

### **CONTRACT AMENDMENT NO. 3**

THIS CONTRACT AMENDMENT NO. 3 (the "Third Amendment") is made and entered into this 21<sup>st</sup> day of March, 2023, by and between the City of Laguna Beach (CITY), a California municipal corporation, and USA Waste of California, Inc. (CONTRACTOR), a corporation organized under the laws of the State of Delaware and doing business in the State of California.

#### **RECITALS**

WHEREAS, on August 1, 2013, the parties entered into a Solid Waste Handling Service Agreement for residential, commercial, and City solid waste, recycling, organic waste, household hazardous waste and electronic waste collection services (the "Agreement"); and

WHEREAS, on July 1, 2015 and again on July 13, 2021, the Agreement was amended (respectively referred to as the "First Amendment" and the "Second Amendment"); and

WHEREAS, since the adoption of the Agreement, Senate Bill 1383 (SB 1383), Short-lived Climate Pollutants, as well as its implementing regulations have become effective, and establish methane emissions reduction targets in a statewide effort to reduce emissions of short-lived climate pollutants, and provides CalRecycle the regulatory authority required to achieve the organic waste disposal reduction targets of 75% reduction of the 2014 level of statewide disposal of organic waste by 2025; and requires jurisdictions to provide organic waste collection to all organic waste generators, including residents, businesses, City facilities, and large events and venues by January 1, 2022, and

WHEREAS, the City Council has authorized a Request for Proposals from qualified Solid Waste Enterprises in an effort to enter a new Solid Waste franchise agreement which will comply with all requirements of SB 1383 and its implementing regulations, and desires to amend the Agreement by entering this Third Amendment by extending its term by one year to June 30, 2024, in order to enable an orderly transition from the current Solid Waste Handling Services provided under the Agreement to the services that will be provided under the proposed new franchise agreement;

NOW, THEREFORE, in consideration of the foregoing, the parties do hereby amend the

Agreement as more fully set forth below:

**SECTION 1 Amendment to Section 2.01 of the Agreement.**

The text of Section 2.01 of the Agreement is amended in its entirety to read as follows:

2.01 Term: The term of this Contract ("Term") shall be for a ten 10-year, nine month period beginning August 1, 2013 and terminating at 11:59 p.m. on June 30, 2024.

**SECTION 2 Amendment to Section 5.02 of the Agreement.**

The text of Section 5.02.01 of the Agreement is amended to add the following to the end of the existing text:

Notwithstanding any provision to the contrary herein, in connection with the CPI adjustment commencing on July 1, 2023, the Service Component of the Maximum Service Rates set forth on Exhibit 12 shall be adjusted by a percentage equal to one hundred percent (100%) of the change in the 12 month average Los Angeles/Orange County/Riverside Consumer Price Index (CPI) for the previous December to December period, compared to the next previous December to December period.

**SECTION 3 Amendment to Section 10.11.6.1 of the Agreement.**

Section 10.11.6.1 of the Agreement is amended in its entirety to read as follows:

10.11.6.1 Commercial Organics Collection

CONTRACTOR'S proposal to provide Commercial Organics Collection Services dated January 30, 2023 (the "Proposal") attached hereto as Exhibit 13 is hereby adopted and shall be implemented by CONTRACTOR, with the services set forth therein commencing effective July 1, 2023. Maximum Rates for Commercial Organics Collection under the Proposal shall be as set forth in the attached Exhibit 12. CONTRACTOR shall comply with all aspects of the Proposal, including the One-year Extension Program Implementation Plan included therein, the requirement that all organics carts needed to carry out the services set forth in the Proposal be delivered prior to July 1, 2023, and Contractor's obligation to provide one additional vehicle and driver to service the City prior to phasing out

the yellow bag program on July 31, 2023.

**SECTION 4** Amendment to Exhibit 12

EXHIBIT 12 is hereby amended and superseded in its entirety by the revised Exhibit 12 attached hereto and incorporated herein, with the Maximum Rates set forth therein effective July 1, 2023.

**SECTION 5.** Unaffected provisions remain effective.

All provisions of the Agreement, as amended by the First Amendment and the Second Amendment, excepting for those expressly amended by this Third Amendment, shall remain unchanged and in full force and effect.

CITY OF LAGUNA BEACH ("CITY")

By: Shohreh Dupuis Date: 4/20/23

MM Shohreh Dupuis, City Manager

ATTEST  
By: Ann Marie McKay Date: 4/20/2023

Ann Marie McKay, City Clerk

APPROVED AS TO FORM

By: Philip D. Kohn Date: 4/4/23

Philip D. Kohn, City Attorney

USA Waste of California, Inc. ("CONTRACTOR")

By: Mike Hammer Date: Mar 22, 2023  
By: Mike Hammer (Mar 22, 2023 16:13 PDT)

Michael Hammer, President-Southern California Area



# Contract Amendment No. 3 Signature page

Final Audit Report

2023-03-22

Created:	2023-03-22
By:	Elizabeth Vazquez Vaquez-Avila (lavila@lagunabeachcity.net)
Status:	Signed
Transaction ID:	CBJCHBCAABAAzvGxgmVCeUKTSaoZ2ZMWrEgsMb4TI5qi

## "Contract Amendment No. 3 Signature page" History



Document created by Elizabeth Vazquez Vaquez-Avila (lavila@lagunabeachcity.net)

2023-03-22 - 10:59:03 PM GMT- IP address: 64.58.157.194



Document emailed to mhammer@wm.com for signature

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Signer mhammer@wm.com entered name at signing as Mike Hammer

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Document e-signed by Mike Hammer (mhammer@wm.com)

Signature Date: 2023-03-22 - 11:13:55 PM GMT - Time Source: server- IP address: 156.101.9.4



Agreement completed.

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**EXHIBIT 12**  
**Maximum Service Rates**  
**Effective July 1, 2023**

<b>RESIDENTIAL</b>		<b>Disposal</b>	<b>Service</b>	<b>Total Rate</b>
Residential Collection		\$ 3.32	\$ 22.62	\$ 25.94
Additional Cart-Greenwaste/Recycling (Over 2)		\$ 0.38	\$ 2.94	\$ 3.32
Additional Cart-Trash (Over 1)		\$ 1.44	\$ 9.31	\$ 10.75
Cart Damaged as a Result of Misuse		\$ -	\$ 76.20	\$ 76.20
Cart Contamination Fee per occurrence		\$ 3.72	\$ 30.72	\$ 31.00
Extra Pickup fee		\$ 5.30	\$ 38.76	\$ 44.07
Bulky Item Pickup Service shall be free of charge for the first three requests each calendar		No Charge	No Charge	No Charge
Thereafter, Service Shall Occur at a Flat Rate		\$ 6.09	\$ 44.55	\$ 50.65
Residential Bagster 1 <sup>st</sup> Bagster Collection		\$ -	\$ 167.88	\$ 167.88
Additional Bagster collected at same occurrence		\$ -	\$ 141.86	\$ 141.86
Commercial - Curbside - MFD (6 Units or More)				
1 x/week		\$ 9.24	\$ 54.11	\$ 63.35
Each Extra Unit over 6 Units with 1x/week collection				
1 x/week		\$ 1.53	\$ 8.83	\$ 10.37
Commercial - Curbside - MFD (6 Units or More)				
2 x/week		\$ 18.47	\$ 75.94	\$ 94.41
Each Extra Unit over 6 Units with 1x/week collection				
2 x/week		\$ 3.08	\$ 5.22	\$ 8.29
<b>COMMERCIAL CARTS- REFUSE - COMMERCIAL/MULTI FAMILY</b>		<b>Disposal</b>	<b>Service</b>	<b>Total Rate</b>
Commercial Can - 64 Gallon Cart - (Non-Restaurant, includes Multi Family)				
1 x/week		\$ 5.71	\$ 56.50	\$ 62.22
2 x/week		\$ 15.86	\$ 103.17	\$ 119.04
3 x/week		\$ 28.46	\$ 147.30	\$ 175.75
4 x/week		\$ 41.59	\$ 190.90	\$ 232.49
5 x/week		\$ 55.91	\$ 233.30	\$ 289.21
6 x/week		\$ 69.93	\$ 276.02	\$ 345.95
Commercial Can - 96 Gallon Cart - (Non-Restaurant, includes Multi Family)				
1 x/week		\$ 8.57	\$ 57.45	\$ 66.02
2 x/week		\$ 23.54	\$ 102.58	\$ 126.11
3 x/week		\$ 42.31	\$ 143.92	\$ 186.23
4 x/week		\$ 62.00	\$ 184.33	\$ 246.33
5 x/week		\$ 82.44	\$ 224.00	\$ 306.44
6 x/week		\$ 103.34	\$ 263.21	\$ 366.55
<b>COMMERCIAL BINS - REFUSE - COMMERCIAL/MULTI FAMILY</b>		<b>Disposal</b>	<b>Service</b>	<b>Total Rate</b>
One Yard Bin				
1 x/week		\$ 12.27	\$ 145.66	\$ 157.93
2 x/week		\$ 34.01	\$ 267.67	\$ 301.68
3 x/week		\$ 60.95	\$ 384.50	\$ 445.45
4 x/week		\$ 88.23	\$ 500.99	\$ 589.22
5 x/week		\$ 117.08	\$ 615.92	\$ 733.00
6 x/week		\$ 147.83	\$ 728.95	\$ 876.78
Two Yard Bin				
1 x/week		\$ 24.54	\$ 148.14	\$ 172.69
2 x/week		\$ 65.49	\$ 264.40	\$ 329.89
3 x/week		\$ 114.46	\$ 372.65	\$ 487.11
4 x/week		\$ 163.52	\$ 480.81	\$ 644.33
5 x/week		\$ 214.80	\$ 586.78	\$ 801.57
6 x/week		\$ 268.80	\$ 690.00	\$ 958.80

**EXHIBIT 12**  
**Maximum Service Rates**  
**Effective July 1, 2023**

**Three Yard Bin**

1 x/week	\$ 36.81	\$ 156.63	\$ 193.45
2 x/week	\$ 95.60	\$ 273.95	\$ 369.55
3 x/week	\$ 164.22	\$ 381.46	\$ 545.68
4 x/week	\$ 232.55	\$ 489.25	\$ 721.80
5 x/week	\$ 303.45	\$ 594.49	\$ 897.94
6 x/week	\$ 377.57	\$ 696.50	\$ 1,074.07

**Four Yard Bin**

1 x/week	\$ 49.10	\$ 208.82	\$ 257.91
2 x/week	\$ 127.45	\$ 365.26	\$ 492.71
3 x/week	\$ 218.95	\$ 508.57	\$ 727.52
4 x/week	\$ 310.03	\$ 652.33	\$ 962.36
5 x/week	\$ 404.58	\$ 792.62	\$ 1,197.20
6 x/week	\$ 503.39	\$ 928.66	\$ 1,432.05

**Split 3 Yard Bin - MSW/RCY**

1 x/week	\$ 16.75	\$ 148.73	\$ 165.48
2 x/week	\$ 34.29	\$ 198.43	\$ 232.72
3 x/week	\$ 51.42	\$ 240.04	\$ 291.45
4 x/week	\$ 68.56	\$ 289.04	\$ 357.61
5 x/week	\$ 85.71	\$ 335.69	\$ 421.39
6 x/week	\$ 102.85	\$ 378.51	\$ 481.36

**Insta Bin - MSW**

1 x/week	\$ 36.95	\$ 143.51	\$ 180.46
2 x/week	\$ 36.95	\$ 153.36	\$ 190.31
3 x/week	\$ 36.95	\$ 163.23	\$ 200.18
4 x/week	\$ 36.95	\$ 173.06	\$ 210.01
5 x/week	\$ 36.95	\$ 182.93	\$ 219.88
6 x/week	\$ 36.95	\$ 192.78	\$ 229.73
Weekend	\$ 36.95	\$ 27.63	\$ 64.57
Additional Days	\$ -	\$ 9.86	\$ 9.86

**Insta Bin -C&D**

1 x/week	\$ 89.01	\$ 139.79	\$ 228.80
2 x/week	\$ 89.01	\$ 149.62	\$ 238.64
3 x/week	\$ 89.01	\$ 159.49	\$ 248.50
4 x/week	\$ 89.01	\$ 169.32	\$ 258.33
5 x/week	\$ 89.01	\$ 179.20	\$ 268.21
6 x/week	\$ 89.01	\$ 189.05	\$ 278.06
Weekend	\$ -	\$ 64.47	\$ 64.47
Additional Days	\$ -	\$ 9.86	\$ 9.86

COMMERCIAL/MULTI-FAMILY RECYCLING	Disposal	Service	Total Rate
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**Commercial Can - 64 & 96 Gallon Carts**

1 x/week	\$ 6.14	\$ 26.87	\$ 33.02
2 x/week	\$ 11.72	\$ 51.32	\$ 63.04
3 x/week	\$ 17.31	\$ 75.79	\$ 93.10
4 x/week	\$ 22.90	\$ 100.24	\$ 123.14
5 x/week	\$ 28.49	\$ 124.70	\$ 153.19
6 x/week	\$ 34.07	\$ 149.16	\$ 183.23

**One Yard Bin**

1 x/week	\$ 14.69	\$ 64.30	\$ 78.99
2 x/week	\$ 28.06	\$ 122.81	\$ 150.87
3 x/week	\$ 41.43	\$ 181.33	\$ 222.77
4 x/week	\$ 54.80	\$ 239.84	\$ 294.64
5 x/week	\$ 68.17	\$ 298.35	\$ 366.52
6 x/week	\$ 81.54	\$ 356.88	\$ 438.42

**Two Yard Bin**

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**Maximum Service Rates**  
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	1 x/week	\$ 16.07	\$ 70.29	\$ 86.36
	2 x/week	\$ 30.67	\$ 134.27	\$ 164.94
	3 x/week	\$ 45.29	\$ 198.24	\$ 243.53
	4 x/week	\$ 59.91	\$ 262.20	\$ 322.11
	5 x/week	\$ 74.52	\$ 326.17	\$ 400.70
	6 x/week	\$ 89.13	\$ 390.15	\$ 479.28
<b>Three Yard Bin</b>				
	1 x/week	\$ 17.98	\$ 78.73	\$ 96.72
	2 x/week	\$ 34.36	\$ 150.38	\$ 184.74
	3 x/week	\$ 50.72	\$ 222.02	\$ 272.74
	4 x/week	\$ 67.09	\$ 293.67	\$ 360.76
	5 x/week	\$ 83.47	\$ 365.31	\$ 448.77
	6 x/week	\$ 99.83	\$ 436.97	\$ 536.81
<b>Four Yard Bin</b>				
	1 x/week	\$ 23.98	\$ 104.96	\$ 128.94
	2 x/week	\$ 45.80	\$ 200.51	\$ 246.31
	3 x/week	\$ 67.63	\$ 296.03	\$ 363.66
	4 x/week	\$ 89.45	\$ 391.55	\$ 481.00
	5 x/week	\$ 111.28	\$ 487.07	\$ 598.34
	6 x/week	\$ 133.10	\$ 582.59	\$ 715.69
<b>COMMERCIAL/MULTI-FAMILY ORGANICS</b>				
		<b>Disposal</b>	<b>Service</b>	<b>Total Rate</b>
<b>Commercial Can - 35 gallon</b>				
	1 x/week	\$ -	\$ 31.56	\$ 31.56
	2 x/week	\$ -	\$ 62.85	\$ 62.85
	3 x/week	\$ -	\$ 94.12	\$ 94.12
	4 x/week	\$ -	\$ 125.41	\$ 125.41
	5 x/week	\$ -	\$ 156.68	\$ 156.68
	6 x/week	\$ -	\$ 187.97	\$ 187.97
	7x/week	\$ -	\$ 251.22	\$ 251.22
<b>Commercial Can - 64 gallon</b>				
	1 x/week	\$ -	\$ 38.16	\$ 38.16
	2 x/week	\$ -	\$ 76.02	\$ 76.02
	3 x/week	\$ -	\$ 113.91	\$ 113.91
	4 x/week	\$ -	\$ 151.79	\$ 151.79
	5 x/week	\$ -	\$ 189.65	\$ 189.65
	6 x/week	\$ -	\$ 227.52	\$ 227.52
	7x/week	\$ -	\$ 338.83	\$ 338.83
<b>One Yard Bin</b>				
	1 x/week	\$ -	\$ 82.24	\$ 82.24
	2 x/week	\$ -	\$ 160.52	\$ 160.52
	3 x/week	\$ -	\$ 238.80	\$ 238.80
	4 x/week	\$ -	\$ 317.08	\$ 317.08
	5 x/week	\$ -	\$ 395.37	\$ 395.37
	6 x/week	\$ -	\$ 473.65	\$ 473.65
	7x/week	\$ -	\$ 536.91	\$ 536.91
<b>Two Yard Bin</b>				
	1 x/week	\$ -	\$ 101.05	\$ 101.05
	2 x/week	\$ -	\$ 199.00	\$ 199.00
	3 x/week	\$ -	\$ 296.95	\$ 296.95
	4 x/week	\$ -	\$ 394.90	\$ 394.90

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**Maximum Service Rates**  
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5 x/week	\$	-	\$	492.84	\$	492.84
6 x/week	\$	-	\$	590.81	\$	590.81
7x/week	\$	-	\$	654.05	\$	654.05
<b>Commercial - Additional Rates (Each Occurance)</b>						
Commercial Bulky Item after three	\$	22.42	\$	194.66	\$	217.08
Valet/Scout Service - Per Bin per Month	\$	-	\$	72.06	\$	72.06
Additional Bin Pickup	\$	6.66	\$	57.83	\$	64.49
Additional MFD Large item PU	\$	5.36	\$	46.54	\$	51.90
Locking Fee	\$	-	\$	9.20	\$	9.20
Sunday, Holiday Service	\$	9.52	\$	82.60	\$	92.12
Graffiti Removal	\$	-	\$	45.99	\$	45.99
Overloaded Bins	\$	-	\$	55.19	\$	55.19
Late Fee	\$	-	\$	4.23	\$	4.23
Reactivation Fee	\$	-	\$	35.19	\$	35.19
Dry Run Fee	\$	-	\$	77.42	\$	77.42
A bin which needs moved in excess of 25 feet to service (monthly rate is determined by the number of bins times the services per week time the rate)						
25 to 50 feet	\$	-	\$	3.68	\$	3.68
51 to 75 feet	\$	-	\$	5.51	\$	5.51
Commercial Recycling Contamination fee per occurrence	\$	26.04	\$	32.93	\$	58.97
<b>Three Yard Split Bin</b>						
1 x/week	\$	16.75	\$	148.73	\$	165.48
2 x/week	\$	34.29	\$	198.43	\$	232.72
3 x/week	\$	51.42	\$	240.04	\$	291.45
4 x/week	\$	68.56	\$	289.04	\$	357.61
5 x/week	\$	85.71	\$	335.69	\$	421.39
6 x/week	\$	102.85	\$	378.51	\$	481.36
Permanent 40 Yard (up to 5 Tons)	\$	229.50	\$	485.29	\$	714.79
Permanent -40 yard Compactor	\$	229.50	\$	562.53	\$	792.03
Temporary 40 Yard - 2 Days (up to 5 tons)	\$	229.50	\$	527.31	\$	756.81
Temporary 40 Yard - 6 Days (up to 5 tons)	\$	229.50	\$	572.87	\$	802.37
Temporary 40 Yard C&D - 2 Days (up to 5 tons)	\$	477.78	\$	513.33	\$	991.11
Temporary 40 Yard C&D - 6 Days (up to 5 tons)	\$	477.78	\$	558.89	\$	1,036.67

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Temporary 10 Yard C&D - 2 Days (up to 5 tons)	\$	477.78	\$	513.33	\$	991.11
Temporary 10 Yard C&D - 6 Days (up to 5 tons)	\$	477.78	\$	558.89	\$	1,036.67
Permanent -40 yard Compactor	\$	229.50	\$	562.53	\$	792.03
Demurrage Per Day Charge - Temporary Only	\$	-	\$	11.39	\$	11.39
Tons Greater than 5 (Per Ton Rate)	\$	45.90	\$	-	\$	45.90
Disposal and Processing Rate (Per Ton Rate)						
C&D Processing Rate	\$	-	\$	95.56	\$	95.56
County Disposal	\$	45.90	\$	-	\$	45.90

### **Proposed 1- Year Extension Program Implementation Plan**

WM is taking proactive strides to stay ahead of CalRecycle's requirements. In addition to providing organics services at the appropriate capacity needed, SB 1383 calls for the identification and documentation of contamination in source separated organics. In response, we have introduced a commercial cart rate for source separated organics in lieu of the Yellow Bag Program. This change will allow WM to closely monitor each customer's participation and provide the appropriate contamination documentation needed to comply with SB 1383. WM will adopt the following process to achieve our proposed modernized organics collection program and ease the transition for businesses from free to chargeable recycling.

#### **Organics Space Audits**

To address space constraints in the City, WM will conduct physical site audits and provide a report on the space limitations of each of the 84 commercial business required to participate in organics recycling. Additionally, for more challenging areas, the operations team intends to scout out appropriate "staging areas" for carts to be placed on service days.

#### **Organics Right-sizing & Ongoing Recycling Outreach**

After the space audits have been completed, WM will begin extensive outreach to right-size organics services for each commercial business. This will include but is not limited to:

- Sending a customer notification letter detailing the upcoming changes, available service levels, and the new corresponding rates.
- Sending a postcard with a link to a survey for customers to elect their desired service levels.
- Reviewing customer responses and confirming service level plans with the customer and the City.
- Conducting additional outreach to non-responsive customers and providing them with WM's proposed service level plan for their business.

To ease the transition from free to chargeable recycling WM will provide literature that encourages businesses to properly source separate materials and decrease their trash generation for cost savings. WM will also provide individual evaluations for each account upon request. Our outreach methods are as follows:

- Sending a customer notification letter detailing the upcoming changes, available service levels, and the new corresponding rates.
- Sending a postcard with a link to a survey for customers to elect their desired service levels.
- Reviewing customer responses and confirming service level plans with the customer and the City.
- Conducting additional outreach to non-responsive customers to communicate their option for a right-sizing consultation.



**Organics Roll-Out**

WM proposes to have all organics carts delivered prior to July 1, 2023. Accounts with completed service level plans will be delivered the agreed upon cart size. Remaining non-responsive accounts at the time of delivery will be automatically enrolled in the organics program and receive the default minimum level of service as determined by the City.

**Recycling Service Level Changes**

Accounts with completed service level plans will be delivered the agreed recycling container size. Non-responsive accounts at the time of delivery will be continually notified of their option for a right sizing consultation.

**Education & Monitoring**

To strengthen participation in our programs WM will provide customers with education materials and continue to monitor accounts by:

- Providing a detailed program welcome packet with each organics cart at the time of delivery.
- Hosting virtual training sessions for businesses in need.
- Visiting customers who were automatically enrolled to encourage participation.
- Monitoring overage reports and reaching out to repeat offenders to right-size their service.
- Conducting periodic audits of accounts via camera footage and or physical lid flipping.

**Staffing & Implementation**

WM will provide the necessary staffing to accommodate the implementation of Commercial Organics and the conversion to Chargeable Recycling. WM will add one additional vehicle in accordance with the requirements set forth in Section 12 of the Agreement and a driver that is 75% dedicated to the City's organics collection prior to the phase out the yellow bag program by July 31, 2023. With this addition, we will achieve full compliance with these new terms by December 31, 2023. In preparation for this change, WM Recycling Personnel as well as SCS Consulting will be conducting technical assistance to aid in right sizing and adjusting service levels.



## **CONTRACT AMENDMENT NO. 2**

THIS CONTRACT AMENDMENT NO. 2 is made and entered into this 1<sup>st</sup> day of July, 2021, by and between the City of Laguna Beach (CITY), a California municipal corporation, and USA Waste of California, Inc. (CONTRACTOR), a corporation organized under the laws of the State of Delaware and doing business in the State of California.

WHEREAS, on August 1, 2013, the parties entered into a Service Agreement for residential, commercial, and City solid waste, recycling, organic waste, household hazardous waste and electronic waste collection services (CONTRACT); and

WHEREAS, on July 1, 2015, the CONTRACT was amended (the "First Amendment"); and

WHEREAS, the State of California has adopted Assembly Bill 1826 (AB 1826), that requires each jurisdiction to implement an organic waste recycling program to divert organic waste generated by businesses subject to the requirements of AB1826 on and after January 1, 2016, and requires businesses to recycle organic waste on and after April 1, 2016, depending on the amount of organic waste they generate per week; and

WHEREAS, the State of California has adopted Senate Bill 1383 (SB 1383), Short-lived Climate Pollutants, that establishes methane emissions reduction targets in a statewide effort to reduce emissions of short-lived climate pollutants, and provides CalRecycle the regulatory authority required to achieve the organic waste disposal reduction targets of 75% reduction of the 2014 level of statewide disposal of organic waste by 2025; and requires jurisdictions to provide organic waste collection to all organic waste generators, including residents, businesses, City facilities, and large events and venues by January 1, 2022, and

WHEREAS, at its meeting on May 18, 2021, the City Council of the City of Laguna Beach authorized a State mandated Residential Customer SB 1383 Organics Program and a State Mandated Proposed Multi-Family Customer SB 1383 Food Waste Program: and

WHEREAS the parties wish to amend the CONTRACT to reflect the foregoing as more fully set forth below.

NOW, THEREFORE, in consideration of the foregoing, the parties do hereby amend the CONTRACT as follows:

1. Section 9.18.3.1 is added to the CONTRACT to read in its entirety as follows:

“9.18.3.1 – State Mandated Residential Customer SB 1383 Organics Program and Fees. On May 18, 2021, the CITY approved CONTRACTOR’S proposal to provide City-wide Organics Collection Services (the “Residential Organics Program”) that will commence effective January 1, 2022, and CONTRACTOR hereby agrees to implement the Residential Organics Program as set forth herein. A one-time increase to the maximum rates CONTRACTOR may charge Customers of \$4.12 for residential collection shall become effective on January 1, 2022, to cover the cost of the Residential Organics Program. CONTRACTOR shall utilize the recycling coordinator dedicated to the CITY as set forth in Section 14.02 to support this program. The State mandated Residential Organics Program will utilize the existing green waste collection program. Residents will dispose of food waste by adding it to their green waste carts serviced by Automated Side Loaders. CONTRACTOR will provide kitchen food scrap pails at the initiation of the program and implement a comprehensive public outreach and education program for program start-up and on-going needs to alert residents to the changes and to fully explain the Sustainability-based benefits and advantages of the Residential Organics Program. Educational materials will be distributed at the initiation of the Residential Organics Program. CONTRACTOR shall deliver organic waste to a properly permitted facility where it will be composted in accordance with all applicable laws and regulations. Contractor intends to use the Tierra Verde Industries (TVI) facility in the City of Irvine for this purpose. CONTRACTOR will assist with monitoring for material quality and contamination and as set forth in Section 9.18.1 and compliance reporting as required per SB 1383 and as set forth in Section 15.01. CONTRACTOR shall charge Customer rates that do not exceed those set forth in First Amended Exhibit 12, as hereby amended.”

2. Section 9.18.3.2 is added to the CONTRACT to read in its entirety as follows: “9.18.3.2 – State Mandated Multi-Family Customer SB 1383 Food Waste Program and Fees. On May 18, 2021, the CITY approved CONTRACTOR’S proposal to provide City-wide Multi-family Customer Food Waste Collection Services that will commence effective January 1, 2022 (the “Multi Family Organics Program”), and Contractor hereby agrees to implement the Multi Family Organics Program as set forth herein. The Multi Family Organics Program will offer two options for organics collection (food waste collection or organics collection). CONTRACTOR will provide kitchen food scrap pails at the initiation of the program and implement a comprehensive public outreach and education program for program start-up and on-going needs to alert multi-family customers to the Multi Family Organics Program, and to fully explain the Sustainability-based

benefits and advantages of the Program.

Educational materials will be distributed at the initiation of the Program. The food waste collection service will require customers to place food waste in 35 or 64-gallon carts, or one or two cubic yard bins provided by the CONTRACTOR. The food waste will be delivered to a properly permitted facility where it will be processed in accordance with all applicable laws and regulations. CONTRACTOR intends to use Waste Management's Centralized Organic Recycling (CORG) facility for this purpose, which is located at the Orange Material Recovery Facility in the City of Orange and plans to process the materials delivered into an "engineered bio-slurry" to be transported to anaerobic digesters for natural gas production. CONTRACTOR intends to deliver materials from multi-family customers that elect to commingle food waste with green waste to TVI for composting. CONTRACTOR will provide containers, and collection vehicles and will establish at least one new route for food waste recycling. CONTRACTOR will assist with monitoring for material quality and contamination and as set forth in Section 10.10.3 and compliance reporting as required per SB 1383 and as set forth in Section 15.01. CONTRACTOR shall charge Customers rates that do not exceed those set forth in First Amended Exhibit 12, as hereby amended."

3. EXHIBIT 12 is hereby amended and superseded in its entirety by First Amended Exhibit 12, Maximum Service Rates Effective July 1, 2021, attached hereto.

Except as amended as set forth above in Sections 1 through 3, inclusive, all other terms and conditions of the CONTRACT, as amended by the First Amendment, shall remain in full force and effect.

CITY OF LAGUNA BEACH ("CITY")

By: Shohreh Dupuis Date: 8/9/21

MM Shohreh Dupuis, City Manager

ATTEST

By: Ann Marie McKay Date: 8/10/2021

Ann Marie McKay, City Clerk

APPROVED AS TO FORM

By: Philip D. Kohn Date: 8/10/21

Philip D. Kohn, City Attorney

USA Waste of California, Inc. ("CONTRACTOR")

By: Doug Corcoran Date: 07/29/2021

Doug Corcoran, Vice President

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

Title: \_\_\_\_\_

**First Amended Exhibit 12**  
**Maximum Service Rates Effective July 1, 2021**

Notwithstanding anything to the contrary in the Contract or its exhibits and attachments, this First Amended Exhibit 12 supersedes and replaces in its entirety Exhibit 12, added to the Contract by that certain Contract Amendment No. 1, by and between the City of Laguna Beach (“City”) and USA Waste of California Inc. (“Contractor”), dated July 1, 2015. Further, City and Contractor hereby acknowledge and agree that any reference to Exhibit 11 in the Contract, including its exhibits and attachments and any other document incorporated by reference therein, shall mean this First Amended Exhibit 12 as of the Effective Date of July 1, 2021.

<b>Maximum Service Rates</b>			
<b>Effective July 1, 2021</b>			
<b>RESIDENTIAL</b>	<b>Disposal</b>	<b>Service</b>	<b>Total Rate</b>
<b>Residential Collection (Effective through 12.31.21)</b>	\$ 2.05	\$ 15.01	\$ 17.06
<b>Residential Collection (Effective 1.1.22 - includes organics collection)</b>	\$ 5.51	\$ 15.67	\$ 21.18
<b>Additional Cart-Greenwaste/Recycling (Over 2)</b>	\$ -	\$ 2.68	\$ 2.68
<b>Additional Cart-Trash (Over 1)</b>	\$ 2.28	\$ 0.41	\$ 2.69
<b>Cart Damaged as a Result of Misuse</b>	\$ -	\$ 67.17	\$ 67.17
<b>Cart Contamination Fee per occurrence</b>	\$ 6.51	\$ 21.07	\$ 27.58
<b>Extra Pickup fee</b>	\$ 2.28	\$ 36.39	\$ 38.67
<b>Bulky Item Pickup Service shall be free of charge for the first three requests each calendar year</b>	No Charge	No Charge	No Charge
<b>After 3 Bulk Requests, Service Shall Occur at a Flat Rate</b>	\$ 7.02	\$ 37.38	\$ 44.40
<b>Residential Bagster 1<sup>st</sup> Bagster Collection</b>	\$ -	\$ 147.98	\$ 147.98
<b>Additional Bagster collected at same occurrence</b>	\$ -	\$ 125.04	\$ 125.04
<b>COMMERCIAL/MULTI-FAMILY REFUSE CARTS</b>			
<b>Commercial Cart - 64 Gallon Cart - (Non-Restaurant, includes MFD 6 units or more)</b>	<b>Disposal</b>	<b>Service</b>	<b>Total Rate</b>
1 x/week	\$ 4.99	\$ 49.81	\$ 54.80
2 x/week	\$ 9.98	\$ 65.56	\$ 75.54
3 x/week	\$ 14.98	\$ 78.20	\$ 93.18
4 x/week	\$ 19.97	\$ 92.44	\$ 112.41
5 x/week	\$ 24.96	\$ 105.08	\$ 130.04
6 x/week	\$ 29.95	\$ 119.29	\$ 149.24

Commercial Cart - 96 Gallon Cart - (Non-Restaurant, includes MFD 6 Units or More)		Disposal	Service	Total Rate
	1 x/week	\$ 7.49	\$ 50.64	\$ 58.13
	2 x/week	\$ 14.98	\$ 65.84	\$ 80.81
	3 x/week	\$ 22.46	\$ 77.09	\$ 99.55
	4 x/week	\$ 29.95	\$ 89.84	\$ 119.79
	5 x/week	\$ 37.44	\$ 102.65	\$ 140.09
	6 x/week	\$ 44.93	\$ 115.44	\$ 160.37
Commercial Cart - Curbside - MFD (6 Units or More)		Disposal	Service	Total Rate
	1 x/week	\$ 7.49	\$ 44.27	\$ 51.76
Each Extra Unit over 6 Units with 1x/week collection		Disposal	Service	Total Rate
	1 x/week	\$ 1.25	\$ 7.22	\$ 8.46
Commercial Cart - Curbside - MFD (6 Units or More)		Disposal	Service	Total Rate
	2 x/week	\$ 14.98	\$ 62.13	\$ 77.10
Each Extra Unit over 6 Units with 1x/week collection		Disposal	Service	Total Rate
	2 x/week	\$ 2.50	\$ 4.26	\$ 6.76
COMMERCIAL/MULTI-FAMILY REFUSE BINS				
One Yard Bin		Disposal	Service	Total Rate
	1 x/week	\$ 10.72	\$ 128.39	\$ 139.12
	2 x/week	\$ 21.44	\$ 170.29	\$ 191.73
	3 x/week	\$ 32.17	\$ 204.73	\$ 236.89
	4 x/week	\$ 42.89	\$ 245.68	\$ 288.57
	5 x/week	\$ 53.61	\$ 284.54	\$ 338.15
	6 x/week	\$ 64.33	\$ 320.06	\$ 384.39
Two Yard Bin		Disposal	Service	Total Rate
	1 x/week	\$ 21.44	\$ 130.58	\$ 152.03
	2 x/week	\$ 42.89	\$ 174.71	\$ 217.59
	3 x/week	\$ 64.33	\$ 211.31	\$ 275.64
	4 x/week	\$ 85.77	\$ 254.48	\$ 340.25
	5 x/week	\$ 107.22	\$ 295.53	\$ 402.74
	6 x/week	\$ 128.66	\$ 333.22	\$ 461.89
Three Yard Bin		Disposal	Service	Total Rate
	1 x/week	\$ 32.17	\$ 138.06	\$ 170.22

	2 x/week	\$ 64.33	\$ 186.00	\$ 250.33
	3 x/week	\$ 96.50	\$ 226.15	\$ 322.64
	4 x/week	\$ 128.66	\$ 273.09	\$ 401.75
	5 x/week	\$ 160.83	\$ 317.88	\$ 478.71
	6 x/week	\$ 192.99	\$ 359.19	\$ 552.18
	<b>Four Yard Bin</b>	<b>Disposal</b>	<b>Service</b>	<b>Total Rate</b>
	1 x/week	\$ 42.89	\$ 184.06	\$ 226.95
	2 x/week	\$ 85.77	\$ 248.02	\$ 333.79
	3 x/week	\$ 128.66	\$ 301.52	\$ 430.18
	4 x/week	\$ 171.55	\$ 364.16	\$ 535.71
	5 x/week	\$ 214.44	\$ 423.85	\$ 638.29
	6 x/week	\$ 257.32	\$ 478.93	\$ 736.26
	<b>Insta Bin - MSW</b>	<b>Disposal</b>	<b>Service</b>	<b>Total Rate</b>
	<b>1 Day</b>	\$ 29.95	\$ 128.83	\$ 158.79
	<b>2 Day</b>	\$ 29.95	\$ 137.51	\$ 167.47
	<b>3 Day</b>	\$ 29.95	\$ 146.21	\$ 176.16
	<b>4 Day</b>	\$ 29.95	\$ 154.89	\$ 184.84
	<b>5 Day</b>	\$ 29.95	\$ 163.58	\$ 193.53
	<b>6 Day</b>	\$ 29.95	\$ 172.26	\$ 202.21
	<b>Weekend</b>	\$ 29.95	\$ 172.26	\$ 202.21
	<b>Additional Days</b>	\$ -	\$ 8.69	\$ 8.69
	<b>Insta Bin - C&amp;D</b>	<b>Disposal</b>	<b>Service</b>	<b>Total Rate</b>
	<b>1 Day</b>	\$ 72.17	\$ 128.83	\$ 201.00
	<b>2 Day</b>	\$ 72.17	\$ 137.51	\$ 209.69
	<b>3 Day</b>	\$ 72.17	\$ 146.21	\$ 218.38
	<b>4 Day</b>	\$ 72.17	\$ 154.89	\$ 227.06
	<b>5 Day</b>	\$ 72.17	\$ 163.58	\$ 235.75
	<b>6 Day</b>	\$ 72.17	\$ 172.26	\$ 244.43
	<b>Weekend</b>	\$ 72.17	\$ 172.26	\$ 244.43
	<b>Additional Days</b>	\$ -	\$ 8.69	\$ 8.69
	<b>MULTI-FAMILY ORGANICS</b>			
	<b>Commercial Cart - 35 gallon</b>	<b>Disposal</b>	<b>Service</b>	<b>Total Rate</b>
	1 x/week	\$ 18.68	\$ 35.93	\$ 54.61
	2 x/week	\$ 37.19	\$ 71.54	\$ 108.73
	3 x/week	\$ 55.69	\$ 107.15	\$ 162.84
	4 x/week	\$ 74.20	\$ 142.76	\$ 216.96
	5 x/week	\$ 92.71	\$ 178.36	\$ 271.07
	6 x/week	\$ 111.21	\$ 213.98	\$ 325.19

	7x/week	\$ 129.72	\$ 249.58	\$ 379.30
<b>Commercial Cart - 64 gallon</b>		<b>Disposal</b>	<b>Service</b>	<b>Total Rate</b>
	1 x/week	\$ 22.58	\$ 43.44	\$ 66.02
	2 x/week	\$ 44.99	\$ 86.55	\$ 131.54
	3 x/week	\$ 67.40	\$ 129.67	\$ 197.07
	4 x/week	\$ 89.81	\$ 172.78	\$ 262.59
	5 x/week	\$ 112.21	\$ 215.90	\$ 328.11
	6 x/week	\$ 134.62	\$ 259.01	\$ 393.63
	7x/week	\$ 157.03	\$ 302.12	\$ 459.15
<b>One Yard Bin</b>		<b>Disposal</b>	<b>Service</b>	<b>Total Rate</b>
	1 x/week	\$ 38.11	\$ 73.33	\$ 111.44
	2 x/week	\$ 74.39	\$ 143.13	\$ 217.52
	3 x/week	\$ 110.67	\$ 212.94	\$ 323.61
	4 x/week	\$ 146.95	\$ 282.74	\$ 429.69
	5 x/week	\$ 183.23	\$ 352.54	\$ 535.77
	6 x/week	\$ 219.52	\$ 422.34	\$ 641.86
	7x/week	\$ 255.80	\$ 492.14	\$ 747.94
<b>Two Yard Bin</b>		<b>Disposal</b>	<b>Service</b>	<b>Total Rate</b>
	1 x/week	\$ 59.79	\$ 115.03	\$ 174.82
	2 x/week	\$ 117.74	\$ 226.54	\$ 344.28
	3 x/week	\$ 175.70	\$ 338.04	\$ 513.74
	4 x/week	\$ 233.65	\$ 449.55	\$ 683.20
	5 x/week	\$ 291.61	\$ 561.04	\$ 852.65
	6 x/week	\$ 349.56	\$ 672.55	\$ 1,022.11
	7x/week	\$ 407.52	\$ 784.05	\$ 1,191.57
<b>Commercial - Additional Rates (Each Occurrence)</b>		<b>Disposal</b>	<b>Service</b>	<b>Total Rate</b>
<b>Commercial Bulky Item after three</b>		\$ 20.05	\$ 171.11	\$ 191.16
<b>Additional Bin Pickup</b>		\$ 6.92	\$ 49.86	\$ 56.78
<b>Additional MFD Large item PU</b>		\$ 7.01	\$ 38.68	\$ 45.69
<b>Locking Fee</b>		\$ -	\$ 8.11	\$ 8.11
<b>Sunday, Holiday Service</b>		\$ 6.92	\$ 74.20	\$ 81.12
<b>Graffiti Removal</b>		\$ -	\$ 40.54	\$ 40.54
<b>Overloaded Bins</b>		\$ -	\$ 48.66	\$ 48.66
<b>Late Fee</b>		\$ -	\$ 3.72	\$ 3.72
<b>Reactivation Fee</b>		\$ -	\$ 31.01	\$ 31.01
<b>Dry Run Fee</b>		\$ -	\$ 68.24	\$ 68.24



<b>A bin which needs to be moved in excess of 25 feet to service (monthly rate is determined by the number of bins times the services per week time the rate)</b>				
		<b>Disposal</b>	<b>Service</b>	<b>Total Rate</b>
	<b>25 to 50 feet</b>	\$ -	\$ 3.25	\$ 3.25
	<b>51 to 75 feet</b>	\$ -	\$ 4.86	\$ 4.86
		<b>Disposal</b>	<b>Service</b>	<b>Total Rate</b>
<b>Commercial Recycling Contamination fee per occurrence</b>		\$ 26.04	\$ 29.03	\$ 55.07
<b>Three Yard Split Bin</b>		<b>Disposal</b>	<b>Service</b>	<b>Total Rate</b>
	1 x/week	\$ 14.98	\$ 130.74	\$ 145.72
	2 x/week	\$ 29.95	\$ 174.90	\$ 204.85
	3 x/week	\$ 44.93	\$ 211.57	\$ 256.50
	4 x/week	\$ 59.90	\$ 254.77	\$ 314.67
	5 x/week	\$ 74.88	\$ 295.87	\$ 370.75
	6 x/week	\$ 89.86	\$ 333.63	\$ 423.48
<b>ROLLOFF</b>				
		<b>Disposal</b>	<b>Service</b>	<b>Total Rate</b>
<b>Permanent 40 Yard (up to 5 Tons)</b>		\$ 200.50	\$ 340.82	\$ 541.32
<b>Permanent 40 yard Compactor</b>		\$ 320.80	\$ 306.08	\$ 626.88
<b>Temporary 40 Yard - 2 Days (up to 5 tons)</b>		\$ 200.50	\$ 391.81	\$ 592.31
<b>Temporary 40 Yard - 6 Days (up to 5 tons)</b>		\$ 200.50	\$ 402.03	\$ 602.53
<b>Temporary 40 Yard C&amp;D - 2 Days (up to 5 tons)</b>		\$ 370.39	\$ 401.37	\$ 771.76
<b>Temporary 40 Yard C&amp;D - 6 Days (up to 5 tons)</b>		\$ 370.39	\$ 453.47	\$ 823.86
<b>Temporary 10 Yard C&amp;D - 2 Days (up to 5 tons)</b>		\$ 370.39	\$ 475.67	\$ 846.05
<b>Temporary 10 Yard C&amp;D - 6 Days (up to 5 tons)</b>		\$ 370.39	\$ 528.37	\$ 898.76
<b>Demurrage Per Day Charge - Temporary Services Only</b>		\$ -	\$ 10.39	\$ 10.39
<b>Tons Greater than 5 (Per Ton Rate)</b>		\$ 40.10	\$ -	\$ 40.10
<b>Disposal and Processing Rate (Per Ton Rate)</b>		<b>Disposal</b>	<b>Service</b>	<b>Total Rate</b>
<b>C&amp;D Processing Rate</b>		\$ 74.08	\$ -	\$ 74.08
<b>County Disposal</b>		\$ 40.10	\$ -	\$ 40.10

## CONTRACT AMENDMENT NO. 1

THIS CONTRACT AMENDMENT NO. 1 is made and entered into this 1st day of July, 2015 by and between the City of Laguna Beach (CITY), a California municipal corporation, and USA Waste of California, Inc. (CONTRACTOR), a corporation organized under the laws of the State of Delaware and doing business in the State of California.

WHEREAS, on August 1, 2013, the parties entered into a Service Agreement for residential, commercial, and City solid waste, recycling, organic waste, household hazardous waste and electronic waste collection services (CONTRACT); and

WHEREAS, the State of California has adopted Assembly Bill 1826 (AB 1826), that requires each jurisdiction to implement an organic waste recycling program to divert organic waste generated by businesses subject to the requirements of AB1826 on and after January 1, 2016, and also requires businesses to recycle organic waste on and after April 1, 2016, depending on the amount of organic waste they generate per week; and

WHEREAS, at its meeting on May 19, 2015, the City Council of the City of Laguna Beach authorized a commercial food waste recycling program, a one-time rate increase for commercial customers (excludes roll-off customers) for the purpose of paying the costs associated with a commercial food waste recycling program, established a new residential extra refuse collection service and fee, and new fees to address commercial and residential contaminated recycling and green waste load issues; and

WHEREAS, the parties wish to amend the CONTRACT as described below;

NOW, THEREFORE, in consideration of the foregoing, the parties do hereby amend the CONTRACT as follows:

1. Section 9.17.2.1 is added to the CONTRACT to read in its entirety as follows:  
“9.17.2.1 – Non-Collection Notices for Contaminated Loads and Contamination Fees. CONTRACTOR shall affix to the recycling cart a Non-Collection Notice explaining why collection was not made for each incident. Drivers of collection trucks shall have cameras and shall take pictures of the contaminated load(s). CONTRACTOR shall record contamination incidents on customer accounts to include date of incident, record of picture taken, and type of contamination. First incident – CONTRACTOR will also send the customer a letter and educational materials regarding the contamination issue. Second incident – CONTRACTOR will

also send a second letter and additional educational materials to the customer to encourage proper procedures for segregating recyclable materials in the recycling cart. Third incident – CONTRACTOR will provide CITY with documentation of contamination and evidence of direct customer outreach. CITY, if satisfied with the level of outreach and education, shall authorize the CONTRACTOR to charge the customer a contamination fee, after the second incident, as set forth in Exhibit 12.”

2. Section 9.18.1.1 is added to the CONTRACT to read in its entirety as follows:  
“9.18.1.1 – CONTRACTOR shall affix to the green waste cart a Non-Collection Notice explaining why Collection was not made for each incident. Drivers of collection trucks shall have cameras and shall take pictures of the contaminated load(s). CONTRACTOR shall record contamination incidents on customer accounts to include date of incident, record of picture taken, and type of contamination. First incident – CONTRACTOR will also send the customer a letter and educational materials regarding the contamination issue. Second incident – CONTRACTOR will also send a second letter and additional educational materials to the customer to encourage proper procedures for segregating organic waste materials in the green waste Cart. Third incident – CONTRACTOR will provide CITY with documentation of contamination and evidence of direct customer outreach. CITY, if satisfied with the level of outreach and education, shall authorize the CONTRACTOR to charge the customer a contamination fee, after the second incident, as set forth in Exhibit 12.”

3. Section 9.06.1 is added to the CONTRACT to read in its entirety as follows:  
“9.06.1 – CONTRACTOR shall offer extra Refuse Collection Services on a day other than the customer’s existing service day at rates that do not exceed the maximum rates set forth in Exhibit 12.”

4. Section 10.10.3.1 is added to the CONTRACT to read in its entirety as follows:  
“10.10.3.1 – Contamination Notices for Contaminated Loads and Contamination Fees. CONTRACTOR shall affix to the Recycling Cart a Non-Collection Notice explaining why Collection was not made for each incident. Drivers of collection trucks shall have cameras and shall take pictures of the contaminated load(s). CONTRACTOR shall record contamination incidents on customer accounts to include date of incident, record of picture taken, and type of contamination. First incident – CONTRACTOR will also send the customer a letter and

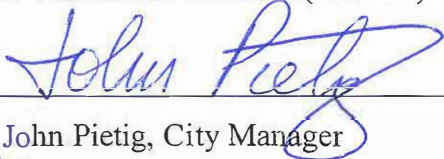
educational materials regarding the contamination issue. Second incident – CONTRACTOR will also send a second letter and additional educational materials to the customer to encourage proper procedures for segregating recyclable materials in the recycling cart. Third incident – CONTRACTOR will provide CITY with documentation of contamination and evidence of direct customer outreach. CITY, if satisfied with the level of outreach and education, shall authorize the CONTRACTOR to charge the customer a contamination fee, after the second incident, as set forth in Exhibit 12.”

5. Section 10.11.6.1 is added to the CONTRACT to read in its entirety as follows: “10.11.6.1 Commercial Food Waste Collection Services. On May 19, 2015, the CITY approved CONTRACTOR’S proposal to provide City-wide Food Waste Collection Services that will commence effective July 1, 2015. A one-time rate increase of 2.67% for commercial customers (excludes roll-off customers) shall become effective on July 1, 2015, to cover the cost of the program. The Food Waste Collection Services program costs include purchase and delivery of yellow bags to customers, collection, and transportation to a food waste processing facility, processing and sorting. Customers will place food waste in yellow bags provided by the CONTRACTOR and placed in recycling carts or bins. CONTRACTOR will also provide education, outreach and recruitment of program participants. Exhibit 12 sets forth the new commercial rates incorporating both Food Waste Collection Services and annual adjustments to maximum service rates effective July 1, 2015, pursuant to Section 5.02 hereof.”

6. EXHIBIT 12, Maximum Service Rates Effective July 1, 2015, is added to the CONTRACT.

7. Except as amended as set forth above in Sections 1 through 6, inclusive, all other terms and conditions of the CONTRACT shall remain in full force and effect.

CITY OF LAGUNA BEACH ("CITY")


By:   
*sum* John Pietig, City Manager

Date: 7/2/15

ATTEST

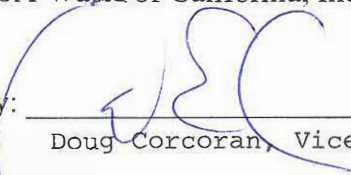
By:  Date: 7/8/15  
Lisette Chel-Walker, City Clerk

APPROVED AS TO FORM

By:   
Philip D. Kohn, City Attorney

Date: 7/8/15

USA Waste of California, Inc. ("CONTRACTOR")

By:   
Doug Corcoran, Vice President

Date: 06/30/2015

Title: \_\_\_\_\_

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

Date: \_\_\_\_\_

Title: \_\_\_\_\_

**EXHIBIT 12**  
**(Replaces Exhibit 11)**  
**Maximum Service Rates**  
**Effective July 1, 2015**

<b>RESIDENTIAL</b>	<b>Disposal</b>	<b>Service</b>	<b>Total Rate</b>
Residential Collection	\$ 1.87	\$ 13.24	\$ 15.12
Additional Cart-Greenwaste/Recycling (Over 2)	\$ -	\$ 2.37	\$ 2.37
Each Additional Cart-Refuse (Over 1)	\$ 2.08	\$ 0.36	\$ 2.44
Each Additional Bagged Refuse Overage Collection (6 or more collections per calendar year)	\$ 2.08	\$ 0.36	\$ 2.44
Each Additional Bagged Refuse Overage bag (6 or more bags per each collection)	\$ 0.43	\$ 0.61	\$ 1.04
Replacement Cart Damaged (Result of Misuse)	\$ -	\$ 59.26	\$ 59.26
Cart Contamination Fee per occurrence	\$ 5.94	\$ 19.06	\$ 25.00
Extra Refuse Pickup fee	\$ 2.08	\$ 32.92	\$ 35.00
Large Item Pickup Service (Free of charge for first 3 requests each calendar year)	No Charge	No Charge	No Charge
Additional Large Item Pickup Service	\$ 6.40	\$ 32.98	\$ 39.38
Residential Bagster 1 <sup>st</sup> Bagster Collection	\$ -	\$ 130.57	\$ 130.57
Additional Bagster collected at same occurrence	\$ -	\$ 110.32	\$ 110.32
<b>COMMERCIAL</b>	<b>Disposal</b>	<b>Service</b>	<b>Total Rate</b>
<b>Commercial - 64 Gallon Cart (Per Week Frequency)</b>			
1 x/week	\$ 4.55	\$ 43.95	\$ 48.50
2 x/week	\$ 9.10	\$ 57.84	\$ 66.94
3 x/week	\$ 13.65	\$ 69.00	\$ 82.65
4 x/week	\$ 18.20	\$ 81.56	\$ 99.76
5 x/week	\$ 22.75	\$ 92.71	\$ 115.47
6 x/week	\$ 27.30	\$ 105.24	\$ 132.54
<b>Commercial - 96 Gallon Cart (Per Week Frequency)</b>			
1 x/week	\$ 6.83	\$ 44.68	\$ 51.51
2 x/week	\$ 13.65	\$ 58.09	\$ 71.75
3 x/week	\$ 20.48	\$ 68.02	\$ 88.50
4 x/week	\$ 27.30	\$ 79.27	\$ 106.57
5 x/week	\$ 34.13	\$ 90.56	\$ 124.69
6 x/week	\$ 40.96	\$ 101.86	\$ 142.81
<b>Commercial - Curbside - MFD (6 Units or More)</b>			
1 x/week	\$ 6.83	\$ 39.05	\$ 45.88
Each Extra Unit over 6 Units with 1x/week collection			
1 x/week	\$ 1.14	\$ 6.37	\$ 7.51
Commercial - Curbside - MFD (6 Units or More)			
2 x/week	\$ 13.65	\$ 54.81	\$ 68.47
Each Extra Unit over 6 Units with 2x/week collection			
2 x/week	\$ 2.28	\$ 3.76	\$ 6.04



**EXHIBIT 12**  
**(Replaces Exhibit 11)**  
**Maximum Service Rates**  
**Effective July 1, 2015**

<b>COMMERCIAL (continued)</b>		<b>Disposal</b>	<b>Service</b>	<b>Total Rate</b>
<b>Commercial - One Yard Bin (Per Week Frequency)</b>				
1 x/week	\$	9.77	\$ 113.29	\$ 123.06
2 x/week	\$	19.55	\$ 150.25	\$ 169.80
3 x/week	\$	29.32	\$ 180.64	\$ 209.96
4 x/week	\$	39.10	\$ 216.77	\$ 255.87
5 x/week	\$	48.87	\$ 251.05	\$ 299.92
6 x/week	\$	58.64	\$ 282.40	\$ 341.04
<b>Commercial - Two Yard Bin (Per Week Frequency)</b>				
1 x/week	\$	19.55	\$ 115.22	\$ 134.77
2 x/week	\$	39.10	\$ 154.15	\$ 193.25
3 x/week	\$	58.64	\$ 186.44	\$ 245.08
4 x/week	\$	78.19	\$ 224.53	\$ 302.72
5 x/week	\$	97.74	\$ 260.75	\$ 358.49
6 x/week	\$	117.29	\$ 294.01	\$ 411.30
<b>Commercial - Three Yard Bin (Per Week Frequency)</b>				
1 x/week	\$	29.32	\$ 121.81	\$ 151.13
2 x/week	\$	58.64	\$ 164.11	\$ 222.76
3 x/week	\$	87.97	\$ 199.54	\$ 287.50
4 x/week	\$	117.29	\$ 240.95	\$ 358.24
5 x/week	\$	146.61	\$ 280.48	\$ 427.09
6 x/week	\$	175.93	\$ 316.92	\$ 492.86
<b>Commercial - Four Yard Bin (Per Week Frequency)</b>				
1 x/week	\$	39.10	\$ 162.41	\$ 201.50
2 x/week	\$	78.19	\$ 218.83	\$ 297.02
3 x/week	\$	117.29	\$ 266.04	\$ 383.33
4 x/week	\$	156.39	\$ 321.30	\$ 477.69
5 x/week	\$	195.48	\$ 373.97	\$ 569.45
6 x/week	\$	234.58	\$ 422.57	\$ 657.15
<b>Commercial - Insta Bin (Per Week Frequency)</b>				
1 Day	\$	27.30	\$ 113.67	\$ 140.97
2 Day	\$	27.30	\$ 121.33	\$ 148.64
3 Day	\$	27.30	\$ 129.00	\$ 156.30
4 Day	\$	27.30	\$ 136.66	\$ 163.96
5 Day	\$	27.30	\$ 144.32	\$ 171.63
6 Day	\$	27.30	\$ 151.99	\$ 179.29
Weekend	\$	27.30	\$ 151.99	\$ 179.29
Additional Days	\$	-	\$ 7.66	\$ 7.66

**EXHIBIT 12**  
**(Replaces Exhibit 11)**  
**Maximum Service Rates**  
**Effective July 1, 2015**

<b>COMMERCIAL (continued)</b>	<b>Disposal</b>	<b>Service</b>	<b>Total Rate</b>
<b>Commercial - Additional Rates (Each Occurance)</b>			
Commercial Service Units Large Item pick up service (Free of charge for first three requests each calendar year)	No Charge	No Charge	No Charge
Additional Business Service Units Large Item Pickup Service	\$ 18.28	\$ 150.97	\$ 169.25
Additional Bin Pickup	\$ 6.31	\$ 43.99	\$ 50.30
Additional MFD and Mixed Used Dwellings Large Item Pickup Service	\$ 6.39	\$ 34.13	\$ 40.52
Locking Fee	\$ -	\$ 7.16	\$ 7.16
Sunday, Holiday Service	\$ 6.31	\$ 65.46	\$ 71.77
Graffiti Removal	\$ -	\$ 35.78	\$ 35.78
Overloaded Bins	\$ -	\$ 42.93	\$ 42.93
Late Fee	\$ -	\$ 3.28	\$ 3.28
Reactivation Fee	\$ -	\$ 27.37	\$ 27.37
Dry Run Fee	\$ -	\$ 60.22	\$ 60.22
Distance Moved (monthly rate based on number of Bins times the weekly collection frequency)			
0 to 25 feet	No Charge	No Charge	No Charge
25 to 50 feet	\$ -	\$ 2.86	\$ 2.86
51 to 75 feet	\$ -	\$ 4.29	\$ 4.29
Commercial Recycling Contamination fee per occurrence	\$ 23.74	\$ 26.26	\$ 50.00
<b>Commercial - Three Yard Split Bin (Per Week Frequency)</b>			
1 x/week	\$ 13.65	\$ 115.35	\$ 129.00
2 x/week	\$ 27.30	\$ 154.32	\$ 181.62
3 x/week	\$ 40.96	\$ 186.66	\$ 227.62
4 x/week	\$ 54.61	\$ 224.79	\$ 279.40
5 x/week	\$ 68.26	\$ 261.06	\$ 329.32
6 x/week	\$ 81.91	\$ 294.37	\$ 376.29



**EXHIBIT 12**  
**(Replaces Exhibit 11)**  
**Maximum Service Rates**  
**Effective July 1, 2015**

<b>ROLLOFF</b>	<b>Disposal</b>	<b>Service</b>	<b>Total Rate</b>
Permanent 40 Yard (up to 5 Tons)	\$ 182.78	\$ 300.71	\$ 483.49
Temporary 40 Yard - 2 Days (up to 5 tons)	\$ 182.78	\$ 345.70	\$ 528.48
Temporary 40 Yard - 6 Days (up to 5 tons)	\$ 182.78	\$ 354.72	\$ 537.50
Temporary C&D & Processing 40 Yard - 2 Days (up to 5 tons)	\$ 279.39	\$ 633.53	\$ 633.53
Temporary C&D & Processing 40 yard - 6 Days (up to 5 tons)	\$ 279.39	\$ 679.49	\$ 679.49
Temporary C&D Processing 10 Yard - 2 Days (up to 5 tons)	\$ 279.39	\$ 699.07	\$ 699.07
Temporary C&D Processing 10 Yard - 6 Days (up to 5 tons)	\$ 279.39	\$ 745.57	\$ 745.57
Permanent -40 yard Compactor	\$ 292.44	\$ 270.06	\$ 562.50
Demurrage Per Day Charge - Temporary Only	\$ -	\$ 9.17	\$ 9.17
Permanent & Temporary Disposal and Processing Rate - Over 5 tons	\$ 36.56	\$ -	\$ 36.56
Disposal and Processing Rate (Per Ton Rate)			
Temporary C&D >5 tons	\$ 55.88		\$ 55.88
C&D Processing Rate	\$ 55.88	\$ -	\$ 55.88
County Disposal	\$ 36.56	\$ -	\$ 36.56

COLLECTION SERVICES CONTRACT  
FOR THE PROVISION OF  
  
RESIDENTIAL, COMMERCIAL, AND CITY SOLID  
WASTE, RECYCLING, ORGANIC WASTE,  
HOUSEHOLD HAZARDOUS WASTE AND  
ELECTRONIC WASTE COLLECTION SERVICES

Between the  
City of Laguna Beach

and

USA Waste of California, Inc.

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This agreement (hereinafter "Contract") is made and entered into so as to be effective as of August 1, 2013 (the "Effective Date"), by and between the City of Laguna Beach, a General Law City of the State of California, hereinafter referred to as "CITY" and USA Waste of California, Inc., a Delaware corporation, hereinafter referred to as "CONTRACTOR".

### **RECITALS:**

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

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

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

E. CONTRACTOR has agreed, as part of this Contract, to provide such services as are necessary or desirable to ensure CITY complies with the requirements of AB 341, AB 939 and Public Resources Code Section 40000, et seq.

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



## COVENANTS:

Now, therefore, in consideration of the mutual covenants, Contracts and consideration contained herein, the CITY and CONTRACTOR hereby agree as hereinafter set forth:

### Article 1. Definitions

For the purpose of this Contract the definitions contained in this Article shall apply unless otherwise specifically stated. When not inconsistent with the context, words used in the present tense include the future, words in the plural include the singular, and words in the singular include the plural. Use of the masculine gender shall include the feminine gender. The meaning of terms or words not defined herein shall be as commonly understood in the Solid Waste industry if such words or terms have a special meaning in that industry which is different than their common understanding.

1.01 Applicable Law. All federal, state, county, and local laws, regulations, rules, orders, judgments, decrees, rulings, permits, approvals, or other requirement of any governmental entity or regulatory or quasi-regulatory authority having jurisdiction over an aspect of the Collection Services, including judicial interpretations thereof, that are in force on the Effective Date, and as may be enacted, issued or amended thereafter, until termination or expiration of this Contract.

1.02 Bagster Bag. A sturdy single use bag purchased from a retail outlet with a capacity of up to 3,300 pounds designed to be dumped into a special roll-off Collection truck that is approved for such purpose by the CITY.

1.03 Bagster Collection Service. Solid Waste handling services provided by CONTRACTOR on an as needed and temporary basis to any Premises in the Service Area in connection with construction, demolition, cleanup or other projects, and by use of temporary placed Bagster Bags.

1.04 Bin. A metal or plastic container, with a capacity of one (1) cubic yard up to and including ten (10) cubic yards, designed or intended to be mechanically dumped into a loader packer type truck that is approved for such purpose by the CITY and used for the Collection of Refuse, Food Waste, Green Waste, Recyclable Material, and/or other Solid Waste.

1.05 Biohazardous or Biomedical Waste. Any waste which may cause disease or reasonably be suspected of harboring pathogenic organisms; included are waste resulting from the operation of medical clinics, hospitals, and other facilities processing wastes which may consist of, but are not limited to, human and animal parts, contaminated bandages, pathological specimens, hypodermic needles, Sharps, contaminated clothing and surgical gloves.

1.06 Brown Goods. Electronic equipment such as stereos, televisions, computers, VCR's and other similar items collected from SFD Service Units.

1.07 Bundled Green Waste. Any Green Waste resulting from normal yard and landscaping maintenance generated at SFD Service Units that is tied or bundled and placed out for Collection. Bundled Green Waste does not include items herein defined as Exempt Waste.

1.08 Business Service Unit. All retail, professional, wholesale and industrial facilities, and other commercial enterprises offering goods or services to the public.

1.09 Cart. A heavy plastic receptacle with wheels and a rated capacity not exceeding ninety-six (96) gallons, having a hinged tight-fitting lid, and wheels that is approved for such purpose by the CITY for the Collection of Food Waste, Green Waste, Recyclable Materials, Refuse, and/or other Solid Waste.

1.10 Change in Law. The adoption, promulgation, or modification of any Applicable Law after the Effective Date.

1.11 CITY. The City of Laguna Beach, California.

1.12 CITY Collection Service. The Collection of Solid Waste by CONTRACTOR, from CITY Service Units in the Service Area pursuant to the terms and conditions set forth in this Contract.

1.13 CITY Food Waste Collection Service. The Collection of Food Waste, by the CONTRACTOR, from CITY Service Units in the Service Area and the delivery of that Food Waste to the Food Waste Processing Facility or other Organics Waste processing facility, as appropriate.

1.14 CITY Green Waste Collection Service. The Collection of Green Waste, by the CONTRACTOR, from CITY Service Units in the Service Area and the delivery of that Green Waste to the Green Waste Processing Facility or other Organics Waste processing facility, as appropriate.

1.15 CITY Organic Waste Collection Service. CITY Green Waste Collection Service and CITY Food Waste Collection Service.

1.16 CITY Recycling Service. The Collection of Recyclable Materials, by the CONTRACTOR, from CITY Service Units in the Service Area and the delivery of those Recyclable Materials to a Materials Recycling Facility.

1.17 CITY Refuse Collection Service. The Collection of Refuse, by CONTRACTOR, from premises owned or controlled by CITY, including CITY Service Units in the Service Area pursuant to the terms and conditions set forth in this Contract.

1.18 CITY Roll-off Service. The provision of Roll-Off Containers at premises owned or controlled by CITY, including the CITY Service Units, for the accumulation of Green Waste, Recyclable Materials and Refuse, and the Collection and Disposal of those materials and such other Large Items from premises owned or controlled by the CITY, including the CITY Service Units, as may be directed by the CITY.

1.19 CITY Service Unit. All premises owned or controlled by CITY in the Service Area including those properties as set forth in Exhibit 1, which is attached to and included in this Contract.

1.20 Collection. The process whereby Organic Waste, Recyclable Materials, Refuse, and other Solid Waste is removed from a Service Unit by CONTRACTOR and transported to a Disposal Facility, Food Waste Processing Facility, Green Waste Processing Facility, Materials Recycling Facility or other approved facility, as appropriate.

1.21 Collection Services. SFD Collection Service, Commercial Collection Service, and CITY Collection Service.

1.22 Commercial Service Unit. Business Service Units, MFD Service Units, and Mixed Use Dwellings that utilize a Bin, Cart or Roll-Off Container for the accumulation and set-out of Solid Waste.

1.23 Commercial Collection Service. The Collection of Solid Waste by CONTRACTOR from Commercial Service Units in the Service Area pursuant to the terms and conditions set forth in this Contract.

1.24 Commercial Food Waste Collection Service. The Collection of Food Waste from Commercial Service Units in the Service Area, and the delivery of that Food Waste to a Food Waste Processing Facility or other Organics Waste processing facility, as appropriate.

1.25 Commercial Green Waste Collection Service. The Collection of Green Waste from Commercial Service Units in the Service Area, and the delivery of that Green Waste to a Green Waste Processing Facility or other Organics Waste processing facility, as appropriate.

1.26 Commercial Large Item Collection Service. The periodic on-call Collection of Large Items from Commercial Service Units in the Service Area, and the delivery of those Large Items to a Disposal Facility, Materials Recycling Facility or such other facility as may be appropriate under the terms of this Contract. Commercial Large Item Collection Service does not include the Collection of Large Items through the use of Roll-Off Containers.

1.27 Commercial Recycling Service. The Collection of Recyclable Materials from Commercial Service Units in the Service Area, the delivery of those Recyclable Materials to a Materials Recovery Facility, and the processing and marketing of those Recyclable Materials.

1.28 Commercial Refuse Collection Service. The Collection of Refuse from Commercial Service Units in the Service Area pursuant to the terms and conditions set forth in this Contract.

1.29 Commercial Roll-Off Collection Service. Solid Waste handling services provided by CONTRACTOR on an as needed and temporary basis, or permanent basis, to any Premises in the Service Area, in connection with construction, demolition, cleanup or other projects, and by use of Roll-Off Containers.

1.30 Commercial Conditionally Exempt Small Quantity Generators. Means a Commercial Service Unit that generates less than 220 pounds or 27 gallons of hazardous waste per month in a manner consistent with applicable definitions as set forth by the State of California Department of Toxic Substances Control for Conditionally Exempt Small Quantity Generators and Conditionally Exempt Small Quantity Generators (CCR Title 22).

1.31 Commercial Temporary Bin Collection Service. Solid Waste handling services provided by CONTRACTOR on an as needed and temporary basis to any Premises in the Service Area in connection with construction, demolition, cleanup or other projects, and by use of temporarily placed Bins.

1.32 Compactor. Any Roll-Off Container that has a compaction mechanism, whether stationary or mobile.

1.33 Container. Any and all types of receptacles, including Carts, Bins and Roll-Off Containers, used pursuant to the terms of this Contract for the Collection of Refuse, Recyclable Materials, Organic Waste, or other Solid Waste.

1.34 Contaminant. In the context of material not deemed Green Waste, any material not normally produced from gardens or landscapes such as, but not limited to, brick, rocks, gravel, large quantities of dirt, concrete, sod, non-Organic Wastes, oil and wood or wood products, including but not limited to, stumps, diseased elms, and other diseased trees. In the context of material not deemed Recyclable Materials, those materials not meeting the specifications set forth by CONTRACTOR, which must be consistent with industry standards.

1.35 Construction and Demolition Debris (C&D). Used or discarded materials resulting from construction, remodeling, repair or demolition operations on any type of structure.

1.36 Contract. This written document and all future amendments hereto, between the CITY and the CONTRACTOR, governing the provision of Collection Services as provided herein.

1.37 Contract Year. Except for the eleven (11) month period from August 1, 2013 to June 30, 2014, the Contract Year shall be for each twelve (12) month period from July 1 to June 30, beginning July 1, 2014.

1.38 CONTRACTOR. That person or entity that has obtained from the CITY a contract to provide Collection Services as set forth herein.

1.39 Contract Administrator. That person, or their designee, designated by the CITY Manager to administer and monitor the provisions of this Contract.

1.40 County. Orange County, California.

1.41 County Agreement. That certain waste disposal agreement entered into between various Orange County cities, including specifically the City of Laguna Beach, and the County of Orange relating to the use of County landfills for the disposal of Solid Waste collected in such cities, and which is referenced as Attachment A, as the same may be amended from time to time.

1.42 Customer. Any person or entity receiving Collection Services from CONTRACTOR pursuant to this Contract.

1.43 Difficult-to-Recycle Materials. Those materials requiring special handling identified on Exhibit 7.

1.44 Disposal Facility. The facility or facilities at which Solid Waste collected under this Contract may be disposed. Pursuant to the County Agreement, as of the Effective Date, all Refuse collected hereunder shall be disposed of at County landfills.

1.45 Dwelling Unit. An individual living unit within a SFD Service Unit or MFD Service Unit.

1.46 Effective Date. August 1, 2013

1.47 Electronic Waste (E-Waste). Waste that is powered by batteries or electricity, such as computers, telephones, answering machines, radios, stereo equipment, tape players/recorders, phonographs, videocassette players/recorders, compact disc players/recorders, calculators and other items also defined as CEDs.

1.48 Environmental Laws. Environmental Laws mean all federal and state statutes, County, local and CITY ordinances concerning public health, safety and the environment including, by way of example and not limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 USC §9601 et seq.; the Resource Conservation and Recovery Act, 42 USC §6901 et seq.; the Federal Clean Water Act, 33 USC §1251 et seq.; the Toxic Substances Control Act, 15 USC §2601 et seq.; the Occupational Safety and Health Act, 29 USC §651 et seq.; the California Hazardous Waste Control Act, California Health and Safety Code §25100 et seq.; the Carpenter-Presley-Tanner Hazardous Substance Account Act, California Health and Safety Code §25300 et seq.; the Porter-Cologne Water Quality Control Act, California Water Code §13000 et seq.; the Safe Drinking Water and

Toxic Enforcement Act, California Health and Safety Code §25249.5 et seq.; as currently in force or as hereafter amended, and all rules and regulations promulgated there under.

1.49 Exempt Waste. Biohazardous or Biomedical Waste, Hazardous Waste, Sludge, Stable Matter, automobiles, automobile parts, boats, boat parts, boat trailers, internal combustion engines, lead-acid batteries, those wastes under the control of the Nuclear Regulatory Commission.

1.50 Food Waste. Food scraps and trimmings from food preparation including, but not limited to: meat, fish and dairy waste, fruit and vegetable waste, grain waste, and acceptable food packaging such items as pizza boxes, paper towels, waxed cardboard and food Contaminated paper products. Food Waste must be generated by and at the Service Unit wherein the Food Waste is Collected.

1.51 Food Waste Processing Facility. Any facility selected by CONTRACTOR that is designed, operated and legally permitted for the purpose of receiving and processing Food Waste.

1.52 Green Waste. Any vegetative matter resulting from normal yard and landscaping maintenance that is not more than three (3) feet in its longest dimension or six (6) inches in diameter or weighs more than fifty (50) pounds. Green Waste includes plant debris, such as grass clippings, leaves, pruning, weeds, branches, brush, Holiday trees, and other forms of vegetative Organic Waste and must be generated by and at the Service Unit wherein the Green Waste are Collected. Green Waste does not include palm fronds and items herein defined as Exempt Waste.

1.53 Green Waste Processing Facility. Any facility designed, operated and legally permitted for the purpose of receiving and processing Green Waste and Large Green Waste.

1.54 Gross Receipts. All monies, fees, charges, consideration, and revenue received or imputed to CONTRACTOR and any Affiliate of CONTRACTOR, in connection with, arising from, or in any way attributable to the services set forth in this Contract, including services carried out by any permissible subcontractor hereunder. Gross Receipts include, without limitation, any franchise fee imposed and collected pursuant to this Contract. Gross Receipts does not include revenue from the sale of Recyclable Material, Green Waste, Food Waste, and other material, which is diverted from disposal.

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



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

1.57 Household Hazardous Waste (HHW). Any Hazardous Waste generated at a SFD Service Unit.

1.58 Large Items. Solid Waste that cannot and/or would not typically be accommodated within a Cart including specifically: furniture (including chairs, sofas, mattresses, and rugs); appliances (including refrigerators with and without Freon, ranges, washers, dryers, water heaters, dishwashers, plumbing, small household appliances and other similar items, commonly known as "White Goods"); and clothing. For purposes of this Contract, and notwithstanding any provision hereof to the contrary, Large Items shall specifically include items commonly known in the waste industry as "Brown Goods," "E-Waste" and "Universal Waste" (including, without limitation all types of Electronic Waste, stereos, televisions, computers and monitors, cellular phones, VCRs, microwaves and other similar type of equipment and products), batteries, and fluorescent light tubes. Large Items do not include car bodies, Construction and Demolition Debris (with the exception of appliances/White Goods described above), items weighing more than sixty (60) pounds, or items that cannot reasonably be moved with equipment of the type which, pursuant to industry standards, would normally be carried in a truck Collecting Large Items. In the event a question arises as to whether a specific item, or category of items meets the definition of Large Items, the Contract Administrator shall be responsible to determine whether said definition shall apply, which determination shall be final and binding.

1.59 Large Green Waste. Green Waste such as tree trunks and branches with a diameter of not less than six (6) inches and not more than two (2) feet and a length of not more than five (5) feet in its longest dimension, which are attributed to the normal activities of a SFD Service Unit. Large Green Waste must be generated by and at the SFD Service Unit wherein the Large Green Waste are Collected.

1.60 Materials Recovery Facility (MRF). An appropriately permitted facility where Solid Waste, including Recyclable Materials, is transferred, or is processed, sorted or separated for the purposes of recovering reusable or Recyclable Materials.

1.61 MFD Difficult-to-Recycle Collection Service. The periodic on-call Collection of Difficult-to-Recycle Materials from MFD Service Units in the Service Area, and the delivery of those Difficult-to-Recycle Materials to a facility as may be appropriate under the terms of this Contract.

1.62 MFD Service Unit. Any residence with six (6) or more Dwelling Units, including any flat, apartment, condominium, town home, service-enriched housing or other residence, and other Dwelling Units in detached buildings on a single parcel, and excluding a hotel, motel, dormitory, sheltered nursing facility, rooming house, or other such similar facility as determined by CITY.

1.63 Mixed Use Dwelling. A building or structure which contains at least one (1) Business Service Unit and at least one (1) Dwelling Unit and utilizes a common Bin or Cart for the accumulation and Collection of Solid Waste.

- 1.64      Municipal Code. The Code of Ordinances of the City of Laguna Beach.
- 1.65      Non-Collection Notice. A form developed and used by the CONTRACTOR, as approved by the CITY, to notify Customers of the reason for non-collection of materials set out by the Customer for Collection by CONTRACTOR pursuant to this Contract.
- 1.66      Organic Waste. Includes Food Waste (if available) and Green Waste. Organic Waste must be generated by and at the Service Unit wherein the Organic Waste is Collected.
- 1.67      Overages. Any Solid Waste in excess of the capacity of a Container or in excess of the amount corresponding to the service classification to which a Customer subscribes, as appropriate.
- 1.68      Premises. Any parcel of real property in the CITY where Solid Waste is produced, generated or accumulated.
- 1.69      Prior Agreement. The Agreement entered between CITY and CONTRACTOR dated July 1, 2007 and amended August 22, 2008 and October 17, 2012, which terminates as of the Effective Date.
- 1.70      Rebuilt Vehicle. For purposes of this Contract, "rebuilt" means, at a minimum, replacement of worn parts and reconditioning or replacement of hydraulic systems, transmissions, differentials, electrical systems, engines, and brake systems. In addition, the rebuilt vehicle must be repainted and its tires must have at least eighty-five percent (85%) of tread remaining.
- 1.71      Recycling. The processing of Solid Waste for the purpose of returning it to the economy in the form of raw materials for new, reused, or reconstituted products, or other uses resulting in diversion from landfill disposal.
- 1.72      Recyclable Materials. Shall initially include: newsprint (including inserts); mixed paper (including magazines, catalogs, envelopes, junk mail, corrugated cardboard, Kraft brown bags and paper, paperboard, paper egg cartons, office ledger paper, and telephone books); glass containers; aluminum beverage containers; small scrap and cast aluminum (not exceeding forty (40) pounds in weight nor two (2) feet in any dimension for any single item); steel including "tin" cans and small scrap (not exceeding forty (40) pounds in weight nor two (2) feet in any dimension for any single item); bimetal containers; mixed plastics such as plastic bags, plastic film, plastic containers (1-7), and bottles including containers made of HDPE, LDPE, PET, or PVC; textiles; and aseptic containers. Upon notice to and prior approval by CITY, CONTRACTOR may deem additional materials or groups of materials Recyclable Materials if they become capable of recycling at CONTRACTOR's facilities in or near the Service Area. CONTRACTOR reserves the right, upon notice to and prior written approval by the CITY, to discontinue acceptance of any category of Recyclable Materials as a result of market conditions related to such materials. With regard to the preceding two sentences, the City's approval shall not be unreasonably withheld.
- 1.73      Refuse. Solid Waste which is permitted for disposal in a Class III landfill and which has been placed in a Container with the intention of disposal.
- 1.74      Roll-Off Container. A metal Container with a capacity of ten (10) or more cubic yards that is normally loaded onto a motor vehicle and transported to an appropriate facility.



1.75 Self Hauler. A person or entity which personally or with its employees removes and transports Solid Waste from a Premises that is owned or controlled by such person or entity to a Disposal Facility or MRF under such terms, conditions and regulations as may be set forth in the Municipal Code, or any other CITY ordinance, resolution, regulation or policy, as such may be adopted or amended from time to time.

1.76 Service Area. The jurisdictional boundaries that comprise the City of Laguna Beach, including areas, which may be annexed by the CITY.

1.77 Service Unit. SFD Service Units, CITY Service Units or Commercial Service Units.

1.78 SFD Collection Service. The Collection of Solid Waste by CONTRACTOR from SFD Service Units in the Service Area pursuant to the terms and conditions set forth in this Contract.

1.79 SFD Difficult-to-Recycle Collection Service. The periodic on-call Collection of Difficult-to-Recycle Materials from SFD Service Units in the Service Area, and the delivery of those Difficult-to-Recycle Materials to a facility as may be appropriate under the terms of this Contract.

1.80 SFD Food Waste Collection Service. The Collection of Food Waste from SFD Service Units in the Service Area, and the delivery of that Food Waste to a Food Waste Processing Facility or other Organics Waste processing facility, as appropriate.

1.81 SFD Green Waste Collection Service. The Collection of Green Waste from SFD Service Units in the Service Area, and the delivery of that Green Waste to a Green Waste Processing Facility or other Organics Waste processing facility, as appropriate.

1.82 SFD Large Item Collection Service. The periodic on-call Collection of Large Items from SFD Service Units in the Service Area, and the delivery of those Large Items to a Disposal Facility, Materials Recovery Facility or such other facility as may be appropriate under the terms of this Contract. SFD Large Item Collection Service does not include the Collection of Large Items through the use of Roll-Off Containers.

1.83 SFD Organic Waste Collection Service. SFD Green Waste Collection Service and SFD Food Waste Collection Service.

1.84 SFD Recycling Service. The Collection of Recyclable Materials from SFD Service Units in the Service Area, the delivery of those Recyclable Materials to a Materials Recovery Facility, and the processing and marketing of those Recyclable Materials.

1.85 SFD Refuse Collection Service. The Collection of Refuse from SFD Service Units in the Service Area pursuant to the terms and conditions of this Contract.

1.86 SFD Service Unit. A detached or attached Dwelling Unit on a Premises containing five (5) or fewer Dwelling Units.

1.87 Sharps. Hypodermic needles, pen needles, intravenous needles, lancets, and other devices that are used to penetrate the skin for the delivery of medications. Sharps must be generated at the Dwelling Unit wherein the Sharps are Collected.

1.88 Sludge. The accumulated solids, residues, and precipitates generated as a result of waste treatment or processing, including wastewater treatment, water supply treatment, or operation of an air pollution control facility, and mixed liquids and solids pumped from septic

tanks, grease traps, privies, or similar disposal appurtenances or any other such waste having similar characteristics or effects.

1.89 Solid Waste. Except as provided below, all "Solid Waste" as defined in California Public Resources Code Section 40191, as that section may be amended from time to time, which is generated within the CITY, and excluding Exempt Waste.

1.90 Stable Matter. Manure and other waste matter normally accumulated in or about a stable, or any animal, livestock or poultry enclosure, and resulting from the keeping of animals, poultry or livestock

1.91 Tipping Fee. The fee charged to CONTRACTOR to dispose of Solid Waste at a landfill.

1.92 Universal Waste (U-Waste). Materials that the California Department of Toxic Substances Control considers Universal Waste (California Code of Regulations Title 22, Div 4.5, Ch. 23), including materials such as batteries, thermostats, lamps, cathode ray tubes, computers, telephones, answering machines, radios, stereo equipment, tape players/recorders, phonographs, video cassette players/recorders, compact disc players/recorders, calculators, some appliances, aerosol cans, fluorescent lamps, and certain mercury-containing devices.

1.93 Used Oil. Any oil that has been refined from crude oil or has been synthetically produced, and is no longer useful to the Customer because of extended storage, spillage or contamination with non-hazardous impurities such as dirt or water; or has been used and as a result of such use has been contaminated with physical or chemical impurities. Used Oil must be generated by and at the SFD Service Unit wherein the Used Oil is Collected. Used Oil does not include transmission fluid.

1.94 Used Oil Filter. Any oil filter that is no longer useful to the Customer because of extended storage, spillage or Contamination with non-hazardous impurities such as dirt or water; or has been used and as a result of such use has been Contaminated with physical or chemical impurities. Used Oil Filters must be generated by and at the SFD Service Unit wherein the Used Oil Filter is Collected.

1.95 White Goods. Discarded refrigerators, ranges, water heaters, freezers, and other similar household appliances.

1.96 Work Day. Any day, Monday through Saturday that is not a holiday as set forth in Section 4.04 of this Contract.

## Article 2. Term of Contract

2.01 Term. The term of this Contract ("Term") shall be for a nine (9) year, eleven (11) month period beginning August 1, 2013 and terminating at 11:59 p.m. on June 30, 2023. The CITY may, in its absolute and sole discretion, choose to engage in negotiations to extend the Term or enter a new agreement at or near the conclusion of the Term, but the parties acknowledge that the CITY shall not engage in such discussions if CONTRACTOR has not met the minimum performance and diversion requirements set forth in Article 6.

## Article 3. Grant of Franchise

3.01 Grant of Exclusive Contract. Except as hereinafter expressly set forth, CITY hereby grants to CONTRACTOR and CONTRACTOR hereby accepts from CITY, for the Term hereof, the exclusive contract, right, and privilege to engage in Collection of Solid Waste within

the Service Area. The exclusive franchise, right and privilege to engage in Collection of Solid Waste within CITY granted to CONTRACTOR by this Contract shall be interpreted to be consistent with all Applicable Laws, now in effect and adopted during the term of this Contract, and the scope of this Contract shall be limited by all applicable current and developing laws and regulations. In the event any Changes in Law limit the ability of CITY to lawfully grant CONTRACTOR the scope of services as specifically set forth herein, CONTRACTOR agrees that the scope of this Contract will be limited to those services and materials which may be lawfully provided, and that CITY shall not be responsible for any lost profits claimed by CONTRACTOR as a result thereof.

3.02 Matters Excluded from Scope of Franchise. Notwithstanding any other provisions set forth in this Contract to the contrary, the exclusive franchise granted herein shall exclude:

3.02.1 Collection of any Solid Waste otherwise within the scope of this Contract by a Self Hauler.

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

3.02.3 Any Solid Waste otherwise within the scope of this Contract which is collected or transported to a Disposal Facility or MRF by CITY employees in the course and scope of their employment with CITY;

3.02.4 The collection, transportation, or disposal of Hazardous Waste; Universal Waste; E-Waste; Biohazardous Waste; untreated medical waste; infectious waste; Animal Waste; used cooking fats, oils, grease and similar waste; or other materials which do not constitute Solid Waste;

3.02.5 Construction and Demolition Debris that is incidentally removed by a duly licensed construction or demolition contractor, or as part of a total service offered by such licensed company, and where the licensed company uses its own equipment and employees.

3.02.6 The collection, transportation, and disposal of Green Waste and related Solid Waste by a gardener, or landscaper, as an incidental part of the gardening or landscaping services provided to its customers, rather than as a hauling service, provided that such Solid Waste is not collected or transported by a third party hired for the primary purpose of collecting and transporting said materials;

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

3.03 Enforcement of Exclusivity. CONTRACTOR shall be responsible for enforcing the exclusivity of this Contract. CITY shall reasonably assist CONTRACTOR in its

efforts to enforce the exclusivity hereof. In addition, CITY shall adopt such ordinances or other regulations as it deems to be necessary or desirable to protect the exclusive rights granted herein. CITY shall have the right, but not the obligation, to enforce the exclusivity hereof, including by instituting appropriate legal proceedings, and/or to request that CONTRACTOR do so. CONTRACTOR shall have an affirmative obligation to enforce such exclusivity provisions when requested to do so by CITY. CONTRACTOR shall reimburse CITY for its reasonable legal costs, extraordinary administrative costs (including staff time), or other expenses incurred in connection with CITY's actions to either enforce the exclusivity hereof, or to assist CONTRACTOR in doing so.

## Article 4. General Requirements Applicable to Services Provided by CONTRACTOR

4.01 Service Standards. CONTRACTOR shall perform all Collection Services under this Contract in a professional manner, consistent with the standards applicable in its industry. Collection Services described in this Contract shall be performed regardless of weather conditions or difficulty of Collection, unless CITY and CONTRACTOR reasonably determine it would be unsafe for CONTRACTOR's employees to do so.

4.02 Labor and Equipment. CONTRACTOR shall provide and maintain all labor, equipment, tools, facilities, and personnel supervision required for the performance of CONTRACTOR'S obligations under this Contract. CONTRACTOR shall at all times have sufficient backup equipment and labor to fulfill CONTRACTOR'S obligations under this Contract. No compensation for CONTRACTOR'S services or for CONTRACTOR'S supply of labor, equipment, tools, facilities or supervision shall be provided or paid to CONTRACTOR by CITY or by any Customer except as expressly provided by this Contract.

4.03 Collection Schedule. CONTRACTOR shall establish Collection routes and a Collection schedule which shall be approved by the Contract Administrator such that Customers at all Service Units within the CITY will have not less than one established Collection day each week. CONTRACTOR shall provide notice to each Customer of its established Collection day(s), and shall provide at least one week's notice to Customers of any change in their established Collection day(s). CONTRACTOR may not change its established Collection schedules without obtaining the prior written consent of the Contract Administrator

4.04 Holiday Service. CONTRACTOR shall not be required to provide Collection Services or maintain office hours on days during the Term hereof which CITY observes as legal holidays. For purposes of this Contract, the only holidays CONTRACTOR shall not be required to provide Collection Services or maintain office hours, which are so observed by CITY, are New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day. Should CITY modify the foregoing list of observed holidays it shall notify CONTRACTOR. In any week in which a day observed by CITY as a holiday falls on a Work Day, SFD Collection Services for the holiday and each Work Day thereafter will be delayed one Work Day for the remainder of the week with normally scheduled Friday SFD Collection Services being performed on Saturday.

4.05 Inspections. The CITY shall have the right to inspect the CONTRACTOR'S facilities or Collection vehicles and their contents during normal operation hours while operating inside or outside the CITY.

4.06 Commingling of Materials. Until delivery to the intended disposal, recycling or processing facility, CONTRACTOR shall not at any time commingle any Solid Waste Collected

pursuant to this Contract with any other material Collected by CONTRACTOR inside or outside the City of Laguna Beach without the express prior written authorization of the Contract Administrator.

4.07 Spillage and Litter. CONTRACTOR shall not litter Premises in the process of providing Collection Services or while its vehicles are on the road. CONTRACTOR shall transport all materials Collected under the terms of this Contract in such a manner as to prevent the spilling or blowing of such materials from the CONTRACTOR'S vehicle. CONTRACTOR shall exercise all reasonable care and diligence in providing Collection Services so as to prevent spilling or dropping of Solid Waste and shall immediately, at the time of occurrence, clean up such spilled or dropped Solid Waste. CONTRACTOR shall not be responsible for cleaning up sanitary conditions caused by the carelessness of the Customer; however, the CONTRACTOR shall clean up any material or residue that are spilled or scattered by the CONTRACTOR or its employees.

4.08 Ownership of Materials. Title to Solid Waste, including Recyclable Materials, Organic Waste, or Difficult-to-Recycle Materials shall pass to CONTRACTOR at such time as said materials are placed in CONTRACTOR'S Collection vehicle.

## Article 5. Charges and Rates

### 5.01 Responsibility For Service Billing and Payments by CONTRACTOR.

5.01.1 General – Tax Roll Billing. The CITY shall be responsible for billing via the County tax rolls each SFD Service Unit Customer that receives weekly automated or manual SFD Collection Service; excepting those Premises for which a Self Hauler exemption has been established as provided in the Municipal Code. The CITY and CONTRACTOR shall use reasonable efforts to ensure that all SDF Service Unit Customers have been identified so that the CITY may bill amounts owing CONTRACTOR via the County tax rolls. If, for any reason, billing for a Customer at a SFD Service Unit is not placed on the tax rolls as contemplated by the parties herein, such Customer shall be billed for services by CONTRACTOR in the same manner as other Customers, as set forth herein below. The maximum rate CONTRACTOR may charge Customers at a SFD Service Unit that are billed “directly”, rather than through the tax rolls (if any), for services other than weekly automated or manual SFD Collection Service shall be as indicated on the attached Exhibit 11.

5.01.2 Allocation of Funds by CITY. The monthly cost of SFD Collection Service shall be paid by the CITY directly to CONTRACTOR. Payment shall be made at a per unit rate based on applicable Maximum Service Rate(s) set forth in Exhibit 11, and as may be adjusted under the terms of the Contract, multiplied by the number of SFD Service Units eligible for service. The number of SFD Service Units eligible for service shall be adjusted annually in September (based on the number of units submitted to the Orange County Assessor's Office) and in April (based on the number of units constructed and demolished from August 1 through March 30). CITY shall make payment to CONTRACTOR within thirty (30) days of receipt of CONTRACTOR'S invoice. CITY shall withhold any amounts due to CITY pursuant to the terms hereof but not yet paid by CONTRACTOR.

5.01.3 Tax Roll Payments Limited. CONTRACTOR is responsible to provide CITY with all information necessary to accomplish placing such charges on the County property tax rolls. CITY is not by entering this agreement imposing any tax or levy on CONTRACTOR's Customers, and CONTRACTOR shall bear all risk that the property tax levy is not sufficient to cover its fees for services, and all risk associated with any challenge to placing collection of its



charges on the County property tax rolls. Should either of the forgoing occur, CONTRACTOR's sole remedy shall be against its Customer, and CONTRACTOR shall have no recourse for payment with CITY, provided that CITY undertakes actions in accordance with Applicable Law sufficient to entitle CONTRACTOR to full compensation for all services rendered hereunder at the Maximum Service Rates, as adjusted. In as much as payments may occur through the tax rolls by Customer's prior to services being received, CITY shall have the right to adjust payments to CONTRACTOR to ensure CONTRACTOR is not paid for services it does not provide. For instance, in the event payments occur in advance of the end of the Term of this Agreement, CITY shall not deliver funds to CONTRACTOR for periods following the end of the Term in which CONTRACTOR does not actually provide service.

5.01.4 Billing by CONTRACTOR. CONTRACTOR shall provide all Customers not billed on the County property tax rolls with itemized bills, distinctly showing charges for all classifications of services, including charges for late payments. CONTRACTOR acknowledges that it, and not its Customers, is to pay a franchise fee to CITY as consideration for this Contract. Accordingly, CONTRACTOR'S billings shall not include separate itemization of a "Franchise Fee" or other similar designation. Billings may be made in advance for all Customers, except that billings shall be made in arrears on a monthly or quarterly basis for Customers utilizing Roll-Off Containers or Compactors for Commercial Collection Service hereunder. CONTRACTOR shall include any additional charges, as may be approved by the Contract Administrator, on its billings. CONTRACTOR may charge Customers up to the Maximum Service Rates established in Exhibit 11 which is attached to and included in this Contract and as may be adjusted under the terms of this Contract.

5.01.5 Partial Month Service. If, during a month, a Service Unit is added to or deleted from CONTRACTOR'S Service Area, the CONTRACTOR'S billing shall be pro-rated based on the weekly service rate (weekly service rate shall be the service rate established in Exhibit 11 divided by four (4) times the number of actual weeks in the month that service was provided to the Service Unit.)

5.01.6 Delinquent SFD Service Accounts. CONTRACTOR shall report to the Contract Administrator, on a monthly basis, all SFD Customers who are not billed by the CITY via County tax rolls and whose account is over one-hundred and twenty (120) days past due. CONTRACTOR may discontinue Collection Service and take such action as is legally available to collect or cause collection of such past due amounts.

5.01.7 Delinquent Commercial Service Accounts. CONTRACTOR shall provide Commercial Customers with a notice of delinquency in the event of non-payment, and if payment is not received within thirty (30) days from the notice of delinquency, CONTRACTOR may terminate Commercial Collection Service at the delinquent account until the payment in full has been received including any accrued interest, payment of a reactivation fee in an amount not exceeding that set forth in Exhibit 11, and reimbursement of any NSF bank charges or other costs of collection. CONTRACTOR may charge interest on any delinquent account at the maximum annual rate allowed by law for such time as the bill remains unpaid after its due date, as well as late fee not exceeding the amount set forth on Exhibit 11 per delinquent billing per account. CONTRACTOR will provide CITY a list of delinquent accounts pursuant to section 15.02.5.

5.01.8 Franchise Fee Payments. CONTRACTOR shall pay to CITY, a franchise fee equal to ten percent (10%) of CONTRACTOR's Gross Receipts, excepting Gross Receipts attributable to regular weekly SFD Collection Service at SFD Service Units. Franchise Fee shall be paid to CITY quarterly on or before the 30th day following the end of each calendar quarter

(i.e., on April 30, July 30, October 30, and January 30). Should any such payment due date fall on a weekend or holiday in which the CITY's business offices are closed, payment shall be due on the first day thereafter in which the CITY's business offices are open. The amount of each payment shall be equal to ten percent (10%) of CONTRACTOR's Gross Receipts, excepting Gross Receipts attributable to regular weekly SFD Refuse Collection Service at SFD Service Units in the calendar quarter preceding the date payment is due. The Franchise Fee due hereunder shall apply to applicable Gross Receipts of CONTRACTOR collected after the expiration of the Term hereof relating to CONTRACTOR's performance during the Term hereof. Franchise Fees shall be accompanied by a statement certified by an officer of CONTRACTOR, or other authorized person, attesting to the accuracy of the amounts paid, and setting forth the basis for their calculation in a manner acceptable to CITY.

5.01.9 Effect of Acceptance. No acceptance by CITY of any payment shall be construed as an accord that the amount is the correct amount, nor shall such acceptance of payment be construed as a release of any claim CITY may have against CONTRACTOR for any additional sums payable under the provisions of this Contract. All amounts paid shall be subject to independent audit and recompilation by CITY, as required in Article 19. If, after audit, such recompilation indicates an overpayment, CITY shall notify the CONTRACTOR in writing of the amount of the overpayment. CONTRACTOR may offset the amounts from the Franchise Fee payments next due following receipt of such notice. If the CITY chooses to undertake a discretionary audit in addition to the billing audit and performance review required in Article 19, CITY shall bear the cost of any audit except as provided herein. Should any audit reveal an underpayment of any Franchise Fee required pursuant to this Contract, the amount of such under payment shall become due and payable to CITY not later than fifteen (15) days after written notice of such underpayment is given to CONTRACTOR by CITY, complete with any late charges set forth herein. If any audit reveals CONTRACTOR overcharging in more than five percent (5%) of all Customer accounts, or an underpayment of Franchise Fees of more than three percent (3%) for any calendar quarter, CONTRACTOR shall bear the entire cost of such audit.

5.01.10 Windfall Recycling Payment. CONTRACTOR agrees to pay to CITY twenty-five percent (25%) of revenue that is attributable to the sale of Recyclable Material Collected in CITY, that exceeds one hundred and thirty-five dollars (\$135.00) per ton (net of processing costs).

## 5.02 Adjustments To Maximum Service Rates.

5.02.1 CPI Adjustment to Service Component. Commencing on July 1 2015, and on each July 1 thereafter, the Service Component of the Maximum Service Rates set forth on Exhibit 11 shall be adjusted by a percentage equal to ninety percent (90%) of the change in the 12 month average Los Angeles/Orange County/Riverside Consumer Price Index (CPI) for the previous December to December period, compared to the next previous December to December period.

5.02.1.1 The increase of the Service Component shall not exceed five percent (5%) per annum in any Contract Year.

5.02.1.2 Notwithstanding the above, the Service Component Adjustment above five percent (5%) shall be added to the result of the subsequent years' Service Component Adjustment and the result shall be the Service Component Adjustment for that subsequent year, provided no annual Service Component Adjustment shall ever exceed five percent (5%).

5.02.1.3 Notwithstanding the above, in any year that the Service Component Adjustment results in a negative number, there shall be no adjustment of the Service Component. Instead, the negative Service Component Adjustment shall be added to the result of the subsequent years' Service Component Adjustment and the result shall be the Service Component Adjustment for that subsequent year.

5.02.1.4 No annual adjustment to the Service Component of the Maximum Service Rates that would otherwise become effective hereunder shall take effect if, during the previous Contract Year, Contractor has (a) committed an Event of Default (Section 23.06), (b) materially breached this Contract without cure, pursuant to Section 23.02, (c) failed to provide the City with all reports required of CONTRACTOR by this Contract, or (d) failed to pay any Franchise Fee owed to the City.

5.02.1.5 At least ninety (90) days prior to charging Customers any rate increased due to an increase in the CPI as noted above, CONTRACTOR shall notify the Contract Administrator its intent to do so, and receive the Contract Administrator's approval therefore, which approval shall not be withheld unless the increase would conflict with the provisions hereof.

5.02.2 Adjustment to Disposal Component. It is the intention of the parties that the Disposal Component associated with any of the Maximum Service Rates as set forth in Exhibit 11 shall be adjusted annually on July 1 each year starting July 1, 2015 (the "Adjustment Date") such that they reflect each Customer's pro-rata share of any increase or decrease in the actual landfill Tipping Fees incurred by CONTRACTOR since the previous Adjustment Date for disposal of Solid Waste Collected pursuant to this Contract. The initial Disposal Component for the various types of service categories set forth in Exhibit 11 has been arrived at by multiplying an agreed upon assumption of the disposal tonnage fairly attributable to each applicable Customer and/or service type by \$31.37 which is the per ton Tipping Fee charged by the Orange County Landfill System (where as of the Effective Date solid waste must be delivered for disposal per the County Agreement). If as of any Adjustment Date a change has or will occur in the Tipping Fees charged to CONTRACTOR by the landfill to which it delivers Solid Waste Collected hereunder, the Disposal Component associated with any of the Maximum Service Rates set forth in Exhibit 11 shall be adjusted as of the Adjustment Date by similarly multiplying the Disposal Component for each applicable Customer and/or service type by the percent change from the new per ton Tipping Fee and the per ton Tipping Fee then in effect, capturing also disposal tonnage to which the increased Tipping Fee applied prior to the Adjustment Date. However, in no event shall CONTRACTOR Disposal Component be increased before July 1, 2015. In the event an increase occurs in applicable landfill Tipping Fees at a time other than an annual Adjustment Date, CONTRACTOR may request a discretionary adjustment to the Maximum Service Rates applicable to the Disposal Components set forth on Exhibit 11, pursuant to Section 5.03 hereof.

5.02.2.1 No annual adjustment to the Disposal Component of the Maximum Service Rates that would otherwise become effective hereunder shall take effect if, during the previous Contract Year, Contractor has (a) committed an Event of Default (Section 23.06), (b) materially breached this Contract without cure, pursuant to Section 23.02, (c) failed to provide the City with all reports required of CONTRACTOR by this Contract, or (d) failed to pay any Franchise Fee owed to the City.

5.03 Discretionary Adjustments. CONTRACTOR may request an adjustment to the maximum rates set forth in Exhibit 11 at reasonable times other than as set forth in Section 5.02 for unusual changes in the cost of providing service under this Contract. For each request



for an adjustment to the maximum rates brought pursuant to this Section, CONTRACTOR shall prepare a schedule documenting the extraordinary costs. Such request shall be prepared in a form acceptable to CITY with support for assumptions made by CONTRACTOR in preparing the estimate. CITY shall review the CONTRACTOR's request and, in the City Council's sole judgment and absolute, unfettered discretion, make the final determination as to whether an adjustment to the maximum rates will be made, and, if an adjustment is permitted, the appropriate amount of the adjustment; provided, however, the City shall not deny approval of properly supported rate adjustments based on (a) new or increased state or county taxes, fees or other charges relating to the services performed by CONTRACTOR under this Contract, (b) modifications to the CITY's municipal code or other CITY requirements relating to this Contract, or (c) new or modified CONTRACTOR programs or services which are required or requested by the CITY pursuant to the Contract (e.g., Sections 6.03 (diversion mutual cooperation), 6.04 (SRRE/HHWE), 9.18.3 (food waste), and 14.17 (additional programs and services)), but excluding Section 6.08. CONTRACTOR may not request an extraordinary increase in the maximum rates as a result of: changes in fees or taxes such as Social Security, disability or income tax; changes in the market value of Recyclables or processing costs for Recyclables or Organic Waste; inaccurate estimates by the CONTRACTOR of its cost of operations (such as increased labor, fuel or vehicle costs), or costs of compliance with South Coast Air Quality Management District and Air Resource Board rules and standards for Collection Vehicles

## Article 6. Diversion Requirements, Guarantee and Indemnification

6.01 CONTRACTOR'S Diversion Guarantee. A fundamental and material part of the consideration provided by CONTRACTOR to CITY which induced CITY to enter this Contract rather than seeking competitive bids from other qualified solid waste enterprises, was the representation that CONTRACTOR will achieve a minimum annual diversion rate of fifty percent (50%) in connection with the Solid Waste it Collects pursuant to this Contract during each calendar year of the Term hereof through December 31, 2019, and thereafter it will achieve a minimum annual diversion rate of seventy-five percent (75%) in connection with the Solid Waste it Collects pursuant to this Contract for each remaining calendar year, of the Term hereof (hereinafter referred to as "CONTRACTOR'S Diversion Guarantee.") For purposes of determining if Contractor achieves CONTRACTOR'S Diversion Guarantee, the parties agree the annual diversion rate will be calculated using the following formula: *"the tons of materials Collected by CONTRACTOR from the provision of Collection Services in City that are sold or delivered to a recycler or re-user, net of all residue, divided by the total tons of materials Collected in City by CONTRACTOR in each calendar year."*

6.02 Warranties and Representations. CONTRACTOR warrants and represents that it is aware of and familiar with CITY's waste stream, and that it has the ability to and will provide sufficient programs and services to ensure CITY will meet or exceed the diversion requirements as set forth in CONTRACTOR'S Diversion Guarantee, as well as the diversion requirements of the Applicable Laws (including, without limitation, amounts of Solid Waste to be diverted, time frames for diversion, and any other requirements) governing this Contract (including AB 341, AB 939, and all amendments and related subsequent legislation), and that it shall do so without imposing any costs or fees other than those set forth on the attached Exhibit 11 (including if new programs are implemented which are not called out herein). The programs called out herein are minimum requirements that must be met, and CONTRACTOR shall be responsible for implementing any other programs that may be necessary to achieve the forgoing.

6.03 Mutual Cooperation. CITY and CONTRACTOR shall reasonably cooperate in good faith with all efforts by each other to meet CITY's diversion and other compliance requirements imposed by AB 939 and other Applicable Laws, and to meet CONTRACTOR'S obligations under CONTRACTOR'S Diversion Guarantee. In this regard, CITY's obligations shall include, without limitation, making such petitions and applications as may be reasonably requested by CONTRACTOR for time extensions in meeting diversion goals, or other exceptions from the terms of Applicable Laws, and to agree to authorize such changes to CONTRACTOR's Recycling or Solid Waste programs as may be reasonably requested by CONTRACTOR in order to achieve CONTRACTOR'S Diversion Guarantee.

6.04 Waste Reduction and Program Implementation. CONTRACTOR shall implement the programs identified in the Source Reduction and Recycling Element (SRRE) and Household Hazardous Wastes Element (HHWE) of the CITY's General Plan immediately upon the Effective Date hereof, and will implement any programs required by any amendments or modifications thereto. In meeting this obligation, and in carrying out CONTRACTOR'S Diversion Guarantee, CONTRACTOR shall be mindful of and comply with all requirements of the County Agreement, including specifically, without limitation, the requirements thereof generally relating to (i) the delivery of Solid Waste only to transfer stations that provide quarterly certifications of Solid Waste delivered, and (ii) the disposal of residual Solid Waste that remains after Recycling processes have been completed. CONTRACTOR shall provide CITY with monthly, quarterly and annual written reports in a form adequate to meet CITY's filing and reporting requirements as required by the Applicable Laws to CalRecycle and to the County of Orange throughout the Term of this Contract wherein CITY's performance under the above programs shall be set forth in detail. CONTRACTOR shall be responsible to prepare, or assist CITY with the preparation of, all reports and other information as may be required by any agency, including specifically, the State of California, in order to comply with AB 939 and other Applicable Laws. CONTRACTOR shall reimburse CITY for any costs CITY incurs in appearing before CalRecycle and/or the County of Orange in relation thereto.

6.05 Guarantee and Indemnification. CONTRACTOR warrants and guaranties that it will carry out its obligations under this Contract such that: (i) both it and CITY will at all times be in compliance with the requirements of the Applicable Laws including specifically AB 939 and AB 341, and (ii) CITY will meet or exceed the diversion requirements (including, without limitation, amounts of Solid Waste to be diverted, time frames for diversion, and any other requirements) set forth in CONTRACTOR'S Diversion Guarantee and the Applicable Laws including AB 939, and all amendments thereto. In this regard CONTRACTOR agrees that it will, in addition to any other requirement contained herein, at its sole cost and expense:

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

6.05.2 Assist CITY in responding to inquiries from CalRecycle or any other regulatory agency;

6.05.3 Assist CITY in preparing for, and participating in, the CalRecycle's biannual review of CITY's SRRE pursuant to Public Resources Code Section 41825;

6.05.4 Assist CITY in applying for any extension, including under Public Resources Code Section 41820, if so directed by CITY;

6.05.5 Assist CITY in any hearing conducted by CalRecycle, or any other regulatory agency, relating to CITY's compliance with the Applicable Laws including AB 939;

6.05.6 Assist CITY with the development of and implement a public awareness and education program that is consistent with the CITY's SRRE and Household Hazardous Waste Element, as well as any related requirements of the Applicable Laws;

6.05.7 Provide CITY with Recycling, source reduction, and other technical assistance as may be needed to comply with the Applicable Laws including AB 939;

6.05.8 Defend, with counsel acceptable to CITY, CITY and CITY's officials, employees, and agents against the imposition of fines and/or penalties, or any other liabilities, issued by CalRecycle pursuant to the Applicable Laws including AB 939;

6.05.9 Be responsible for and pay, any fees, penalties or other costs imposed against the CITY by CalRecycle, and indemnify and hold harmless CITY from and against any fines, penalties, or other liabilities, levied against it for violation of the diversion requirements, set forth in the Applicable Laws, including AB 939, or for violation of any other provision of the Applicable Laws, including AB 939, arising from or in any way related to CONTRACTOR's performance of its obligations under this Contract.

6.06 Failure To Meet Minimum Diversion Requirements. CONTRACTOR'S failure to meet the minimum diversion requirements of CONTRACTOR'S Diversion Guarantee set forth above may result in a finding of material breach, the imposition of liquidated damages, a denial of an adjustment to the Maximum Service Rates otherwise authorized, or the requirement to undertake additional diversion programs in accordance with Section 6.08. Notwithstanding the above, CONTRACTOR shall not be in material breach, rate adjustments shall not be impacted, and Section 6.08 shall not apply, if CONTRACTOR has undertaken, in good faith, the methods and level of effort required to fully implement the work plans as set forth in Exhibits 4, 5, 6, 7, 8 and 9. In addition, in determining whether to impose liquidated damages, the CITY shall consider CONTRACTOR'S good faith efforts, waste characterization data provided by CONTRACTOR, inclusion of non-franchised diversion data provided by CONTRACTOR, and the availability of permitted facilities that are capable of processing material to achieve the required levels of diversion.

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

6.08 Implementation of Additional Diversion Services. If the CITY determines that CONTRACTOR has not fulfilled its good faith efforts requirements set forth in Section 6.06,

CITY may direct CONTRACTOR to perform additional services (including the implementation of new diversion programs) or modify the manner in which it performs existing services, and CONTRACTOR agrees to do so at no additional charge. Pilot programs and innovative services which may entail new Collection methods, and use of new or alternative Solid Waste processing and disposal technologies are included among the types of changes which CITY may direct.

## Article 7. Service Units

7.01 Service Units. Service Units shall include all the following categories of Premises which are in the Service Area as of August 1, 2013, and all such Premises which may be added to the Service Area by means of annexation, new construction, or as otherwise set forth in this Contract during term of this Contract:

7.01.1 SFD Service Units

7.01.2 Commercial Service Units

7.01.3 CITY Service Units

7.01.4 Any question as to which Service Unit category a Premises falls (not whether it is subject to this Contract) shall be determined by the Contract Administrator, and the determination of the Contract Administrator shall be final.

7.02 Service Unit Changes. The CITY and CONTRACTOR acknowledge that during the term of this Contract it may be necessary or desirable to add or delete Service Units for which CONTRACTOR will provide Service.

7.02.1 Additions and Deletions. CONTRACTOR shall provide services described in this Contract to new Service Units in CONTRACTOR'S Service Area within five (5) Work Days of receipt of notice from the CITY or new Service Unit to begin such Service.

7.03 Annexation. If during the life of the Contract, additional territory within or adjacent to the CONTRACTOR'S Service Area is acquired by the CITY through annexation, CONTRACTOR agrees to provide Collection Services in such annexed area in accordance with the provisions and service rates set forth in this Contract. Such Collection Services shall begin within five (5) Work Days of receipt of written notice from the CITY. CONTRACTOR shall not begin Collection Service without written authorization from the CITY.

7.04 Route Map Update. CONTRACTOR shall revise the Service Unit route maps to show the addition of Service Units added due to annexation and shall provide such revised maps to the Contract Administrator as requested.

## Article 8. Flow Control: County Agreement

8.01 CITY shall have the option to direct and/or approve which Disposal Facility or MRFs CONTRACTOR shall use to dispose of or process Solid Waste generated within the Service Area for the sole purpose of CITY's compliance with the County Agreement. CONTRACTOR expressly consents to CITY's ability to direct the location for disposal of Solid Waste hereunder, and waives any and all rights to challenge CITY's ability to do so, including without limitation any rights under the Commerce Clause of the United States Constitution; provided, however, that CONTRACTOR shall receive appropriate rate adjustments if CITY directs CONTRACTOR to dispose of Solid Waste at locations other than those in Orange County.

8.02 CONTRACTOR expressly acknowledges its awareness 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 disposal of all Solid Waste Collected in the CITY Service Area to occur in the Orange County landfill system. CONTRACTOR further acknowledges that the County of Orange is an intended third party beneficiary of CONTRACTOR's obligations relating in any way to the disposal of Solid Waste pursuant to this Contract 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 Collection franchisee. CONTRACTOR represents and warrants that it can and will perform its duties in connection with this Contract, in such a manner as to ensure that CITY does not breach the terms of the County Agreement as a result of CONTRACTOR's actions or inactions.

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

## Article 9. SFD Collection Services

9.01 Provision of Carts for SFD Service Units. With the exception of SFD Service Units at Hard to Service Locations identified on Exhibit 5, CONTRACTOR shall provide each Customer at a SFD Service Unit with one (1) ninety-six (96) gallon Cart designated for the Collection of Refuse (a "Refuse Cart"), one (1) ninety-six (96) gallon Cart designated for the Collection of Recyclable Materials (a "Recycling Cart"); and one (1) ninety-six (96) gallon Cart for Collection of commingled Green Waste (a "Green Waste Cart"). Any Customer requesting a smaller Refuse, Recycling and/or Green Waste Cart(s) shall be provided with either a thirty-five (35) gallon or a sixty-four (64) gallon Cart(s) by CONTRACTOR instead of the standard ninety-six (96) gallon Cart noted above.

9.01.1 Use of Existing Carts. CONTRACTOR has been providing Collection Services in CITY pursuant to the Prior Agreement utilizing Refuse, Recycling and Green Waste Carts identical to those required by this Contract. CONTRACTOR may utilize the Carts that were distributed to Customers in connection with the Prior Agreement to satisfy its obligations under this Contract.

9.02 Placement of Carts for Collection. Wherever feasible, Customers shall be directed by CONTRACTOR to place Carts for Collection either in the street gutter, against the curb, in front of their Premises, or adjacent to their Premises in the alley or easement in the rear of their Premises. If a Customer and CONTRACTOR cannot agree upon a Collection location, or if CITY determines the selected location may cause safety or other concerns, CITY may make the final determination of the Collection location.



9.03 Hard to Service Locations. There are certain SFD Service Units within the CITY that are hard to service due to topography and which have been identified on Exhibit 5. Customers at such locations may utilize their own Containers for Collection Service, or a Refuse Cart provided by CONTRACTOR. Such Containers shall be placed in a location to be determined by CONTRACTOR and Customer that permits for the safe Collection thereof. If a Customer at a Hard to Service SFD Unit and CONTRACTOR cannot agree upon either whether a CONTRACTOR provided Cart shall be used or the location for Collection location, or if CITY determines the selected location may cause safety or other concerns, the Contract Administrator shall may make the final determination of the issue.

9.04 Collection Requirement. CONTRACTOR shall provide SFD Collection Service to all Customers at SFD Service Units in the Service Area not less than once per week, at rates that do not exceed the maximum rates set forth in Exhibit 11.

9.05 On-Premises Service Collection Day. CONTRACTOR's Collection schedule shall be arranged such that it shall provide service to Customers receiving on-Premises Collection Service on the same Work Day that curbside Collection would otherwise be provided to the SFD Service Unit.

9.06 Frequency and Scheduling of Service. Except as otherwise provided herein, SFD Collection Service shall be provided one (1) time per week in compliance with the approved Collection schedule. SFD Collection Service shall be scheduled so that a SFD Service Unit receives SFD Refuse Collection Service, SFD Recycling Collection Service, and SFD Organic Waste Collection Service on the same Work Day.

9.07 Hour and Days of Collection. Except as provided in Section 4.04, SFD Collection Service shall be provided, commencing no earlier than 7:00 a.m. and terminating no later than 6:00 p.m., Monday through Friday. The hours, day, or both of Collection may be extended due to extraordinary circumstances or conditions with the prior verbal or written consent of the Contract Administrator. Notwithstanding the foregoing, in the event required by unusual or emergency circumstances, or temporary changes needed to accommodate seasonal fluctuation in Collection needs, the Contract Administrator may authorize a modification to the above time limitations.

9.08 Manner of Collection. The CONTRACTOR shall provide SFD Collection Service with as little disturbance as possible and shall leave any Cart in an upright position at the same point it was Collected without obstructing alleys, roadways, driveways, sidewalks or mailboxes.

9.08.1 CONTRACTOR'S employees providing SFD Collection Service shall follow the regular walk for pedestrians while on private property and shall not trespass nor cross property to the adjoining Premises unless the occupant or owner of both properties has given permission. Care should be taken to prevent damage to property, including flowers, shrubs, and other plantings.

9.09 Replacement of Refuse, Recycling, and Green Waste Carts. CONTRACTOR'S employees shall take care to prevent damage to Carts by unnecessary rough treatment. However, any Cart damaged by the CONTRACTOR shall be replaced by the CONTRACTOR, at the CONTRACTOR'S expense, on or before the next service date at no cost or inconvenience to the Customer.

9.09.1 Upon notification to the CONTRACTOR by the CITY or a Customer that the Customer's Refuse, Recycling or Green Waste Cart(s) has been stolen or damaged beyond repair through no fault of the CONTRACTOR, the CONTRACTOR shall deliver a replacement

Cart(s) to such Customer within five (5) Work Days. The CONTRACTOR shall maintain records documenting all Cart replacements occurring on a monthly basis.

9.09.2 Each Customer shall be entitled to the replacement of one (1) lost, destroyed, or stolen Refuse Waste Cart, one (1) lost, destroyed, or stolen Recycling Cart, and one (1) lost, destroyed, or stolen Green Waste Cart during the Term of this Contract at no cost to the Customer. Except in cases where a Cart must be replaced because of damage caused by CONTRACTOR or due to ordinary wear and tear, where CONTRACTOR elects to replace a Cart rather than repair it on-site, CONTRACTOR shall be compensated for the cost of those replacements in excess of one (1) per type of Cart per Customer during the Term of the Contract, in accordance with the "Cart Exchange" Service Rate set forth in Exhibit 11.

9.10 Repair of Refuse, Recycling and Green Waste Carts. CONTRACTOR shall be responsible for repair of damaged Carts, including but not limited to, damaged hinged lids, wheels and axles. Within five business days of being made aware of needed Cart repairs, CONTRACTOR shall either repair the damaged Cart or remove the Cart for repairs and deliver a replacement Cart to the Customer.

9.11 Cart Exchange. Within five (5) business days following notification from a Customer that a change in the size of a Refuse, Recycling or Green Waste Cart is requested, CONTRACTOR shall deliver the new size Cart(s) to such Customer. Each SFD Service Unit shall be eligible to receive one (1) free Refuse Cart exchange per Contract Year, provided this option is not being abused. Accordingly CONTRACTOR shall be compensated only for the cost of those exchanges in excess of one (1) per Contract Year for those SFD Service Units receiving larger Refuse Cart sizes, in accordance with the "Cart Exchange" Maximum Service Rate as set forth in Exhibit 11 or as may be adjusted under the terms of this Contract.

9.12 Additional Refuse Carts. Within five (5) business days following notification from a Customer that an additional Refuse Cart(s) is requested, CONTRACTOR shall deliver such Refuse Cart(s) to such Customer. CONTRACTOR may charge Customers having additional Refuse Carts rates for Collection Service that do not exceed the maximum rates set forth in Exhibit 11.

9.13 Additional Recycling or Organic Waste Carts. Within five (5) business days following notification from a Customer that it additional Recycling or Green Waste Carts are desired, CONTRACTOR shall deliver such Carts to such Customer. Customers at SFD Service Units are entitled to one (1) additional Recycling Cart, and one (1) additional Green Waste Cart at no additional cost (provided that the additional Carts are used by SFD Service Unit Customers for the intended purposes of setting out additional Recycling or Organic Waste Materials for regular weekly Collection Service). CONTRACTOR may charge for each additional Recycling Cart in excess of two (2), and each additional Green Waste Cart in excess of two (2) at the "Additional Cart" Service Rates set forth in Exhibit 11.

9.14 Ownership of Carts. Ownership of Carts shall rest with the CONTRACTOR.

9.15 On-Premises Service. CONTRACTOR shall provide "on-Premises SFD Collection Services" to a SFD Service Unit when requested as set forth below. This service shall require CONTRACTOR to use its own forces to bring a Customer's Carts or other Containers used for Collection from the Customer's backyard, side yard, or such other location at which the Customer's Containers are regularly stored, to CONTRACTOR's Collection Vehicle; and, after disposal of the contents thereof, returning said Carts or Containers to the location where they are regularly stored.

9.15.1 CONTRACTOR shall provide on-Premises SFD Collection Services at no additional cost to the SFD Service Unit meeting the following criteria:

- SFD Service Units at which all adult Customers have disabilities that prevent them from setting their Carts at the curb for Collection themselves. Any dispute between a Customer and CONTRACTOR as to the Customer's eligibility for on-Premises SFD Collection Services pursuant to this provision shall be resolved by the Contract Administrator whose decision shall be final.
- SFD Service Units identified as Hard to Service Locations and listed on Exhibit 5.

9.15.2 CONTRACTOR shall provide on-Premises SFD Collection Services to any SFD Service Unit requesting it and not meeting the above criteria at rates that do not exceed the Maximum Service Rates as set forth in Exhibit 11.

9.16 SFD Refuse Collection Service.

9.16.1 Non-Collection. Excepting for Section 9.16.1.1 below and with respect to Customers listed on Exhibit 5 who use their own Containers, CONTRACTOR shall not be required to Collect any Refuse that is not placed in a Refuse Cart, or to Collect any Refuse Cart not properly placed for Collection. In the event of non-collection, CONTRACTOR shall affix to the Refuse Cart a Non-Collection Notice explaining why Collection was not made. CONTRACTOR shall maintain a copy of such notices during the term of this Contract.

9.16.1.1 Bagged Refuse Overage. SFD Customers may place up to five (5) bags of Refuse next to their Refuse Cart to accommodate Bagged Refuse Overage five (5) times per calendar year at no additional charge. CONTRACTOR may charge for each additional bag in excess of the allowable five (5) bags, and for each additional occurrence of Bagged Refuse Overage in excess of five (5) times per year at the "Additional Bagged Refuse Overage" Rates set forth in Exhibit 11. On the sixth (6<sup>th</sup>) occurrence in any calendar year, CONTRACTOR shall also notify SFD Customers that they may subscribe for an additional Refuse Cart subject to the "Additional Cart Service" Rates set forth in Exhibit 11.

9.16.2 Disposal Facility. Except as set forth below, all Refuse Collected as a result of performing SFD Refuse Collection Services shall be transported to, and disposed of, at the Disposal Facility as specified in Article 8 above; provided, however, CONTRACTOR may elect to first process Collected Refuse in order to remove material capable of Recycling (at which point it shall become Recyclable Material), and deliver the residue to the Disposal Facility. In the event the Disposal Facility is closed on a Work Day, CONTRACTOR shall transport and dispose of the Solid Waste at such other legally permitted disposal facility as designated in writing by CITY. Failure to comply with this provision shall result in the levy of an administrative charge as specified in this Contract and may result in CONTRACTOR being in default under this Contract.

9.17 SFD Recycling Service.

9.17.1 Non-Collection. Excepting with respect to Customers listed on Exhibit 5 who are subject to the provisions of Section 9.17.5 below, CONTRACTOR shall not be required to Collect any Recyclable Materials not placed in a Recycling Cart, excepting that corrugated cardboard which will not fit inside a Recycling Cart and is placed beside a Recycling Cart shall be Collected. In addition, CONTRACTOR shall not be required to Collect a Recycling Cart containing a Contaminated load, nor to Collect any Recycling Cart not properly placed for Collection. In the event of non-collection, CONTRACTOR shall affix to the Recycling Cart a



Non-Collection Notice explaining why Collection was not made. CONTRACTOR shall maintain a copy of such notices during the term of this Contract.

9.17.2 Recycling - Improper Procedure. Except as set forth below in this Section 9.17.2, CONTRACTOR shall not be required to Collect a Recycling Cart if the Customer has Contaminated the load within it with unapproved materials such as mixed Solid Waste or Organic Waste. If Recyclable Materials in a Recycling Cart are Contaminated through commingling with mixed Solid Waste or Organic Waste, CONTRACTOR shall, if practical, separate the mixed Solid Waste or Organic Waste from the Recyclable Materials. The Recyclable Materials shall then be Collected and the mixed Solid Waste or Organic Waste shall be left in the Recycling Cart along with a Non-Collection Notice explaining why the mixed Solid Waste or Organic Waste is not considered a Recyclable Material. However, in the event the Recyclable Materials and mixed Solid Waste or Organic Waste are commingled to the extent that they cannot easily be separated by the CONTRACTOR or the nature of the mixed Solid Waste or Organic Waste renders the entire Recycling Cart Contaminated, CONTRACTOR may leave the Recycling Cart un-Collected along with a Non-Collection Notice that contains instructions on the proper procedures for segregating Recyclable Materials in the Recycling Cart.

9.17.3 Customers may place Recyclable Materials in Recycling Carts for Collection, and their presence shall not render the contents of a Recycling Cart a Contaminated load.

9.17.4 Material Recycling Facility. All Recyclable Materials Collected as a result of performing Recycling Services shall be delivered to a MRF, as determined by CONTRACTOR, provided use of the selected MRF does not violate the County Agreement. Failure to comply with this provision shall result in the levy of an administrative charge as specified in this Contract and may result in the CONTRACTOR being in default under this Contract.

9.17.5 Hard-to-Service Locations. CONTRACTOR agrees to implement a Recyclable Material Collection program for SFD Service Units located at the hard-to-service locations listed in Exhibit 5, in accordance with the "Reverse Recycling Plan" set forth in Exhibit 6, using the implementation schedule included in Exhibit 6 with full implementation by January 1, 2014.

9.18 SFD Organic Waste Collection Service.

9.18.1 Non-Collection. CONTRACTOR shall not be required to Collect any Green Waste Cart if the Customer has Contaminated the load within it with unapproved materials such as Refuse or Recyclable Materials. In the event of non-collection, CONTRACTOR shall affix to the Green Waste Cart a Non-Collection Notice explaining why Collection was not made that contains instructions on the proper procedures for segregating Organic Waste in the Green Waste Cart. CONTRACTOR shall maintain a copy of such notices during the term of this Contract.

9.18.2 Organic Waste Processing Services. CONTRACTOR shall ensure that all Organic Waste Collected in Green Waste Carts pursuant to this Contract is diverted from the landfill, as that term is used in connection with AB 939, and delivered to a properly permitted facility.

9.18.3 Food Waste Collection Services. CITY has expressed an interest in a Food Waste diversion program. CONTRACTOR has advised that such a program is not currently viable due to the lack of a commercially viable processing facility to support it.

CONTRACTOR shall implement a Food Waste diversion program if requested by CITY, and in accordance therewith CONTRACTOR shall propose a detailed Food Waste diversion program, and propose reasonable rates for the implementation of such a program. If CITY deems the rates proposed to be excessive, CONTRACTOR shall meet and confer in good faith with CITY to attempt to arrive at agreeable rates. As part of any meet and confer process hereunder, CONTRACTOR shall provide all financial information related to the proposed program which CITY reasonably deems necessary, and CITY shall take reasonable steps, consistent with state law, to protect the confidential or proprietary nature of any data or information supplied by CONTRACTOR, to evaluate the actual program costs and profits proposed by CONTRACTOR. CONTRACTOR shall not be obligated to implement SFD Food Waste Collection Services until CITY approves a CONTRACTOR Food Waste Collection Services proposal.

9.18.4 Leaf Collection. During the five (5) month period beginning October 1st and ending February 28th during the term of this Contract, Customers at SFD Service Units may place unlimited amounts of leaves at the curb alongside their Green Waste Cart as part of Green Waste Collection Service. The leaves shall be placed in plastic Green Waste bags and closed in such a manner as to contain the leaves during Collection. Leaves must be generated by and at the SFD Service Unit wherein the leaves are Collected. During this period, CONTRACTOR shall Collect and dispose of all leaves that are properly bagged and placed at the curb at no additional charge to the Customer.

9.18.5 Bundled Green Waste. CONTRACTOR shall collect all Bundled Green Waste that is set out for Collection beside or on top of a Green Waste Cart, provided that such Bundled Green Waste is not over five (5) feet long at its longest dimension, or weigh more than fifty (50) pounds; and further provided that it was generated at the SFD Service Unit from which Collection is sought. CONTRACTOR is not required to Collect Bundled Green Waste that does not comply with the foregoing requirements. CONTRACTOR shall affix a Non-Collection Notice to any Bundled Green Waste not Collected explaining why Collection was not made. CONTRACTOR shall maintain a copy of such notices during the term of this Contract.

9.18.6 Holiday Tree Collection. CONTRACTOR shall Collect Holiday Trees set out at the curb for Collection during the three-week period beginning December 26 each year during the Term of this Contract. CONTRACTOR shall deliver the Collected Holiday Trees to an appropriate facility for processing and be diverted from landfill disposal to the maximum extent feasible. The CONTRACTOR shall also accept holiday trees delivered to its Sunset Material Recovery Facility (MRF) in Irvine, California by SFD Service Units receiving Cart service. Any holiday trees accepted at the Sunset MRF shall be diverted from landfill disposal to the maximum extent feasible. Holiday Tree Collection service shall be provided at no additional charge to the Customers at SFD Service Units.

#### 9.19 SFD Large Item Collection Service.

9.19.1 Conditions of Service. CONTRACTOR shall provide SFD Large Item Collection Service to all SFD Service Units in the Service Area. Each SFD Service Unit in the Service Area shall be entitled to receive SFD Large Item Collection Service, during which up to ten (10) Large Items may be collected, up to three (3) times per Contract Year at no charge. CONTRACTOR may charge SFD Customers for Large Item Collection in excess of three (3) Collections per year per rates that do not exceed the Maximum Service Rates specified in Exhibit 11. The location for Collection of Large Items shall be as agreed to by the CONTRACTOR and Customer, and shall be a location that will provide safe and efficient accessibility to the CONTRACTOR'S Collection crew and vehicle.

9.19.2 Frequency of Service. SFD Large Item Collection Service shall be provided within seven days of CONTRACTOR receiving a call for such service from a Customer.

9.19.3 Proper Handling of Large Items. CONTRACTOR shall properly handle all materials required to be collected as Large Items, including specifically items that require special handling pursuant to the Environmental Laws, such as materials that constitute "Universal Waste" and/or "E-Waste."

9.19.4 Maximum Reuse and Recycling. CONTRACTOR shall dispose of Large Items collected from Service Units pursuant to this Contract in accordance with the following hierarchy:

- 9.19.4.1 Reuse as is (where energy efficiency is not compromised)
- 9.19.4.2 Disassemble for reuse or Recycling
- 9.19.4.3 Recycle
- 9.19.4.4 Disposal

9.19.5 CONTRACTOR shall not landfill Large Items unless the Large Items cannot be reused or recycled.

#### 9.20 SFD Difficult-to-Recycle Collection Service.

9.20.1 Conditions of Service. In accordance with Exhibit 7, CONTRACTOR shall provide SFD Difficult-to-Recycle Collection Service to all SFD Service Units in the Service Area at no charge to Customers, which service will result in the Collection of many items that may also be Collected as part of the Large Item Collection Service.

9.20.2 Frequency of Service. SFD Difficult-to-Recycle Collection Service shall be provided within two weeks of receipt of a request from a Customer.

9.20.3 Packaging. Upon receiving a request for service, a kit will be sent by CONTRACTOR to the Customer via U.S. mail. The Customer shall be responsible to package the Difficult-to-Recycle Materials in the kit provided by CONTRACTOR and place it out on the Collection date agreed upon, at a Collection location to be determined by CONTRACTOR with each Customer (which shall never be curbside). The kit shall consist of a heavy bag, bag tie, survey card, labels (for waste that is not labeled) and an instruction sheet. The instruction sheet shall at a minimum include the Collection date and a list of Difficult to Collect Materials scheduled for Collection that the Customer discussed with the call center Customer service representative.

9.20.4 Quantity. The quantity of Difficult-to-Recycle Materials that can be Collected at any one time is limited to the items that can be placed into two (2) kit bags along with the following items that may be placed outside the bag:

- 9.20.4.1 Up to four (4) vehicle batteries and five (5) fluorescent tubes and/or CFL's;
- 9.20.4.2 An unlimited number of televisions, computer systems (consisting of CPU, Monitor, Keyboard, Mouse, and/or Printer);
- 9.20.4.3 Up to five (5) compressed cylinders (propane tanks).

9.20.5 Non-Collection. In the event of non-collection, CONTRACTOR shall affix to the Difficult-to-Recycle Material kit a Non-Collection Notice explaining why Collection was not

made and maintain a copy of such notice during the term of this Contract. Prior to the end of the Work Day, CONTRACTOR shall notify the Contract Administrator, either by fax or e-mail, of any non-collection occurrences.

9.20.6 Spillage. CONTRACTOR shall carry absorbent material on all vehicles used for Collection of Difficult-to-Recycle Materials and shall cleanup any spills during Collection, which has leaked from the Difficult-to-Recycle Collection kit, or which spills or leaks during the time the Difficult-to-Recycle Material is in the Collection vehicle.

9.20.7 Segregation of Difficult-to-Recycle Materials. CONTRACTOR shall keep all Difficult-to-Recycle Materials Collected pursuant to this Contract segregated from other materials.

9.20.8 Difficult-to-Recycle Materials Processing. CONTRACTOR shall recycle all Difficult-to-Recycle Materials pursuant to this Contract to the extent feasible and shall properly dispose of all Difficult-to-Recycle Materials that are Contaminated or otherwise cannot be recycled in a manner consistent with all Applicable Laws.

9.20.8.1 CONTRACTOR shall notify the Contract Administrator, either by fax or e-mail, of any Contamination which renders the Difficult-to-Recycle Materials unacceptable for Recycling, or which requires disposal of the Difficult-to-Recycle Materials.

9.21 Annual HHW, E-Waste, U-Waste, and Document Destruction Collection Event. CONTRACTOR shall host an annual community Collection day for Collecting HHW, E-Waste U-Waste, and documents for secure destruction, in a manner consistent with the Plan set forth in Exhibit 8, which is attached to and included in this Contract.

## Article 10. Commercial Collection Services

10.01 Service Agreements. Any service agreements with Customers shall be consistent with the terms of this Contract, and no such agreements shall contain any provision that commits a Customer to service beyond the Term hereof.

10.02 Hours of Collection. Collection services shall not start before 7:00 am or continue after 6:00 pm of any day. Notwithstanding the foregoing, in the event required by unusual or emergency circumstances, or temporary changes needed to accommodate seasonal fluctuation in Collection needs, the Contract Administrator may authorize a modification to the above time limitations.

10.03 Sunday Collection. CONTRACTOR may make arrangements with Customers, consistent with Applicable Laws, regulations, and ordinances to provide Sunday Commercial Collection Service; however, CONTRACTOR shall not be required to provide Commercial Collection Service on Sundays unless a Customer requests seven day per week service.

10.04 Accessibility. CONTRACTOR shall Collect all Bins, Carts and Roll-Off Containers that are readily accessible to the CONTRACTOR'S crew and vehicles and not blocked. However, CONTRACTOR shall provide "push services" as necessary during the provision of Commercial Collection Services at rates not to exceed those set forth in Exhibit 11. Push services shall include, but not be limited to dismounting from the Collection vehicle, moving the Bins, Carts or Roll-Off Containers from their storage location for Collection and returning the Bins, Carts or Roll-Off Containers to their storage location.

10.05 Locking Bins. All Bins shall have the ability to be locked should the Customer require locking lid service. CONTRACTOR may charge Customers for locks for Bins, provided such charges shall not exceed those set forth in the attached Exhibit 11. CONTRACTOR may require that Customers only use locks provided by CONTRACTOR to lock Bins.

10.06 Manner of Collection. CONTRACTOR shall provide Commercial Collection Service with as little disturbance as possible and shall leave any Bins, Carts or Roll-Off Containers at the same point it originally located without obstructing alleys, roadways, driveways, sidewalks or mailboxes.

10.07 Replacement/Cleaning of Bins. CONTRACTOR shall at Customer's request annually refurbish, replace, or steam clean as necessary all Bins and Roll-Off Containers at no charge to Customers; provided, however, CITY may require the steam cleaning or replacement of Bins utilized at restaurants, bars and grocery stores/markets more frequently if it determines such action is needed to protect public health and safety. Additional steam cleaning shall be provided to any Customers who request it at a charge not to exceed the maximum rate set forth in Exhibit 11 hereto, or alternatively CONTRACTOR shall provide a replacement Bin/Roll-off Container to Customers at no charge.

10.08 Commercial Carts. Customers at Commercial Service Units who utilize Carts shall be entitled to Cart replacement pursuant to the same provisions hereof applicable to Customers at SFD Service Units.

10.09 Commercial Refuse Collection Service.

10.09.1 Conditions of Service. Commercial Refuse Collection Service shall be provided as deemed necessary and as determined between the CONTRACTOR and the Customer, but such service shall be received no less than one (1) time per week with no exception for holiday(s) as set forth herein, except that Collection service scheduled to fall on a holiday may be rescheduled as determined between the Customer and the CONTRACTOR as long as the minimum frequency requirement is met. Commercial Refuse Collection Service may be provided by Bin, Cart, or Roll-off at the option of the Customer. The size of the Container and the frequency (above the minimum) of Collection shall be determined between the Customer and the CONTRACTOR. However, size and frequency shall be sufficient to provide that no Solid Waste need be placed outside the Bin or Cart. CONTRACTOR shall set, charge to, and collect from Customers rates for Commercial Collection Service, which rates shall not exceed those set forth in Exhibit 11, as they may be amended from time to time pursuant to the provisions hereof. Customers may own their Containers provided that the Customer is completely responsible for its proper maintenance and that such Container shall be of a type that can be serviced by the CONTRACTOR'S equipment.

10.09.2 Non-Collection. CONTRACTOR shall not be required to Collect any Refuse that is not placed in a Container. In the event of non-collection, CONTRACTOR shall affix to the Container a Non-Collection Notice explaining why Collection was not made.

10.09.3 Solid Waste Overflow. CONTRACTOR may charge Customers an overload fee, as set forth in Exhibit 11. In the case of repeated overflows of Solid Waste, CONTRACTOR shall contact the Commercial Service Unit Customer to arrange for an appropriate change in Cart or Bin size, Collection frequency or both. In the event CONTRACTOR cannot successfully reach an agreement with such Customer regarding the change in service, CONTRACTOR shall advise the Contract Administrator who shall make a final written determination as to the required level of service. On or before the next service date



after receipt of the Contract Administrator's written determination, CONTRACTOR shall change the Collection Service in accordance with such written determination.

10.09.4 Wet/Dry Routing. As part of its Recycling and diversion programs, all Commercial Service Unit Customers shall be part of a Wet/Dry routing system to be fully implemented by January 1, 2014 pursuant to the schedule set forth in Exhibit 9. The wet waste route is to be limited to Solid Waste that cannot be recycled or that might cross Contaminate Recyclable Materials if intermingled with them, and the Solid Waste Collected on this route may be taken directly to the landfill for disposal. The dry waste routes is intended to capture dry waste much of which can be recycled, and the Solid Waste Collected on this route may not be taken directly to the landfill and instead must first be taken to CONTRACTOR's Sunset Environmental Transfer/Processing Facility (or other facilities selected by CONTRACTOR and approved by CITY) where the Solid Waste is to be processed to remove Recyclable Materials before any residual may be transferred for disposal. CONTRACTOR shall evaluate each Customer at a Commercial Service Unit in the CITY to identify which Customers can be placed on the dry waste route, with a goal of maximizing the Customers on the dry waste route. If a Customers' entire waste stream is not suitable for the dry waste route, to the degree practical and reasonable a portion of their waste stream shall be added to the dry waste route, with the remainder being handled on the wet waste route. CONTRACTOR shall report to the CITY its findings and conclusions regarding which Customers are to be placed on the dry waste route and which are to be placed on the wet waste route. The Contract Administrator shall have the final determination in approving CONTRACTOR's recommendation as to which Customers may be included in whole or in part, on the wet waste route and all other Customers must be included on the dry waste route.

10.10 Commercial Recycling Service.

10.10.1 Conditions of Service. CONTRACTOR shall offer Commercial Recycling Service to all Commercial Service Units in the Service Area.

10.10.2 Size and Frequency of Service. As part of the Maximum Service Rates set forth in Exhibit 11, Commercial Recycling Service shall be provided as deemed necessary and as determined between the CONTRACTOR and the Customer, but such service shall be received no less than one (1) time per week with no exception for holiday(s) as set forth herein, except that Collection service scheduled to fall on a holiday may be rescheduled as determined between the Customer and the CONTRACTOR as long as the minimum frequency requirement is met. Service may be provided by Bin, Roll-off, or Cart at the option of the Customer. The size of the Container and the frequency (above the minimum) of Collection shall be determined between the Customer and the CONTRACTOR. However, size and frequency shall be sufficient to provide that no Recyclable Materials need be placed outside the Container. Customers at Commercial Service Units whose entire waste stream is part of the dry waste route noted above need not be provided special Containers for Commercial Recycling Service unless deemed necessary or desirable by the CONTRACTOR and its Customers.

10.10.3 Recycling - Improper Procedure. Except as set forth below, CONTRACTOR shall not be required to Collect materials placed out in a Bin or Cart designated for Recyclable Materials if the Customer has Contaminated the load within it with unapproved materials such as mixed Solid Waste or Organic Waste. If Recyclable Materials in a designated Recycling Container are Contaminated through commingling with mixed Solid Waste or Organic Waste, CONTRACTOR shall, if practical, separate the mixed Solid Waste or Organic Waste from the Recyclable Materials. The Recyclable Materials shall then be Collected and the mixed Solid Waste or Organic Waste shall be left in the Recycling Container along with a Non-

Collection Notice explaining why the mixed Solid Waste or Organic Waste is not considered a Recyclable Material. However, in the event the Recyclable Materials and mixed Solid Waste or Organic Waste are commingled to the extent that they cannot easily be separated by the CONTRACTOR or the nature of the mixed Solid Waste or Organic Waste renders the entire Recycling Container Contaminated, CONTRACTOR may leave the Recycling Container un-Collected along with a Non-Collection Notice that contains instructions on the proper procedures for segregating Recyclable Materials.

10.10.4 Customers may place Recyclable Materials in Recycling Containers for Collection, and their presence shall not render the contents of a Recycling Container a Contaminated load.

10.10.5 Material Recovery Facility. All separated Recyclable Materials Collected as a result of performing Recycling Services shall be delivered to a Material Recovery Facility. Failure to comply with this provision shall result in the levy of an administrative charge as specified in this Contract and may result in the CONTRACTOR being in default under this Contract.

10.11 Commercial Organic Waste Collection Services.

10.11.1 Green Waste Collection Services. This Service shall be provided as deemed necessary and as determined between the CONTRACTOR and the Customer, but such service shall be received no less than one (1) time per week with no exception for holiday(s) as set forth herein, except that Collection service scheduled to fall on a holiday may be rescheduled as determined between the Customer and the CONTRACTOR as long as the minimum frequency requirement is met. Service may be provided by Bin or Cart at the option of the Customer. The size of the Container and the frequency (above the minimum) of Collection shall be determined between the Customer and the CONTRACTOR. However, size and frequency shall be sufficient to provide that no Green Waste need be placed outside the Bin or Cart. The CONTRACTOR shall provide Containers as part of the Commercial Collection Service rates set forth in Exhibit 11, however, Customers may own their Bin provided that the Customer is completely responsible for its proper maintenance and such Bin shall be of a type that can be serviced by the CONTRACTOR'S equipment.

10.11.2 Collection of Green Waste Overages. CONTRACTOR shall be required to Collect all Green Waste that is set out for Collection regardless of whether or not the Green Waste is properly contained in a Container. CONTRACTOR shall obtain and retain pictorial evidence of such Overages and may be compensated for the Collection of such Overages in accordance with the approved "Overage" Maximum Service Rate as provided in Exhibit 11 or as may be adjusted under the terms of this Contract.

10.11.3 Holiday Tree Collection. CONTRACTOR shall Collect Holiday Trees set out at the curb for Collection during the three-week period beginning December 26 each year during the Term of this Contract. CONTRACTOR shall deliver the Collected Holiday Trees to an appropriate facility for processing and be diverted from landfill disposal to the maximum extent feasible. The CONTRACTOR shall also accept holiday trees delivered to its Sunset Material Recovery Facility (MRF) in Irvine, California by Commercial Service Units receiving Cart or Bin service. Any holiday trees accepted at the Sunset MRF shall be diverted from landfill disposal to the maximum extent feasible. Holiday Tree Collection service shall be provided at no additional charge to the Customers at Commercial Service except unsold Holiday Trees generated by Commercial Service Units that as a normal course of business sell Holiday Trees.

10.11.4 Green Waste Processing Facility. All Green Waste Collected as a result of performing Commercial Green Waste Collection Services shall be delivered to the Green Waste Processing Facility. All expenses related to Green Waste Processing and marketing will be the sole responsibility of CONTRACTOR.

10.11.5 Additional Green Waste Capacity. Upon notification to CONTRACTOR by CITY or a Commercial Customer that additional Green Waste Capacity is requested, CONTRACTOR shall deliver such Green Waste Containers as are needed to meet the capacity requirements of the Commercial Service Unit no later than the next regularly scheduled Collection day. CONTRACTOR shall be compensated for the cost of providing additional Organic Materials Containers in accordance with the approved "Additional Commercial Green Cart" Maximum Service Rate provided in Exhibit 11 or as may be adjusted under the terms of this Contract.

10.11.6 Food Waste Collection Services. CITY has expressed an interest in a Food Waste diversion program. CONTRACTOR has advised that such a program is not currently viable due to the lack of a commercially viable processing facility to support it. CONTRACTOR shall implement a Food Waste diversion program if requested by CITY, and in accordance therewith CONTRACTOR shall propose a detailed Food Waste diversion program, and propose reasonable rates for the implementation of such a program. If CITY deems the rates proposed to be excessive, CONTRACTOR shall meet and confer in good faith with CITY to attempt to arrive at agreeable rates. As part of any meet and confer process hereunder, CONTRACTOR shall provide all financial information, subject to CONTRACTOR's confidentiality requirements, related to the proposed program which CITY reasonably deems necessary to evaluate the actual program costs and profits proposed by CONTRACTOR. CONTRACTOR shall not be obligated to implement Commercial Food Waste Collection Services until CITY approves a CONTRACTOR Food Waste Collection Services proposal.

10.12 Commercial Large Item Collection Service.

10.12.1 Conditions of Service. CONTRACTOR shall provide Commercial Large Item Collection Service to all Commercial Service Units in the Service Area. Each Commercial Service Unit in the Service Area shall be entitled to receive Commercial Large Item Collection Service, during which up to ten (10) Large Items may be collected, up to three (3) times per Contract Year at no charge. CONTRACTOR may charge Commercial Customers for Large Item Collection in excess of three (3) Collections per year per rates that do not exceed the Maximum Service Rates specified in Exhibit 11. The location for Collection of Large Items shall be as agreed to by the CONTRACTOR and Customer, and shall be a location that will provide safe and efficient accessibility to the CONTRACTOR'S Collection crew and vehicle.

10.12.2 Frequency of Service. Commercial Large Item Collection Service shall be provided within seven days of CONTRACTOR receiving a call for such service from a Customer.

10.12.3 Proper Handling of Large Items. CONTRACTOR shall properly handle all materials required to be collected as Large Items, including specifically items that require special handling pursuant to the Environmental Laws, such as materials that constitute "Universal Waste" and/or "E-Waste."

10.12.4 Maximum Reuse and Recycling. CONTRACTOR shall dispose of Large Items collected from Service Units pursuant to this Contract in accordance with the following hierarchy:

10.12.4.1 Reuse as is (where energy efficiency is not compromised)



10.12.4.2 Disassemble for reuse or Recycling

10.12.4.3 Recycle

10.12.4.4 Disposal

10.12.5 CONTRACTOR shall not landfill Large Items unless the Large Items cannot be reused or recycled.

10.13 Commercial Roll-off Collection Service. CONTRACTOR shall provide Commercial Roll-Off Collection Service to any Customers in the Service Area requesting such service, and C&D shall be delivered to a MRF. CONTRACTOR shall respond to requests for service within two (2) Work Days of receipt of the request or after an on-site inspection (whichever is later), where deemed appropriate by CONTRACTOR. CONTRACTOR shall be compensated for such services in accordance with the Maximum Service Rates as set forth in Exhibit 11 to this Contract as may be adjusted in accordance with the terms of this Contract.

10.14 Commercial Temporary Bin Collection Service. CONTRACTOR shall provide Commercial Temporary Bin Collection Service to all Customers in the Service Area requesting such service, and C&D shall be delivered to a MRF. CONTRACTOR shall respond to requests for service within two (2) Work Days of receipt of the request or after an on-site inspection (whichever is later), where deemed appropriate by CONTRACTOR. CONTRACTOR shall be compensated for such services in accordance with the Maximum Service Rates as set forth in Exhibit 11 to this Contract as may be adjusted in accordance with the terms of this Contract.

10.15 MFD and Commercial Conditionally Exempt Small Quantity Generators Difficult-to-Recycle Collection Service.

10.15.1 Conditions of Service. In accordance with Exhibit 7, CONTRACTOR shall provide MFD and Commercial Conditionally Exempt Small Quantity Generators Difficult-to-Recycle Collection Service to all MFD and Commercial Conditionally Exempt Small Quantity Generators Service Units in the Service Area at no charge to Customers, which service will result in the Collection of many items that may also be Collected as part of the Large Item Collection Service.

10.15.2 Conditions of Service. In accordance with Exhibit 7, CONTRACTOR shall provide MFD and Commercial Conditionally Exempt Small Quantity Generators Difficult-to-Recycle Collection Service to all MFD and Commercial Conditionally Exempt Small Quantity Generators Service Units in the Service Area at no charge to Customers, which service will result in the collection of may items that may also be Collected as part of the Large Item Collection Service.

10.15.3 Frequency of Service. MFD and Commercial Conditionally Exempt Small Quantity Generators Difficult-to-Recycle Collection Service shall be provided within two weeks of receipt of a request from a Customer.

10.15.4 Packaging. Upon receiving a request for service, a kit will be sent by CONTRACTOR to the Customer via U.S. mail. The Customer shall be responsible to package the Difficult-to-Recycle Materials in the kit provided by CONTRACTOR and place it out on the Collection date agreed upon, at a Collection location to be determined by CONTRACTOR with each Customer (which shall never be curbside). The kit shall consist of a heavy bag, bag tie, survey card, labels (for waste that is not labeled) and an instruction sheet. The instruction sheet shall at a minimum include the Collection date and a list of Difficult to Collect Materials scheduled for Collection that the Customer discussed with the call center Customer service representative.

10.15.5 Quantity. The quantity of Difficult-to-Recycle Materials that can be Collected at any one time is limited to the items that can be placed into two (2) kit bags along with the following items that may be placed outside the bag:

10.15.5.1 Up to four (4) vehicle batteries and five (5) fluorescent tubes and/or CFL's;

10.15.5.2 An unlimited number of televisions, computer systems (consisting of CPU, Monitor, Keyboard, Mouse, and/or Printer);

10.15.5.3 Up to five (5) compressed cylinders (propane tanks).

10.15.6 Non-Collection. In the event of non-collection, CONTRACTOR shall affix to the Difficult-to-Recycle Material kit a Non-Collection Notice explaining why Collection was not made and maintain a copy of such notice during the term of this Contract. Prior to the end of the Work Day, CONTRACTOR shall notify the Contract Administrator, either by fax or e-mail, of any non-collection occurrences.

10.15.7 Spillage. CONTRACTOR shall carry absorbent material on all vehicles used for Collection of Difficult-to-Recycle Materials and shall cleanup any spills during Collection, which has leaked from the Difficult-to-Recycle Collection kit, or which spills or leaks during the time the Difficult-to-Recycle Material is in the Collection vehicle.

10.15.8 Segregation of Difficult-to-Recycle Materials. CONTRACTOR shall keep all Difficult-to-Recycle Materials Collected pursuant to this Contract segregated from other materials.

10.15.9 Difficult-to-Recycle Materials Processing. CONTRACTOR shall recycle all Difficult-to-Recycle Materials pursuant to this Contract to the extent feasible and shall properly dispose of all Difficult-to-Recycle Materials that are Contaminated or otherwise cannot be recycled in a manner consistent with all Applicable Laws.

10.15.10 CONTRACTOR shall notify the Contract Administrator, either by fax or e-mail, of any Contamination which renders the Difficult-to-Recycle Materials unacceptable for Recycling, or which requires disposal of the Difficult-to-Recycle Materials.

10.16 Annual HHW, E-Waste and U-Waste Collection Day. CONTRACTOR shall host an annual community Collection day for Collecting E-Waste and U-Waste in a manner consistent with the HHW and E-Waste Event Plan set forth in Exhibit 8, which is attached to and included in this Contract.

## Article 11. CITY Collection Services

11.01 CITY Collection Services. CONTRACTOR shall provide CITY Collection Services (including CITY Refuse Collection Service, CITY Recycling Service, and CITY Organic Waste Collection Service) at all CITY Service Units (but excluding bus stops and beaches), at no cost to CITY and shall provide Containers for such service as CITY deems appropriate for each of its various Premises (i.e., Carts, Bins or Roll-off Container). Such services shall be provided for all existing CITY facilities, as they may be expanded from time to time, as well as all new or additional facilities acquired/constructed during the Term hereof. CONTRACTOR shall carry out its obligations pursuant to this provision in a manner, and to a degree, approved by the Contract Administrator. Exhibit 1, attached hereto and incorporated herein, is a list of current facilities, provided for informational purposes only, at which the forgoing CITY Collection

Services shall be provided, but is not intended as an all inclusive list or to in any way limit CONTRACTOR's obligations hereunder.

11.02 CITY Temporary Roll-Off Collection Service. CONTRACTOR's obligation hereunder shall include the obligation to provide temporary CITY Roll-Off Service to all CITY Service Units requesting such service at no charge to CITY; provided, however, such no-cost services shall not include Construction and Demolition Debris or material not generated by the CITY in its normal operations. CONTRACTOR shall respond to requests for service within two (2) Work Days of receipt of the request.

11.03 CITY Code Enforcement Clean-Up Services. CONTRACTOR obligations hereunder shall include the obligation, at no cost to CITY, to provide CITY Collection Services to support Code Enforcement, by providing Bins, Cart, or a Roll-Off Containers, as appropriate, within twenty-four (24) hours of a request of the Contract Administrator; and, in connection therewith CONTRACTOR shall transport and deliver the Collected Solid Waste to the Disposal Facility, the Materials Recycling Facility, Green Waste Processing Facility, or such other facility as is appropriate.

11.04 Annual MFD and Commercial Conditionally Exempt Small Quantity Generators HHW, E-Waste, U-Waste Collection Event, and Document Destruction Collection Event. CITY shall be entitled to participate in the annual E-Waste and U-Waste Collection event set forth in Exhibit 8.

11.05 CITY Special Event Collection Service. CONTRACTOR shall provide CITY Collection Services, as well as Containers for Refuse, Organic Waste and/or Recyclable Materials (as deemed appropriate by the Contract Administrator), at all CITY-sponsored special events at no cost. Attached hereto, and incorporated herein, as Exhibit 4 is a list of the current CITY-sponsored special events which has been provided for informational purposes only, and for which the forgoing CITY Collection Services shall be provided. Exhibit 4 is not intended as an all-inclusive list or to in any way limit CONTRACTOR's obligations hereunder.

## Article 12. Collection Equipment

12.01 General Provisions. All equipment used by CONTRACTOR in the performance of services under this Contract shall be of a high quality and meet all federal, state, and local regulations and air quality standards. The vehicles shall be designed and operated so as to prevent Collected materials from escaping from the vehicles. Hoppers shall be closed on top and on all sides with screening material to prevent Collected materials from leaking, blowing or falling from the vehicles. Collection vehicles utilized by CONTRACTOR pursuant to this Contract shall be replaced as specified in the replacement schedule in Exhibit 10. CONTRACTOR's equipment shall be maintained so as to both: (1) meet the highest industry standards with regards to efforts to prevent liquid from leaking and to the degree possible be "watertight" and "leak-proof" and, (2) at all times comply with the provisions of all laws and regulations, including any applicable National Pollution Discharge Elimination Systems ("NPDES") permit, with regards to leaking of materials. CONTRACTOR shall immediately clean up any spills from its equipment of which it becomes or is made aware, in a manner that complies with all Applicable Laws. In addition to complying with all Applicable Laws, CONTRACTOR shall, at a minimum: notify the Contract Administrator and applicable Hazardous Materials Management Agencies within one (1) hour of a spill or leak of any Hazardous Substance or Waste; clean up any spillage or litter caused by CONTRACTOR within two (2) hours upon notice from the CITY; and, to facilitate such cleanup, CONTRACTOR'S

Collection vehicles shall at all times carry reasonable quantities of petroleum absorbent materials along with a broom and shovel.

12.02 Vehicle Registration, Licensing and Inspection. On or before August 1, 2013 and upon request by the CITY thereafter during the term of this Contract, CONTRACTOR shall submit documentation to the CITY Representative to verify that each of the CONTRACTOR'S Collection vehicles is in compliance with all registration, licensing and inspection requirements of the California Highway Patrol, the California Department of Motor Vehicles, and any other Applicable Laws or regulations. CONTRACTOR shall not use any vehicle to perform Collection Services that is not in compliance with applicable registration, licensing and inspection requirements. Each vehicle shall comply, at all times, with all applicable statutes, laws or ordinances of any public agency. Routine inspections by the California Highway Patrol will be required bi-annually and certificates for said inspection shall be filed with the CITY upon request.

12.03 Clean Air Vehicles. During the term of this Contract, to the extent required by law, CONTRACTOR shall provide its Collection vehicles to be in full compliance with local, State and federal clean air requirements that were adopted, including, but not limited to, the California Air Resources Board Heavy Duty Engine Standards as currently proposed to be contained in CCR Title 13, Section 2020 et seq; the Federal EPA's Highway Diesel Fuel Sulfur regulations and any other applicable air pollution control laws. CONTRACTOR'S fleet of Collection vehicles used to perform under this Contract shall have an average age of no more than five (5) years.

12.04 Fuel Type. CONTRACTOR shall utilize compressed natural gas (CNG) as the fuel type for all its Collection vehicles, and to the extent practical CNG, bio-diesel or hybrid electric for all its support vehicles.

12.05 Global Positioning Systems (GPS). CONTRACTOR shall provide all route Collection vehicles equipped with fully functioning on-board GPS with direct and real-time linkages to CONTRACTOR's Customer service system.

12.06 Collection Vehicle Noise Level. The noise level generated by Collection vehicles using compaction mechanisms during the compaction process shall not exceed seventy-five (75) decibels at a distance of twenty-five (25) feet from the Collection vehicle measured at an elevation of five (5) feet above ground level using the "A" scale of the standard sound level meter at slow response. CONTRACTOR shall cause the Collection vehicles to be tested annually during the months of March and April, beginning March of 2015, and shall submit a certificate of testing showing that the vehicles met the requirements of this Article.

12.07 Safety Markings. All Collection equipment used by COLLECTOR shall have appropriate safety markings including, but not limited to, highway lighting, flashing and warning lights, clearance lights, and warning flags. All such safety markings shall be subject to the approval of the CITY and shall be in accordance with the requirements of the California Vehicle Code, as may be amended from time to time. All Collection vehicles shall be equipped with audible back-up warning devices and back-up warning devices.

12.08 Vehicle Signage and Painting. Collection vehicles shall be painted and numbered consecutively without repetition and shall have the CONTRACTOR'S name, CONTRACTOR'S Customer service telephone number, and the number of the vehicle painted in letters of contrasting color, at least four (4) inches high, on each side and the rear of each vehicle. No advertising shall be permitted other than the name of the CONTRACTOR except promotional advertisement of the Recyclable Materials, Organic Waste, and Difficult-to-Recycle

programs. CONTRACTOR shall repaint all vehicles (including vehicles striping) during the term of this Contract on a frequency as necessary to maintain a positive public image as reasonably determined by the Contract Administrator, but not less often than every thirty (30) months beginning August 1, 2013.

12.09 Bin Signage, Painting, and Cleaning. All metal Bins of any service type furnished by the CONTRACTOR shall be either painted or galvanized. All metal or plastic Bins shall display the CONTRACTOR'S name, CONTRACTOR'S Customer service telephone number, and the number of the bin and shall be kept in a clean and sanitary condition. Such Bins, as are provided by the CONTRACTOR, shall be steam cleaned by the CONTRACTOR as frequently as necessary so as to maintain them in a sanitary condition. At a minimum, CONTRACTOR shall steam clean or replace the Bins as needed once per year at CONTRACTOR'S expense. Bins will be subject to periodic, unscheduled inspections by the CITY and determination as to sanitary condition shall be made by the CITY.

12.10 Maintenance Log. CONTRACTOR shall maintain a maintenance log for all Collection vehicles. The log shall at all times be accessible to CITY by physical inspection upon request of Contract Administrator, and shall show, at a minimum, each vehicles CONTRACTOR assigned identification number, date purchased or initial lease, dates of performance of routine maintenance, dates of performance of any additional maintenance, and description of additional maintenance performed.

12.11 Equipment Inventory. On or before the Effective Date, CONTRACTOR shall provide to CITY an inventory of Collection vehicles and major equipment used by CONTRACTOR for Collection or transportation and performance of services under this Contract. The inventory shall indicate each Collection vehicle by CONTRACTOR assigned identification number, DMV license number, the age of the chassis and body, type of fuel used, the type and capacity of each vehicle, the number of vehicles by type, the date of acquisition, the decibel rating and the maintenance and rebuild status. CONTRACTOR shall submit to the Contract Administrator, either by Fax or e-mail, an updated inventory annually to the CITY or more often at the request of the Contract Administrator. Each inventory shall also include the tare weight of each vehicle as determined by weighing at a public scale and not at a disposal or other facility scale used by CONTRACTOR. Each vehicle inventory shall be accompanied by a certification signed by CONTRACTOR that all Collection vehicles meet the requirements of this Contract.

12.12 Reserve Equipment. CONTRACTOR shall have available to it, at all times, reserve Collection equipment which can be put into service and operation within one (1) hour three (3) hours of any breakdown. Such reserve equipment shall correspond in size and capacity to the equipment used by the CONTRACTOR to perform the contractual duties.

12.13 Equipment Maintenance. CONTRACTOR shall maintain Collection equipment in a clean condition and in good repair at all times. All parts and systems of the Collection equipment shall operate properly and be maintained in a condition satisfactory to CITY. CONTRACTOR shall wash all Collection vehicles at least once a week.

12.14 Large Items. Vehicles used for Collection of Large Items shall not use Compactor mechanisms or mechanical handling equipment that may damage reusable goods or release Freon or other gases from pressurized appliances.

12.15 Collection Vehicle Size Limitations. CONTRACTOR shall not use any Collection vehicle for SFD Service Units receiving Cart Collection that exceeds 40 cubic yards in capacity or exceeds 56,000 pounds when loaded. This requirement shall not apply to



CONTRACTOR Collection vehicles collecting Bins or Large Items. The CONTRACTOR may exceed the Collection vehicle size limitation for a limited time period due to extraordinary circumstances or conditions with the prior written consent of the Contract Administrator. The limited time period shall not exceed 120 days.

## Article 13. CONTRACTOR's Office

13.01 CONTRACTOR'S Office. The CONTRACTOR shall maintain an office where complaints can be received. Such office shall be equipped with sufficient telephones that all Collection Service related calls received during normal business hours are answered by an employee within five (5) rings, and shall have responsible persons in charge during Collection hours and shall be open during such normal business hours, 8:00 a.m. to 5:00 p.m. Monday through Friday, and 8:00 a.m. to 12:00 noon Saturdays. The CONTRACTOR shall provide either a local or toll free telephone number, and a telephone answering service or mechanical device to receive Customer inquiries during those times when the office is closed. Calls received after normal business hours shall be addressed the next Work Day morning.

13.02 Emergency Contact. The CONTRACTOR shall provide the Contract Administrator with an emergency phone number where the CONTRACTOR can be reached outside of the required office hours.

13.03 Multilingual/TDD Service. CONTRACTOR shall at all times maintain the capability of responding to telephone calls in English and such other languages as CITY may direct. CONTRACTOR shall at all times maintain the capability or responding to telephone calls through Telecommunications Device for the Deaf (TDD) Services.

13.04 Customer Calls. During office hours, CONTRACTOR shall maintain a telephone answering system capable of accepting at least fifteen (15) incoming calls at one time. CONTRACTOR shall record all calls including any inquiries, service requests and complaints into a Customer service log.

13.05 All incoming calls will be answered within 5 rings. Any call "on-hold" in excess of 1.5 minutes shall have the option to remain "on-hold" or to be switched to a message center where Customer can leave a message. CONTRACTOR'S Customer service representative shall return Customer calls. For all messages left before 3:00 p.m., all "call backs" shall be attempted a minimum of one time prior to 6:00 p.m. on the day of the call. For messages left after 3:00 p.m., all "call backs" shall be attempted a minimum of one time prior to noon the next Work Day. CONTRACTOR shall make minimum of three (3) attempts within twenty-four hours of the receipt of the call. If CONTRACTOR is unable to reach the Customer on the next Work Day, the CONTRACTOR shall send a postcard to the Customer on the second Work Day after the call was received, indicating that the CONTRACTOR has attempted to return the call.

## Article 14. Other Services

14.01 Public Outreach and Education Services. CONTRACTOR, at their own expense, shall prepare, submit and implement an annual (calendar year) Public Education and Outreach Program beyond the CITY's Public Education and Outreach Program. The proposed action plan must be submitted annually for CITY approval no later than September 30 for the next calendar year. The program must include a minimum of four campaigns per calendar year, designed to increase diversion and resident participation. Campaigns should target certain Recyclable Materials or "problem" areas of the CONTRACTOR'S Service Area where

improvements can be maximized. Targets of outreach should be based on local trends and Recycling patterns based on information obtained by both the Contract Administrator and CONTRACTOR staff.

14.02 Recycling Coordinator. CONTRACTOR will provide for the equivalent 1/2 full-time Recycling Coordinator dedicated to the CITY, which equates to a minimum of 1,040 hours per Contract Year. CONTRACTOR may use a subcontractor as approved by the CITY to perform some or all the duties normally assigned to the Recycling Coordinator, which such approval shall not be unreasonably withheld.

14.03 CITY Public Education Program Support. CONTRACTOR will provide CITY fifty thousand dollars (\$50,000.00) annually to assist in CITY public education program support, with the first payment due August 1, 2013 and each July 1<sup>st</sup> thereafter. Starting July 1, 2015, the annual payment for Public Education Programs Payment will be adjusted by the same percentage as Service Component as specified in Section 5.02.1.

14.04 Annual Collection Service Notice. Each full or partial calendar year during the term of this Contract, CONTRACTOR shall publish and distribute separate notices to all SFD Customers regarding SFD Collection Service, and to all Commercial Customers regarding Commercial Collection Service. To the extent appropriate, based on the category of Customer receiving the notice, it shall contain at a minimum: definitions of the materials to be Collected, procedures for setting out the materials, Collection and Disposal options for unacceptable materials such as Hazardous Waste, maps of the Service Area indicating the day of the week that Collection Service will be provided, and CONTRACTOR Customer service phone number, email address and website address. The notice shall be provided in English and such other languages as reasonably may be directed by CITY in accordance with its Equal Access Program requirements.

14.05 Green Business Certification Program. On or before August 1, 2013, CONTRACTOR shall establish a recognition program for commercial businesses in the Service Area. The Green Business Program will be a voluntary program, managed entirely by CONTRACTOR, and certification will include water and energy conservation, pollution prevention, and reduction of toxic substances in the workplace. Businesses certified will be honored by CONTRACTOR at an Earth Day event and Council Meeting.

14.06 Green SFD and MFD Resident Champion Program. On or before August 1, 2013, CONTRACTOR shall establish a recognition program for residents who go above and beyond in the area of sustainability. CONTRACTOR shall conduct residential Recycling outreach announcing Recycling contest and champion program, and the Green Resident Champion will be announced annually on Earth Day.

14.07 Seasonal Renters Recycling Outreach. On or before August 1, 2013, CONTRACTOR will begin conducting seasonal renter outreach. CONTRACTOR agrees to develop, print and distribute educational material geared toward seasonal renters such as signs, information sheets, or table tents for placement in rental homes to educate seasonal renters on CITY's diversion programs.

14.08 Recyclable Scavenging Mitigation. CONTRACTOR agrees to immediately initiate a comprehensive public education campaign to mitigate the scavenging of Recyclable Materials. CONTRACTOR will produce fliers, email and bill inserts, and CONTRACTOR's Recycling Coordinator or other CONTRACTOR staff will conduct personal visits to businesses and give presentations at community and City Council meetings, describing what to do to prevent and report scavenging.



14.09 Textile and Clothing Recycling Program. CONTRACTOR agrees to promote the diversion and reuse of textiles and clothing that is currently being disposed of with Refuse. CONTRACTOR will encourage SFD, MFD, and Commercial Customers to discard textiles and clothing to be Collected during SFD, MFD, and Commercial Recycling Service. CONTRACTOR staff will separate textiles and clothing from other materials following Collection for donation to Goodwill, the Salvation Army or other reuse, repurpose organizations.

14.10 Enhanced Office Recycling Program. On or before August 1, 2013, CONTRACTOR shall establish an Office Recycling Program for commercial businesses in the Service Area. The Office Recycling Program will be a voluntary program, managed entirely by CONTRACTOR and include outreach and education. This program will extend beyond traditional office settings to include clinics, coffee houses, realtors, retail locations, and other commercial businesses.

14.11 Composting Workshops and Educational Programs. CONTRACTOR shall offer four home composting workshops per year at locations and times approved by the CITY. The program will include educational materials and subsidies to assist residents buy compost bins.

14.12 Annual Spring Compost Give-Away Event. As listed in Exhibit 4, CONTRACTOR shall provide forty tons (40) of compost material delivered to the CITY's corporation yard, or a location within the CITY as designated by the CITY, for the one-day annual Spring Compost Give-Away Event to be held in May of each year. During the event, CONTRACTOR shall provide on-site staff support.

14.13 Special Event Greening. CONTRACTOR will work with large venue event organizers, including the Pageant of the Masters, the Sawdust Festival, Taste of Laguna Beach, and Concerts in the Park to develop Recycling plans. CONTRACTOR will assist event organizers incorporate "Greening" focus and practices, track and report diversion, and other Greening successes in real-time during events.

14.14 Collaborative Sustainability Branding. CONTRACTOR will work directly with CITY and community based organizations to support branding efforts to highlight and promote all community Sustainability events, such as the Annual HHW, E-Waste, U-Waste, and Document Destruction Collection Event, Compost Give-away, Green Business Certification, Green Resident Champion, and major Laguna Beach events.

14.15 Batteries and U-Waste Drop-off Recycling Program. CONTRACTOR shall set up convenient community drop-off locations for batteries and U-Waste Collection in the Service Area at locations and Collection schedules approved by the CITY.

14.16 Sharps-by-Mail. CONTRACTOR shall continue to provide the Sharps-by-Mail Program offered at participating pharmacies and expand the locations in the Service Area at locations approved by the CITY. In addition, CONTRACTOR shall provide community drop-off locations utilizing secure kiosks for safe disposal of Sharps at locations approved by the CITY.

14.17 Bagster Collection Service. CONTRACTOR shall provide Bagster Collection Service to all Customers in the Service Area requesting such service. CONTRACTOR shall respond to requests for service within three (3) Work Days of receipt of the request. CONTRACTOR shall be compensated for such services in accordance with the Maximum Service Rates as set forth in Exhibit 11 to this Contract as may be adjusted in accordance with the terms of this Contract.

14.18 Additional Programs and Services. CONTRACTOR shall provide additional services and programs as requested by CITY at a price to be mutually agreed upon between the CONTRACTOR and the Contract Administrator. In the event the CONTRACTOR and the Contract Administrator cannot reach a mutually agreed upon price for the requested service or program, and such service or program is entirely outside the scope of services contemplated by this Contract, CITY shall have the right to procure the service of other vendors or contractors to provide the requested service.

14.19 News Media Relations. CONTRACTOR shall notify the Contract Administrator by Fax, e-mail or phone of all requests for news media interviews related to Collection Services hereunder within twenty-four (24) hours of CONTRACTOR'S receipt of the request. Before responding to any inquiries involving controversial issues or any issues likely to affect participation or Customer perception of services, CONTRACTOR will discuss CONTRACTOR'S proposed response with the Contract Administrator.

14.19.1 Copies of draft news releases or proposed trade journal articles shall be submitted to CITY for prior review and approval at least five (5) working days in advance of release, except where CONTRACTOR is required by any law or regulation to submit materials to any regulatory agency in a shorter period of time, in which case CONTRACTOR shall submit such materials to CITY simultaneously with CONTRACTOR'S submittal to such regulatory agency.

14.19.2 Copies of articles resulting from media interviews or news releases shall be provided to the CITY within five (5) days after publication.

## Article 15. Record Keeping and Reporting Requirements

15.01 Record Keeping. Notwithstanding Article 41 herein:

15.01.1 Accounting Records. CONTRACTOR shall maintain full, complete and separate financial, statistical and accounting records, pertaining to cash and billing provisions under this Contract, prepared on an accrual basis in accordance with generally accepted accounting principles. Such records shall be subject to audit, copy, and inspection. Gross revenues derived from provision of the Collection Services, whether such services are performed by the CONTRACTOR or by a subcontractor or subcontractors, shall be recorded as revenues in the accounts of the CONTRACTOR. CONTRACTOR shall maintain and preserve all cash, billing and disposal records for a period of not less than three (3) years following the close of each of the CONTRACTOR'S fiscal years.

15.01.2 Contract Materials Records. CONTRACTOR shall maintain records of the quantities of (i) Solid Waste Collected and disposed under the terms of this Contract, by service type (ii) Recyclable Materials, by type, Collected, purchased, processed, sold, donated or given for no compensation, and residue disposed.

15.01.3 Other Records. CONTRACTOR shall maintain all other records reasonably related to provision of Collection Services, whether or not specified in this the Contract.

15.02 Monthly Reporting. CONTRACTOR shall provide monthly reports to the Contract Administrator, in an electronic format acceptable to CITY. The monthly reports shall be submitted no later than the 30th day of each month and shall cover the following topics for the previous month:

15.02.1 Tonnage and Diversion Reports. Tons of Solid Waste collected and recycled, grouped by the specific type of waste generator and program.

15.02.2 Spill Reports. All equipment oil, hydraulic fluids, spilled paint, or any other liquid or debris resulting from the CONTRACTOR'S operations or equipment repair, cleanup and reporting activities.

15.02.3 Customer Service Report. A comprehensive summary and a complete listing of all Customer contact including complaints and items such as billing questions, billing adjustments, service changes, service inquiries, Collection of missed pickups and retention calls. Also provide a summary narrative of problems encountered with Collection and processing activities and actions taken. Indicate type and number of Non-Collection Notices left at Service Recipient locations. Also include a Customer service performance standards report with average response time, total number of calls, and a summary of any problems with the CONTRACTOR's computer or telephone system and measures taken to correct the problems.

15.02.4 Construction and Demolition Waste Recycling Report. Include a summary report with name of Customer, address, site address, and type of service provided.

15.02.5 Account Delinquency. Provide a summary report of commercial delinquent accounts of non-payment after 30 days and stop service accounts.

15.02.6 AB341 Commercial Recycling Report. Include list of commercial accounts signed up for Recycling, not Recycling, diversion rate, and summary of education, outreach, monitoring, and reporting efforts. Also include the recycling coordinator's hours worked and summary of work performed.

15.02.7 Hazardous Waste Diversion Report. Include number of businesses and residential accounts with Hazardous Waste and/or E-waste pickups. Include list of Collection locations, address and items collected pursuant to this Contract.

15.02.8 Large Item Pickups Report. Include number of business and residential accounts with Large Items pickups including a summary of items or quantity of items donated to the Goodwill or other facilities.

15.03 Quarterly Reports. CONTRACTOR shall provide Quarterly reports to the Contract Administrator, in an electronic format acceptable to CITY. The Quarterly reports shall be submitted no later than the 30th day following the end of each calendar quarter and shall cover the following topics for the previous quarter:

15.03.1 Franchise Fees Report. Include franchise fees, Gross Receipts, summary of revenues and number of Customers by service (i.e., commercial Carts, Bins, Roll-offs, permanent accounts, etc.), and Collection frequency.

15.03.2 Recyclable Material Revenue Report. Include summary of Recycling sales revenue by type of material marketed on a gross and net basis.

15.04 Annual Reporting. CONTRACTOR shall provide annual reports to the Contract Administrator, both in a hard copy format and in an electronic format acceptable to CITY. The annual reports shall be submitted no later than April 1 for the previous Contract Year, and shall cover the following topics for the previous Contract Year:

15.04.1 Financial Reports. CONTRACTOR shall prepare an annual Financial Report for submittal to the CITY by April 1, 2014, and each April 1<sup>st</sup> thereafter covering the CONTRACTOR'S prior calendar year operations. At a minimum, the Financial Report shall

include the number of SFD Service Units and Commercial Service Units provided with Collection Services, including any additional services, the CONTRACTOR'S gross billing and amount collected for each type of Service Unit, per ton and total annual disposal and processing fees paid

15.04.1.1 The Financial Report shall also include Annual Financial Statements. If the CONTRACTOR has Audited, Reviewed, or Compiled Financial Statements prepared each year by an Independent Certified Public Accountant, those Financial Statements shall be included in the Financial Report submitted to the CITY.

15.04.1.2 In the event that the CONTRACTOR does not have Financial Statements Audited, Reviewed, or Compiled each year, then the CONTRACTOR must have Financial Statements prepared by an Independent Certified Public Accountant. Such Financial Statements may be Audited, Reviewed or Compiled at the discretion of the CONTRACTOR and shall be included in the Financial Report submitted to the CITY.

15.04.2 Public Education. Public education and information activities undertaken during the year, including distribution of bill inserts, Collection notification tags, community information and events, tours and other activities related to the provision of Collection Services. This report shall discuss the impact of these activities on Recycling program participation and include amounts Collected from SFD and Commercial Service Units.

15.04.3 Recycling Analysis. An analysis of any Recycling and Green Waste Collection, processing and marketing issues or conditions (such as participation, setouts, Contamination, etc.) and possible solutions, discussed separately for SFD and Commercial programs.

15.04.4 AB341 Commercial Recycling Report. Include list of commercial accounts signed up for Recycling, not Recycling, diversion rate, and summary of education, outreach, monitoring and reporting efforts. Also include the recycling coordinator's hours worked and summary of work performed.

15.04.5 Refuse Data. The number of SFD and Commercial Service Units and the number of Refuse Bins and Carts distributed by size and Service Unit type.

15.04.6 Recycling Data. Gross tons Collected daily on average by material type by route for SFD and Commercial Recycling Service. The average participation rates by quarter relative to the total number of Service Units by Service Unit type. Indicate, by material type (and grade where appropriate), quarterly totals of Recyclable Materials processed and sold including facility name and location. Indicate any quantities, by material type, donated or otherwise disbursed without compensation. Indicate number of Recycling Bins and Carts distributed by size and Service Unit type. Also provide quarterly totals and location for residue disposed.

15.04.7 Green Waste Data. Include average daily gross tons Collected by route. Indicate average daily number of set-outs by route. Indicate average participation rates relative to the total number of Service Units in terms of weekly set-out counts. Indicate number of Green Waste Bins and Carts distributed by size and Service Unit type. Also provide totals and location for Residue Disposed.

15.04.8 Food Waste Data. Include average daily gross tons Collected by route. Indicate average daily number of set-outs by route. Indicate average participation rates relative to the total number of Service Units in terms of weekly set-out counts. Indicate number

of Food Waste Bins and Carts distributed by size and Service Unit type. Also provide totals and location for Residue Disposed.

15.04.9 Organic Waste Data. Include average daily gross tons Collected by route. Indicate average daily number of set-outs by route. Indicate average participation rates relative to the total number of Service Units in terms of weekly set-out counts. Indicate number of Organic Waste Bins and Carts distributed by size and Service Unit type. Also provide totals and location for Residue Disposed.

15.04.10 Customer Service Log. A copy of the Customer service log, including a summary of the type and number of complaints and their resolution. Copies of a written record of all calls related to missed pickups and responses to such calls.

15.04.11 Service Issue Log. A summary narrative of problems encountered with Collection and processing activities and actions taken. Indicate type and number of Non-Collection Notices left at Customer locations. Indicate instances of property damage or injury, significant changes in operation, market factors, publicity conducted, needs for publicity. Include description of processed material loads rejected for sale, reason for rejection and disposition of load after rejection.

15.04.12 Bin and Cart Inventory. An updated complete inventory of Bins and Carts by type and size, and a list of all Service Unit addresses where Containers are deployed.

15.04.13 Additional Reporting. The CONTRACTOR shall furnish the CITY with any additional reports as may reasonably be required, such reports to be prepared within a reasonable time following the reporting period.

15.05 CalRecycle Reports. CONTRACTOR shall prepare annual CalRecycle reports, for submittal to the CITY for review and comment, and CONTRACTOR revision as needed. CITY is required to submit a final report to the State annually by August 1<sup>st</sup>, and hence CONTRACTOR shall submit a draft CalRecycle report format to the CITY by July 15 each year in a format that fully meets all State requirements. CONTRACTOR shall finalize the format in a form approved by the CITY.

## Article 16. Nondiscrimination

16.01 Nondiscrimination. In the performance of all work and services under this Contract, CONTRACTOR shall not discriminate against any person on the basis of such person's race, sex, color, national origin, religion, marital status or sexual orientation. CONTRACTOR shall comply with all applicable local, state and federal laws and regulations regarding nondiscrimination, including those prohibiting discrimination in employment.

## Article 17. Service Inquiries and Complaints

17.01 CONTRACTOR'S Customer Service. All service inquiries and complaints shall be directed to the CONTRACTOR. A representative of the CONTRACTOR shall be available to receive the complaints during normal business hours. All service complaints will be handled by the CONTRACTOR in a prompt and efficient manner. In the case of a dispute between the CONTRACTOR and a Customer, the matter will be reviewed and a decision made by the Contract Administrator

17.01.1 The CONTRACTOR will utilize the Customer Service Log to maintain a record of all inquiries and complaints in a manner prescribed by the CITY.



17.01.2 For those complaints related to missed Collections that are received by 12:00 p.m. on a Work Day, the CONTRACTOR will return to the Service Unit address and Collect the missed materials before leaving the Service Area for the day. For those complaints related to missed Collections that are received after 12:00 p.m. on a Work Day, the CONTRACTOR shall have until the end of the following Work Day to resolve the complaint. For those complaints related to repair or replacement of Carts or Bins, the appropriate Sections of this Contract shall apply.

17.01.3 CONTRACTOR agrees that it is in the best interest of the CITY that all Refuse, Recyclable Materials and Organic Waste be Collected on the scheduled Collection day. Accordingly, missed Collections will normally be Collected as set forth above regardless of the reason that the Collection was missed. However, in the event a Customer requests missed Collection service more than two (2) times in any consecutive two (2) month period the Contract Administrator will work with the CONTRACTOR to determine an appropriate resolution to that situation. In the event the CONTRACTOR believes any complaint to be without merit, CONTRACTOR shall notify the Contract Administrator, either by Fax or e-mail. The Contract Administrator will investigate all disputed complaints and render a decision.

17.01.4 CONTRACTOR'S service and emergency telephone numbers shall be accessible by a local (Laguna Beach) phone number. The telephone number (s) shall be listed in the area's telephone directories under the CONTRACTOR'S name in the White Pages and Yellow Pages.

## Article 18. Quality of Performance of CONTRACTOR

18.01 Intent. CONTRACTOR acknowledges and agrees that one of CITY'S primary goals in entering into this Contract is to ensure that the Collection Services are of the highest caliber, that Customer satisfaction remains at the highest level, that maximum diversion levels are achieved, and that materials Collected are put to the highest and best use to the extent possible.

18.02 Service Supervisor. CONTRACTOR shall assign a qualified supervisor to be in charge of the Collection Service within the Service Area and shall provide the name of that person in writing to the Contract Administrator within thirty (30) days of the execution of this Contract, and annually by January 1<sup>st</sup> of each subsequent Contract Year of the term of this Contract, and any other time the person in that position changes. The supervisor shall be physically located in the Service Area and available to the Contract Manager through the use of telecommunication equipment at all times that CONTRACTOR is providing Collection Services. In the event the supervisor is unavailable due to illness or vacation, CONTRACTOR shall designate an acceptable substitute who shall be available and who has the authority to act in the same capacity as the supervisor.

18.03 Contract Manager. CONTRACTOR shall designate a Contract Manager and shall provide the name of that person in writing to the CITY within thirty (30) days of the execution of this Contract and annually by January 1<sup>st</sup> of each subsequent Contract Year of this Contract and any other time the person in that position changes. The Contract Manager shall be available to the CITY through the use of telecommunications equipment at all times that CONTRACTOR is providing Collection Services in the Service Area. The Contract Manager shall provide the CITY with an emergency phone number where the Contract Manager can be reached outside of normal business hours.



18.04 **Administrative Charges.** It shall be the duty of CONTRACTOR to perform services under this Contract in such a manner as to implement the goals set forth in Section 18.01 above. In the event CONTRACTOR fails to perform the services set forth in this Contract, and in addition to any other remedy available to CITY, CITY may assess an administrative charge against CONTRACTOR in the following amounts:

<b>ADMINISTRATIVE CHARGES</b>		
a.	Failure or neglect to resolve each reasonable complaint within the time set forth in this Contract.	\$100.00 per incident per Customer
b.	Failure to clean up spillage or litter caused by CONTRACTOR.	\$500.00 per incident per location.
c.	Failure to repair damage to Customer property caused by CONTRACTOR or its personnel.	\$500.00 per incident per location.
d.	Failure to repair damage to CITY property caused by CONTRACTOR or its personnel.	\$1,500.00 per incident.
e.	Failure to repair damage to CITY streets caused by CONTRACTOR operating vehicles in violation of Contract vehicle requirements.	\$1,500.00 per incident and the actual cost of repair to CITY's satisfaction – no cost to CITY.
f.	Failure to maintain Collection vehicles in a clean, safe, and sanitary manner.	\$250.00 per incident per day.
g.	Failure to have a vehicle operator properly licensed.	\$250.00 per incident per day.
h.	Failure to maintain office hours as required by this Contract.	\$250.00 per incident per day.
i.	Failure to maintain or timely submit to CITY all documents and reports required under the provisions of this Contract.	\$100.00 per incident per day.
j.	Failure to properly cover materials in Collection vehicles.	\$100.00 per incident.
k.	Failure to display CONTRACTOR'S name and Customer service phone number on Collection vehicles.	\$100.00 per incident per day.
l.	Failure to comply with the hours of operation as required by this Contract.	\$100.00 per incident per day.
m.	Failure or neglect to complete at least ninety percent (90%) of each route on the regular scheduled Collection Service Work Day.	\$500.00 for each route not completed.

<b>ADMINISTRATIVE CHARGES</b>		
n.	Failure to Collect Difficult-to-Recycle Materials in the manner set out in this Contract (Sections 9.20 and 10.15).	\$100.00 per incident per day.
o.	Changing routes without proper notification to the Contract Administrator.	\$250.00 per incident per day.
p.	Commingling Refuse with Recyclable Materials.	\$500.00 per incident.
q.	Commingling of materials Collected inside and outside the City of Laguna Beach.	\$500.00 per incident.
r.	Failure to repair or replace damaged Carts or Bins within the time required by this Contract.	\$100.00 per incident per day.
s.	Failure to deliver or exchange Carts or Bins within the time required by this Contract.	\$100.00 per incident per day.
t.	Failure to have CONTRACTOR personnel in proper uniform.	\$100.00 per incident per day.
u.	Disposal of Recyclable Materials or Organic Materials in the Disposal Facility without first obtaining the required permission of the CITY.	\$500.00 per occurrence.
v.	Failure to provide required communications equipment.	\$100.00 per incident per day.
w.	Failure to deliver any Collected materials to the Disposal Facility, Materials Recycling Facility, Green Waste Processing Facility, or Food Waste Processing Facility as appropriate, except as otherwise expressly provided in this Contract.	\$1,000 per incident per day.
x.	Delivery to the Disposal Facility of any Solid Waste Collected outside of the CITY boundaries of Laguna Beach commingled with that Collected as part of this Contract.	\$1,000 per incident per day.
y.	Failure to cure not meeting the minimum diversion requirements of this Contract (calculated per annual year).	Up to a maximum of \$15,000 per year based on tonnage shortfall calculated at the approved per ton disposal fee for each ton of shortfall.

18.05 Procedure for Review of Administrative Charges. The Contract Administrator may assess administrative charges pursuant to this Contract on a monthly basis. At the end of each month during the term of this Contract, the Contract Administrator shall issue a written

notice to CONTRACTOR ("Notice of Assessment") of the administrative charges assessed and the basis for each assessment.

18.05.1 The assessment shall become final unless, within ten (10) calendar days of the date of the notice of assessment, CONTRACTOR provides a written request for a meeting with the Contract Administrator to present evidence that the assessment should not be made.

18.05.2 The Contract Administrator shall schedule a meeting between CONTRACTOR and the Director or the Director's designee as soon as reasonably possible after timely receipt of CONTRACTOR'S request.

18.05.3 The Director or the Director's designee shall review CONTRACTOR'S evidence and render a decision sustaining or reversing the administrative charges as soon as reasonably possible after the meeting. Written notice of the decision shall be provided to CONTRACTOR.

18.05.4 In the event CONTRACTOR does not submit a written request for a meeting within ten (10) calendar days of the date of the Notice of Assessment, the Contract Administrator's determination shall be final and CITY may deduct the administrative charges from amounts otherwise due to CONTRACTOR.

18.05.5 CITY'S assessment or collection of administrative charges shall not prevent CITY from exercising any other right or remedy, including the right to terminate this Contract, for CONTRACTOR'S failure to perform the work and services in the manner set forth in this Contract.

## Article 19. Billing Audit and Performance Review

19.01 At CITY's Cost. The CITY may conduct up to five (5) billing audit and performance reviews ("review") of the CONTRACTOR'S performance during the term of this Contract. The review will be performed by a qualified firm under contract to the CITY. The CITY shall have the final responsibility for the selection of the firm but shall seek comments from the CONTRACTOR.

19.02 At CONTRACTOR'S Cost. As a precondition to any extension of this Contract beyond June 30, 2023, a review must be completed. The CONTRACTOR shall pay in advance and be responsible for the cost of the review under this Article 19.02 an amount of **Seventy Thousand Dollars (\$70,000.00)**, provided however this amount shall be adjusted each July 1<sup>st</sup> by a percentage equal to of the change in the Los Angeles/Orange County/Riverside Consumer Price Index (CPI) for December to December of the prior year. CONTRACTOR shall pay for the review under this Article 19.02 regardless of if any extension beyond the June 30, 2023 date occurs. The review will be performed by a qualified firm under contract to the CITY. The CITY shall have the final responsibility for the selection of the firm but shall seek comments from the CONTRACTOR.

19.03 Purpose. The review shall be designed to meet the following objectives:

19.03.1 Verify that Customer billing rates have been properly calculated and they correspond to the level of service received by the Customer.

19.03.2 Verify that franchise fees, and other fees required under this Contract have been properly calculated and paid to the CITY.

19.03.3 Verify CONTRACTOR'S compliance with the reporting requirements and performance standards of the Contract.

19.03.4 Verify the diversion percentages reported by the CONTRACTOR.

19.04 CONTRACTOR'S Cooperation. CONTRACTOR shall cooperate fully with the review and provide all requested data, including operational data, financial data and other data requested by the CITY within thirty (30) Work Days. Failure of the CONTRACTOR to cooperate or provide the requested documents in the required time shall be considered an event of default.

## Article 20. Performance Bond

20.01 Performance Bond. Within ten (10) calendar days from the date the City Council approves this Contract, the CONTRACTOR shall furnish to the CITY, and keep current, a Performance Bond in a form acceptable to the CITY, for the faithful performance of this Contract and all obligations arising hereunder in an amount as follows:

20.01.1 From August 1, 2013, the CONTRACTOR shall maintain a performance bond in the amount of three hundred thousand dollars (\$300,000).

20.01.1.1 The performance bond shall be executed by a surety company licensed to do business in the State of California; having an "A-" or better rating by A. M. Best or Standard and Poors; and included on the list of surety companies approved by the Treasurer of the United States.

20.01.2 Letter of Credit. As an alternative to the performance bond required by this Section 20.01, upon mutual agreement of the parties, CONTRACTOR may deposit with CITY an irrevocable letter of credit in an amount as set forth in this Contract. If allowed, the letter of credit must be issued by an FDIC insured banking institution chartered to business in the state of California, in the CITY'S name, and be callable at the discretion of the CITY. Nothing in this Section shall, in any way, obligate the CITY to accept a letter of credit in lieu of the performance bond.

## Article 21. Insurance

21.01 Insurance Policies. CONTRACTOR shall secure and maintain throughout the term of this Contract insurance against claims for injuries to persons or damages to property, which may arise from or in connection with CONTRACTOR'S performance of work or services under this Contract. CONTRACTOR'S performance of work or services shall include performance by CONTRACTOR'S employees, agents, representatives and subcontractors.

21.01.1 Minimum Scope of Insurance. Insurance coverage shall be at least this broad:

21.01.1.1 Insurance Services Office Form No. GL 0002 (Ed. 1/96) covering Comprehensive General Liability and Insurance Services Office Form No. GL 0404 covering Broad Form Comprehensive General Liability; or Insurance Services Office Commercial General Liability coverage ("occurrence" form CG 0001), including X, C, U where applicable.

21.01.1.2 Insurance Services Office Form No. CA 0001 (Ed. 12/93) covering Automobile Liability, code 1 "any auto", or code 2 "owned autos" and endorsement CA 0025. Coverage shall also include code 8, "hired autos" and code 9 "non-owned autos".

21.01.2 Workers' Compensation insurance as required by the California Labor Code and Employers Liability Insurance.

21.01.3 Hazardous Waste and Environmental Impairment Liability Insurance.

21.02 Minimum Limits of Insurance. CONTRACTOR shall maintain insurance limits no less than:

21.02.1 Comprehensive General Liability: \$3,000,000 combined single limit per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability insurance with a general aggregate limit is used, either the general aggregate limit shall apply separately to this Contract or the general aggregate limit shall be \$10,000,000.

21.02.2 Automobile Liability: \$3,000,000 combined single limit per accident for bodily injury and property damage.

21.02.3 Workers' Compensation and Employers Liability: Workers' Compensation limits as required by the California Labor Code and Employers Liability limits of \$3,000,000 per accident.

21.02.4 Hazardous Waste and Environmental Impairment Liability: \$3,000,000 each incident.

21.03 Deductibles and Self-Insured Retention. Any deductibles or self-insured retention shall be for the account of the CONTRACTOR and paid entirely by CONTRACTOR without contribution from the CITY.

21.04 Endorsements. The policies are to contain, or be endorsed to contain, the following provisions:

21.04.1 General Liability and Automobile Liability Coverage.

21.04.1.1 The CITY, its officers, employees, agents and contractors are to be covered as additional insureds as respects: Liability arising out of activities performed by, or on behalf of, CONTRACTOR; products and completed operations of CONTRACTOR; Premises owned, leased or used by CONTRACTOR; and automobiles owned, leased, hired or borrowed by CONTRACTOR. The coverage shall contain no special limitations on the scope of protection afforded to CITY, its officers, employees, agents and contractors.

21.04.1.2 CONTRACTOR'S insurance coverage shall be primary insurance as respects CITY, its officers, employees, agents and contractors but only as respects the liabilities assumed by CONTRACTOR under this Contract. Any insurance or self-insurance maintained by CITY, its officers, employees, agents or contractors shall be in excess of CONTRACTOR'S insurance and shall not contribute with it.

21.04.1.3 Coverage shall state that CONTRACTOR'S insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

21.04.2 All Coverage. Each insurance policy required by this Contract shall be endorsed to state that coverage shall not be canceled except after thirty (30) calendar days prior written notice has been given to CITY.

21.05 Acceptability of Insurers. Insurance is to be placed with insurers acceptable to CITY'S Risk Manager.

21.06 Verification of Coverage. CONTRACTOR shall furnish CITY with certificates of insurance and with original endorsements affecting coverage required by this Contract. The certificates and endorsement for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. CONTRACTOR shall furnish CITY with a new certificate of insurance and endorsements on each renewal of coverage or change of insurers.

21.06.1 Proof of insurance shall be mailed to the following address or any subsequent address as may be directed in writing by the City Clerk:

CITY OF LAGUNA BEACH

City Clerk  
505 Forest Avenue  
Laguna Beach, CA 92651

21.07 Subcontractors. CONTRACTOR shall include all subcontractors as insureds under its policies or shall obtain separate certificates and endorsements for each subcontractor.

21.08 Modification of Insurance Requirements. The insurance requirements provided in this Contract may be modified or waived by CITY'S Risk Manager, in writing, upon the request of CONTRACTOR if the CITY'S Risk Manager determines such modification or waiver is in the best interest of CITY considering all relevant factors, including exposure to CITY.

21.09 Rights of Subrogation. All required insurance policies shall preclude any underwriter's rights of recovery or subrogation against CITY with the express intention of the parties being that the required insurance coverage protects both parties as the primary coverage for any and all losses resulting from CONTRACTOR's negligence in the performance of services under this Contract. CONTRACTOR shall ensure that any companies issuing insurance to cover the requirements contained in this Contract agree that they shall have no recourse against CITY for payment or assessments in any form on any policy of insurance. The clauses 'Other Insurance Provisions' and 'Insured Duties in the Event of an Occurrence, Claim or Suit' as it appears in any policy of insurance in which CITY is named as an additional insured shall not apply to CITY.

## Article 22. Indemnification

### 22.01 General.

22.01.1 CONTRACTOR hereby agrees to and shall indemnify and hold harmless CITY, its elected and appointed boards, commissions, officers, employees, and agents (collectively the indemnitees) from and against any and all loss, liability, penalty, forfeiture, claim, demand, action, proceeding or suit in law or equity of any and every kind and description (including, but not limited to, injury to and death of any Person and damage to property, or for contribution or indemnity claimed by third parties) arising out of, resulting from, and/or in any way connected with this Contract including: (1) the negligence or willful misconduct of CONTRACTOR, its officers, employees, agents, Companies and/or subcontractors in performing services under this Contract; (2) the failure of CONTRACTOR, its officers, employees, agents, Companies and/or subcontractors to comply in all respects with the provisions of this Contract (including without limitation CONTRACTOR's obligation to ensure CITY complies with the requirements of the County Agreement), Applicable Laws (including, without limitation, the Environmental Laws), ordinances and regulations, and/or applicable permits and licenses; (3) the acts of CONTRACTOR, its officers, employees, agents,



Companies and/or subcontractors in performing services under this Contract for which strict liability is imposed by law (including, without limitation, the Environmental Laws; and (4) any challenge to the award of, or any provisions of this Contract (including any claim that the application of any provision hereof violates any provision of the California Constitution) arising from the acts or omissions of CONTRACTOR. The foregoing indemnity and hold harmless provisions shall apply regardless of whether such loss, liability, penalty, forfeiture, claim, demand, action, proceeding, suit, injury, death or damage is also caused in part by any of the indemnitees negligence, but shall not extend to matters resulting from the indemnitees sole negligence, willful misconduct, or violation of Applicable Law. CONTRACTOR further agrees to and shall, upon demand of CITY, at CONTRACTOR's sole cost and expense, defend (with attorneys acceptable to CITY) CITY, its elected and appointed boards and commissions, officers, employees, and agents against any claims, actions, suits in law or equity or other proceedings, whether judicial, quasi-judicial or administrative in nature, arising or resulting from any of the aforementioned events, and to reimburse the CITY for any and all costs and expenses CITY incurs in providing any such defense, either before, during or after the time CONTRACTOR elects to provide such defense, including any and all costs incurred in overseeing any defense to be provided herein by CONTRACTOR. The foregoing obligation to defend shall apply regardless of whether such claim or action is caused in part by any of the indemnitees negligence, but shall not extend to matters alleging or resulting from the indemnitees sole negligence, willful misconduct, or violation of Applicable Law.

22.01.2 CONTRACTOR, upon demand of the CITY, made by and through the City Attorney, shall protect CITY and appear in and defend the CITY and its elected officials, officers, employees and agents, in any claims or actions by third parties, whether judicial, administrative or otherwise, including, but not limited to disputes and litigation over the definitions of "Solid Waste" or "Recyclable Material," the scope of the rights granted herein, conflicts between the rights granted herein and rights asserted by other Persons, or the limits of CITY's authority with respect to the grant of licenses, or agreements, exclusive or otherwise, asserting rights under the Dormant Commerce Clause or any other federal or state laws to provide Collection Services in the CITY. The foregoing provision shall apply regardless of whether such claim or action is caused in part by any of the indemnitees negligence, but shall not extend to matters alleging or resulting from the indemnitees sole negligence, willful misconduct or violation of Applicable Law.

22.01.3 The provisions of this Section shall not terminate or expire, shall be given the broadest possible interpretation, and shall survive the expiration or earlier termination of this Contract.

## 22.02 Hazardous Substances Indemnification.

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

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

22.02.1.2 Relates to material Collected, transported, recycled, processed, treated or disposed of by CONTRACTOR.

22.02.2 CONTRACTOR's obligations pursuant to this Section shall apply, without limitation, to:

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

22.02.2.2 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 by CONTRACTOR of any facility;

22.02.2.3 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;

22.02.2.4 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 Contract.

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

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

22.03 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 Contract

22.04 Subcontractors. The CONTRACTOR shall require all subcontractors to enter into a contract containing the provisions set forth in the preceding subsection in which contract the subcontractor fully indemnifies the CITY in accordance with this Contract.

22.05 Damage by CONTRACTOR. If CONTRACTOR'S employees or subcontractors negligently cause any injury, damage or loss to CITY property, including but not limited to CITY streets or curbs, CONTRACTOR shall reimburse CITY for CITY'S cost of repairing such injury, damage or loss. Such reimbursement is not in derogation of any right of CITY to be indemnified by CONTRACTOR for any such injury, damage or loss. With the prior written approval of CITY, CONTRACTOR may repair the damage at CONTRACTORS sole cost and expense.

## Article 23. Cities Remedies: Default and Termination

23.01 Notice of Default. If the Contract Administrator determines that CONTRACTOR has defaulted in the performance of any obligation hereunder, the Contract Administrator may provide written notice to CONTRACTOR of such default. The Contract Administrator shall, in such written notice, set a reasonable time within which correction of such default shall be made. Unless a longer or shorter time is otherwise specified by the Contract Administrator, a reasonable time for correction shall be thirty (30) days from the date such written notice is given.

23.02 Failure to Cure. If CONTRACTOR fails to correct, to the satisfaction of the Contract Administrator, all deficiencies contained in the written notice thereof within the specified time, or if it is not reasonably possible to correct such deficiencies within the specified time, and CONTRACTOR fails to commence to correct or remedy such deficiencies within the specified time and diligently effect such correction or remedy thereafter, then the Contract Administrator may refer the matter to the City Council for review, or review the matter himself.

23.03 Review by Contract Administrator. If the Contract Administrator reviews the matter and determines that CONTRACTOR has failed to properly or adequately cure any default set forth above, the Contract Administrator, in the exercise of his reasonable discretion, may terminate this Contract, or take such other action as he deems appropriate to pursue any remedy available to CITY. A decision or order of the Contract Administrator shall be final and binding on CONTRACTOR unless CONTRACTOR files a "Notice of Appeal" with the City Clerk within fifteen (15) business days of the date the notice of the Contract Administrator's decision is given. The Contract Administrator shall schedule any appeal for consideration by the City Council at the earliest feasible City Council Meeting following the date a Notice of Appeal is given to CITY.

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

23.05 Performance During Reviews. CONTRACTOR's performance under this Contract is not excused during any period of time when its performance is under review as set

forth above, including at any time prior to a final decision as to whether such performance is deficient.

23.06 Termination without Right to Cure. The occurrence of any of the following shall be deemed an "Event of Default," in which case CITY may terminate this Contract without providing CONTRACTOR an opportunity to cure:

23.06.1 If CONTRACTOR practices, or attempts to practice, any fraud upon CITY.

23.06.2 If CONTRACTOR becomes insolvent, unable, or unwilling to pay its debts, or upon listing of an order for relief in favor of CONTRACTOR in a bankruptcy proceeding.

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

23.06.4 If CONTRACTOR ceases to provide Collection Services as required under this Contract over all or any portion of the Service Area for a period of seven (7) days or more, for any reason not specified as a force majeure event hereunder.

23.06.5 If CONTRACTOR fails to materially comply with any insurance or indemnification requirement set forth in this Contract,

23.06.6 If CITY is required to pay any fine or penalty based on CONTRACTOR's violation of Applicable Laws or breach of this Contract, which is not timely paid on its behalf by CONTRACTOR or for which CONTRACTOR fails, refuses, neglects or is unable to indemnify CITY as required in this Contract, including without limitation the diversion requirements of AB 939,

23.06.7 In the event any CONTRACTOR management employee, officer or director is convicted of fraud, bribery or attempted bribery of a public officer or employee, embezzlement, extortion, racketeering, false claims, false statements, forgery or any other similar felony involving business dishonesty.

23.07 Violations. Notwithstanding the foregoing and as supplemental and additional means of termination of this Contract under this Article, in the event that the CONTRACTOR'S record of performance show that the CONTRACTOR has frequently, regularly or repetitively defaulted in the performance of any of the material covenants and conditions required herein to be kept and performed by the CONTRACTOR, in the commercially reasonable opinion of the CITY, considering industry standards, and regardless of whether the CONTRACTOR has corrected each individual condition of default, the CONTRACTOR shall be deemed a "habitual violator", shall be deemed to have waived the right to any further notice or grace period to correct, and all of said defaults shall be considered cumulative and collectively shall constitute a condition of irredeemable default. The CITY shall thereupon issue the CONTRACTOR a final warning citing the circumstances therefore, and any single default by the CONTRACTOR of whatever nature, subsequent to the occurrence of the last of said cumulative defaults, shall be grounds for immediate termination of the Contract. In the event of any such subsequent default, the CITY may terminate this Contract upon giving of written final notice to the CONTRACTOR, such cancellation to be effective upon the date specified in the CITY'S written notice to the

CONTRACTOR. Immediately upon the specified date in such final notice the CONTRACTOR shall proceed to cease any further performance under this Contract.

23.08 Termination Cumulative. CITY'S right to terminate this Contract is cumulative to any other rights and remedies provided by law or by this Contract.

23.09 Force Majeure. CONTRACTOR shall be excused from performance and shall not be liable for failure to perform under this Contract if CONTRACTOR's performance is temporarily disrupted, prevented or delayed for any of the following reasons which are deemed to be "Force Majeure" events: riots, wars, sabotage, civil disturbances, insurrections, strikes or other labor disturbances lasting less than 14 calendar days, explosion, natural disasters such as floods, earthquakes, landslides, and fires, or "other catastrophic events" which are beyond the reasonable control of CONTRACTOR. The term "other catastrophic events" does not include: (i) the financial inability of CONTRACTOR to perform; (ii) failure of CONTRACTOR to obtain any necessary permits or licenses from applicable governmental agencies; (iii) the failure to obtain the right, or the loss of the right, to use the facilities of any public utility where such failure is due in substantial part to the acts or omissions of CONTRACTOR; or (iv) strikes or other labor disturbances lasting 14 calendar days or longer. If as a result of a Force Majeure event, CONTRACTOR is unable wholly or partially to meet its obligations under this Contract, it shall give the CITY prompt written notice of the Force Majeure event, describing it in reasonable detail. In the event of a Force Majeure event, CONTRACTOR's obligations under this Contract shall be suspended, but only with respect to the particular component of obligations affected by the Force Majeure event and only for the period during which the Force Majeure event exists.

## Article 24. CONTRACTOR'S Remedies; Administrative Hearing

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

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

## Article 25. CITY'S Additional Remedies

25.01 In addition to any other remedies set forth herein, CITY shall be entitled to any or all remedies in law or equity, as well as the following specific rights and remedies, in the event of a breach of this Contract by CONTRACTOR:



25.02 The right to use CONTRACTOR's equipment for the purpose of Collection Services for a period not to exceed six (6) months. In the case of equipment not owned by CONTRACTOR, CONTRACTOR shall assign to CITY, to the extent CONTRACTOR is permitted to do so under the instruments pursuant to which CONTRACTOR possesses such equipment, the right to use and possess the equipment. If CITY exercises its rights under this Section, CITY shall pay to CONTRACTOR the reasonable rental value of the equipment for the period of CITY's possession thereof (although payment may, if appropriate, occur in the form of a setoff against damages otherwise owed by CONTRACTOR pursuant to the terms hereof);

25.03 The right to license others to perform the services otherwise to be performed by CONTRACTOR hereunder, or to perform such services itself; and

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

## Article 26. Rights of CITY to Perform During Emergency

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

26.02 Possession of Equipment. CONTRACTOR agrees, that in the event of circumstances described in Section 26.01 above, CITY may take temporary possession of and use all of said equipment and facilities without paying CONTRACTOR any rental or other charge; however, if CONTRACTOR's failure to provide Collection Services is based on force majeure, CITY shall pay CONTRACTOR reasonable rental and other applicable charges for use of CONTRACTOR equipment. Upon CONTRACTOR giving CITY notice that it is able to resume its normal responsibilities under this Contract CITY shall either relinquish possession of all of the above-mentioned property to CONTRACTOR.

## Article 27. Legal Representation

27.01 Acknowledgement. It is acknowledged that each party was, or had the opportunity to be, represented by counsel in the preparation of and contributed equally to the drafting of the terms and conditions of this Contract and, accordingly, the rule that a contract shall be interpreted strictly against the party preparing the same shall not apply herein due to the joint contributions of both parties.

## Article 28. Financial Interest

28.01 Representation. CONTRACTOR warrants and represents that no elected official, officer, agent or employee of the CITY has a financial interest, directly or indirectly, in



this Contract the compensation to be paid under it and, further, that no CITY employee who acts in the CITY as a "purchasing agent" as defined in the appropriate Section of California Statutes, nor any elected or appointed officer of the CITY, nor any spouse or child of such purchasing agent, employee or elected or appointed officer, is a partner, officer, director or proprietor of the CONTRACTOR and, further, that no such CITY employee, purchasing agent, CITY elected or appointed officer, or the spouse or child of any of them, alone or in combination, has a material interest in the CONTRACTOR. Material interest means direct or indirect ownership of more than five percent (5%) of the total assets or capital stock of the CONTRACTOR.

## Article 29. CONTRACTOR's Personnel

29.01 Personnel Requirements. The CONTRACTOR shall employ and assign qualified personnel to perform all services set forth herein. The CONTRACTOR shall be responsible for ensuring that its employees comply with all Applicable Laws and regulations and meet all federal, state and local requirements related to their employment and position.

29.01.1 Discontinued Use of Unsatisfactory Employees. The CITY may request the transfer of any employee of the CONTRACTOR who materially violates any provision hereof, or who is wanton, negligent, or discourteous in the performance of his duties.

29.01.2 Uniforms. CONTRACTOR'S field operations personnel shall be required to wear a clean uniform shirt bearing the CONTRACTOR'S name. CONTRACTOR'S employees, who normally come into direct contact with the public, including drivers, shall bear some means of individual photographic identification such as a nametag or identification card.

29.01.3 Driver's License. Each driver of a Collection vehicle shall at all times carry a valid California driver's license and all other required licenses for the type of vehicle that is being operated.

29.01.4 Compliance with Applicable Laws. Each driver of a Collection vehicle shall at all times comply with all Applicable Laws, regulations and requirements.

29.01.5 Identification of Employees. CONTRACTOR'S employees, officers, and agents shall at no time be allowed to identify themselves or in any way represent themselves as being employees of the CITY.

29.01.6 Identification of CONTRACTOR. The CONTRACTOR'S name and the Customer Service telephone number shall be properly displayed on all Collection vehicles.

29.01.7 Employee List. CONTRACTOR shall provide a list of current employees and authorized subcontractors to CITY upon request.

29.01.8 Training and Legal Compliance. CONTRACTOR shall provide operating and safety training for all personnel that meet minimum OSHA standards, and shall comply with all Applicable Laws and regulations applicable to its employees and personnel. CONTRACTOR shall establish and enforce an education program designed to train CONTRACTOR's employees in the identification of Hazardous Wastes, and will provide employees with appropriate literature to leave behind at Premises which improperly place Hazardous Wastes for Collection along with Solid Waste. CONTRACTOR's employees shall not knowingly place such Hazardous Wastes into the Collection vehicles, nor shall they knowingly dispose of such Hazardous Wastes in any manner other than that authorized by Applicable Laws and regulations.

## Article 30. Exempt Waste

30.01 The CONTRACTOR shall not be required to Collect or dispose of Exempt Waste, but may offer such services. All such Collection and disposal of Exempt Waste is not regulated under this Contract, but if provided by the CONTRACTOR shall be in strict compliance with all federal, state and local laws and regulations. If CONTRACTOR is aware of any Exempt Waste and chooses not to collect it, CONTRACTOR must notify CITY of the Exempt Waste.

## Article 31. Independent Contractor

31.01 In the performance of services pursuant to this Contract, CONTRACTOR shall be an independent contractor and not an officer, agent, servant or employee of CITY. CONTRACTOR shall have exclusive control of the details of the services and work performed and over all persons performing such services and work. CONTRACTOR shall be solely responsible for the acts and omissions of its officers, agents, employees, contractors and subcontractors, if any. CONTRACTOR nor its officers, employees, agents, contractors, or subcontractors shall obtain any right to retirement benefits, Workers Compensation benefits, or any other benefits that accrued to CITY employees. CONTRACTOR expressly waives any claim it may have or acquire to such benefits.

31.02 Subcontractors. The CONTRACTOR shall require all subcontractors to enter into a contract containing the provisions set forth in the preceding subsection in which contract the subcontractor agrees that CONTRACTOR and subcontractor are independent contractors and have no other agency relationship with CITY.

## Article 32. Laws to Govern

32.01 The law of the State of California shall govern the rights, obligations, duties and liabilities of CITY and CONTRACTOR under this Contract and shall govern the interpretation of this Contract.

## Article 33. Jurisdiction and Venue

33.01 The parties agree that any litigation between CITY and CONTRACTOR concerning or arising out of this Contract shall be filed and maintained exclusively in the Superior Courts of Orange County, State of California.

## Article 34. Assignment, Subletting, Transfer; Requirements and Limitations

34.01 General. CONTRACTOR shall not assign its rights, nor delegate, subcontract or otherwise transfer its obligations under this Contract (collectively referred to as an "Assignment") to any other Person without the prior approval by the City Council of the CITY. Any such Assignment made without the approval by the City Council of the CITY shall be void and the attempted Assignment shall constitute a material breach of this Contract.

34.02 "Assignment" to be Broadly Interpreted. For purposes of this Section the term "Assignment" shall be given the broadest possible interpretation, and shall include, but not be limited to: (i) a sale, exchange or other transfer of substantially all of the CONTRACTOR's

assets dedicated to service under this Contract to a third party; (ii) a sale, exchange or other transfer of any membership interest of CONTRACTOR to a third party; (iii) any dissolution, reorganization, consolidation, merger, re-capitalization, stock issuance or re-issuance, voting trust, pooling agreement, escrow arrangement, liquidation or other transaction which results in a change of ownership or control of CONTRACTOR; (iv) any assignment by operation of law, including those resulting from mergers or acquisitions by or of CONTRACTOR or any of its Affiliates, insolvency or bankruptcy, making assignment for the benefit of creditors, writ of attachment for an execution being levied against this Contract, 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

34.03 Nature of Contract – Personal to CONTRACTOR. CONTRACTOR acknowledges that this Contract 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 Collection Services in a safe, effective and responsible fashion, at all times in keeping with applicable Environmental Laws, regulations and best Solid Waste management practices, and (2) CONTRACTOR's financial resources to maintain the required equipment and to support its indemnity obligations to CITY under this Contract. CITY has relied on each of these factors, among others, in choosing CONTRACTOR to perform the services to be rendered by CONTRACTOR under this Contract.

34.04 Procedure for Consideration of Assignment. If CONTRACTOR requests CITY's consideration of and consent to an Assignment, the City Council of CITY may deny, approve or conditionally approve such request in its sole and absolute discretion. Under no circumstances shall CITY be obliged to consider any proposed Assignment if CONTRACTOR is in default at any time during the period of consideration. Should the CITY consent to any Assignment request, such Assignment shall not take effect until all conditions relating to the CITY's approval have been met. Any request for an Assignment shall be made in a manner to be prescribed by the Contract Administrator, and no request by CONTRACTOR for consent to an Assignment need be considered by CITY unless and until CONTRACTOR has met (or with respect to matters that would only occur upon completion of the Assignment if approved, made reasonable assurances that it will meet) the following requirements:

34.04.1 CONTRACTOR shall undertake to pay CITY its reasonable direct and indirect expenses, including administrative, investigative, consulting, and attorney's fees and 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 (collectively the "Administrative Assignment Fee"). An advance non-refundable payment in an amount to be determined by the Contract Administrator towards the Administrative Assignment Fee shall be paid to the CITY prior to CITY's consideration of any Assignment request, although CONTRACTOR shall be responsible to pay all costs incurred by CITY in considering a request for Assignment, including those in excess of the aforesaid deposit amount, regardless of whether CITY consents to the Assignment

34.04.2 If requested to do so, CONTRACTOR shall furnish CITY with audited financial statements of the proposed assignee's operations for the immediately preceding three (3) operating years.

34.04.3 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 scale of operations conducted by CONTRACTOR under this Contract; (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 laws, including the 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 Substances; and, (v) of any other information required by CITY to ensure the proposed assignee can fulfill the terms of this Contract in a timely, safe and effective manner.

34.04.4 The proposed assignee shall execute an agreement assuming all of CONTRACTOR's rights and liabilities under this Contract.

34.05 The use of a subcontractor to perform services under this Contract shall not constitute delegation of CONTRACTOR'S duties provided that CONTRACTOR has received prior written authorization from the Contract Administrator to subcontract such services and the Contract Administrator has approved a subcontractor who will perform such services. CONTRACTOR shall be responsible for directing the work of CONTRACTOR'S subcontractors and any compensation due or payable to CONTRACTOR'S subcontractor shall be the sole responsibility of CONTRACTOR. The Contract Administrator shall have the right to require the removal of any approved subcontractor for reasonable cause. The subcontractors listed in Exhibit 6, which is attached to and incorporated in this Contract, are hereby approved by the CITY.

## Article 35. Compliance with Laws

35.01 In the performance of this Contract, CONTRACTOR shall comply with all Applicable Laws, including without limitation the Charter of the City of Laguna Beach and the Laguna Beach Municipal Code.

35.02 CITY shall provide written notice to CONTRACTOR of any planned amendment of the Laguna Beach Municipal Code that would substantially affect the performance of CONTRACTOR'S services pursuant to this Contract. Such notice shall be provided at least ninety (90) calendar days prior to the City Council's approval of such an amendment, or such longer period of time as may be reasonably required by CONTRACTOR.

## Article 36. Permits and Licenses

36.01 CONTRACTOR shall obtain, at its own expense, all permits and licenses required by law or ordinance and maintain same in full force and effect throughout the term of this Contract. CONTRACTOR shall provide proof of such permits, licenses or approvals and shall demonstrate compliance with the terms and conditions of such permits, licenses and approvals upon the request of the Contract Administrator.

## Article 37. Ownership of Written Materials

37.01 All reports, documents, brochures, public education materials, and other written, printed, electronic or photographic materials developed by CITY, or CONTRACTOR for production to CITY, whether developed directly or indirectly by CITY or CONTRACTOR shall be and shall remain the property of CITY without limitation or restrictions on the use of such materials by CITY. CONTRACTOR shall not use such materials in connection with any project not connected with this Contract without the prior written consent of the Contract Administrator. This Article 35 does not apply to ideas or concepts described in such materials and do not apply to the format of such materials.

## Article 38. Waiver

38.01 Waiver by CITY or CONTRACTOR of any breach or violation of any term covenant or condition of this Contract shall not be deemed to be a waiver of any other term, covenant or condition or any subsequent breach or violation of the same or of any other term, covenant or condition. The subsequent acceptance by CITY of any fee, tax, or any other monies, which may become due from CONTRACTOR to CITY shall not be deemed to be a waiver by CITY of any breach for violation of any term, covenant or condition of this Contract.

## Article 39. Prohibition Against Gifts

39.01 CONTRACTOR represents that CONTRACTOR is familiar with CITY'S prohibition against the acceptance of any gift by a CITY officer or designated employee. CONTRACTOR shall not offer any CITY officer or designated employee any gifts prohibited by the CITY or the Applicable Laws.

## Article 40. Point of Contact

40.01 The day-to-day dealings between the CONTRACTOR and the CITY shall be between the CONTRACTOR and the Contract Administrator. Excepting amendments hereto and such actions set forth herein specifically calling for City Council action or approval, the Contract Administrator is designated as the CITY's authorized agent to take any action with regard to any matter, or enforce any right, set forth herein requiring action by the CITY.

## Article 41. Notices

41.01 All notices required or permitted to be given under this Contract shall be in writing and shall be personally delivered or sent by United States certified mail, postage prepaid, return receipt requested, and addressed as follows:

As to the CITY:

City Manager or His/Her Designee  
City of Laguna Beach  
505 Forest Avenue  
Laguna Beach, CA 92651  
Telephone: (949) 497-0344  
Fax: (949) 494-1864  
Email:

As to the CONTRACTOR:

Thomas Koutroulis  
District Manager  
Waste Management of Orange County  
16122 Construction Circle E.  
Irvine, CA 92606  
Telephone: (949) 451-2600  
Fax: (949) 559-1721  
Email: [TKoutrou@wm.com](mailto:TKoutrou@wm.com)

Copy to:

Legal Department  
Waste Management  
9081 Tujunga Avenue  
Sun Valley, CA 91352

or to such other address as either party may from time to time designate by notice to the other given in accordance with this Section. Notice shall be deemed given on the date served if served personally between the hours of 8:00 a.m. to 5:00 p.m. on any regular business day for CITY's business offices. If mailed, notice shall be deemed given three (3) business days from the date such notice is deposited in the United States mail in the manner proscribed above.

41.02 Notice by CITY to CONTRACTOR of a Collection or other Customer problem or complaint may be given to CONTRACTOR orally by telephone at CONTRACTOR'S local office with confirmation sent to CONTRACTOR through the Customer Service System by the end of the Work Day.

## Article 42. Transition to Next Contractor

42.01 In the event CONTRACTOR is not awarded a Contract to continue to provide Collection Services following the expiration or early termination of this Contract, CONTRACTOR shall cooperate fully with CITY and any subsequent contractors to assure a smooth transition of services described in this Contract. Such cooperation shall include but not be limited to transfer of computer data, files and tapes; providing routing information, route maps, vehicle fleet information, and list of Customers; providing a complete inventory of all Carts and Bins; providing adequate labor and equipment to complete performance of all Collection Services required under this Contract and providing other reports and data required by this Contract.

## Article 43. CONTRACTOR's Records

43.01 CONTRACTOR shall maintain any and all letters, books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or relating to charges for services or expenditures and disbursements charged to Customers for a minimum period of three (3) years, or for any longer period required by law, from the date of final payment to CONTRACTOR pursuant to this Contract.



43.02 CONTRACTOR shall maintain all documents and records, which demonstrate performance under this Contract for a minimum period of three (3) years, or for any longer period required by law, from the date of termination or completion of this Contract.

43.03 Any records or documents required to be maintained pursuant to this Contract shall be made available for inspection or audit, at any time (after reasonable notice deemed to be 5 business days) during regular business hours, upon written request by the Contract Administrator, the City Attorney, City Auditor, Contract Administrator, or a designated representative of any of these officers. Copies of such documents shall be provided to CITY for inspection at the CITY offices when it is practical to do so. Otherwise, unless an alternative site is mutually agreed upon, the records shall be available at CONTRACTOR'S address indicated for receipt of notices in this Contract.

43.04 Where CITY has reason to believe that such records or documents may be lost or discarded due to the dissolution, disbandment or termination of CONTRACTOR'S business, CITY may, by written request or demand of any of the above named officers, require that custody of the records be given to CITY and that the records and documents be maintained in City Hall. Access to such records and documents shall be granted to any party authorized by CONTRACTOR, CONTRACTOR'S representatives, or CONTRACTOR'S successor-in-interest.

## **Article 44. Attorneys' Fees and Litigation Costs**

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

## **Article 45. Integrated Agreement**

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

## **Article 46. Amendment**

46.01 No amendment of this Contract shall be valid unless in writing duly executed by the Parties.

## **Article 47. Severability**

47.01 If any provision of this Contract or the application of it to any person or situation shall to any extent be held invalid or unenforceable, the remainder of this Contract and the application of such provisions to persons or situations other than those as to which it shall

have been held invalid or unenforceable, shall not be affected, shall continue in full force and effect, and shall be enforced to the fullest extent permitted by law.

## **Article 48. Headings**

48.01 Headings in this document are for convenience of reference only and are not to be considered in any interpretation of this Contract.

## **Article 49. Exhibits**

49.01 Each Exhibit referred to in this Contract forms an essential part of this Contract. Each such Exhibit is a part of this Contract and each is incorporated by this reference.

## **Article 50. Effective Date**

50.01 This Contract shall become effective at such time as it is properly executed by the CITY and the CONTRACTOR, and the CONTRACTOR shall begin Services, as covered herein, as of August 1, 2013.

IN WITNESS WHEREOF, the CITY and the CONTRACTOR have executed this Contract on the respective date(s) below each signature.


**CITY OF LAGUNA BEACH**

A General Law City

By:   
John Pietig,  
City Manager

7/31/13  
Date

ATTEST

By:   
Lisette Chel-Walker,  
City Clerk

7-31-13  
Date

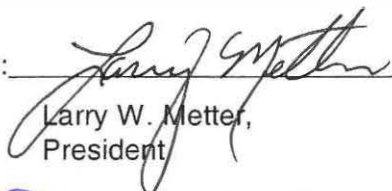
APPROVED AS TO FORM

By:   
Phil Kohn,  
City Attorney

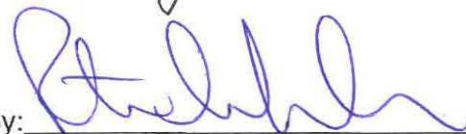
7/31/13  
Date

**CONTRACTOR**

USA Waste of California, Inc.

By:   
Larry W. Metter,  
President

7/11/13  
Date

By:   
Pete Demolder,  
Assistant Secretary

7/11/13  
Date

**EXHIBIT 1 - CITY Service Units**

<b>Street #</b>	<b>Street</b>	<b>City Service Unit</b>	<b>Service Level</b>
505	Forest Ave	Laguna Police and Fire	96 Gal Toter FEL
	Forest Ave	City of Laguna Beach	1 – 3CY FEL 3x WK
	Forest Ave	City of Laguna Beach	1 – 3CY FEL 3x WK
	Forest Ave	City of Laguna Beach	1 – 3CY FEL 3x WK
501	Forest Ave	City of Laguna Beach	3CY FEL RCY
501	Forest Ave	City of Laguna Beach	1 – 3CY FEL 1x WK
285	Agate St	Laguna Beach Fire Station	1 – 3CY FEL 4x WK
285	Agate St	Laguna Beach Fire Station	1 – 3CY FEL 4x WK
285	Agate St	Laguna Beach Fire Station	1 – 3CY FEL 4x WK
285	Agate St	Laguna Beach Fire Station	1 – 3CY FEL 4x WK
285	Agate St	Laguna Beach Fire Station	96 Gal Toter FEL RCY
384	Legion	Laguna Beach Legion Hall	96 Gal Toter FEL
384	Legion	Laguna Beach Legion Hall	96 Gal Toter FEL
384	Legion	Laguna Beach Legion Hall	96 Gal Toter FEL
384	Legion	Laguna Beach Legion Hall	96 Gal Toter FEL RCY
384	Legion	Laguna Beach Legion Hall	96 Gal Toter FEL RCY
Laguna Canyon Rd/73 Toll Rd		City of Laguna Beach	1 – 3CY FEL 1x WK
306	Third St	Laguna Beach County Water Dist.	1 – 3CY FEL 2X WK
306	Third St	Laguna Beach County Water Dist.	3CY FEL RCY
21540	Wesley Dr	City of Laguna Beach	1 – 3CY FEL 2X WK
505	Forest Ave	City of Laguna Beach	3 CY FEL RCY
2900	Alta Laguna Blvd	Laguna Beach Fire Station 3	1 – 3CY FEL 1x WK

**EXHIBIT 1 - CITY Service Units**

<b>Street #</b>	<b>Street</b>	<b>City Service Unit</b>	<b>Service Level</b>
2900	Alta Laguna Blvd	Laguna Beach Fire Station 3	ROLLOUT FEE FEL
8601	Coast Hwy N	Laguna Beach County Water Dist.	1 – 2CY FEL 1X WK
350	3 <sup>rd</sup> St	Laguna Beach Senior Center	3CY FEL RCY
350	3 <sup>rd</sup> St	Laguna Beach Senior Center	1 – 3CY FEL 1x WK
20652	Laguna Canyon Rd	City of Laguna Beach Homeless	1 – 3CY FEL 6x WK
20652	Laguna Canyon Rd	City of Laguna Beach Homeless	3CY FEL RCY
20612	Laguna Canyon Rd	City of Laguna Beach	3CY FEL RCY
20612	Laguna Canyon Rd	City of Laguna Beach	1 – 3CY FEL 2X WK
31646	2 <sup>nd</sup> Ave	City of Laguna Beach	1 – 3CY FEL 1x WK
1900	Laguna Canyon Rd	City of Laguna Beach Corp	3 – 40CY, T, GW, STR & Metal
20522	Laguna Canyon Rd	City of Laguna Beach Corp- Old City Dump	2 – 3CY FEL 1 – 3CY RCY
479	Ocean Ave	City of Laguna Office	1 – 3CY FEL 96-gal recycling or split bin (trash/recycling)
635	Laguna Canyon Rd	Village Entrance Parking Structure	1 – 3 CY FEL 1 – 3CY FEL REY

**EXHIBIT 2 - Approved Facilities****1. Refuse****County of Orange Landfill System**

Primary sites: Frank R. Bowerman, Prima Desecha

Owned and operated by the County of Orange

**2. Construction and Demolition Debris**

Sunset Environmental  
16122 Construction Circle West  
Irvine, CA 92606

Manager:  
Fidel Gutierrez  
(949) 654-1562

**3. Recyclable Materials**

Orange Transfer Station  
2050 N. Glassell Street  
Orange, CA 92865

Manager:  
Peter Branda  
(714) 685-6486

Sunset Environmental  
16122 Construction Circle West  
Irvine, CA 92606

Manager:  
Fidel Gutierrez  
(949) 654-1562

**4. Green Waste**

Tierra Verde Industries  
7913 Marine Way  
Irvine, Ca. 92618  
949-351-1346

**5. Food Waste**

Orange Transfer Station  
2050 N. Glassell Street  
Orange, CA 92865

Manager:  
Peter Branda  
(714) 685-6486



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**EXHIBIT 3 - Approved Subcontractors****Can Do Services/ CDSRVS, LLC**

840 W. Grove  
Orange, Ca. 92865  
Robert Miller Jr.  
(951) 232-0504

**At Your Door Special Collection**

WM Curbside, LLC  
5101 East La Palma Avenue, Suite 206  
Anaheim, CA 92807

**WellDyneRx**

P.O. Box 4517  
Englewood, CA 80155-4517

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**EXHIBIT 4 – CITY Sponsored Events**

Annual Patriots Day Parade – March

Annual Spring Compost Give A-Way – May

Water District Environmental Expo (Compost) - Fall

Laguna Beach Chamber of Commerce Community Expo – September

Annual Holiday Tree Lighting and Hospitality Night – December

Earth Day/Kelp Fest

Festival of the Arts – Laguna Beach Uncorked!

Zero Trash Laguna – Monthly community clean ups

Monthly Beach Cleanups

Laguna Beach 4th of July Fireworks

Spring Classic Golf Tournament

Laguna Beach Chamber of Commerce Community Events, including the following:

- Taste of Laguna Beach
- Hometown Pageant Night
- State of the Mayor
- Installation
- Mixers
- Annual Shredding Event
- Working with the Chamber Environmental Committee

All Event Roll-Off Box Requests from Public Works Supporting Small CITY Events

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**EXHIBIT 5 - Hard-to-Service Streets**

<b>Street #</b>	<b>Street</b>	<b>Street #</b>	<b>Street</b>
324	Arch	675	Glomstad Ln
356	Arch	685	Glomstad Ln
360	Arch	20750	Gunderson Dr
100	Arch Bay	20751	Gunderson Dr
102	Arch Bay	20752	Gunderson Dr
150	Castle Rock Rd	20753	Gunderson Dr
170	Castle Rock Rd	20754	Gunderson Dr
180	Castle Rock Rd	20755	Gunderson Dr
220	Castle Rock Rd	20756	Gunderson Dr
20862	Castle Rock Rd	20757	Gunderson Dr
20881	Castle Rock Rd	124	High Dr.
20882	Castle Rock Rd	128	High Dr.
20902	Castle Rock Rd	130	High Dr.
20912	Castle Rock Rd	430	High Dr.
20920	Castle Rock Rd	444	High Dr.
20930	Castle Rock Rd	480	High Dr.
20938	Castle Rock Rd	2279	Inez
20942	Castle Rock Rd	2280	Inez
20950	Castle Rock Rd	1115	Jefferson Wy
20960	Castle Rock Rd	1120	Jefferson Wy
20976	Castle Rock Rd	1160	Jefferson Wy
20980	Castle Rock Rd	1165	Jefferson Wy
21082	Castle Rock Rd	1191	Jefferson Wy
21121	Castle Rock Rd	1198	Jefferson Wy
21162	Castle Rock Rd	1415	Jefferson Wy
21172	Castle Rock Rd	1429	Jefferson Wy
21185	Castle Rock Rd	2401	Juanita Way
21220	Castle Rock Rd		(Construction)
2518	Catalina	1108	Keller Wy
	Ceanothus Dr	1110	Keller Wy
	Ceanothus Dr	1111	Keller Wy
	Ceanothus Dr	1115	Keller Wy
1130	Crabbe Wy	1118	Keller Wy
1135	Crabbe Wy	1120	Keller Wy
1170	Crabbe Wy	1125	Keller Wy
1175	Crabbe Wy	1135	Keller Wy
1245	Crabbe Wy	1140	Keller Wy
1255	Crabbe Wy	1145	Keller Wy
1269	Crabbe Wy	1150	Keller Wy
2015	Crestview Dr	1155	Keller Wy
2025	Crestview Dr	1160	Keller Wy
2080	Crestview Dr	1165	Keller Wy
2095	Crestview Dr	1175	Keller Wy
2097	Crestview Dr	1185	Keller Wy
2101	Crestview Dr	1190	Keller Wy
2108	Crestview Dr	1269	Keller Wy
2111	Crestview Dr	1345	Keller Wy



**EXHIBIT 5 - Hard-to-Service Streets**

<b>Street #</b>	<b>Street</b>	<b>Street #</b>	<b>Street</b>
2120	Crestview Dr	9	Lagunita
2147	Crestview Dr	11	Lagunita
2155	Crestview Dr	2	Pacific Vista
2160	Crestview Dr	4	Pacific Vista
2163	Crestview Dr	5	Pacific Vista
2170	Crestview Dr	6	Pacific Vista
2173	Crestview Dr	7	Pacific Vista
2183	Crestview Dr	8	Pacific Vista
2192	Crestview Dr	9	Pacific Vista
2210	Crestview Dr	10	Pacific Vista
2236	Crestview Dr	11	Pacific Vista
2255	Crestview Dr	12	Pacific Vista
2260	Crestview Dr	14	Pacific Vista
2263	Crestview Dr	15	Pacific Vista
2285	Crestview Dr	17	Pacific Vista
2300	Crestview Dr	19	Pacific Vista
2306	Crestview Dr	2447	Pala Way
2318	Crestview Dr	2447	Pala Way
2320	Crestview Dr	2449	Pala Way
2327	Crestview Dr	2500	Pala Way
2329	Crestview Dr	2518	Pala Way
2330	Crestview Dr	2540	Pala Way
2331	Crestview Dr	2560	Pala Way
2341	Crestview Dr	701	Pearl St
2345	Crestview Dr	735	Pearl St
2351	Crestview Dr	755	Pearl St
2360	Crestview Dr	789	Pearl St
2361	Crestview Dr	374	Pinecrest Dr
2371	Crestview Dr	380	Pinecrest Dr
2376	Crestview Dr	384	Pinecrest Dr
2378	Crestview Dr	388	Pinecrest Dr
2391	Crestview Dr	390	Pinecrest Dr
2703	Crestview Dr	394	Pinecrest Dr
2025	Crestview Pl	32012	Point Place
2192	Crestview Pl	32013	Point Place
2196	Crestview Pl	32015	Point Place
2203	Crestview Pl	32017	Point Place
2209	Crestview Pl	32019	Point Place
2210	Crestview Pl	32025	Point Place
2211	Crestview Pl	32029	Point Place
2220	Crestview Pl	32031	Point Place
2230	Crestview Pl	32033	Point Place
2236	Crestview Pl	32035	Point Place
2260	Crestview Pl	32037	Point Place
2299	Crestview Pl	32039	Point Place
2300	Crestview Pl	32041	Point Place
1021	Didrikson Wy	1	Rockledge

**EXHIBIT 5 - Hard-to-Service Streets**

<b>Street #</b>	<b>Street</b>	<b>Street #</b>	<b>Street</b>
1024	Didrikson Wy	2	Rockledge
1034	Didrikson Wy	3	Rockledge
1037	Didrikson Wy	4	Rockledge
1044	Didrikson Wy	5	Rockledge
1047	Didrikson Wy	6	Rockledge
1049	Didrikson Wy	7	Rockledge
1057	Didrikson Wy	8	Rockledge
1084	Didrikson Wy	100	Rockledge
1755	Donna Dr	121	Rockledge
1988	Donna Dr	131	Rockledge
2008	Donna Dr	150	Rockledge
2014	Donna Dr	181	Rockledge
2020	Donna Dr	1110	Saling Wy
1024	Dyer Pl	1120	Saling Wy
1025	Dyer Pl	1131	Saling Wy
1035	Dyer Pl	1145	Saling Wy
1036	Dyer Pl	1165	Saling Wy
1045	Dyer Pl	1175	Saling Wy
1055	Dyer Pl	1185	Saling Wy
1056	Dyer Pl	1961	Saling Wy
1065	Dyer Pl	645	Sleepy Hollow
1066	Dyer Pl	671	Sleepy Hollow
1075	Dyer Pl	683	Sleepy Hollow
1076	Dyer Pl	685	Sleepy Hollow
1078	Dyer Pl	688	Sleepy Hollow
1080	Dyer Pl	28911	Sommet Du Monde
1085	Dyer Pl	28961	Sommet Du Monde
1086	Dyer Pl	28971	Sommet Du Monde
1095	Dyer Pl	28972	Sommet Du Monde
1096	Dyer Pl	28981	Sommet Du Monde
1099	Dyer Pl	28982	Sommet Du Monde
200	Fern St	20752	Stan Oak Dr
365	Fern St	20754	Stan Oak Dr
565	Fern St	20762	Stan Oak Dr
700	Gainsborough Dr	20770	Stan Oak Dr
703	Gainsborough Dr	20780	Stan Oak Dr
705	Gainsborough Dr	20790	Stan Oak Dr
706	Gainsborough Dr	20962	Stan Oak Dr
708	Gainsborough Dr	21052	Stan Oak Dr
716	Gainsborough Dr	21056	Stan Oak Dr
732	Gainsborough Dr	21072	Stan Oak Dr
775	Gainsborough Dr	21181	Stan Oak Dr
777	Gainsborough Dr	21182	Stan Oak Dr
785	Gainsborough Dr	24056	Stan Oak Dr
803	Gainsborough Dr	825	Summit
812	Gainsborough Dr	833	Summit
821	Gainsborough Dr	857	Summit

**EXHIBIT 5 - Hard-to-Service Streets**

<b>Street #</b>	<b>Street</b>	<b>Street #</b>	<b>Street</b>
831	Gainsborough Dr	888	Summit
858	Gainsborough Dr	1141	Summit Pl
864	Gainsborough Dr	1161	Summit Pl
881	Gainsborough Dr	1171	Summit Pl
900	Gainsborough Dr	253	Upland Rd
803	Gainsborough Pl	260	Upland Rd
821	Gainsborough Pl	263	Upland Rd
858	Gainsborough Pl	273	Upland Rd
900	Gainsborough Pl	274	Upland Rd
920	Gainsborough Pl	276	Upland Rd
699	Gainsborough Wy	278	Upland Rd
716	Gainsborough Wy	283	Upland Rd
777	Gainsborough Wy	285	Upland Rd
779	Gainsborough Wy	293	Upland Rd
791	Gainsborough Wy	360	Upland Rd
792	Gainsborough Wy	48	Vista Del Sol
799	Gainsborough Wy	50	Vista Del Sol
709	Gaviota Dr	96	Vista Del Sol
711	Gaviota Dr	98	Vista Del Sol
725	Gaviota Dr	611	Wilcox Way
729	Gaviota Dr	615	Wilcox Way
735	Gaviota Dr	620	Wilcox Way
741	Gaviota Dr	637	Wilcox Way
765	Gaviota Dr	1024	Wykoff Wy
767	Gaviota Dr	1025	Wykoff Wy
775	Gaviota Dr	1044	Wykoff Wy
777	Gaviota Dr	1045	Wykoff Wy
787	Gaviota Dr	1050	Wykoff Wy
789	Gaviota Dr	1054	Wykoff Wy
790	Gaviota Dr	1055	Wykoff Wy
915	Gaviota Dr	1075	Wykoff Wy
220	Glomstad Ln	1078	Wykoff Wy
601	Glomstad Ln	1079	Wykoff Wy
605	Glomstad Ln	1085	Wykoff Wy
625	Glomstad Ln	1086	Wykoff Wy
635	Glomstad Ln	1095	Wykoff Wy
646	Glomstad Ln	1098	Wykoff Wy
670	Glomstad Ln	1124	Wykoff Wy

### EXHIBIT 6 - Reverse Recycling Plan For Hard To Handle Locations

#### **Basic Program Elements:**

- Customers will bag their wet trash and non-Recyclable Materials. The aim of this program is for Customers to bag only the trash, thereby enabling easier recovery of Recyclable Materials by minimizing Contamination. By separating Recycling and trash, residents are able to engage in the Recycling process.
- Bagged trash will be placed with loose dry waste in the Customer's Containers.
- CONTRACTOR shall service the hard to handle route areas utilizing a special service truck routed for the areas.
- The specially designated service truck shall deliver all Solid Waste Collected from the Hard to Handle Locations to Sunset Environmental in Irvine, and all Solid Waste delivered will be processed before any is transferred to the landfill. Trash bags will be separated for delivery to the landfill and the remaining loose material will be transferred to CONTRACTOR's processing facility in Orange for further processing prior to delivery of any residual to the landfill.
- Residents will be encouraged through an outreach program to ensure trash is bagged using heavy-duty liners that will resist breakage during the Collection and separation process.

#### **Implementation Schedule:**

<b>Month/Year</b>	<b>Program Activity</b>
<b>August 2013</b>	<p>Introduce Program to affected neighborhoods via Public Education materials (fliers, mailers, personal visits, etc.)</p> <p>Provide explanation of program and instructions.</p> <p>Provide bags for first 30 days of program.</p> <p>Establish tracking mechanism to identify diversion volumes.</p>
<b>September 2013</b>	<p>Initiate Collection program.</p> <p>Continue to provide outreach and public education as necessary to maximize participation.</p> <p>Begin tracking diversion performance based on visual inspections.</p>

**EXHIBIT 6 - Reverse Recycling Plan For Hard To Handle Locations****October 2013**

Continue Collection program.

Continue to provide outreach and public education as necessary to maximize participation.

Continue tracking diversion performance.

Provide January program diversion data to CITY and to affected neighborhoods.

**November 2013**

Continue Collection program.

Continue to provide outreach and public education as necessary to maximize participation.

Continue tracking diversion performance.

Provide January and February program diversion data to CITY and to affected neighborhoods.

**December 2013**

Continue Collection program.

Continue to provide targeted program outreach and public education only if necessary.

Discontinue program-specific tracking of diversion performance.

Provide Q4 2013 program diversion data to CITY and to affected neighborhoods. Inform all parties that diversion data will not be separately tracked from this point forward, but diversion will be included in City-wide numbers.

Recognize efforts of the affected neighborhoods, with special acknowledgment given to those residents who demonstrated extra interest and high participation, at City Council meeting.

**January 1, 2014**

Complete implementation

## EXHIBIT 7 – Difficult-to-Recycle Materials

On or before August 1, 2013, CONTRACTOR, at their own expense, will provide Difficult-to-Recycle Collection Service as set forth in Sections 9.20 and 10.15 herein. CONTRACTOR shall provide Difficult-to-Recycle Collection Service for SFD and MFD Service Units at a budget no less than \$40,300 per Contract Year and a budget of \$5,000 per Contract Year for Commercial Conditionally Exempt Small Quantity Generators. The annual budgets for Difficult-to-Recycle Materials will be adjusted by the same percentage as Service Component as specified in Section 5.02.1.

### Eligible Waste

In general, most ordinary household chemicals purchased at retail stores are eligible for SFD, MFD and Commercial Conditionally Exempt Small Quantity Generators Difficult-to-Recycle Collection Service. Most consumers' electronic items can be Collected including microwave ovens (large appliances are not acceptable). Console TV's and similar consumer electronic items in limited amounts are eligible unless they originate from a Business Service Unit. Universal Waste is Collected and typically includes fluorescent lamps, compact fluorescent bulbs, and mercury devices. The following list is not all-inclusive.

### Difficult-to-Recycle Materials Eligible Waste

#### Garden Chemicals

- |   |              |
|---|--------------|
| ▪ Insect sprays                           | ▪ Fertilizer |
| ▪ Weed killers                            | ▪ Herbicides |
| ▪ Other poisons, rat poison, roach poison |              |

#### Swimming Pool Chemicals

- |                             |              |
|-----------------------------|--------------|
| ▪ Pool acid                 | ▪ Stabilizer |
| ▪ Chlorine: tablets, liquid |              |

#### Automotive Waste

- |                  |                               |
|------------------|-------------------------------|
| ▪ Motor Oil      | ▪ Diesel fuel                 |
| ▪ Antifreeze     | ▪ Used Oil / Used Oil Filters |
| ▪ Waxes/Polishes | ▪ Transmission fluid          |
| ▪ Cleaners       | ▪ Windshield washer fluid     |
| ▪ Brake fluid    | ▪ Hydraulic fluid             |
| ▪ Gasoline       | ▪ Automotive batteries        |

#### Paint Products

- |                   |                     |
|-------------------|---------------------|
| ▪ Oil based paint | ▪ Caulking          |
| ▪ Latex paint     | ▪ Wood preservative |



### EXHIBIT 7 – Difficult-to-Recycle Materials

- |            |           |
|------------|-----------|
| ▪ Stripper | ▪ Glue    |
| ▪ Stains   | ▪ Thinner |

#### Household Cleaners

- |                  |                           |
|------------------|---------------------------|
| ▪ Bleach         | ▪ Tile remover            |
| ▪ Ammonia        | ▪ Floor and tile cleaners |
| ▪ Floor stripper | ▪ Naval jelly             |
| ▪ Drain cleaner  | ▪ Driveway cleaner        |

#### Misc. Household

- |                         |                             |
|-------------------------|-----------------------------|
| ▪ Household batteries   | ▪ Compact Fluorescent Bulbs |
| ▪ Televisions, Monitors | ▪ High intensity lamps      |
| ▪ Fluorescent tubes     | ▪ Sharps: needles, lancets  |
|                         | ▪ Propane Cylinders         |

### Ineligible Waste

Commercial waste, waste from Business Service Units, unusually large quantities of the same waste are not eligible for this program (not totally inclusive).

- |   |  |
|---|--|
| ▪ Biological waste                                | ▪ Materials improperly packed for transportation |
| ▪ Radioactive materials including smoke detectors | ▪ Unknown material                               |
| ▪ Ammunition                                      | ▪ Tires  |
| ▪ Explosives                                      | ▪ Appliances                                     |
| ▪ Commercial chemicals                            | ▪ Liquid mercury                                 |
| ▪ Large containers over five (5) gallons          | ▪ Driveway sealer greater than five (5) gallons  |
| ▪ Unlabeled material                              | ▪ All medicines                                  |
| ▪ Fire extinguishers                              |  |

**EXHIBIT 8 – HHW, E-Waste, Universal Waste, and Document Destruction  
Collection Event**

CONTRACTOR shall host an annual Collection event that will be open to all residents and businesses (including the CITY) in the CITY as set forth in Sections 9.21 and 10.16.

**Basic Program Elements:**

- Once per year, on a day identified by the CITY, at a location chosen by the CITY, CONTRACTOR shall host a community event where all residents and businesses can bring E-Waste, Universal Waste, paint for Collection, and documents for secure destruction.
- A licensed E-Waste processor, approved by the CITY, will recycle all E-Waste items delivered in full compliance with all Applicable Laws.
- Tonnage will be tracked and reported to the CITY.

**Schedule:**

- The Schedule for this program will be developed at the CITY's discretion. CONTRACTOR recommends holding this event during a non-holiday weekend in Spring or Fall centered around an environmental event.

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## EXHIBIT 9 – Commercial Wet/Dry Service Plan

### **Basic Program Elements:**

- All Commercial Service Units will be evaluated for appropriate allocation to wet or dry route.
- CONTRACTOR will develop, print, and distribute educational materials, as well as provide all necessary Public Education and Outreach to the business community and to all Commercial Service Units for this program.
- New commercial routes or rerouting will occur to ensure a minimum impact to Customers.
- Wet waste loads will be delivered to Orange County landfills for disposal.
- Dry loads shall be delivered to Sunset Environmental facility for processing and diversion of Recyclable Materials.
- Diversion performance will be tracked and reported to CITY.

### **Implementation Schedule:**

<b>Month/Year</b>	<b>Program Activity</b>
August 2013	<p>CONTRACTOR begins Customer base evaluation to identify wet, dry and wet/dry Customers – includes interviews with drivers, waste characterizations, site surveys for space constraints, etc.</p> <p>CONTRACTOR prepares Public Education material.</p> <p>CONTRACTOR finalizes Public Education material with CITY staff.</p> <p>CONTRACTOR begins development of virtual routing scheme.</p>
September - October 2013	<p>Distribution of initial Public Education materials.</p> <p>Recycling Coordinator begins one-on-one Customer visits and group presentations.</p> <p>CONTRACTOR reviews route changes with CITY staff and with affected Customers.</p>
Oct - Nov 2013	<p>CONTRACTOR makes Container changes as necessary for affected Customers.</p> <p>CONTRACTOR makes necessary changes to route sheets and Customer account profiles, if necessary.</p>
December 2013	<p>Launch new Wet/Dry routes</p> <p>Begin tracking and reporting of diversion improvements.</p>

**EXHIBIT 9 – Commercial Wet/Dry Service Plan**

Make adjustments as necessary.

January 1 2014

Program in full deployment.

Recycling Coordinator and Route Manager continue to communicate with Customers to ensure program is sustainable.

EXHIBIT 10 - Vehicle Replacement Schedule						
Unit No	Year	Unit Description	Fuel Type	Alt. Unit No.	License No	Replacement Date
101529*	2002	VOLVO WXLL64	CNG	Residential	8S28125	4 <sup>th</sup> Qtr 2013
101539*	2002	VOLVO WXLL64	CNG	Residential	8S28128	4 <sup>th</sup> Qtr 2013
103120	2008	AUTOCAR WX64	CNG	Residential	8S59652	2019
103121	2008	AUTOCAR WX64	CNG	Residential	8R87705	2019
103122	2008	AUTOCAR WX64	CNG	Residential	8R87517	2019
103123	2008	AUTOCAR WX64	CNG	Residential	8R87350	2019
103124	2008	AUTOCAR WX64	CNG	Residential	8R87293	2019
103125	2008	AUTOCAR WX64	CNG	Residential	8R87348	2019
103919	2012	AUTOCAR ACX42	CNG	Residential small truck (shared)	95974E1	2023
264112	2006	AUTOCAR WXLL64	CNG	Commercial	8B68947	2017
264821	2009	AUTOCAR WXLL64	CNG	Commercial	8V28287	2020
264823	2009	AUTOCAR WXLL64	CNG	Commercial	8V28631	2020



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**EXHIBIT 11**  
**Maximum Service Rates**  
**Effective August 1, 2013 through June 30, 2015**

<b>Residential</b>	<b>Disposal</b>	<b>Service</b>	<b>Total Rate</b>
Residential Collection	\$1.79	\$13.08	<b>\$ 14.87</b>
Each Additional Cart - Green Waste (3 carts or more)	\$0.00	\$2.34	<b>\$ 2.34</b>
Each Additional Cart - Recycling (3 carts or more)	\$0.00	\$2.34	<b>\$ 2.34</b>
Each Additional Cart - Refuse (2 carts or more)	\$1.98	\$0.36	<b>\$ 2.34</b>
Each Additional Bagged Refuse Overage Collection (6 or more Collections per calendar year)	\$1.98	\$0.36	<b>\$ 2.34</b>
Each Additional Bagged Refuse Overage Bag (6 or more bags per each collection)	\$0.40	\$0.60	<b>\$ 1.00</b>
Replacement Cart Damaged (Result of Misuse)	\$0.00	\$58.55	<b>\$ 58.55</b>
Large Item Pickup Service (Free of charge for first 3 requests each calendar year)	No Charge	No Charge	<b>No Charge</b>
Additional Large Item Pickup Service	\$6.10	\$32.58	<b>\$ 38.68</b>
Residential Bagster 1 <sup>st</sup> Bagster Collection	\$0.00	\$129.00	<b>\$129.00</b>
Additional Bagster collected at same occurrence	\$0.00	\$109.00	<b>\$109.00</b>
<b>Commercial - 64 Gallon Cart (Per Week Frequency)</b>	<b>Disposal</b>	<b>Service</b>	<b>Total Rate</b>
1x/week	\$4.34	\$42.06	<b>\$ 46.40</b>
2 x/week	\$8.68	\$55.27	<b>\$ 63.95</b>
3 x/week	\$13.02	\$65.86	<b>\$ 78.88</b>
4 x/week	\$17.36	\$77.79	<b>\$ 95.15</b>
5 x/week	\$21.70	\$88.37	<b>\$110.07</b>
6 x/week	\$26.03	\$100.28	<b>\$126.31</b>
<b>Commercial - 96 Gallon Cart (Per Week Frequency)</b>	<b>Disposal</b>	<b>Service</b>	<b>Total Rate</b>
1x/week	\$6.51	\$42.70	<b>\$ 49.21</b>
2 x/week	\$13.02	\$55.39	<b>\$ 68.41</b>
3 x/week	\$19.53	\$64.73	<b>\$ 84.26</b>
4 x/week	\$26.03	\$75.35	<b>\$101.38</b>
5 x/week	\$32.54	\$86.00	<b>\$118.54</b>
6 x/week	\$39.05	\$96.66	<b>\$135.71</b>

**EXHIBIT 11**  
**Maximum Service Rates**  
**Effective August 1, 2013 through June 30, 2015**

<b>Commercial - Curbside - MFD (6 Units or More)</b>	<b>Disposal</b>	<b>Service</b>	<b>Total Rate</b>
1x/week	\$5.85	\$37.96	<b>\$ 43.81</b>
Each Extra Unit over 6 Units with 1x/week collection	\$0.99	\$6.17	<b>\$ 7.17</b>
2x/week	\$11.69	\$53.56	<b>\$ 65.26</b>
Each Extra Unit over 6 Units with 2x/week collection	\$1.36	\$4.36	<b>\$ 5.72</b>
<b>Commercial - One Yard Bin (Per Week Frequency)</b>	<b>Disposal</b>	<b>Service</b>	<b>Total Rate</b>
1x/week	\$9.31	\$108.48	<b>\$117.79</b>
2 x/week	\$18.63	\$143.70	<b>\$162.33</b>
3 x/week	\$27.96	\$172.59	<b>\$200.55</b>
4 x/week	\$37.28	\$207.01	<b>\$244.29</b>
5 x/week	\$46.60	\$239.66	<b>\$286.25</b>
6 x/week	\$55.91	\$269.48	<b>\$325.39</b>
<b>Commercial - Two Yard Bin (Per Week Frequency)</b>	<b>Disposal</b>	<b>Service</b>	<b>Total Rate</b>
1x/week	\$18.63	\$110.07	<b>\$128.70</b>
2 x/week	\$37.28	\$146.90	<b>\$184.18</b>
3 x/week	\$55.91	\$177.37	<b>\$233.28</b>
4 x/week	\$74.56	\$213.39	<b>\$287.95</b>
5 x/week	\$93.20	\$247.62	<b>\$340.82</b>
6 x/week	\$111.82	\$279.04	<b>\$390.86</b>
<b>Commercial - Three Yard Bin Cart (Per Week Frequency)</b>	<b>Disposal</b>	<b>Service</b>	<b>Total Rate</b>
1x/week	\$27.96	\$116.12	<b>\$144.08</b>
2 x/week	\$55.91	\$155.94	<b>\$211.85</b>
3 x/week	\$83.88	\$189.14	<b>\$273.02</b>
4 x/week	\$111.83	\$228.10	<b>\$339.93</b>
5 x/week	\$139.79	\$265.24	<b>\$405.03</b>
6 x/week	\$167.75	\$299.43	<b>\$467.18</b>

**EXHIBIT 11**  
**Maximum Service Rates**  
**Effective August 1, 2013 through June 30, 2015**

<b>Commercial - Three Yard Split Bin (Per Week Frequency)</b>	<b>Disposal</b>	<b>Service</b>	<b>Total Rate</b>
1x/week	\$13.02	\$110.35	<b>\$123.37</b>
2 x/week	\$26.03	\$147.39	<b>\$173.42</b>
3 x/week	\$39.05	\$178.06	<b>\$217.11</b>
4 x/week	\$52.07	\$214.29	<b>\$266.36</b>
5 x/week	\$65.09	\$248.73	<b>\$313.81</b>
6 x/week	\$78.10	\$280.34	<b>\$358.44</b>
<b>Commercial - Four Yard Bin (Per Week Frequency)</b>	<b>Disposal</b>	<b>Service</b>	<b>Total Rate</b>
1x/week	\$37.28	\$154.82	<b>\$192.11</b>
2 x/week	\$74.56	\$207.92	<b>\$282.48</b>
3 x/week	\$111.82	\$252.19	<b>\$364.01</b>
4 x/week	\$149.10	\$304.17	<b>\$453.27</b>
5 x/week	\$186.38	\$353.67	<b>\$540.04</b>
6 x/week	\$223.67	\$399.24	<b>\$622.91</b>
<b>Commercial - Insta Bin (Per Week Frequency)</b>	<b>Disposal</b>	<b>Service</b>	<b>Total Rate</b>
1 Day	\$26.03	\$108.36	<b>\$134.40</b>
2 Days	\$26.03	\$115.72	<b>\$141.76</b>
3 Days	\$26.03	\$123.08	<b>\$149.11</b>
4 Days	\$26.03	\$130.43	<b>\$156.47</b>
5 Days	\$26.03	\$137.79	<b>\$163.82</b>
6 Days	\$26.03	\$145.15	<b>\$171.18</b>
Weekend	\$26.03	\$145.15	<b>\$171.18</b>
Additional Days	\$0.00	\$7.36	<b>\$ 7.36</b>

**EXHIBIT 11**  
**Maximum Service Rates**  
**Effective August 1, 2013 through June 30, 2015**

<b>Commercial - Additional Rates (Each Occurrence)</b>	<b>Disposal</b>	<b>Service</b>	<b>Total Rate</b>
Commercial Service Units Large Item pick up service (Free of charge for first three requests each calendar year)	No Charge	No Charge	<b>No Charge</b>
Additional Business Service Units Large Item Pickup Service	\$17.43	\$144.41	<b>\$161.84</b>
Additional MFD and Mixed Used Dwellings Large Item Pickup Service	\$6.10	\$32.58	<b>\$ 38.68</b>
Additional Bin Pickup	\$6.01	\$42.06	<b>\$ 48.07</b>
Locking Fee	\$0.00	\$6.87	<b>\$ 6.87</b>
Sunday, Holiday Service	\$6.01	\$62.67	<b>\$ 68.68</b>
Graffiti Removal	\$0.00	\$34.34	<b>\$ 34.34</b>
Overloaded Bins	\$0.00	\$41.21	<b>\$ 41.21</b>
Late Fee	\$0.00	\$3.15	<b>\$ 3.15</b>
Reactivation Fee	\$0.00	\$26.27	<b>\$ 26.27</b>
Dry Run Fee	\$0.00	\$57.80	<b>\$ 57.80</b>
<b>Distance Moved (monthly rate based on number of Bins time the weekly Collection frequency)</b>	<b>Disposal</b>	<b>Service</b>	<b>Total Rate</b>
0 to 25 feet	No Charge	No Charge	<b>No Charge</b>
26 to 50 feet	\$0.00	\$2.75	<b>\$ 2.75</b>
51 to 75 feet	\$0.00	\$4.12	<b>\$ 4.12</b>
<b>Commercial – Roll-Off Containers (Each Occurrence)</b>	<b>Disposal</b>	<b>Service</b>	<b>Total Rate</b>
Permanent 40 Yard (up to 5 Tons)	\$174.28	\$297.10	<b>\$471.38</b>
Temporary 40 Yard - 2 Days (up to 5 Tons)	\$174.28	\$341.55	<b>\$515.83</b>
Temporary 40 Yard - 6 Days (up to 5 Tons)	\$174.28	\$350.46	<b>\$524.74</b>
Temporary C&D & Processing 40 Yard - 2 Days (up to 5 Tons)	\$275.64	\$349.92	<b>\$625.56</b>
Temporary C&D & Processing 40 Yard - 6 Days (up to 5 Tons)	\$275.64	\$395.33	<b>\$670.97</b>
Temporary C&D & Processing 10 Yard - 2 Days (up to 5 Tons)	\$275.64	\$414.68	<b>\$690.32</b>
Temporary C&D & Processing 10 Yard - 6 Days (up to 5 Tons)	\$275.64	\$460.61	<b>\$736.26</b>
Permanent - 40 yard Compactor	\$278.84	\$266.82	<b>\$545.65</b>
Demurrage Per Day Charge - Temporary Only	\$0.00	\$9.06	<b>\$ 9.06</b>
Permanent & Temporary Disposal and Processing Rate – Over 5 Tons	\$34.86	\$0.00	<b>\$ 34.86</b>
<b>Disposal and Processing Rate (Per Ton Rate)</b>	<b>Disposal</b>	<b>Service</b>	<b>Total Rate</b>
Temporary C&D > 5 tons	\$55.13	\$0.00	<b>\$ 55.13</b>
C&D Processing Rate	\$55.13	\$0.00	<b>\$ 55.13</b>
County Disposal	\$34.86	\$0.00	<b>\$ 34.86</b>

**ATTACHMENT A**

**Waste Disposal Agreement between the City of Laguna Beach and the County of Orange**







ORANGE COUNTY

# Waste & Recycling

Our Community. Our Commitment.

Michael B. Giancola, Director  
300 N. Flower Street, Suite 400  
Santa Ana, CA 92703

[www.ocjardfils.com](http://www.ocjardfils.com)  
Telephone: (714) 834-4000  
Fax: (714) 834-4183

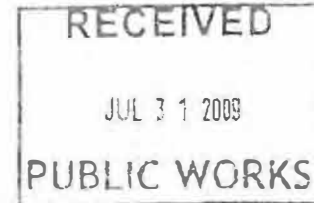
## Memorandum

Date: July 30, 2009

To: Cities, Facility Operators, and Sanitation Districts

From: Jeff Southern */s/*

Subject: Executed copy of Waste Disposal Agreement



Enclosed is your copy of the fully executed Waste Disposal Agreement with the County of Orange OC Waste & Recycling Department. The County maintains two original copies of the document, one at the Clerk of the Board and the other with the Department. Should you have any questions or need any assistance please do not hesitate to call me.

(714) 834-2652

Thank you,

Jeff Southern

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WASTE DISPOSAL AGREEMENT

Between

THE COUNTY OF ORANGE, CALIFORNIA

And the

CITY OF LAGUNA BEACH

Dated May 19, 2009

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County Authorization Date:

March 24, 2009

County Notice Address:

Director  
OC Waste & Recycling  
300 N. Flower Street, Suite 400  
Santa Ana, CA 92703

City Authorization Date:

May 19, 2009

City Notice Address:

City of Laguna Beach  
505 Forest Avenue  
Laguna Beach, CA 92651

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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:

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 1980 (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 Primo 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.

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.

"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, or 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 1925, 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

(F) 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. (i) 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(I).

(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:

$(\text{July CPI of calculation year} / \text{CPI for July 2008})$

<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 (1) 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(J), 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.

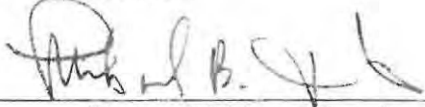
SECTION 7.15 BINDING EFFECT. This Agreement shall bind and inure to the benefit of the parties hereto and any successor or assignee acquiring an interest hereunder consistent with the provisions of Section 7.13 hereof.

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

Date 2/9/09

COUNTY OF ORANGE

By   
Director, OC Waste & Recycling


Date 7/7/09

By   
Kenneth Frank  
City Manager  
City of Laguna Beach

Date \_\_\_\_\_

By N/A  
[NAME]  
City Representative  
City of Laguna Beach

APPROVED AS TO FORM:  
COUNTY COUNSEL  
ORANGE COUNTY, CALIFORNIA

By   
Date 07.27.09

**APPENDIX 1**

**ESTIMATED ANNUAL TONNAGE**

# 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



**APPENDIX 2**  
**CUMULATIVE TONNAGE TARGETS**

## APPENDIX 2

### Cumulative County Acceptable Waste Tonnage Target to be Used for Purposes of Section 4.2 (B)

<i>Fiscal Year</i>	<i>County Acceptable Waste Tonnage</i>	<i>Cumulative County Acceptable Waste Tonnage</i>
FY 2008-09	3,170,387	3,170,387
FY 2009-10	3,092,806	6,263,193
FY 2010-11	3,185,590	9,448,783
FY 2011-12	3,344,870	12,793,653
FY 2012-13	3,445,216	16,238,869
FY 2013-14	3,514,120	19,752,989
FY 2014-15	3,549,262	23,302,251
FY 2015-16	3,565,608	26,867,859
FY 2016-17	3,582,033	30,449,892
FY 2017-18	3,598,535	34,048,427
FY 2018-19	3,615,115	37,663,542
FY 2019-20	3,631,774	41,295,316

APPENDIX 3  
CUMULATIVE CAPITAL COSTS  
to be Used  
for Purposes of Section 4.2(A)vi

Fiscal Year (ending June 30)	Annual Capital Costs	Cumulative Capital Costs
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

**APPENDIX 4**  
**FORM OF HAULER ACKNOWLEDGMENT**

## FRANCHISE HAULER ACKNOWLEDGMENT

THIS FRANCHISE HAULER ACKNOWLEDGMENT, dated as of July 7, 2009 (the "Acknowledgment"), by and between the City of Laguna Beach (the "City") and USA Waste of California, Inc., a Delaware Corporation dba Waste Management of Orange County (the "Franchise Hauler").

### WITNESSETH

[WHEREAS, the City and the Franchise Hauler have heretofore entered into an agreement entitled Amended and Restated Solid Waste Services Agreement, dated as of July 1, 2007 (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 [SUBSTITUTE "AUTHORIZATION" THROUGHOUT IF APPLICABLE]] provides for 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 19, 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.

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 5.1 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 7<sup>th</sup> day of July, 2009.

CITY OF LAGUNA BEACH

Signature: Kenneth Frank

Printed Name: Kenneth Frank

Title: City Manager

USA Waste of California/dba Waste Management of Orange County

Signature: [Signature]

Printed Name: John Rose

Title: President



RESOLUTION NO. 13.048

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LAGUNA BEACH, CALIFORNIA APPROVING THE EXCLUSIVE FRANCHISE AGREEMENT ENTERED BETWEEN THE CITY OF LAGUNA BEACH AND USA WASTE OF CALIFORNIA, INC., A DELAWARE CORPORATION.

WHEREAS, the City desires to create a fully-integrated solid waste management system and has determined the most appropriate means to do so is through the award of an exclusive franchise for the collection, disposal and processing of solid waste; and

WHEREAS, through its past performance, USA Waste of California (Contractor) has demonstrated an ability to satisfactorily provide solid waste handling services in the City; and

WHEREAS, Contractor has agreed to terms to be included in a franchise agreement that the City Council finds will enable the City to meet or exceed its expectations and goals in awarding an exclusive franchise; and

WHEREAS, based on the above, the City Council desires to enter an exclusive franchise agreement with Contractor for the collection, disposal and processing of solid waste in the City as more fully set forth in franchise agreement presented to the City Council on July 16, 2013 for approval (which is attached hereto and incorporated herein by reference); and

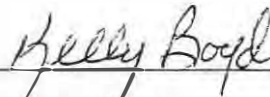
WHEREAS, Public Resources Code section 49300 requires the City Council to approve the terms of the proposed franchise agreement with Contractor for providing solid waste handling services pursuant to a resolution.

NOW, THEREFORE, the City Council of the City of Laguna Beach does RESOLVE as follows:

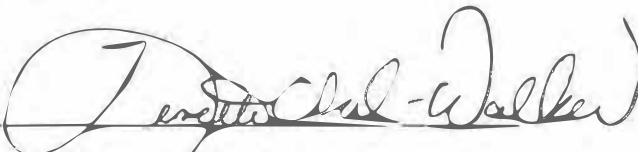
The City Council hereby approves the exclusive franchise agreement between Contractor and the City of Laguna Beach to provide solid waste handling services as set forth in the agreement attached hereto and incorporated herein by this reference and hereby authorizes the City Manager to execute such agreement, and further authorizes the Mayor to execute this Resolution, all on

1 behalf of the City.

2 ADOPTED this 16th day of July 2013.

3  
4   
5 Kelly Boyd, Mayor

6 ATTEST:

7   
8  
9 Lisette Chel-Walker, City Clerk

10  
11 STATE OF CALIFORNIA )

12 ) ss.


13 COUNTY OF ORANGE )  
14

15 I, LISETTE CHEL-WALKER, Clerk of the City Council of the City of Laguna Beach,  
16 California, do hereby certify that the foregoing Resolution No. 13.048 was duly adopted at a  
17 Regular Meeting of the City Council of said City held on July 16, 2013, by the following vote:

18 AYES: COUNCILMEMBERS: Whalen, Iseman, Dicterow, Pearson, Boyd

19 NOES: COUNCILMEMBERS: None

20 ABSENT: COUNCILMEMBERS: None

21  
22   
23 Lisette Chel-Walker, City Clerk  
24  
25  
26  
27  
28

## Performance Bond

Bond No: 864704

KNOW ALL MEN BY THESE PRESENTS, that USA Waste of California, Inc., 16122 Construction Circle East, Irvine, CA 92606, the Principal, and Evergreen National Indemnity Company, 6140 Parkland Boulevard, Suite 321, Mayfield Heights, OH 44124 the Surety, are held and firmly bound unto the City of Laguna Beach, 505 Forest Avenue, Laguna Beach, CA 92651 as Obligee, in the penal sum of Three Hundred Thousand and 00/100 Dollars (\$300,000.00) for the payment of which we bind ourselves, our heirs, administrators, executors, successors, and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has entered into a certain written Contract for Residential, Commercial, and City Solid Waste, Recycling, Organic Waste, Household Hazardous Waste and Electronic Waste with the above mentioned Obligee, which contract is hereby incorporated herein as if fully rewritten Notwithstanding, any terms and provisions specifically modified herein shall have the meaning given in this bond.

NOW, THEREFORE, the condition of the above obligation is such that if the Principal shall promptly and faithfully perform this Contract, then this obligation shall be null and void; subject, however, to the following conditions:

1. This bond is for the term beginning August 1, 2013 and ending June 30, 2023.
2. If there is no breach or default on the part of the Obligee, then the Surety's performance obligation under the bond shall arise after:
  - a. The Obligee has notified the Principal and the Surety in writing at their respective addresses of the alleged breach, and has requested and attempted to arrange a conference with the Principal and the Surety to be held not later than fifteen (15) days after receipt of such notice to discuss methods of performing the Contract; and has made available during notice period all books, records, and accounts relevant to the Contract which may be requested by the Principal or Surety. If the Obligee, Principal and Surety agree, the Principal shall be allowed a reasonable time to perform the Contract; but such an contract shall not waive the Obligee's right, if any subsequently to declare a Principal default;
  - b. The Obligee has declared the Principal in default and formally terminated the Principal's right to complete the Contract, provided, however, that such default shall not be declared earlier than twenty (20) days after the Principal and the Surety have received the notice as provided in "a" above; and
  - c. The Obligee has agreed to pay the balance of the Contract price to the Surety in accordance with the terms of the Contract or to the such contractor as may be tendered by the Surety to the Obligee.
3. No claim, action, suit or proceeding, except as hereinafter set forth, shall be had or maintained against the Surety of this instrument unless same be brought or instituted and process served upon the Surety within six months after the expiration of the bond. The parties hereto expressly acknowledge and agree that no liquidated damages shall be claimed, due or payable by Surety pursuant to this Bond.
4. The bond may be extended for additional terms at the option of the Surety, by Continuation Certificate executed by the Surety.
5. Neither non-renewal by the Surety, nor failure, nor inability of the Principal to file a replacement bond shall constitute loss to the Obligee recoverable under this bond.
6. In no event shall the liability of the Surety hereunder exceed the penal sum hereof.

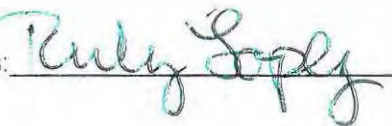
Signed, sealed and executed this 26th day of July 2013.


USA Waste of California, Inc.  
Principal

By:   
**Donna L. Meals, Authorized Representative**  
(Corporate Seal)

Evergreen National Indemnity Company  
Surety

By:   
**Cheryl C. May, Attorney-In-Fact**  
(Corporate Seal)

Witness: 

Witness:   
Joy M. Brown

## CORPORATE ACKNOWLEDGMENT

State of Texas

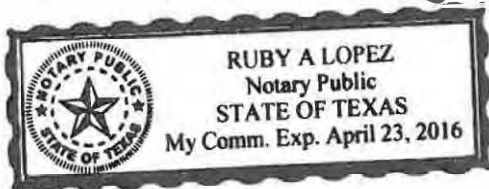
SS:

County of Harris

On this 26th day of July 2013, before me, Ruby A. Lopez, Notary Public, personally appeared Donna L. Meals, to me known and known to me to be the Authorized Representative of USA Waste of California, Inc., and who executed the foregoing instrument, and she thereupon duly acknowledged to me that she executed the same as her free and voluntary act.

Ruby A. Lopez  
Notary Public

April 23, 2016  
Expiration Date



## SURETY ACKNOWLEDGMENT

State of Ohio

SS:

County of Cuyahoga

On this 26th day of July 2013, before me, Julie K. Bowers, Notary Public, personally appeared Cheryl C. May, to me known, who being by me duly sworn, did depose and say that she is the Attorney-In-Fact of Evergreen National Indemnity Company, the Surety company described in and which executed the foregoing instrument; that such execution was authorized by the Surety company, and evidenced by the attached Power of Attorney.

Julie K Bowers  
Julie K. Bowers, Notary Public

8-13-2014  
Expiration Date



JULIE K BOWERS  
NOTARY PUBLIC  
STATE OF OHIO  
Comm. Expires  
August 13, 2014  
Recorded in  
Portage County

**EVERGREEN NATIONAL INDEMNITY COMPANY**  
**MAYFIELD HEIGHTS, OH**  
**POWER OF ATTORNEY**

Bond No. 864604

KNOW ALL MEN BY THESE PRESENTS: That the Evergreen National Indemnity Company, a corporation in the State of Ohio does hereby nominate, constitute and appoint: \*\*\*CHERYL C. MAY\*\*\*

its true and lawful Attorney(s)-In-Fact to make, execute, attest, seal and deliver for and on its behalf, as Surety, and as its act and deed, where required, any and all bonds, undertakings, recognizances and written obligations in the nature thereof, PROVIDED, however, that the obligation of the Company under this Power of Attorney shall not exceed **THREE HUNDRED THOUSAND AND 00/100 DOLLARS (\$300,000.00)**

This Power of Attorney is granted and is signed by facsimile pursuant to the following Resolution adopted by its Board of Directors on the 23rd day of July, 2004:

"RESOLVED, That any two officers of the Company have the authority to make, execute and deliver a Power of Attorney constituting as Attorney(s)-in-fact such persons, firms, or corporations as may be selected from time to time.

FURTHER RESOLVED, that the signatures of such officers and the Seal of the Company may be affixed to any such Power of Attorney or any certificate relating thereto by facsimile; and any such Power of Attorney or certificate bearing such facsimile signatures or facsimile seal shall be valid and binding upon the Company; and any such powers so executed and certified by facsimile signatures and facsimile seal shall be valid and binding upon the Company in the future with respect to any bond or undertaking to which it is attached."

IN WITNESS WHEREOF, the Evergreen National Indemnity Company has caused its corporate seal to be affixed hereunto, and these presents to be signed by its duly authorized officers this 1st day of June, 2009.

EVERGREEN NATIONAL INDEMNITY COMPANY



By: Charles D. Hamm Jr.  
Charles D. Hamm Jr., President

By: David A. Canzone  
David A. Canzone, CFO

Notary Public,  
State of Ohio)

SS:

On this 1st day of June, 2009, before the subscriber, a Notary for the State of Ohio, duly commissioned and qualified, personally came Charles D. Hamm, Jr. and David A. Canzone of the Evergreen National Indemnity Company, to me personally known to be the individuals and officers described herein, and who executed the preceding instrument and acknowledged the execution of the same and being by me duly sworn, deposed and said that they are the officers of said Company aforesaid, and that the seal affixed to the preceding instrument is the Corporate Seal of said Company, and the said Corporate Seal and signatures as officers were duly affixed and subscribed to the said instrument by the authority and direction of said Corporation, and that the resolution of said Company, referred to in the preceding instrument, is now in force.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal at Columbus, Ohio, the day and year above written.



Penny M. Burns

Penny M. Burns, Notary Public  
My Commission Expires April 4, 2017

State of Ohio )

SS:

I, the undersigned, Secretary of the Evergreen National Indemnity Company, a stock corporation of the State of Ohio, DO HEREBY CERTIFY that the foregoing Power of Attorney remains in full force and has not been revoked; and furthermore that the Resolution of the Board of Directors, set forth herein above, is now in force.

Signed and sealed in Mayfield Hts, Ohio this 26th day of July 2013



Wan C. Collier

Wan C. Collier, Secretary



STATE OF CALIFORNIA  
DEPARTMENT OF INSURANCE  
SAN FRANCISCO

NO 08366

## Certificate of Authority

THIS IS TO CERTIFY THAT, Pursuant to the Insurance Code of the State of California,

Evergreen National Indemnity Company

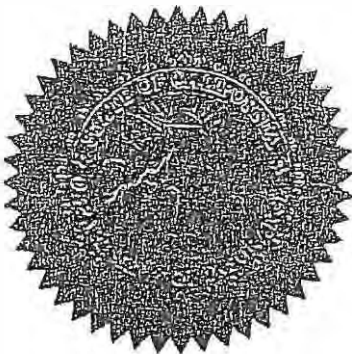
of Ohio, organized under the  
laws of Ohio, subject to its Articles of Incorporation or  
other fundamental organizational documents, is hereby authorized to transact within the State, subject to  
all provisions of this Certificate, the following classes of insurance:

Surety


as such classes are now or may hereafter be defined in the Insurance Laws of the State of California.

THIS CERTIFICATE is expressly conditioned upon the holder hereof now and hereafter being in  
full compliance with all, and not in violation of any, of the applicable laws and lawful requirements made  
under authority of the laws of the State of California as long as such laws or requirements are in effect  
and applicable, and as such laws and requirements now are, or may hereafter be changed or amended.

IN WITNESS WHEREOF, effective as of the 30th  
day of March 2007, I have hereunto  
set my hand and caused my official seal to be affixed this  
30th day of March 2007



By

Steve Poizner  
Insurance Commissioner  
  
Susan J. Stapp  
for Richard D. Baum Deputy  
Chief Deputy

**NOTICE:**

Qualification with the Secretary of State must be accomplished as required by the California Corporations Code promptly after issuance of this Certificate of Authority. Failure to do so will be a violation of Insurance Code Section 701 and will be grounds for revoking this Certificate of Authority pursuant to the covenants made in the application therefor and the conditions contained herein.



## Evergreen National Indemnity Company

### Certificate

2012

The following financial information was excerpted from the Statutory Annual Statement filed by Evergreen National Indemnity Company with the Ohio Department of Insurance.

#### STATEMENT OF INCOME

Direct Written Premium	\$ 32,530,919
Reinsurance Assumed	4,240,538
Reinsurance Ceded	(24,873,948)
Net Written Premium	11,897,509
Change in Unearned	(229,566)
Net Earned Premium	11,667,943
Losses & LAE Incurred	(396,453)
Net Commission Expense	5,897,283
Other Expenses	3,246,773
Underwriting Gain/ (Loss)	2,920,340
Net Investment Income	922,857
Net Realized Capital Gains (Loss)	229,919
Other Income/ (Expense)	17,674
Income Before FIT	4,090,790
Federal Income Tax	1,291,129
Net Income	2,799,661

#### BALANCE SHEET

##### Assets

Invested Assets	47,804,541
Agent's Balances (net of Reins.)	1,954,182
Reinsurance Recoverable	280,438
Other Assets	724,074
<b>Total Assets</b>	<b>50,763,235</b>

##### Liabilities & Surplus

Unearned Premium Reserve	4,486,557
Loss & LAE Reserves	3,610,866
Ceded Reinsurance Payable	3,659,478
Other Liabilities	5,354,503
<b>Total Liabilities</b>	<b>17,111,404</b>
<b>Surplus</b>	<b>33,651,831</b>
<b>Total Liabilities &amp; Surplus</b>	<b>50,763,235</b>

I hereby certify that the above information is that contained in the Statutory Annual Statement filed by Evergreen National Indemnity Company with the Ohio Department of Insurance for the year ending December 31, 2012.

David A. Canzone, Treasurer