/1/2022	6/30/2022
109		<b>ROBO Calls</b>		
110		Write script for robo call - Submit to City for approval	2/1/2022	2/15/2022
111		City approval of script	2/16/2022	2/25/2022
112		Collection call reminder based on route implementation date	3/1/2022	7/1/2022
113		<b>Council Updates</b>		
114		Republic to develop transition update - Submit to City for approval	12/1/2021	12/31/2021
115		City to review and finalize transition update	1/3/2022	1/15/2022
116		City to develop presentation	1/15/2022	2/5/2022
117		City presentation to Council	2/15/2022	2/15/2022



City of Santa Ana: AB 341, AB 1826, and SB1383 Implementation Plan \*

Row	Contract Reference	Description	Target Start Date	Target End Date
118		<b>Social Media Strategy</b>		
119		Develop social media strategy with City and timeline of posts	10/14/2021	11/30/2021
120	5.3.4	<b>Community Events</b>		
121		Minimum of four per calendar year	7/1/2022	ongoing
122	5.5	<b>Contamination Monitoring</b>		
123	5.5.1	Development of annual inspection method - Submit to City for approval	3/1/2022	ongoing
124		City approval within 15 days of receipt	TBD	TBD
125	5.5.1.1	<b>Actions upon Identification of Prohibited Container Contaminants</b>		
126	5.5.1.1.A	Record keeping	7/1/2022	ongoing
127	5.5.1.1.B	Identification of excluded waste	7/1/2022	ongoing
128	5.5.1.1.C,D	Courtesy Pickup Notice/Notice of Assessment of Contamination Fees - On more than three occasions		
129		Design - To include a list of incremental actions on one notice (check box of courtesy, fee assessed, description of contaminant) - Submit to City for approval	11/1/2021	11/30/2021
130		City to approve notices	12/1/2021	12/15/2021
131		Print	4/1/2022	5/1/2022
132	5.5.1.1.E	Communication with customer	7/1/2022	ongoing
133	5.5.1.1.F	Disposal of contaminated materials	7/1/2022	ongoing
134	5.5.1.2	<b>On-Going Contamination Monitoring by Route Personnel</b>		
135		Ongoing education to minimize contamination	7/1/2022	ongoing
136	5.5.1.3	<b>Prescribed Contamination Monitoring</b>		
137	5.5.1.3.A	Methodology & Frequency	7/1/2022	ongoing
138		Prescribed contamination plan describing methodology for the calendar year and the schedule for performance of each route review. Plan to include prioritizing the inspection of customers more likely out of compliance - Submit to City for approval	1/15/2022	annually
139		City approval within 15 days of receipt	TBD	TBD
140		Conduct route reviews of all routes, 10% of containers per each route, randomly selected	7/1/2022	annually
141	5.5.1.3.B	Noticing of Customers with Contamination, and Disposal of Materials	7/1/2022	ongoing
142	5.5.1.3.C	Reporting Requirements (Article 8)	7/1/2022	ongoing
143	5.6	<b>Inspection and Enforcement</b>		
144	5.6.A	<b>Annual Compliance Reviews (Multi-family and Commercial Customers)</b>		



City of Santa Ana: AB 341, AB 1826, and SB1383 Implementation Plan \*

Row	Contract Reference	Description	Target Start Date	Target End Date
145	5.6.A.2	Commercial Customer Compliance Review - compliance review of all multi-family and commercial customers generating 2 or more cubic yards per week	7/1/2022	annually
146	5.6.A.3	Annual Hauler Route Review of commercial, multi-family, and residential customers	7/1/2022	annually
147	5.6.A.4	Food Recovery Compliance Review - Inspect Tier 1 (4.3.8)	7/1/2022	annually
148		Food Recovery Compliance Review - Inspect Tier 2 (4.3.8)	1/1/2024	annually
149	<b>5.6.B</b>	<b>Customer Waiver Inspections - contractor to verify commercial customer de minimis and physical space constraints waiver every five years from date of individual issuance</b>	7/1/2022	ongoing
150	<b>5.6.C</b>	<b>Compliance Review Process</b>	7/1/2022	annually
151	5.6.C.1	Number of reviews - conduct sufficient number of compliance reviews describe in Section 5.6	7/1/2022	annually
152	5.6.C.2	Non-compliant entities - When compliance reviews are performed, provide educational materials in response to violations within five working days or immediately upon determination of non-compliance	7/1/2022	12/31/2023
153		Non-compliant entities - Document non-compliant customers through compliance reviews, report all customers with SB 1383 violations to the City	1/1/2024	ongoing
154	5.6.C.3	Documentation of Inspection Actions - Generate a written and/or electronic record and maintain documentation for each inspection, route review, compliance review conducted including Article 8	7/1/2022	ongoing
155	<b>5.7</b>	<b>Service Complaints</b>		
156	5.7.A	Documentation of Compliers - General and SB 1383 Noncompliance	7/1/2022	ongoing
157	5.7.B	Investigation of SB1383-Noncompliance Complaints	7/1/2022	ongoing
158	5.7.B.1	Investigation - Within 90 days of receiving a complaint. Utilize one or more methods: review service level, review waiver list, inspect premises, or contact entity	7/1/2022	ongoing
159	5.7.B.2	Reporting - Within 10 days of completing an investigation of 1383 non-compliant account, submit an investigation complaint and recommendation to City	7/1/2022	ongoing
160	<b>5.8</b>	<b>Universal Enrollment Monitoring</b>		
161		Cooperatively develop and agree to a process	3/1/2022	7/1/2022
162		Reconcile, confirm, and review universal enrollment	7/1/2022	annually
163	<b>Article 8</b>	<b>Records, Reports, and Information Requirements</b>		
164		Submit report formats for all requirements to City for approval	1/15/2022	annually

\*Subject to change upon City approval

**EXHIBIT 8**  
**PROCESSING, TRANSFER, AND DISPOSAL SERVICES, AND**  
**FACILITY STANDARDS**

Contractor has selected and arranged for Discarded Materials to be Transported to Approved Facilities for Transfer, Source Separated Recyclable Materials Processing, Source Separated Organic Material Processing Organic Waste Processing, High Diversion Organic Waste Processing, C&D Processing, and Disposal. The Approved Facilities shall comply with the standards specified in this Exhibit. Pursuant to Section 4.9 of the Agreement, if the Contractor does not own or operate one or more of the Approved Facilities, Contractor shall enter into a subcontract agreement with the owner or Facility operator of such Approved Facility(ies) and the requirements of Section 4.9 of the Agreement and this Exhibit shall pertain to the Subcontractor(s).

Note that Contractor, by definition in Article 1 of the Agreement, includes Affiliates, DBAs, and Subcontractors. As a result, requirements of Section 4.9 of the Agreement and this Exhibit shall pertain to Affiliate(s) and Subcontractors providing Facility-related services.

**8.1 General Requirements**

A. Overview. Contractor agrees to Transport and deliver Discarded Materials it Collects in the City to an appropriate Approved Facility(ies) for Transfer, Processing, or Disposal, as applicable for each type of Discarded Material. As of the commencement date of this Agreement, the Approved Facilities, which were selected by Contractor and reviewed and approved by the City, are listed in the table on the following page and in the definitions in Article 1 of this Agreement. Contractor will perform all Transfer, Processing, and Disposal services at Approved Facilities in accordance with Applicable Law, standard industry practice, and specifications and other requirements of this Agreement.

Material Type	Approved Transfer Facility (if applicable)	Approved Processing Facility	Description of Processing Methodology (Materials recovery facility, composting facility, anaerobic digestion, etc.)
Source Separated Recyclable Materials	CVT Regional Material Recovery and TS SWIS 30-AB-0335 1131 N. Blue Gum St. Anaheim, CA 92806 Owner Republic Services	CVT Regional Material Recovery and TS SWIS 30-AB-0335 1131 N. Blue Gum St. Anaheim, CA 92806 Owner Republic Services	Materials Recovery Facility
Yard Waste	Rainbow Transfer/Recycling Co. SWIS 30-AB-0099 17121 Nichols Ln Huntington Beach CA, 92647 Owner Republic Services	Recology, Blossom Valley Organics, SWIS 15-AA-0307 6061 N Wheeler Ridge Rd. Lamont, CA 93242 Owner Recology	Composting Facility
Food Waste	CVT Regional Material Recovery and TS SWIS 30-AB-0335 1131 N. Blue Gum St. Anaheim, CA 92806 Owner Republic Services	Agromin OC Chino SWIS 36-AA-0499, 8100 Chino Corona Rd. Chino, CA 91708 Owner Agromin	Composting Facility
Source Separated Organic Materials	CVT Regional Material Recovery and TS SWIS 30-AB-0335 1131 N. Blue Gum St. Anaheim, CA 92806 Owner Republic Services	Kochergen Farms Composting, SWIS 16-AA-0022 Avenal Cutoff Rd. and Omaha Ave. Avenal CA 93239 Owner Kochergen Farms	Composting Facility
Source Separated Organic Materials	Rainbow Transfer/Recycling Co. SWIS 30-AB-0099 17121 Nichols Ln Huntington Beach CA, 92647 Owner Republic Services	Republic Services Copper Mountain Landfill 34853 East County 12th Street, Wellton, AZ 85356 No SWIS Number Owner Republic Services	Composting Facility
Source Separated Organic Materials	CVT Regional Material Recovery and TS SWIS 30-AB-0335 1131 N. Blue Gum St. Anaheim, CA 92806 Owner Republic Services	Rialto BioEnergy Facility, LLC. SWIS 36-AA-0446 503 East Santa Ana Avenue Rialto, CA 92376 Owner Anaergia Services	Large Volume In-Vessel Digestion Facility
C&D	CVT Regional Material Recovery and TS SWIS 30-AB-0335 1131 N. Blue Gum St. Anaheim, CA 92806 Owner Republic Services	CVT Regional Material Recovery and TS SWIS 30-AB-0335 1131 N. Blue Gum St. Anaheim, CA 92806 Owner Republic Services	Processing Facility

B. Facility Capacity Guarantee. Contractor shall guarantee sufficient capacity over the Term of this Agreement to Transfer (if applicable), Transport, and Process all Source Separated Recyclable Materials, Source Separated Organic Materials, and C&D Debris

Collected under this Agreement. Contractor shall cause the Approved Facility(ies) to Recycle or Process the Recyclable Materials, Organic Materials, and C&D Debris as appropriate, market the Source Separated Recyclable Materials, Source Separated Organic Materials, and C&D Debris recovered from such operations, and Dispose of Residue. Contractor shall provide the City, upon request, with documentation demonstrating the availability of such Transfer (if applicable), Transport, and Processing capacity as described below.

1. City may request that Contractor report aggregate Facility capacity committed to other entities through Contractor's contracts. City, or its agent, will have the right to seek verification of Contractor's reported aggregate capacity through inspection of pertinent sections of Contractor's contracts with such entities to determine the duration of Contractor's commitment to accept materials from such entities and the type and volume of materials Contractor is obligated to accept through the contracts. In addition, City, or its agent, will have the right to review tonnage reports documenting the past three (3) years of Tonnage accepted at the Approved Facility(ies) by such entities. To the extent allowed by law, City, or its agent(s), agree to maintain the confidentiality of the information reviewed related to the individual contracts with other contracting entities and agree to review all related material at the Contractor's office and will not retain any copies of reviewed material. Contractor will fully cooperate with the City's request and provide City, or its agent(s) access to Contractor's records.
  2. If the Contractor's Subcontractor is the owner and/or operator of Approved Facilities, the Contractor shall, upon City request, demonstrate that such capacity is available and allocated to the City by provision of its agreement with the Approved Facility(ies) owner(s)/operator(s) (Subcontractor(s)) documenting the Subcontractor's guarantee to accept the Recyclable Materials, Organic Materials, and C&D Debris Contractor delivers over the Term of this Agreement and any extensions to the Agreement.
- C. Equipment and Supplies. Contractor shall equip and operate the Approved Facilities in a manner to fulfill Contractor's obligations under this Agreement, including achieving all applicable standards for Disposal reduction, Processing, Recycling, Diversion, Residue volume and content, and final product quality standards required under this Agreement and Applicable Law. Contractor is solely responsible for the adequacy, safety, and suitability of the Approved Facilities. Contractor shall modify, enhance,

and/or improve the Approved Facilities as needed to fulfill service obligations under this Agreement, at no additional compensation from the City or rates charged to Customers.

Contractor shall provide all rolling stock, stationary equipment, material storage Containers, spare parts, maintenance supplies, Transfer, Transport, and Processing equipment, and other consumables as appropriate and necessary to operate the Approved Facilities and provide all services required by this Agreement. Contractor shall place the equipment in the charge of competent equipment operators. Contractor shall repair and maintain all equipment at its own cost and expense.

- D. Facility Permits. Contractor or Facility operator shall keep all existing permits and approvals necessary for use of the Approved Facility(ies), in full regulatory compliance. Contractor, or Facility operator, shall, upon request, provide copies of permits and/or notices of violation of permits to the City.
- E. Transfer Facility. At Contractor's option, Contractor may rely on a Transfer Facility and, in such case, shall Transport and deliver some or all Solid Waste to the Approved Transfer Facility for pre-Processing (if applicable) and Transfer. At the Approved Transfer Facility, Solid Waste shall be unloaded from Collection vehicles and loaded into large-capacity vehicles and Transported to the Approved Facility(ies) for Processing, in a timely manner and in accordance with Applicable Law.

If Contractor delivers some or all Solid Waste to a Transfer Facility, it shall receive assurances from Facility operator that Facility operator will Transport or arrange for Transport of the Solid Waste to appropriate Approved Facility(ies) for Processing or the Designated Disposal Facility for Disposal, as applicable for each type of Solid Waste. In such case, Contractor shall receive written documentation from the Facility operator(s) of the Facilities used for Processing of Recyclable Materials, Organic Materials, and C&D Debris. Contractor shall pay all costs associated with Transport, Transfer, and, Processing of all Recyclable Materials, Organic Materials, and C&D Debris Collected in accordance with this Agreement, including marketing of recovered materials and Disposal of all Residue.

Contractor shall comply with separate handling requirements described in this Exhibit 8.

- F. Contractor-Initiated Change in Facility(ies). Contractor may change its selection of one

or more of the Approved Facility(ies) following the City's written approval, which may be conditioned on various factors including, but not limited to: the performance of the current versus proposed Facility, the permitting status of and LEA inspection records related to the proposed Facility, the distance of the Facility from the City, and any other factor that may reasonably degrade the value received by the City. If Contractor elects to use a Facility(ies) that is(are) not listed on the then-current list of Approved Facility(ies) in this Exhibit, it shall submit a written request for approval to the City thirty (30) business days prior to the desired date to use the Facility and shall obtain the City's written approval prior to use of the Facility. Contractor's compensation and rates shall not be adjusted for a Contractor-initiated change in Facilities.

- G. Notification of Emergency Conditions. Each Approved Facility shall notify the City of any unforeseen operational restrictions that have been imposed upon the Facility by a regulatory agency or any unforeseen equipment or operational failure that will temporarily prevent the Facility from Processing the Recyclable Materials, Organic Materials, and C&D Debris Collected under this Agreement. Contractor shall notify the City in accordance with Section 4.9.3 of the Agreement.
- H. Approved Facility Unavailable/Use of Alternative Facility. If Contractor is unable to use the Approved Facility due to a sudden unforeseen closure of the Facility or other emergency conditions described in Section 8.1.G in this Exhibit 8, Contractor may use an Alternative Facility provided that the Contractor provides verbal and written notice to the City and receives written approval from the City at least twenty-four (24) hours prior to the use of an Alternative Facility to the extent reasonably practical given the nature of the emergency or sudden closure. The Contractor's written notice shall include a description of the reasons the Approved Facility is not feasible and the period of time Contractor proposes to use the Alternative Facility. As appropriate for the Recyclable Materials, Organic Materials, and C&D Debris to be delivered to the Alternative Facility, the Alternative Facility shall meet the applicable Facility standards in this Agreement and shall be sent to: (i) an allowable Facility, operation, or used for an activity specified by pursuant to 14 CCR Section 18983.1(b) and not subsequently sent to Disposal; (ii) an "Organic Waste Processing Facility" pursuant to 14 CCR Section 18982(a)(14.5) for applicable Source Separated Recyclable Materials and Source Separated Organic Materials; or, (iii) a Transfer Facility. If Contractor is interested in using a Facility for Organic Waste Processing technology that is not listed above and not currently approved by CalRecycle, Contractor shall be responsible for securing the

approvals necessary from CalRecycle prior to the City's final approval of such Facility or activity, and shall do so in accordance with the procedures specified in 14 CCR Section 18983.2.

If any Approved Facility specified in this Exhibit becomes unavailable for use by Contractor for Recyclable Materials, Organic Materials, and C&D Debris Collected in the City for a period of more than two (2) days, City may designate an Alternative Facility. The Parties agree that the Approved Facility shall only be deemed to be "unavailable" if one or more of the following has occurred: (i) a Force Majeure event has occurred; (ii) a Facility has lost one or more permits to operate; (iii) a Facility has exhibited a pattern of violation through the receipt of repeated notices of violation from one or more regulatory agencies. Further, the Parties agree that a Facility shall only be deemed to be "unavailable" if the lack of availability of the Facility is not due to Contractor's negligence, illegal activity, neglect, or willful misconduct, as determined only after written notice of alleged negligence, illegal activity, neglect, or willful misconduct has been presented to Contractor and Contractor has been provided an opportunity to present evidence and rebut such claims. At City's request, Contractor shall research and propose Alternate Facility(ies) for the impacted Recyclable Materials, Organic Materials, and any other type of Solid Waste, excluding Refuse, separately Collected by Contractor, and shall submit a written analysis and recommendation to the City within thirty (30) days concerning the cost for use of Alternative Facility(ies) and any logistical changes that would be required to utilize such Alternative Facility(ies). City and Contractor will discuss the advantages and disadvantages of use of the potential Alternative Facility(ies) and City will designate the approved Alternative Facility(ies). The decision of the City shall be final. The change in Facility shall be treated as City-directed change in scope.

In the event an Approved Facility becomes unavailable due to the negligence, illegal activity, neglect, or willful misconduct of Contractor, Contractor shall bear all additional costs for use of an Alternative Facility including increased Processing costs, Transportation costs, Transfer costs, and all other costs.

The table listing Approved Facilities in this Exhibit shall be modified accordingly to reflect the new City-Approved Facility(ies).

If Contractor is not the owner of the new Approved Facility, Contractor shall enter into a subcontract agreement with the Facility operator of the Alternative Facility to require

compliance with the requirements of Section 4.9 of this Agreement and this Exhibit unless City waives one or more requirements.

- I. **Monitoring, Waste Evaluations, and Capacity Planning Requirements.** Contractor shall conduct material sampling, sorting, and waste evaluations of various material streams as further described in Section 8.5 in this Exhibit 8 to meet or exceed SB 1383 requirements. Upon City request, the Contractor shall also participate in facility capacity planning studies to ensure that sufficient capacity is allocated to the City.
- J. **Compliance with Applicable Law.** Contractor (including its Affiliates and Subcontractors) warrants throughout the Term of this Agreement and any extensions that the Approved Facilities are respectively authorized and permitted to accept Recyclable Materials, Organic Materials, and C&D Debris in accordance with Applicable Law and are in full compliance with Applicable Law.
- K. **Records and Investigations.** Contractor shall maintain accurate records of the quantities of Discard Materials Transported to and accepted at the Approved Facility(ies) and shall cooperate with City and any regulatory authority in any audits or investigations of such quantities.
- L. **Inspection and Investigations.** An authorized City employee or agent shall be allowed to enter each Facility during normal working hours in order to conduct inspections and investigations in order to examine Facility operations; Processing activities; contamination monitoring; material sampling and sorting activities, including inspection of end-of-line materials after sorting; and records pertaining to the Facility in order to determine compliance with Applicable Law, including SB 1383, to understand protocols and results, and conduct investigations, if needed. Contractor shall permit City or its agent to review or copy, or both, any paper, electronic, or other records required by City.

## **8.2. Processing Standards**

- A. **Recovery Required.** Contractor agrees to Transport and deliver all Source Separated Recyclable Materials, Source Separated Organic Materials, and C&D Debris Collected under this Agreement to the Approved Facility for Processing as applicable for each material type. Contractor shall conduct Processing activities for all Source Separated Recyclable Materials, Source Separated Organic Materials, and C&D Debris to recover Recyclable Materials and Organic Waste to reduce Disposal. The Processing shall be

performed in a manner that minimizes Disposal to the greatest extent practicable and complies with Applicable Law, including SB 1383. Contractor may Dispose of Organic Waste removed from homeless encampments and illegal disposal sites and quarantined Organic Waste, which meet the requirements described in 14 CCR Section 18984.13(d), rather than Process such materials.

B. Separate Handling Requirements

1. Contractor shall keep Source Separated Recyclable Materials, Source Separated Organic Materials, and C&D Debris separate from each other and separate from other Solid Waste streams and shall Process the materials separately from each other and separately from other Solid Waste streams.
2. Pursuant to 14 CCR Section 17409.5.6(a)(1), "Remnant Organic Material" separated from Refuse for recovery can be combined with Organic Waste removed from the Source Separated Organic Materials for recovery once the material from the Source Separated Organic Materials has gone through the Organic Waste recovery measurement protocol described in 14 CCR Section 17409.5.4.

C. Residue Disposal. Contractor shall be responsible for Disposal of Residue from Processing activities at its own expense at the Designated Disposal Facility.

D. Processing Facility Residue Guarantees. Upon request of the City, Contractor shall provide a certified statement from the Facility operator documenting its Residue level. The Residue level shall be calculated separately for each material type and for each Approved Facility used for Recycling and Processing. The Residue level calculation method shall be reviewed and approved by the City.

E. Source Separated Recyclable Materials Processing Standards.

1. Contractor shall arrange for Processing of all Source Separated Recyclable Materials at a Facility that recovers materials designated for Collection in the Source Separated Recyclable Materials Container and in a manner deemed not to constitute landfill Disposal pursuant to 14 CCR Section 18983.1(a) which states that landfill Disposal includes final deposition of Organic Waste at a landfill or use of Organic Waste as ADC or AIC.

F. Source Separated Organic Materials Processing Standards.

1. Contractor shall arrange for Processing of all Source Separated Organic Materials at a Facility that recovers Source Separated Organic Materials and in a manner deemed not to constitute landfill Disposal pursuant to 14 CCR Section 18983.1(a) which states that landfill Disposal includes final deposition of Organic Waste at a landfill or use of Organic Waste as ADC or AIC.
2. Contractor shall arrange for Source Separated Organic Materials Processing at the Approved Organic Waste Processing Facility that meets one or more of the following criteria, and such Facility or operation is capable of and permitted to accept and recover the types of Organic Wastes included in the Source Separated Organic Materials:
  - a. "Compostable Material Handling Operation or Facility" as defined in 14 CCR Section 17852(a)(12); small composting facilities that are otherwise excluded from that definition; or community composting as defined within 14 CCR Section 18982(a)(8). The compostable materials handling operation or Facility shall, pursuant to 14 CCR Section 17867(a)(16), demonstrate that the percentage of Organic Waste in the materials sent to Disposal is:
    - i. On and after January 1, 2022, less than 20 percent (20%); and,
    - ii. On and after January 1, 2024, less than 10 percent (10%).
  - b. An "In-vessel Digestion Operation or Facility" as defined in 14 CCR 17896.5. The in-vessel digestion Facility or operation shall, pursuant to 14 CCR Section 17896.44.1, demonstrate that the percentage of Organic Waste in the materials sent to Disposal is:
    - i. On and after January 1, 2022, less than 20 percent (20%); and,
    - ii. On and after January 1, 2024, less than 10 percent (10%).
  - c. A "Biomass Conversion Operation" as defined in Section 40106 of the California Public Resources Code.
  - d. Soil amendment for erosion control, revegetation, slope stabilization, or

landscaping at a landfill, that is defined as a reduction in landfill Disposal in accordance with 14 CCR Section 18983.1(b).

- e. Land application of compostable materials consistent with 14 CCR Section 17852(a)(24.5) and subject to the conditions in 14 CCR Section 18983.1(b)(6).
- f. Lawful use as animal feed, as set forth in California Food and Agricultural Code Section 14901 et seq. and Title 3, Division 4, Chapter 2, Subchapter 2 commencing with 14 CCR Article 1, Section 2675.
- g. Other operations or facilities with processes that reduce short-lived climate pollutants that are approved by the State in accordance with 14 CCR Section 18983.2.

If Contractor is interested in using an operation, Facility, or activity not expressly identified above for Source Separated Organic Materials Processing, Contractor shall be responsible for securing the approvals necessary from CalRecycle prior to the City's final approval of such operation, Facility, or activity, and shall do so in accordance with the procedures specified in 14 CCR Section 18983.2.

- 3. Preparation of Materials for Processing. The Contractor shall be responsible for preparing materials for Processing at the Approved Organic Waste Processing Facility, which shall include, but is not limited to, removal of visible physical contaminants such as plastic, glass, metal, and chemicals prior to size reduction.
- 4. Limits on Incompatible Materials in Recovered Organic Waste
  - a. Limits. Except as described in Section 8.2.F.4.c. of this Exhibit 8, Contractor's Transfer/Processing Facility or operation shall only send offsite that Organic Waste recovered after Processing the Source Separated Organic Materials that meets the following requirements or as otherwise specified in 14 CCR Section 17409.5.8(a):
    - i. On and after January 1, 2022 with no more than 20 percent (20%) of Incompatible Material by weight; and,
    - ii. On and after January 1, 2024 with no more than 10 percent (10%) of

Incompatible Material by weight.

- b. Measurement. Contractor shall measure the actual levels of Incompatible Materials in accordance with procedures described in 14 CCR Section 17409.5.8(b).
- c. Exceptions. The limits in Section 8.2.F.4.a. of this Exhibit 8, shall not apply to the recovered Organic Waste sent offsite from the Transfer/Processing Facility or operation, if the Contractor sends the recovered Organic Waste from the Transfer/Processing Facility or operation to one or more of the following types of Facilities that will further Process the Organic Waste, or as otherwise specified in 14 CCR Section 17409.5.7(c):
  - i. A Transfer/Processing Facility or operation that complies with Section 8.2.F.4.a. of this Exhibit 8;
  - ii. A compostable materials handling Facility or operation that, pursuant to 14 CCR Section 17867(a)(16), demonstrates that the percentage of Organic Waste in the materials sent to Disposal is:
    - (A) On and after January 1, 2022, less than 20 percent (20%); and,
    - (B) On and after January 1, 2024, less than 10 percent (10%).
  - iii. An in-vessel digestion Facility or operation that, pursuant to 14 CCR Section 17896.44.1, demonstrates that the percentage of Organic Waste in the materials sent to Disposal is:
    - (A) On and after January 1, 2022, less than 20 percent (20%); and,
    - (B) On and after January 1, 2024, less than 10 percent (10%).
  - iv. An activity that meets the definition of a recycling center as described in 14 CCR Section 17402.5(d).

G. C&D Material Program Standards.

- 1. Contractor shall comply with the CALGreen Construction and Demolition Materials Recycling requirements.

2. Contractor shall deliver mixed C&D Material loads to the Approved C&D Processing Facility for Recycling.
  3. Contractor shall deliver Source Separated C&D Material such as, but not limited to, dirt, concrete, wood waste, cardboard, or other Recyclable C&D Materials to the Approved C&D Processing Facility or other Facility authorized for Recycling C&D Material, and shall deliver salvageable materials to a party for reuse or salvage.
  4. Contractor shall arrange for Processing of Organic Waste in the C&D Material at a Facility that recovers Organic Waste from C&D Material and in a manner deemed not to constitute landfill Disposal pursuant to 14 CCR Section 18983.1(a), which states that landfill Disposal includes final deposition of Organic Waste at a landfill or use of Organic Waste as ADC or AIC.
  5. If City is not satisfied that the Contractor can achieve and sustain the minimum required annual average Mixed Waste organic content recovery rate, or if the Contractor has implemented its corrective action plan and failed to achieve the minimum required annual average Mixed Waste organic content recovery rate, the City shall have the right to direct use of an Alternative Facility, and Contractor shall incur all costs associated with use of the Alternative Facility including Transportation, Transfer, Processing, and Disposal. The City may assess Liquidated Damages in accordance with Section 11.4 of this Agreement and/or may deem this failure an event of default under Section 11.1 of this Agreement. If an Alternative Facility is not available within a commercially reasonable distance, Contractor shall be required to implement, at no cost to the City and with no increase to rates, an Organic Waste Collection system that will provide programmatic compliance with 14 CCR Division 7, Chapter 12, Article 3.
- H. Plastic Bags. Contractor shall annually submit to City written notice from the Approved Organic Waste Processing Facility confirming said Facility can remove plastic bags when Processing Source Separated Organic Materials.
- I. Compostable Plastics. Contractor may accept Compostable Plastics at the Approved Organic Waste Processing Facility. Pursuant to this Agreement, Contractor shall annually submit to City written notice from the Approved Organic Waste Processing Facility confirming said Facility can Process and recover these Compostable Plastics.

- J. Marketing. Upon request, Contractor shall provide proof to the City that all Source Separated Recyclable Materials, Source Separated Organic Materials, and C&D Material Collected by Contractor were Processed and recovered materials were marketed for Recycling, salvage, or Reuse, or as recovered Organic Wastes products in such a manner that materials are not deemed landfill Disposal pursuant to SB 1383 and in a manner that materials are deemed Diversion pursuant to AB 939. All Residue from the Recycling and Processing activities that is not marketed shall be reported to the City as Residue and accounted for as Disposal tonnage at the Designated Disposal Facility. No Source Separated Recyclable Materials, Source Separated Organic Materials, or C&D Material shall be Transported to a domestic or foreign location if landfill Disposal of such material is its intended use. If Contractor becomes aware that a broker or buyer has illegally handled, Disposed of, or used material generated in the City that is not consistent with Applicable Law, Contractor shall immediately inform the City and terminate its contract or working relationship with such party. In such case, Contractor shall find an alternative market for the material(s) recovered from the Source Separated Recyclable Materials, Source Separated Organic Materials, and/or C&D Material that is compliant with Applicable Law.

The performance of commodity markets for materials recovered from Source Separated Recyclable Materials shall not be considered a reason for deeming a Facility "unavailable," nor shall it be considered an acceptable basis for the need to use an Alternative Facility, nor shall it serve as the basis for any adjustment in Contractor's compensation under this Agreement, other than as specifically contemplated in Article 6 of this Agreement.

- K. Disposal of Source Separated Recyclable Materials, Source Separated Organic Materials, and C&D Materials Prohibited. With the exception of Processing Residue, which shall not exceed the limits established under Applicable Law, Source Separated Recyclable Materials, Source Separated Organic Materials, and C&D Materials Collected under this Agreement may not be Disposed of in lieu of Recycling, Processing, or marketing the material, without the express written approval of the City.

If for reasons beyond its reasonable control, Contractor believes that it cannot avoid Disposal, including use as ADC or AIC, of the Source Separated Recyclable Materials, Source Separated Organic Materials, or C&D Material Collected in the City, then it shall prepare a written request for City approval to Dispose of such material. Such request shall contain the basis for Contractor's belief (including, but not limited to, supporting

documentation), describe the Contractor's efforts to arrange for the Processing of such material, the period required for such Disposal, and any additional information supporting the Contractor's request.

In addition, the request shall describe the Contractor's proposed interim plans for implementation while the City is evaluating its request. If the City objects to the interim plans, the City shall provide written notice to the Contractor and request an alternative arrangement. The City shall consider the Contractor's request and inform Contractor in writing of its decision within thirty (30) business days. Depending on the nature of the Contractor's request, City may extend the thirty (30) business day period, at its own discretion, to provide more time for evaluation of the request and negotiation of an acceptable arrangement with the Contractor.

### **8.3. Weighing of Materials**

- A. **Maintenance and Operation.** This Section 8.3 of this Exhibit 8 applies to motor vehicle scales used at the Approved Facilities. Approved Facilities shall be equipped with one or more State-certified motor vehicle scales in accordance with Applicable Law. Upon request, Contractor shall arrange for Facility operator to provide documentary evidence of such scale certification within ten (10) days of City's request during the Term. Licensed weigh master(s) shall operate those scales to weigh all inbound and outbound Collection vehicles Transporting Recyclable Materials, Organic Materials, and C&D Debris and all Transfer vehicles Transporting materials to another site. Contractor shall arrange for Facility operator to provide City with access to weighing information at all times and copies thereof within three (3) business days following the City's request. Exceptions to weighing requirements are specified in Section 8.3.G of this Exhibit 8.
  
- B. **Vehicle Tare Weights for Approved Facility(ies).** Within thirty (30) days prior to the effective date of this Agreement, Contractor shall coordinate with the Facility operator(s) to ensure that all Collection vehicles used by Contractor to Transport Recyclable Materials, Organic Materials, and C&D Debris to Approved Facilities are weighed to determine unloaded ("tare") weights. Contractor shall work with Facility operator(s) to electronically record the tare weight, identify vehicle as Contractor's, and provide a distinct vehicle identification number for each vehicle. Contractor shall provide City with a report listing the vehicle tare weight information upon request. Contractor shall promptly coordinate with Facility operator to weigh additional or replacement Collection vehicles prior to Company placing them into service. Contractor

shall check tare weights at least annually, or within fourteen (14) days of a City request, and shall re-tare vehicles immediately after any major maintenance service that could impact the weight of the vehicle by more than fifty (50) pounds.

- C. Substitute Scales. If any scale at the Approved Facility is inoperable, being tested, or otherwise unavailable, Facility operator shall use reasonable business efforts to weigh vehicles on the remaining operating scale(s). To the extent that all the scales are inoperable, being tested, or otherwise unavailable, Facility operator shall substitute portable scales until the permanent scales are replaced or repaired. Facility operator shall arrange for any inoperable scale to be repaired as soon as possible.
- D. Estimates. Pending substitution of portable scales or during power outages, Facility operator shall estimate the tonnage of the Recyclable Materials, Organic Materials, and C&D Debris Transported to and accepted at the Approved Facilities by utilizing the arithmetic average of each vehicle's recorded tons of Recyclable Materials, Organic Materials, and C&D Debris delivered on its preceding three (3) deliveries.

During any period of time the scales are out of service, Facility operator shall continue to record all information required by this Section 8.3 for each delivery of Recyclable Materials, Organic Materials, and C&D Debris to the Approved Facilities and each load of material Transferred to another Approved Facility(ies).

- E. Weighing Standards and Procedures. At the Approved Facilities, Facility operator shall weigh and record inbound weights of all vehicles delivering Recyclable Materials, Organic Materials, and C&D Debris when the vehicles arrive at the Facility. In addition, Facility operator shall weigh and record outbound weights of vehicles for which Facility operator does not maintain tare weight information. Furthermore, Facility operator shall weigh and record outbound weights of all Transfer vehicles Transporting Recyclable Materials, Organic Materials, and C&D Debris from a Transfer Facility to another Approved Facility(ies) for Processing.
- F. Records. Facility operator shall maintain scale records and reports that provide information including: date of receipt, inbound time, inbound and outbound weights (or tare weights) of vehicles, vehicle identification number, jurisdiction of origin of materials delivered, type of material, company/hauler identification, and classification, type, weight, and final destination of Recyclable Materials, Organic Materials, and C&D Debris if the related materials are Transferred to another Approved Facility(ies).

- G. **Exceptions to Weighing Requirements.** If the Approved Facility does not have motor vehicle scales to weigh Contractor's vehicles and Recyclable Materials, Organic Materials, or C&D Debris delivered to the Facility, Contractor shall obtain a receipt for delivery of the Recyclable Materials, Organic Materials, and C&D Debris that identifies the date and time of delivery, the type of material delivered, and the vehicle number. Contractor or Facility operator shall estimate the tonnage of material delivered for each load based on the volumetric capacity of the vehicle and material density factors (e.g., pounds per cubic yard) approved by or designated by the City.
- H. **Upon-Request Reporting.** If vehicle receiving and unloading operations are recorded on video cameras at the Approved Facilities, Contractor shall make those videos available for City review during the Approved Facilities' operating hours, upon request of the City, and shall provide the name of the driver of any particular load if available.

#### **8.4. Rejection of Excluded Waste**

- A. **Inspection.** Contractor will use standard industry practices to detect and reject Excluded Waste in a uniform and non-discriminatory manner and will not knowingly accept Excluded Waste at the Approved Facility(ies). Contractor will comply with the inspection procedure contained in its permit requirements. Contractor will promptly modify that procedure to reflect any changes in permits or Applicable Law.
- B. **Excluded Waste Handling and Costs.** Contractor will arrange for or provide handling, Transportation, and delivery to a Recycling, incineration, or a Disposal facility permitted in accordance with Applicable Law of all Excluded Waste detected at the Approved Facility(ies). Contractor is solely responsible for making those arrangements or provisions and all costs thereof. Nothing in this Agreement will excuse the Contractor from the responsibility of handling Excluded Wastes that Contractor inadvertently accepts in a lawful manner and of arranging for the disposition of that Excluded Waste in accordance with Applicable Law.

#### **8.5. Materials Evaluations at Approved Facilities**

- A. **General.** Contractor shall conduct the following "evaluations" at Approved Facilities, if applicable to the type of facility:
  - 1. **Refuse Container Waste Evaluations.** Waste evaluations of Refuse at the Approved Transfer Facility (if applicable) in accordance with 14 CCR Sections

18998.1(a)(3)(A) and 17409.5.7.

2. **Organic Waste Recovery Efficiency Evaluations.** Waste evaluations at Approved Transfer Facility (if applicable) or Approved Processing Facility(ies) in accordance with 14 CCR Sections 17409.5.1 to 17409.5.5.
  3. **Evaluation of Organic Waste in Residuals.** Compliance evaluations of Organic Waste to determine the level of Organic Waste in materials sent for Disposal in accordance with 14 CCR Sections 17409.5.3, 17409.5.5, 17867 (Compost operations and facilities), and 17896.44.1 (In-vessel digestion operations and facilities), as applicable.
- B. **Record Keeping and Reporting.** For the evaluations described above, Contractor shall maintain all records and submit reports to CalRecycle as described in 14 CCR Division 7, Chapter 3, Article 6.3, as applicable. Contractor shall report this information to the City on a monthly basis in accordance with Article 8.
- C. **Scheduling of Evaluations.** Contractor shall schedule evaluations during normal working hours. Contractor shall provide City notice of its intent to conduct evaluations at the Approved Facility(ies) at least ten (10) working days in advance of the evaluations.
- D. **Observance of Study by City and/or CalRecycle.** Contractor acknowledges that, upon request, a representative of the City and/or CalRecycle may oversee its next scheduled quarterly sampling and evaluation of any of the evaluations described in Section 5 of this Exhibit 8 conducted at the Approved Facility(ies).

## EXHIBIT 9 COLLECTION SYSTEM SPECIFICATIONS

### 1. General

- A. Under this Agreement, Contractor shall provide a three-Container Collection program for the separate Collection of Source Separated Recyclable Materials, Source Separated Organic Materials, and Refuse as specified in this Section, using Containers that comply with the requirements of Section 4.7.4.
- B. Source Separated Recyclable Materials Collection. Contractor shall provide Containers to Customers for Collection of Source Separated Recyclable Materials with coloring in accordance with Section 4.7.4. Contractor shall Transport the Source Separated Recyclable Materials to (i) the Approved Source Separated Recyclable Materials Processing Facility, or (ii) the Approved Transfer Facility for Transfer and Transport to the Approved Source Separated Recyclable Materials Processing Facility, as specified in Exhibit 8.

Source Separated Recyclable Materials that are to be accepted for Collection in the Source Separated Recyclable Materials Collection program are included in Section 1.66. such materials shall include Source Separated Organic Waste, such as paper products and Printing and Writing Papers as defined by SB 1383, 14 CCR Section 18982(a). The Parties agree that the list of accepted types of Source Separated Recyclable Materials may be added to or removed from time to time by mutual agreement with the City provided that in all cases Source Separated Organic Waste (including paper products and Printing and Writing Papers as defined by SB 1383, 14 CCR Section 18982(a)) is included for Collection. Contractor shall not add or remove materials to or from this list without written approval from the City or signed amendment to the Agreement, and such approval shall not be unreasonably withheld. Prohibited Container Contaminants shall not be Collected in the Source Separated Recyclable Materials Containers.

- C. Source Separated Organic Materials Collection. Contractor shall provide Containers to Customers for Source Separated Organic Materials Collection with coloring in accordance with Section 4.7.4. Contractor shall Transport the Source Separated Organic Materials to (i) the Approved Organic Waste Processing Facility, or (ii) the Approved Transfer Facility for Transfer and Transport to the Approved Organic Waste Processing Facility, as specified in Exhibit 8.

Source Separated Organic Materials that are to be accepted for Collection in the Source Separated Organic Materials Collection program include the following: Food Scraps, Food-Soiled Paper, Compostable Plastics, and Yard Waste. The Parties agree that types of Source Separated Organic Materials may be added to or removed from this list from time to time by mutual agreement with the City. Contractor shall not add or remove materials to or from this list without written approval from the City or signed amendment to the Agreement, and such approval shall not be unreasonably withheld. Carpets, Non-Compostable Paper, textiles, and Prohibited Container Contaminants shall not be Collected in the Source Separated Organic Materials Containers.

Contractor may Collect Compostable Plastics in the Source Separated Organic Materials Containers for Processing at the Approved Organic Waste Processing Facility. At least three (3) months prior to the commencement of the Collection of Compostable Plastics in the Source Separated Organic Materials program, Contractor shall provide written notification to the City that the Facility can Process and recover these Compostable Plastics. Contractor shall provide written notification to the City annually that the Facility has and will continue to have the capabilities to Process and recover the Compostable Plastics. Company shall notify the City within five (5) business days of the Facility's inability to accept Compostable Plastics. The notification shall include: a description of the reasons the Facility is no longer able to Process and recover Compostable Plastics; the period of time the Facility will not Process and recover Compostable Plastics; and, the Contractor's proposed plan to assist in education and outreach of Customers in the event that Compostable Plastics are no longer accepted for Collection. Such changes shall be handled as a change in scope pursuant to Section 2.10.

- D. Refuse Collection. Contractor shall provide Containers to Customers for Collection of Refuse with coloring in accordance with Section 4.7.4. Contractor shall Transport the Collected Refuse to (i) the Designated Disposal Facility, or (ii) the Approved Transfer Facility for Transfer and Transport to the Designated Disposal Facility, as specified in Exhibit 8. Contractor may allow carpets and textiles to be placed in the Refuse Containers. Prohibited Container Contaminants shall not be Collected in the Refuse Containers.

## **2. Use of Plastic Bags for Source Separated Organic Materials Collection**

This section only applies to Source Separated Organic Material Collected in plastic bags.

- A. Option 1: Food Waste in Plastic Bags in the Source Separated Organic Materials Containers. Contractor shall allow Customers to place Food Waste in plastic bags and put the bagged Food Waste in the Source Separated Organic Materials Container. At least three (3) months prior to the commencement of the use of plastic bags for the Food Waste program, Contractor shall provide written notification to the City that allowing the use of bags does not inhibit the ability of the City to comply with SB 1383, and that the Approved Organic Waste Processing Facility can Process and remove plastic bags when it recovers Source Separated Organic Materials. Annually, in accordance with Article 8, Contractor shall provide written notification to the City that the Facility has and will continue to have the capabilities to Process and remove plastic bags when it recovers Source Separated Organic Materials. If, at any time during the Term of the Agreement, the Approved Organic Waste Processing Facility can no longer accept plastic bags, City may assess Liquidated Damages or deem such failure an event of default under Section 11.1. Contractor shall notify the City within five (5) business days of the Facility's inability to accept plastic bags. The notification shall include: a description of the reasons the Facility is no longer able to Process and recover plastic bags; the period of time the Approved Facility will not Process and recover plastic bags; and, the Contractor's proposed plan to assist in education and outreach of Customers in the event that plastic bags are no longer accepted for Collection. Such changes shall be handled as a change in scope pursuant to Section 2.10.
- B. Option 2: Source Separated Organic Materials in Plastic Bags in the Source Separated Organic Materials Containers. Contractor shall allow Customers to place Source Separated Organic Materials in plastic bags and put the bagged Source Separated Organic Materials in the Source Separated Organic Materials Container. At least three (3) months prior to the commencement of the use of plastic bags for the Source Separated Organic Materials program, Contractor shall provide written notification to the City that allowing the use of bags does not inhibit the ability of the City to comply with SB 1383, and that the Approved Organic Waste Processing Facility can Process and remove plastic bags when it recovers Source Separated Organic Materials. Annually, in accordance with Article 8, Contractor shall provide written notification to the City that the Facility has and will continue to have the capabilities to Process and remove the plastic bags when it recovers Source Separated Organic Materials. If, at any time during the Term of the Agreement, the Approved Organic Waste Processing Facility can no longer accept plastic bags, City may assess Liquidated Damages or deem such failure an event of default under Section 11.1. Contractor shall notify the City within five (5)

business days of the Facility's inability to accept plastic bags. The notification shall include: a description of the reasons the Facility is no longer able to Process and recover plastic bags; the period of time the Approved Facility will not Process and recover plastic bags; and, the Contractor's proposed plan to assist in education and outreach of Customers in the event that plastic bags are no longer accepted for Collection. Such changes shall be handled as a change in scope pursuant to Section 2.10.

### **3. C&D Materials Collection**

Contractor shall Collect C&D Materials from all Customers that subscribe to its C&D Materials Collection services and Transport the C&D Material to (i) the Approved C&D Processing Facility, or (ii) the Approved Transfer Facility for Transfer and Transport to an Approved C&D Processing Facility. Contractor shall provide C&D Material Collection and Processing services in accordance with this Agreement. Contractor shall charge Customers for C&D Material Collection services at City-approved rates.

**EXHIBIT 10**

**SANTA ANA CLEAN CITY INITIATIVES**

Service	Implementation Date	Labor and Vehicle Requirement	Schedule	Labor Hours Per Rate Year	Vehicle Hours Per Rate Year
<p><b>Abandoned Item Collection and Litter Cleanup</b>                      Contractor shall provide abandoned item Collection and litter pickup at locations reported by Contractor's route supervisors and drivers, and/or the City within 24 hours of notification. Additionally, in the event of a windstorm or other situations which require cleanup, crews will be dispatched as requested by City staff.</p>	<p>July 1, 2022</p>	<p>Two, two-person crews, two trucks</p>	<p>8:00 A.M. to 5:00 P.M. (8 hours per day), six (6) days per week, Monday through Saturday</p>	<p>9,984 hours</p>	<p>4,992 hours</p>
<p><b>Right-of-Way Trash Container Service</b>                      Contractor shall provide Refuse Containers and Collection service at up to two-hundred and fifty (250) locations Citywide on sidewalks. Locations of Containers shall be designated by the City. Containers may be placed as far as six (6) feet from the curb face. The Contractor-provided Containers</p>	<p>July 1, 2022</p>	<p>One driver and truck.</p>	<p>7:00 A.M. to 11 A.M. six (6) days per week</p>	<p>1,248 hours</p>	<p>1,248 hours</p>

Service	Implementation Date	Labor and Vehicle Requirement	Schedule	Labor Hours Per Rate Year	Vehicle Hours Per Rate Year
<p>shall be sixty (60) gallons with a two hundred (200) pound load capacity, have gravity release locks, and weighted bottoms. Containers shall be branded with the City of Santa Ana's Clean City Initiative logo. The City will provide the artwork.</p>					
<p><b>Right-of-Way Trash Container Steam-Cleaning</b> Contractor shall steam-clean the interior and exterior of the Contractor provided Right-of-Way Trash Containers at a minimum of one-time per week.</p>	July 1, 2022	One steam-cleaning truck and personnel.	8:00 A.M. to 5:00 P.M. (8 hours per day), six (6) days per week	2,496 hours	2,496 hours
<p><b>Hardscape Cleaning</b> Beginning January 1, 2023, or sooner, Contractor shall provide litter pickup to all sidewalk areas designated by the City. The hardscape areas (i.e., sidewalks) shall be cleared of leaves, paper, dirt, feces, miscellaneous items, and other debris in conjunction with litter pickup and any bulky items. Designated areas may be changed by the City at any time.</p>	January 1, 2023, or sooner	Four, two-person crews, four trucks 30 linear miles of sidewalk per week	8:00 A.M. to 5:00 P.M. (8 hours per day), six (6) days per week	19,968 hours	9,984 hours

Service	Implementation Date	Labor and Vehicle Requirement	Schedule	Labor Hours Per Rate Year	Vehicle Hours Per Rate Year
<p><b>Sidewalk, Curb, and Gutter Power-washing</b> Beginning July 1, 2023, or sooner, Contractor shall power-wash sidewalks, curbs and gutters designated by City to remove gum, dirt, and non-gum stains.</p> <p>Designated areas (may change at City's request)</p>	<p>July 1, 2023, or sooner</p>	<p>One, two-person crew, one-truck</p> <p>15 linear miles of sidewalks, curbs and gutters per week</p>	<p>8:00 A.M. to 5:00 P.M. (8 hours per day), six (6) days per week</p>	<p>4,992 hours</p>	<p>2,496 hours</p>
<p><b>Porter Service</b> Beginning July 1, 2023, or sooner, Contractor shall provide daily janitorial services for areas designated by the City. Porter service shall include litter pick-up, and cleaning of Refuse Container, outdoor benches, bollards, and light poles.</p> <p>Designated areas (may change at City's request)</p>	<p>July 1, 2023, or sooner</p>	<p>Two, two-person crews, two trucks</p>	<p>7:00 A.M. to 6:00 P.M. (10 hours per day), five (5) days per week including Saturday</p>	<p>10,400 hours</p>	<p>5,200 hours</p>