

AGREEMENT
BETWEEN
CITY OF DANA POINT
AND
CR&R, INCORPORATED
FOR
SOLID WASTE
HANDLING SERVICES

* * *

March 23, 2006

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Exhibits

1. Initial Maximum Rates
2. County Agreement
3. Rate Adjustment Formula
4. Faithful Performance Bond

AGREEMENT FOR SOLID WASTE HANDLING SERVICES

This Franchise Agreement (hereinafter the "Agreement") is entered as of the Effective Date noted below by and between the City of Dana Point ("City") and CR&R, Incorporated ("Company"), for the provision of Solid Waste Handling Services.

RECITALS

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

WHEREAS, the City Council has declared that recycling, and complying with the provisions of AB 939 are important policy goals and have included such goals as priorities in the City's strategic plan; and

WHEREAS, pursuant to California Public Resources Code Section 40059(a)(2), and the City's strategic plan, the City Council has determined and hereby finds that the public health, safety, and well-being require that an exclusive franchise be awarded to a qualified company for Solid Waste Handling Services in City, as set forth herein; and,

WHEREAS, the City declares its intention of maintaining reasonable rates and quality service for Solid Waste Handling Services by establishing maximum caps on the rates which may be charged for such services; and,

WHEREAS, City and Company are mindful of the provisions of the laws governing Solid Waste Handling Services, including AB 939, the Resource Conservation and Recovery Act ("RCRA"), and the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"). City and Company desire to leave no doubts as to their respective roles and to memorialize that by entering into this Agreement, City is not thereby becoming an "arranger" or a "generator" as those terms are used in CERCLA, and that it is Company, not City, who is "arranging for" the collection and handling in the City of municipal Solid Waste which may contain hazardous substances; and further to confirm that Company has agreed to indemnify the City in connection with any claims relating to the inadvertent or intentional collection, transportation and/or disposal of hazardous materials that may occur in connection with Company's performance under this Agreement, and

WHEREAS, Company has agreed, as part of this Agreement, to provide such services as are necessary to ensure City complies with the requirements of Public Resources Code Section 40000, et seq.,

WHEREAS, Company currently holds a franchise agreement for Solid Waste Handling Services granted by City (the "Pre-existing Franchise Agreement"), which expires on September 30, 2006, and the City Council of City has decided to renew its relationship with Company and award it the franchise set forth in this Agreement, subject to the rights and limitations of this Agreement.

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

ARTICLE 1 DEFINITIONS

Whenever any term used in this Agreement has been defined by the provisions of City's Municipal Code, the California Public Resources Code, or the California Code of Regulations, such definitions shall apply (with precedence given to conflicting definitions in the following order: the City's Municipal Code, then the Public Resources Code and then the Code of Regulations) unless the term is otherwise defined in this Agreement, in which case this Agreement shall control. For purposes of this Agreement, the following terms shall have the following respective meanings:

1.1 AB 939

"AB 939" means the California Integrated Waste Management Act of 1989 (California Public Resources Code Section 40000 et seq.), as it may be amended from time to time, including specifically any subsequently enacted legislation that imposes diversion goals or mandates, and requirements upon City.

1.2 Affiliate

"Affiliate" means all businesses (including corporations, limited and general partnerships and sole proprietorships) which are directly or indirectly related to Company by virtue of direct or indirect ownership interest or common management shall be deemed to be "Affiliated with" Company and included within the term "Affiliates" as used herein. An Affiliate shall include a business in which Company owns a direct or indirect ownership interest, a business which has a direct or indirect ownership interest in Company and/or a business which is also owned, controlled or managed by any business or individual which has a direct or indirect ownership interest in Company. For purposes of determining whether an indirect ownership interest exists, the constructive ownership provisions of Section 318(a) of the Internal Revenue Code of 1986, as in effect on the date of this Agreement, shall apply; provided, however, that (i) "ten percent (10%)" shall be substituted for "fifty percent (50%)" in Section 318(a)(2)(C) and in Section 318(a)(3)(C) thereof; and (ii) Section 318(a)(5)(C) shall be disregarded. For purposes of determining ownership under this paragraph and constructive or indirect ownership under Section 318(a), ownership interest of less than ten percent (10%) shall be disregarded and percentage interests shall be determined on the basis of the percentage of voting interest or value which the ownership interest represents, whichever is greater.

1.3 Billings

"Billings" or "Billing" or "Bill" means the statements of charges provided to Customers for services rendered by Company pursuant to the terms of this Agreement.

1.4 Bin

“Bin” means a metal Container with a capacity of under 10 cubic yards, including compactors, and meeting such other standards as may be imposed by City.

1.5 Bulky Items

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

1.6 Cart

“Cart” means a plastic Container with a hinged lid and wheels serviced by an automated or semi-automated truck with a capacity of no less than 30- and no greater than 101-gallons and meeting such other standards as may be imposed by City.

1.7 City

“City” means City of Dana Point, a municipal corporation, and all the territory lying within the municipal boundaries of City as presently existing or as such boundaries may be modified during the term of this Agreement.

1.8 City Manager

“City Manager” shall mean the City Manager of the City of Dana Point or his/her designated representative.

1.9 Collect/Collection

“Collect” or “Collection” means to take physical possession of and remove Solid Waste from a Premises.

1.10 Commercial Premises

“Commercial Premises” means Premises upon which business activity is conducted, including but not limited to retail sales, services, wholesale operations, manufacturing

and industrial operations, but excluding Premises which are primarily residential in nature and upon which business activities are conducted when such activities are permitted under applicable zoning regulations and are not the primary use of the property. Notwithstanding any provision to the contrary, for purposes of this Agreement Premises upon which the following uses are occurring shall be deemed to be Commercial Premises: hotels; motels; nursing homes; convalescent centers; dormitories; multifamily dwellings, and any other type of Premises not specifically listed at which residency occurs but is transient in nature and hence classified as Commercial Premises as determined by City on a case by case bases.

1.11 Company

“Company” means CR&R, Incorporated, a corporation organized and operating under the laws of the State of California.

1.12 Construction and Demolition Debris

“Construction and Demolition Debris” or “C&D” shall have the meaning set forth in the Municipal Code.

1.13 Container

“Container” means Carts, Bins, and Rolloff Boxes provided by Company.

1.14 Customer

“Customer” means a Person receiving Solid Waste Handling Services from Company pursuant to the terms of this Agreement.

1.15 Disposal

“Disposal” means the ultimate disposition of Solid Waste Collected by Company.

1.16 Dwelling Unit

“Dwelling Unit” means a structure intended for residency by one family or household containing one or more rooms and having sleeping, kitchen and sanitation facilities.

1.17 Environmental Laws

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

the Porter-Cologne Water Quality Control Act, California Water Code §13000 et seq.; the Safe Drinking Water and Toxic Enforcement Act, California Health and Safety Code §25249.5 et seq.; as currently in force or as hereafter amended, and all rules and regulations promulgated thereunder.

1.18 Facility

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

1.19 Green Waste

“Green Waste” means tree trimmings, grass cuttings, dead plants, leaves, branches and dead trees (not more than six (6) inches in diameter or 48 inches in length) and similar materials as more fully described herein.

1.20 Gross Receipts

“Gross Receipts” means any and all revenue receipts, or compensation in any form of Company or subsidiaries, parent companies or other Affiliates of Company, for the Collection and transportation of Solid Waste pursuant to this Agreement, in accordance with generally accepted accounting principals, including, but not limited to, monthly Customer charges for Collection of Solid Waste, without subtracting Franchise Fees, Recycling Fees, or any other cost of doing business; excepting that, revenue from the sale of Recyclable Materials shall be excluded from Gross Receipts for purposes of calculating Franchise Fees.

1.21 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.

1.22 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.

1.23 Materials Recovery Facility (“MRF”)

“Materials Recovery Facility” means a Large Volume Transfer Processing Facility, holding a Solid Waste Facility Permit, as defined in the California Code of Regulations, where Solid Wastes is sorted or separated for the purposes of Recycling, processing or composting.

1.24 Multi-Family Dwelling

“Multi-Family Dwelling” means any building or parcel containing two or more Dwelling Units.

1.25 Person

“Person” means any individual, firm, association, organization, partnership, corporation, business trust, joint venture, or governmental agency.

1.26 Premises

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

1.27 Rate Year

“Rate Year” means the period January 1 to December 31, for each year during the Term of this Agreement.

1.28 Recycling

“Recycling” means the processing of Recyclable Materials for the purpose of returning them to the economy in the form of raw materials for new, reused, or reconstituted products. The Collection, transportation or Disposal of Solid Waste not intended for, or capable of, reuse is not Recycling.

1.29 Recyclable Materials

“Recyclable Materials” means Solid Waste that has some potential economic value, and is set aside, handled, packaged, or offered for Collection in a manner different from Refuse in order to allow it to be processed for Recycling.

1.30 Refuse

“Refuse” means putrescible and non-putrescible Solid Waste.

1.31 Rolloff Box

“Rolloff Box” means Solid Waste Collection Containers of 10-yards or larger, and includes compactors, “high sides” and “low boys,” and which meet such standards as may be imposed by City.

1.32 Single Family Dwelling

“Single Family Dwelling” means a building or parcel containing one Dwelling Unit.

1.33 Solid Waste

“Solid Waste” means all discarded putrescible and non-putrescible solid wastes as defined by Public Resources Code Section 49503, including, without limitation, Refuse, Construction and Demolition Debris, Bulky Items, Recyclable Materials, and Green Waste, or any combination thereof which are permitted to be disposed of in a Class III landfill, and which are included in the definition of “Non-hazardous Solid Waste” set forth in the California Code of Regulations.

1.34 Solid Waste Handling Services

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

1.35 State

“State” means the State of California.

1.36 Temporary Waste Service

“Temporary Waste Service” means the Solid Waste Handling Services related to the Collection of occasional, non-continuing accumulations of Solid Waste which are not generated from ongoing activities or operations, and is limited to Solid Waste Handling Services for either: (a) Construction and Demolition Debris or (b) Solid Waste generated from activities not related to construction which is Collected in a Bin or Rolloff Box in such a manner that a Bin or Rolloff Box designated for its Collection remains on the Premises for no more than thirty (30) days at a time, and for no more than sixty (60) days of any consecutive ninety (90) day period.

1.37 Transformation

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

1.38 Waste Generator

“Waste Generator” means any Person whose act or process produced Solid Waste or whose act first causes Solid Waste to become subject to regulation.

ARTICLE 2 GRANT AND ACCEPTANCE OF FRANCHISE

2.1 Grant and Acceptance of Franchise

By entering into this Agreement City grants Company, and Company accepts, the exclusive right to provide Solid Waste Handling Services in City as set forth and limited herein. The exclusive right granted herein shall specifically apply to all Solid Waste Collection that occurs in City except for such Collection which is specifically excluded as set forth below.

2.2 Enforcement of Exclusivity

Company shall be responsible for enforcing the exclusivity of this Agreement. City shall have the right to enforce the exclusivity provisions hereof if, in its absolute and sole discretion, it chooses to do so, but shall have no obligation to do so for the benefit of Company or otherwise. City additionally shall have the right, but not the obligation, to request that Company enforce the exclusivity provisions hereof. Company shall have an affirmative obligation to enforce such exclusivity provisions when requested to do so by City. Should City take administrative, law enforcement, or other legal action to protect Company’s exclusive rights, or otherwise enforce the exclusivity of this Agreement (including the adoption of any resolution or ordinance intended to facilitate the enforcement of the exclusive rights granted herein) Company shall reimburse City for all of its reasonable administrative, law enforcement, or other legal costs and fees related to any such action.

2.3 Effective Date

This Agreement shall be effective and enforceable as of March 22, 2006 (the “Effective Date”).

2.4 Term of Agreement; extension of Pre-existing Agreement

The parties agree that the Pre-existing Franchise Agreement is hereby extended, and shall remain operative pursuant to all of its terms and conditions, until midnight on December 31, 2006. The term of this Agreement (the “Term”) shall be approximately ten (12) years, commencing at midnight January 1, 2007 (the “Commencement Date”), and expiring at midnight June 30, 2019. For clarification purposes, it is noted that while this Agreement is effective and enforceable as of the Effective Date, except as expressly otherwise noted, Company’s right and obligation to provide the Solid Waste Handling Services noted herein only exists during the Term, beginning on the Commencement Date.

2.5 Conditions to Effectiveness of Agreement

The satisfaction of each and all of the conditions set out below, each of which may be waived in whole or in part by City in writing, is a condition precedent to the effectiveness of this Agreement, and a condition of Company's continued right to the benefits conveyed herein:

2.5.1 Accuracy of Representations.

All representations and warranties made by Company and set forth in this Agreement shall be accurate, true and correct on and as of the Effective Date of this Agreement.

2.5.2 Absence of Litigation.

There shall be no litigation pending in any court challenging the award of this Franchise to Company or the execution of this Agreement or seeking to restrain or enjoin its performance.

2.5.3 Furnishing of Insurance, Bond and Letter of Credit.

Company shall have furnished evidence of the insurance, bonds and letter of credit required by Article 9, and shall comply with all ongoing requirements relating thereto.

2.5.4 Effectiveness of City Council Action.

City's Resolution approving this Agreement shall have become effective pursuant to California law prior to the Commencement Date.

2.5.5 Payment of Fees and Costs

Company shall have paid an amount to City for all legal and administrative fees and costs incurred by City that is associated with this Agreement, including the negotiation and adoption of this Agreement, as set forth in Section 3.1.

2.6 Delegation of Authority

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

2.7 Limitations to Scope

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

- a. The sale or donation of Recyclable Material by the Waste Generator to any person or entity other than Company; provided, however, to the extent permitted by law,

if the Waste Generator is required to pay monetary or non-monetary consideration for the Collection, transportation, or transfer of Recyclable Material, the fact that the Waste Generator receives a reduction or discount in price (or in other terms of the consideration the Waste Generator is required to pay) shall not be considered a sale or donation;

- b. The Collection, removal and transportation of Solid Waste from any Premises by the Waste Generator, when such waste is transported personally by such Waste Generator (or by his or her full-time employees) to a processing or Disposal Facility in a manner consistent with all applicable laws and regulations;
- c. Containers delivered for Recycling under the California Beverage Container Recycling Litter Reduction Act (California Public Resources Code, Section 14500, et. seq.);
- d. The Collection, removal and transportation of Green Waste from a Premises by a gardening, landscaping, or tree trimming company, utilizing its own equipment, as an incidental part of a total service offered by that company rather than as a hauling service;
- e. The Collection, transfer, transport, Recycling, and Disposal of animal waste and remains from slaughterhouse or butcher shops for use as tallow;
- f. The Collection, transfer, transport, Recycling, and Disposal of by-products of sewage treatment, including sludge, sludge ash, grit and screenings;
- g. The Collection, transfer, transport, Recycling, and disposal of Hazardous Substances, Hazardous Waste, radioactive waste and any material not meeting the definition of Solid Waste, regardless of its source;
- h. The Collection, transfer, transport, Recycling, and disposal of Solid Waste by the City through City officers or employees in the normal course of their employment;
- i. Solid Waste Handling Services for governmental agencies other than City, which may have facilities in City, but over which City has no jurisdiction in connection with the regulation of Solid Waste;
- j. Temporary Waste Services as defined herein.
- k. 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.

While the grant contained herein shall not be exclusive with respect to the above noted matters, Company shall still be obligated to provide those services which may be included in the above (i.e., Collection of Bulky Items) pursuant to the rates, and other terms, as set forth to in this Agreement.

The exclusive franchise, right and privilege to provide Solid Waste Handling Services within City granted to Company by this Agreement shall be interpreted to be consistent with all applicable state and federal laws, now in effect and adopted during the term of this Agreement, and the scope of this Agreement shall be limited by all applicable current and developing laws and regulations. In the event that future interpretations of current law, future enactments or developing legal trends limit the ability of City to lawfully grant Company the scope of services as specifically set forth herein, Company agrees that the scope of this Agreement will be limited to those services and materials which may be lawfully provided, and that City shall not be responsible for any lost profits claimed by Company as a result thereof.

2.8 Ownership of Solid Waste

City and Company understand and agree that it is Company, and not City, who will arrange to Collect Solid Waste, that City has not, and, by this Agreement does not, instruct Company on its Collection methods, nor supervise the Collection process; nor do the Parties intend to place title to Solid Waste Collected by Company in City. Rather, the Parties intend that whatever, if any, title in and to the Solid Waste that is Collected by Company which otherwise might exist in or with City in the absence of this Agreement is hereby transferred to Company; and further that if Company gains title to such Solid Waste it is by operation of law and agreement with its Customers and is not the result of this Agreement. Subject to the provisions of this Agreement, and unless City exercises its rights to direct the location for Disposal and processing of Solid Waste, Company shall have the right to retain, Recycle, process, Dispose of, and otherwise use Solid Waste Collected pursuant to the terms hereof in any lawful fashion or for any lawful purpose; and, further, shall have the right to retain any benefit resulting from its right to retain, Recycle, process, Dispose of, or reuse the Solid Waste which it Collects.

2.9 Company Status

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

2.10 Company Authorization

Company represents and warrants that it has the authority to enter into and perform its obligations under this Agreement. The Board of Directors or partners of Company (or the shareholders, if necessary) have taken all actions required by law, its articles of incorporation, its bylaws or otherwise to authorize the execution of this Agreement. The Persons signing this Agreement on behalf of Company have authority to do so. Company shall authorize one employee for the City as a single point of contact for issues arising under this Agreement, and Company acknowledges and agrees that City may expect and assume that this employee's actions are taken on behalf of and with the full approval of the Company. The City Manager shall have the right to require that Company designate a new person as the contact person set forth in this paragraph if he determines the person so appointed by Company to be unacceptable for any reason.

2.11 Annexations

Company's rights and obligations as set forth in this Agreement shall apply in any territory annexed to the City during the Term of this Agreement, except to the extent that the application of such rights and obligations within such annexed territory would violate the provisions of Public Resources Code Section 49520 *et. seq.*, or any other law or regulation relating to the rights of other solid waste enterprises to continue providing services in annexed areas. In such event, this Agreement shall become effective as to such area at the earliest possible date permitted by law.

ARTICLE 3 FRANCHISE & RECYCLING FEE; COST REIMBURSEMENT

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

3.1 Reimbursement of Renegotiation Costs

Company shall pay to City a one-time lump sum payment of One Hundred Thirty Thousand Dollars (\$130,000.00) within thirty (30) days of the Effective Date to reimburse the City for its estimate of the staff expenses and out-of-pocket costs it incurred in connection with renegotiating with Company and entering this Agreement.

3.2 Franchise and Recycling Fee

3.2.1 Commercial Franchise Fee

Throughout the Term of this Agreement Company shall pay to City a fee (the "Franchise Fee") in an annual amount that is equal to 5% of the Gross Receipts derived by Company from all services provided in City pursuant to the terms of this Agreement excepting Solid Waste Collection occurring in Refuse Carts at Single Family Dwellings.

3.2.2 Residential Franchise Fee Option

If the City Council should so desire, it shall have the right to impose a Franchise Fee on Gross Receipts derived by Company from Solid Waste Collection occurring in Refuse Carts at Single Family Dwellings. Should the City decide to impose such a Franchise Fee the parties shall negotiate in good faith to determine an equitable adjustment to the maximum rate Company may charge for Collection occurring in Refuse Carts at Single Family Dwellings. In the event the Parties cannot agree on an equitable adjustment, an adjustment based on the formula that follows shall be deemed to be equitable: The sum of the monthly rate actually charged to individual Customers at Single Family Dwellings receiving Collection services in Refuse Carts plus the proposed franchise fee prorated by the number of Customers to whom it will apply on a monthly basis.

3.2.3 Commercial Recycling Fee

In order to support the City's outreach and administration of AB 939 programs, and to offset the costs City will incur in connection therewith as a result of entering this Agreement, Company shall pay a fee (the "Recycling Fee") to City in an annual amount that is equal to 2.5% of the Gross Receipts derived by Company from all services provided in City pursuant to the terms of this Agreement excepting Solid Waste Collection occurring in Refuse Carts at Single Family Dwellings.

3.2.4 Time and Method of Payment

The Franchise Fee and Recycling Fee noted above shall be paid quarterly on or before the twentieth (20th) day following the end of each calendar quarter during the Term of this Agreement. Hence, on or before said date Company shall remit to City the following: (1) a sum of money equal to 5% of the Gross Receipts collected by Company as a result of applicable services provided within City pursuant to the terms hereof during the preceding calendar quarter, as a Franchise Fee, and (2) a sum equal to 2.5% of the Gross Receipts collected by Company as a result of applicable services provided within City pursuant to the terms hereof during the preceding calendar quarter, as a Recycling Fee. If the Franchise Fee or Recycling Fee is not paid on or before the thirtieth (30th) day following the end of the calendar quarter, and in addition to any other remedy provided by law, Company shall pay to City a penalty in an amount equal to ten percent (10%) per month, or portion thereof, of the amount owing until paid. Should the Residential Franchise Fee option set forth in Section 3.2.2 above be exercised, the amounts due thereunder shall be subject to the procedures and penalties as set forth in this paragraph.

Each quarterly Franchise Fee and Recycling Fee remittance to City shall be accompanied by a statement detailing Gross Receipts for the period covered from all operations conducted or permitted, pursuant to this Agreement, and detail the method by which the Franchise Fee, Recycling Fee and Gross Receipts were calculated such that Gross Receipts from all sources of revenue, including those to which the Recycling and Franchise Fee do not apply, are easily identifiable. In addition, Company shall maintain copies of all Billing and Collection records for five (5) years, following the date of Billing, for inspection and verification by City or its authorized representatives at any reasonable time upon request.

3.2.5 Annual Reimbursement of Administrative Costs

At the end of each Rate Year, with the first payment due as noted below following January 1, 2008, Company shall reimburse City, on an annual basis an amount equal to Seventy Five Thousand Dollars (\$75,000.00) [adjusted annually on January 1 by the change in the Consumer Price Index for All Urban Consumers, CUURA421SA0 not seasonally adjusted, all items index (CPI-U) – Los Angeles County, Riverside County, Orange County average] for all staff time, plus its actual costs for consultants, legal fees, and related out of pocket costs incurred in the administration of this Agreement (the "Annual Administrative Cost Reimbursement"). An invoice for the Annual Administrative Cost Reimbursement shall be provided to Company following the end of each Rate Year and shall be due to City within thirty (30) days. If the Annual

Administrative Cost Reimbursement is not paid on or before the thirtieth (30th) day following the date upon which an invoice is mailed to Company, and in addition to any other remedy provided by law, Company shall pay to City a penalty in an amount equal to ten percent (10%) per month, or portion thereof, of the amount owing until paid.

ARTICLE 4 DIRECT SERVICES

4.1 General

The work to be done by Company pursuant to this Agreement shall include, but not be limited to, the furnishing of all labor, supervision, equipment, materials, supplies, and all other items necessary to perform the services required. The enumeration of, and specification of requirements for particular items of labor or equipment shall not relieve Company of the duty to furnish all others, as may be required, whether enumerated elsewhere in the Agreement or not. The work to be done by Company pursuant to this Agreement shall be accomplished in a thorough and professional manner so that all Customers are provided prompt, reliable, courteous and high-quality Solid Waste Handling Services at all times.

4.2 Refuse Collection Services

4.2.1 Residential Refuse Cart Collection

Company shall provide all Customers at Single Family Dwellings with one 96, 67 or 35-gallon Cart for Collection of Refuse ("Refuse Cart(s)"), and shall Collect all Refuse placed therein for Collection not less than once per week using an automated Collection system at rates that do not exceed the maximum rates set forth in Exhibit 1. Company shall provide additional Refuse Carts to Customers upon request and may charge additional fees to Collect such additional Refuse Carts that do not exceed the maximum rates set forth in Exhibit 1. Company may continue to use the 67 or 35 gallon Refuse Carts it previously distributed to its existing Customers under its previous franchise agreement if such Refuse Carts are in good repair, although Customers shall be provided with a new Cart upon request. Company shall provide all new Customers (i.e., Customers of newly constructed Dwellings) with new Refuse Carts. All Customers may request that their Cart be exchanged for a different size Cart at no additional charge. Wherever feasible, Customers shall be directed to place Carts for Collection in the street gutter, against the curb. Densely developed areas may require Company to make accommodations for Collection, and Customer's and Company may agree upon designated staging areas for Collection as necessary. If Customer and Company can not agree upon a Collection location, or if City determines the selected location to cause safety or other concerns, City may make the final determination of the Collection location.

4.2.2 Enhanced Refuse Collection in Lantern Village

Company shall provide twice per week Refuse Collection at rates not to exceed the once per week Collection rates set forth in Exhibit 1 at all addresses on the following streets and rights-of-way within the Lantern Village area of City: Amber Lantern, El Encanto,

Violet Lantern, the alley between Amber Lantern and El Encanto, the alley between El Encanto and Violet Lantern.

4.2.3 Walk-Out Service

Company shall provide disabled Customers with "walk-out service" as set forth in this paragraph. This service shall require Company to go into backyards/sideyards at no charge for Customers who receive Collection service in Carts and have a letter on file with Company from a physician confirming there is a medical reason that prevents the resident from moving a Cart to the curb, and that there is no other capable persons in the household to provide this service. Company shall return Containers to Customer's storage area after Collection, ensuring that all doors or gates are closed securely. Company may require a new letter from a physician on an annual basis in order for the account to maintain walk-out service at no charge. Any dispute regarding a Customer's eligibility for walk-out service shall be resolved by the City Manager.

4.2.4 Refuse Overage

Customers may periodically generate more Refuse than will fit in their Refuse Cart(s), but not consistently enough to justify requiring that they obtain additional or larger Refuse Carts. Customers are therefore entitled to two annual overage pickups, on Customer's regular Collection day, of material that does not fit in the Refuse Cart(s) at no additional cost. Each pickup shall consist of up to the equivalent of three large trash bags or boxes of Refuse. Company shall Collect all Refuse put out for Collection in addition to the foregoing two overage pickups to be provided at no charge, and Customers may be charged \$5.00 per pickup for overage pickups above two per year. In addition to the two free overage pickups, Company shall Collect all additional Refuse placed out for Collection in the Customer's own containers (bags, boxes, etc.) at no additional charge for the two weekly Collections following December 25th. The service set forth in this Section is limited to Refuse that could otherwise be placed in a Refuse Cart, and not Bulky Items, which shall be Collected in accordance with the provisions of this Agreement.

4.2.5 Commercial Refuse Collection

Company shall provide all Customers at Commercial Premises with at least one Bin and/or Rolloff Box for Collection of Refuse and shall Collect all Refuse placed therein for Collection not less than once per week, at rates that do not exceed the maximum rates set forth in Exhibit 1. Company shall provide additional Containers to Customers and shall provide additional Collections upon request, or as may be required by City's Municipal Code, health and safety requirements, or by the City Manager, and may charge rates for such services which do not exceed the maximum rates set forth in Exhibit 1. Special consideration shall be given when determining the pick up area to ensure that the safety and flow of traffic is not impeded. If Company and Customer have a disagreement as to Container location, or if City determines the Collection location to cause safety or other concerns, City shall make the final determination as to where Containers shall be stored and Collected.

4.2.6 Commercial Refuse Cart Collection

As an alternative to the requirements of Section 4.2.4, Company shall offer Collection in Refuse Carts to Customers at Commercial Premises that do not have space for, or do not generate enough waste to require the use of Bins for Collection. Rates for Customers receiving such service Shall not exceed the maximum rates set forth on Exhibit 1. If Company and Customer have a disagreement as to whether a Refuse Cart is appropriate, or if City determines the Collection in a Refuse Cart causes health and safety or other concerns, City shall make the final determination as to whether Collection in a Refuse Cart may occur.

4.2.7 Multi-Family Refuse Collection

Customers at Multi-Family Dwellings shall receive Collection service from Company either: (1) utilizing Carts in the same manner, and under the same terms and conditions, as Customers at Single Family Dwellings as described herein (with each Dwelling Unit receiving the same services as a Customer at a Single Family Dwelling, unless otherwise specified herein), or (2) utilizing Bins in the same manner, and under the same terms and conditions, as all other Customers at Commercial Premises as described herein. For purposes of calculating Franchise Fees and Recycling Fees pursuant to Section 3.2, Gross Receipts derived from Solid Waste Collection occurring in Refuse Carts at Multi-Family Dwellings shall be deemed to be the same as Gross Receipts derived from "Solid Waste Collection occurring in Refuse Carts at Single Family Dwellings" (as that phrase is used in Sections 3.2.1, 3.2.2 and 3.2.3). The decision to use Refuse Carts or Bins at a Multi-Family Dwelling shall be made mutually by the Company and Customer except that if they have a disagreement as to whether Refuse Carts are appropriate, or if City determines Collection in a Refuse Cart causes health and safety or other concerns, City shall make the final determination as to whether Collection in Refuse Carts may occur.

4.2.8 Multi-Family Cart Sharing Program

City administers a program by which residents of Multi-Family Dwellings who utilize Refuse Carts for Collection may, under certain circumstances, share Refuse, Recycling and Green Waste Carts (the "Cart Sharing Program."). Pursuant to the Cart Sharing Program, certain Dwelling Units meeting qualifications set out and administered by the City are exempt from the requirement to either receive Collection service from Company or be qualified as self-haulers, on the basis they are sharing a set of Carts with another Dwelling Unit. Notwithstanding anything to the contrary herein, Company shall not deliver Carts, provide Collection service, nor send Bills for services to Dwelling Units which qualify for an exemption from service as set forth in this Section due to participation in the Cart Sharing Program. City shall keep Company advised of all Dwelling Units in the City which qualify for this exemption from service.

4.2.9 Self Haul Program

City administers a program by which self hauling of solid waste, as contemplated by Section 2.7(b) hereof, may occur under certain circumstances (the "Self Haul Program"). Pursuant to the Self Haul Program, certain Premises meeting qualifications set out and

administered by the City are exempt from the requirement to receive Collection service from Company, on the basis they are self hauling their own Solid Waste to an appropriate facility for Disposal. Notwithstanding anything to the contrary herein, Company shall not deliver Containers, provide Collection service, nor send Bills for services to Premises which qualify for an exemption from service as set forth in this Section due to participation in the Self Haul Program. City shall keep Company advised of all Premises in the City which qualify for this exemption from service.

4.2.10 On-Call Curbside Bulky Item Pickup

Company shall provide Bulky Item pickup service to Customers at Single-Family and Multi-Family Dwelling Units. Single-Family and Multiple-Family Dwelling Unit Customers will be entitled two Bulky Item pickups per dwelling unit per calendar year, with a maximum of four items per pickup, for no additional charge. Company shall Collect Bulky Items within seven (7) days of the date upon which a Customer requests such service, with Collection occurring on the next regularly scheduled Collection day following the service request applicable to the Customer requesting the service. Company may charge Customers for Bulky Item pickups in excess of those set forth above at rates not exceeding those set forth on Exhibit 1. Company shall Collect all Bulky Items as defined herein, including items referred to as electronic waste or "e-waste," and all any materials shall be properly handled, including those which require special handling under the Environmental Laws. As part of a Bulky Item Collection, Company shall collect unusually large amounts of cardboard, such as moving boxes, and any other commingled Recyclables at no additional charge.

4.2.11 Community Bulky-Item Collection Events

As part of the consideration for the City granting it the exclusive rights for Solid Waste Handling Services set forth herein, Company shall promote and conduct three Bulky Item drop-off events (clean-up days) per year at no cost to the City. Company shall obtain prior approval for the date of the events (typically on a Saturday) from City, and for the location of the events. On event day, Company shall accept all Solid Waste and Bulky Items dropped off by City residents. Residency will be proved by driver's license, utility bills, or other method approved by the City. Company may impose the following restrictions on material Collected:

- No single item that cannot be handled by two workers will be accepted.
- The following items will not be Collected: Hazardous Substances, Hazardous Waste, including waste oil or anti-freeze; concrete and dirt; excepting that all materials defined as Bulky Items, including televisions, monitors and other items referred to as "e-waste," shall be Collected by Company and be properly handled in accordance with all of the Environmental Laws.

Company shall record by class and weight (in tons) the Solid Waste Collected during the cleanup events. Company shall record the kinds and weights (in tons) of Solid Waste diverted during these cleanups from the landfill through Recycling, reuse, Transformation or other means of diversion.

4.2.12 Bulky Item Diversion

Bulky Waste Collected by Company pursuant to this Agreement may not be landfilled until the following hierarchy of diversion efforts has been followed by Company:

- a. Reuse as is (if energy efficient)
- b. Disassemble for reuse or Recycling
- c. Recycle, Transformation, other means of diversion
- d. Disposal

This hierarchy is intended to preclude the use of front or rear loading packer vehicles for Bulky Items unless the compaction mechanism is not used to compact the Bulky Items. The disposition of Bulky Items shall be tracked by Company and this information shall be included in Company's quarterly reports to City.

4.2.13 Proper Handling of Bulky Items: Electronic Waste

Company shall properly handle all materials required to be collected as Bulky Items, including specifically items that require special handling pursuant to the Environmental Laws, such as materials that constitute "e-waste."

4.2.14 Container Overflow Program

Company will have drivers photograph overflowing Containers. Company will send a letter instructing Customers with documented overflowing Containers to cease having overflowing Containers or to increase their service level. If the service level is not increased and the Customer continues to have overflowing Refuse Containers, a second letter may be sent, warning the Customer that an overflow fee may be charged. After two or more incidents of an over-flowing Container, Company may, with City's prior approval, increase the Customer's service level and Bill the Customer accordingly.

4.3 Recycling Services

4.3.1 Automated Cart Recycling Collection

Company shall provide all Customers at Single Family Dwellings, and all Customers at Multi-Family Dwellings who receive Collection service utilizing Refuse Carts, with a 96, 67 or 35 gallon Cart for Collection of commingled Recyclable Materials ("Recycling Cart(s)"), at no additional charge, and shall Collect all Recyclable Materials placed therein for Collection not less than once per week. Company will make available additional Recycling Carts at no additional charge to Customers who regularly recycle more than will fit into their existing Recycling Cart(s). Customers may exchange their Cart sizes at no cost. Wherever feasible, Customers shall be directed to place Carts for Collection in the street gutter, against the curb. Company shall Collect Recyclable Material placed in Recycling Carts for Collection from each Customer on the same day as

such Customers' Refuse Cart is Collected. Company shall have a Recycling program whereby it, at a minimum, Collects and diverts the following from landfill Disposal:

- Metal foil
- Food and beverage cans
- Junk mail
- Tin cans
- Any white paper
- Glass bottles and jars
- Plastic water bottles
- Newspaper
- Plastic drinking bottles
- Phone books
- Plastic milk containers
- Cardboard
- Plastic detergent containers
- Chip board (cereal, cracker boxes)
- Computer paper
- Magazines
- Plastic bottles
- Aluminum cans
- Empty aerosol cans
- Empty/dry paint cans
- Film plastics (including plastic bags)

4.3.2 Enhanced Lantern Village Recycling Collection

Company shall provide twice per week Recycling Collection at rates not to exceed the once per week Collection rates set forth in Exhibit 1, on the same days as Refuse Collection, at all addresses on the following streets and rights-of-way within the Lantern Village area of City: Amber Lantern, El Encanto, Violet Lantern, the alley between Amber Lantern and El Encanto, the alley between El Encanto and Violet Lantern.

4.3.3 Multi-Family Mixed Waste Processing

Company shall deliver all Solid Waste Collected from Customers at Multi-Family Dwellings who receive Collection in Bins to a MRF for processing in order to recover Recyclable Materials. Company shall report the tonnage of Refuse Collected in Bins from Multi-Family Dwellings sent for processing and the tonnage of Recyclable Materials recovered through processing as a result in its monthly reports to City.

4.3.4 Commercial Mixed Waste Processing

In addition to the requirements set forth in Section 4.3.2 related to Multi-Family Dwellings, Company shall deliver not less than 50% of all Solid Waste Collected in Bins and 100% of all Solid Waste Collected in Rolloff Boxes from all other Customers at Commercial Premises to a MRF for processing in order to recover Recyclable Materials. (i.e., 100% of Multi-Family Solid Waste Collected in Bins and Commercial Premises Solid Waste Collected in Rolloff Boxes, and 50% of Solid Waste Collected in Bins from all other Commercial Premises shall be sent for processing.) No additional fees may be charged to Customers as a result of the deliver of Solid Waste to a MRF pursuant to this provision. Company shall report (1) the total tonnage of Refuse Collected in Bins from Commercial Premises (separating tonnage Collected from Multi-Family Dwellings from other Commercial Premises), (2) the tonnage of Refuse Collected from such Commercial Premises sent for processing, and (3) the tonnage of Recyclable Materials recovered as a result in its monthly reports to City.

4.3.5 Commercial Recycling Programs

In addition to the MRF processing requirements set forth above, Company shall offer Recycling Collection service to all Customers at Commercial Premises requesting it using a Container type mutually agreed upon by the Company and the Customer. Rates for such services shall not exceed the maximum rates set forth on Exhibit 1. Commercial Recycling Collection programs shall Collect and divert at least the same Recyclable Materials as at Single-Family Dwelling Units (see Section 4.3.1). Company also agrees to make programs available for all other materials for which it has established markets. Company shall notify all Customers at Commercial Premises each year of the availability of Commercial Recycling Collection programs.

4.3.6 Commercial Site Visits; Waste Audits

Company will visit each Customer at a Commercial Premises within 12 months of the start of service under this Agreement for the purpose of establishing a Recycling program. Company will provide a monthly log to the City, including the name and address of customer, the date of the visit and the contact name and phone number, demonstrating that the required visits have been made. At the end of the first 12 months of service, Company will provide City with a list of Commercial Recycling program participants and one of Commercial Customer non-participants. Each list shall include Customer names and addresses, contact names and phone numbers, refuse service levels including number and size of containers and number of weekly pickups, and Recycling service levels (if applicable), including number and size of containers and number of weekly pickups. Company will continue to conduct on-site visits to Commercial Customers throughout the term of the Agreement to implement and optimize Recycling programs for each Customer.

During these visits, Company will audit the waste stream of the Commercial Customers to determine which Commercial Customers would continue to have sufficient Recyclables in their waste stream to warrant having their Refuse mixed waste processed to recover additional Recyclables.

4.3.7 Warning Notice

Company may refuse to Collect Recyclable Materials and shall not be obligated to continue to provide any type of Container for Recyclable Materials to any Customer who, after reasonable warning, regularly fails to properly sort and set out Recyclable Materials for Collection; provided, however, Company shall obtain City approval prior to taking such action. Reasonable warning as used herein shall mean two (2) written warnings in any twelve (12) month period. Company shall notify City on a monthly basis of any warning notices issued pursuant to this Section, and shall provide copies of such warnings to City upon request.

4.3.8 Marketing and Sale of Recyclable Materials

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

4.4 Green Waste Program

4.4.1 Automated Cart Green Waste Collection

Company shall provide all Customers at Single Family Dwellings, and all Customers at Multi-Family Dwellings who receive Collection service utilizing Refuse Carts, with a 96, 67 or 35 gallon Cart for Collection of commingled Green Waste ("Green Waste Carts") at no additional charge, and shall Collect all Green Waste placed therein for Collection not less than once per week. Company will make available a second additional Green Waste Cart at no additional charge to Customers who regularly recycle more than will fit into their existing Green Waste Cart(s). Company shall provide additional Green Waste Carts to Customers upon request and may charge fees to Customers to Collect such additional Carts (i.e., a fee may be charged for 3 or more Green Waste Carts) that do not exceed the maximum rates set forth in Exhibit 1. Customers may exchange their Cart sizes at no cost. Wherever feasible, Customers shall be directed to place Carts for Collection in the street gutter, against the curb. Company shall Collect Green Waste placed in Green Waste Carts for Collection from each Customer on the same day as such Customers' Refuse Cart is Collected. Company shall have a Recycling program whereby it, at a minimum, collects the following: grass clippings, green plants, leaves, garden trimmings, weeds, and wood scraps/chips.

4.4.2 Commercial Green Waste Collection

Company will provide Customers at Commercial Premises who so desire with Rolloff Boxes and Bins for Green Waste Collection, and will divert loads from landfilling by delivering them to an appropriate Facility for processing. Company shall charge Customers receiving this service a rate that does not exceed 75% of the maximum rate for Refuse Collection in similar Containers as set forth on Exhibit 1 (except that such discounted rate shall only apply to the pull rate for Rolloff Box loads, and Customers may be required to pay the actual per ton gate rate, including applicable Franchise Fees, charged for Green Waste processing for Rolloff Box loads.)

4.4.3 Holiday Tree Collection Program

Company shall operate an annual holiday tree Collection program by Collecting all holiday trees discarded by any Customer of a Single Family or Multi-Family Dwelling, on regularly scheduled Collection days from December 26 through the second Friday in January. All trees without flocking, tinsel or other decorations must be diverted from landfilling.

4.4.4 Diversion of Green Waste

Company shall divert 100% of Green Waste Collected pursuant to the programs noted in Sections 4.4.1, 4.4.2 and 4.4.3. The Company must provide end uses for Green Waste that maximize diversion credits for the City according to regulations established by the California Integrated Waste Management Board ("CIWMB").

4.5 City Services

4.5.1 City Facilities' Collection

Company shall Collect and dispose of all Solid Waste, including Refuse, Recyclables, Green Waste and C&D Debris generated at all Premises owned and/or operated by the City, for no additional charge. Collections shall be scheduled at a time mutually agreed upon by the Company and the City. Company will provide on-floor Carts for staging the Collection of Recyclable Materials. City facilities include, but are not limited to the following:

- City Hall, 33282 Golden Lantern
- Community Center, 34052 Del Obispo
- Harry Otsubo Gardens, Stonehill/Golden Lantern

4.5.2 City Sponsored Events

Company shall provide Solid Waste and Recyclable Materials Collection at all City-sponsored or supported events. The number, type and service requirements for these events may vary from year to year. This service shall include providing servicing and storing Containers (cardboard boxes, Carts, Bins and/or Rolloff Boxes) to Collect and Dispose of all Refuse, and providing, servicing and storing Containers to Collect and process source-separated Recyclables. The Company shall provide these services at no cost to the City or the event sponsors. Applicable events include, but are not limited to:

- Festival of Whales Parade
- Festival of Whales Street Faire – La Plaza Park
- Egg Hunts – Pines and Sea Canyon Parks
- Dana Point Harbor Boat Show
- Summer Concert Series (end of June through end of August)
- Holiday Craft Faire – La Plaza Park
- Fourth of July Fireworks Event

4.5.3 Street Litter Container Collection

Company shall provide Solid Waste Handling Services for all public Refuse Containers along public rights-of-way as directed by City, including at all bus stops at which Refuse Collection is not the responsibility of a bus shelter company. Company shall Collect all Refuse from such Containers at least once per week, and more often as directed by City during the summer months, but at all times as often as necessary to prevent overflow, all at no cost to the City.

4.5.4 Abandoned Item Collection

As part of the consideration for the City granting to Company the exclusive rights for Solid Waste Handling Services set forth herein, Company will Collect and properly Dispose of all items abandoned in City's public right-of-ways (including alleys and parkways), or on City's public property within 24 hours of notification from the City to do so. Company shall not charge City for this service. Notwithstanding any provision to the contrary herein, Company shall also provide Bulky Item Collection at no additional charge at all addresses on the following streets and rights-of-way within the Lantern Village area of City: Amber Lantern, El Encanto, Violet Lantern, the alley between Amber Lantern and El Encanto, the alley between El Encanto and Violet Lantern.

4.5.5 Emergency Collection and Disposal Service

Company will assist City at the City's request with emergency Collection and Disposal service in the event of a major disaster, such as an earthquake, storm, riot or civil disturbance, or as otherwise determined necessary by the City, by providing additional Collection vehicles and drivers above that normally assigned to the City, at rates not exceeding those set forth on Exhibit 1. In the event that Company is unable to provide emergency services or is unable to provide sufficient or timely emergency services to City, City may contract with another solid waste enterprise to collect and transport Solid Waste as needed to protect the public health, safety and welfare.

4.6 Commingling of Routes

Company shall not during its Collection process commingle Solid Waste Collected hereunder with Solid Waste Collected in any other City, and is specifically prohibited from combining Collection routes related to services provided pursuant to this Agreement with Collection Routes for other jurisdictions it may service. Stated otherwise, each route utilized for Collecting Solid Waste pursuant to this Agreement shall be dedicated exclusively to Solid Waste generated and Collected within the City's boundaries pursuant to this Agreement, and no vehicle while transporting Solid Waste Collected pursuant hereto shall be utilized to Collect or transport Solid Waste from any other jurisdiction.

4.7 Diversion Requirements

Company shall achieve a diversion rate for City as a result of its operations hereunder such that the diversion requirements established by the State of California, and the CIWMB are at all times met (currently 50% of the total waste stream of the City). Diversion achieved by Transformation may consist of a maximum of 10% of the total waste stream. City shall evaluate Company's diversion performance at the end of 2006 and each subsequent year-end thereafter. Should the City's diversion not meet the above requirement for its entire waste stream, including "self-hauled" material disposed of directly by residents or businesses in the City, and should City determine, in its sole discretion, that Company has not maximized diversion as contemplated under this Agreement, the Company agrees to undertake reasonable efforts at its cost to implement programs and provide equipment necessary in order for the City to meet the above noted % diversion goal as soon as possible. In addition, if the CIWMB determines that the City

must improve its diversion, Company agrees to undertake efforts at its cost to implement programs and provide equipment necessary in order for the City to meet new diversion goals, as soon as possible, and in all cases within any time frames required by the CIWMB. Company understands that it may be required to divert more than 50% of the waste stream it Collects within the City if necessary to meet the requirements of this Section relating to City's diversion goals. Notwithstanding any other provision of this Agreement to the contrary, should the 50% diversion goal currently set forth in AB 939 be increased by any subsequent law or regulation, Company may thereafter notify City in writing that it is either unable or unwilling comply with the obligations set forth in this Section as a result of said increase and this Agreement will automatically terminate 12 months following the date of such notice; provided, however, Company shall not be excused of its obligations set forth in this Section as applicable to AB 939's current 50% diversion goal prior to termination.

4.8 Operations

4.8.1 Schedules

To preserve peace and quiet, Solid Waste shall only be Collected from Single Family or Multi-Family Dwellings, and Commercial Premises within 200 feet of such Dwellings, between 7:00 A.M. and 7:00 P.M. Monday through Friday (and Saturdays following holidays). Residential Collection routes shall be designed such that Collection activities occur within contiguous residential regions or individual neighborhoods on only one day each week. Collection of Solid Waste at Commercial Premises, except as limited above, shall only occur Monday through Saturday, from 6:00 A.M. through 7:00 P.M., unless the City approves Sunday Collection on a case by case basis. If the regularly scheduled Collection day falls on January 1, Memorial Day, Independence Day, Labor Day, Thanksgiving Day or Christmas Day, alternate Collection shall be performed on the following day, unless that day falls on Sunday and City has not instructed the Company to perform alternative Collection on Sunday. Alternative Collection shall then be performed on the following Monday. Collections for the remainder of the holiday calendar week may only be delayed one day. All other Collection days falling on a legal holiday shall remain as scheduled. Notwithstanding any provision to the contrary herein, Company shall coordinate holiday make-up scheduling with the City Manager to ensure that Collection does not interfere with City's street sweeping operations; City may direct Company to alter the make-up schedule as necessary.

Company shall provide all routes and route schedules to the City and coordinate route schedules with the City's street sweeping schedule. Additionally, Company shall notify City staff and the City's street sweeper in the event that a route has not been completed within its regularly scheduled day in order to prevent the street sweeper to pass through the neighborhood prior to their trash collection. Company shall review its operations plan outlining the Collection routes, intervals of Collection and Collection times for all Solid Waste Collected under this Agreement with City at least once annually, and upon 30-day written notice requesting any such review. If the plan is determined to be inadequate by City, Company shall revise it incorporating any changes necessary to make it satisfactory to City within thirty (30) days.

4.8.2 Missed Pickups

When notified of a missed pick-up (which shall not include the failure of a Customer to timely place a Container in its Collection location), Company shall Collect the Refuse, Recyclable Materials, and/or Green Waste that was not Collected within one (1) business day.

When the frequency of Collection for a Customer at a Commercial Premises renders making up a missed pickup unnecessary, or if for any other reason a missed pickup is not made up, Company shall credit the Customer the prorated cost for the missed pickup.

4.8.3 Vehicles

4.8.3.1 General.

Company shall provide vehicles for the Collection of Solid Waste ("Collection Vehicles") that are sufficient in number and capacity to efficiently perform the work required by this Agreement in strict accordance with its terms. Company is expressly obligated to provide such Collection Vehicles and routes as are required to meet the service standards set forth herein. Company shall have available on Collection day's sufficient back-up vehicles for each type of Collection Vehicle used to respond to complaints and emergencies.

4.8.3.2 Specifications.

Company shall operate no Collection Vehicles within the City that are over 10 years in age during the Term of this Agreement. No vehicle may be purchased for use in the City that is over seven-years-old at the time of purchase. All Collection Vehicles utilized in the performance of this Agreement must be registered with the California Department of Motor Vehicles and shall have watertight bodies designed to prevent leakage, spillage or overflow. Company's Collection Vehicles shall comply with all rules and regulations of the Southern California Air Quality Management District, the Air Resource Board, and any other regulatory body that may be in effect during the term of this Agreement, as well as other Federal, State and local laws and regulations that may be enacted during the term of this Agreement. In addition to such requirements as may be imposed by the of the Southern California Air Quality Management District, the Air Resource Board, or any other agency with similar jurisdiction, as of the Commencement Date: (i) all Collection Vehicles used for Collection of Carts in City shall be powered by engines that are either "alternative fuel powered" in accordance with the standards of the South Coast Air Quality Management District and acceptable to City, or, in the absence of such standards having been adopted by SCAQMD, fueled exclusively by either liquefied natural gas or compressed natural gas; (ii) all other Collection Vehicles (i.e., those used for Bin and Rolloff Box Collection) which are already being used by Company in City as of the Effective Date pursuant to the Pre-existing Franchise Agreement shall be replaced prior to such Collection Vehicles reaching 10 years of age with Collection Vehicles that are new and are powered by engines that are either

“alternative fuel powered” in accordance with the standards of the South Coast Air Quality Management District and acceptable to City, or, in the absence of such standards having been adopted by SCAQMD, fueled exclusively by liquefied natural gas or compressed natural gas; and (iii) any Collection Vehicles introduced into service in City after the Effective Date shall be new and be powered by engines that are either “alternative fuel powered” in accordance with the standards of the South Coast Air Quality Management District and acceptable to City, or, in the absence of such standards having been adopted by SCAQMD, fueled exclusively by liquefied natural gas or compressed natural gas.

4.8.3.3 Vehicle Identification.

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

4.8.3.4 Cleaning and Maintenance

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

Collection Vehicles shall be painted, thoroughly washed, and thoroughly steam cleaned on a regular basis so as to present a clean appearance. The City may inspect vehicles at any time to determine compliance with this Agreement. Company shall also make its Collection Vehicles available to the California Highway Patrol for inspection, at any frequency it requests. Company agrees to replace, repair to the City’s satisfaction, or take out of service in the City, any Collection Vehicle which the City determines to be of unsightly appearance, leaking, or in unsatisfactory operating condition.

Company shall repaint all Collection Vehicles at least every two years, and within thirty (30) days’ notice from City, if City determines that their appearance warrants painting.

Company shall inspect each Collection Vehicle daily to ensure that all equipment is operating properly. Collection Vehicles which are not operating properly shall be removed from service until repaired and operating properly. Company shall perform all scheduled maintenance functions upon Collection Vehicles in accordance with the manufacturer’s specifications and schedule. Company shall keep accurate records of all Collection Vehicle maintenance, recorded according to date and mileage and shall make such records available to City upon request.

Company shall repair, or arrange for the repair of, all of its vehicles and equipment for which repairs are needed because of accident, breakdown or any other cause so as to maintain all equipment in a safe and operable condition. Company shall maintain accurate records of repair, which shall include the date and mileage, nature of repair and the verification by signature of a maintenance supervisor that the repair has been properly performed.

Company shall clean up any leaks or spills from Collection Vehicles per the NPDES permit in effect at the time. No vehicle shall leak fluids. No fluids shall be washed into storm drains at any time. All NPDES dry-cleaning measures shall be complied with. All Collection vehicles must be equipped with absorbent for such clean up efforts.

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

4.8.3.5 Operation.

Vehicles shall be operated in compliance with the California Vehicle Code, and all applicable safety and local ordinances. Company shall not load vehicles in excess of the manufacturer's recommendations or limitations imposed by state or local weight restrictions on vehicles. Company's equipment shall comply with US EPA noise emission regulations, currently codified at 40 CFR Part 205 and other applicable noise control regulations, and such noise control features shall be incorporated throughout the entirety of all Collection Vehicle. Noise levels of equipment used for Collection shall comply with City ordinance and in no event shall the noise level exceed 75 dba when measured at a distance of 25 feet from the vehicle, five feet from the ground. Company shall store all equipment in safe and secure locations in accordance with City's applicable zoning regulations. Company shall be responsible for any damage resulting from or directly attributable to any of its operations, and which it causes to: City's driving surfaces, whether or not paved; associated curbs, gutters and traffic control devices; and all other public and private improvements.

4.8.3.6 City Inspection Per Code.

City may cause any vehicle used in performance of this Agreement to be inspected and tested at any commercially reasonable time and in such manner as may be appropriate to determine that the vehicle is being maintained in compliance with the provisions of the State Vehicle Code, including, but not limited to, California Vehicle Code Sections 27000(b), 23114, 23115, 42030, 42032, and all other Vehicle Code Sections, and related regulations. City may direct the removal of any vehicle from service if that vehicle is found to be in nonconformance with applicable Vehicle Codes or regulations. No vehicle directed to be removed from service shall be returned to service until it conforms

with all applicable Codes and regulations, and its return to service has been approved by the City.

4.8.3.7 Vehicle Inspections.

If requested by City, Company shall submit the Safety Compliance Report/Terminal Record Update from its Biennial Inspection of Terminal, or BIT. If Company receives a terminal rating below satisfactory, it is deemed to be in violation of this Agreement. Company shall have the time allowed by the California Highway Patrol ("CHP") to cure violations and bring the terminal rating up to satisfactory. If the CHP does not adjust the rating to satisfactory or better within six months, then Company shall be considered in default of the contract and the City may terminate the Agreement.

4.8.3.8 Correction of Defects.

Following any inspection, the City Manager shall have the right to cause Company, at its sole cost and expense, to recondition or replace any vehicle or equipment found to be unsafe, unsanitary or unsightly.

4.8.4 Containers

4.8.4.1 Company Provided Carts.

Carts shall be manufactured by injection or rotational molding and the manufacturer, finish, and model of all Carts selected shall be subject to written City approval. Refuse, Recycling and Green Waste Carts shall be differentiated by color and identified as being for Refuse, Recycling or Green Waste only, as appropriate, with a label or stamp in both English and Spanish (or, with City's approval, pictures or graphics) to indicate what materials are to be placed in each Container. Company's name and phone number shall also be placed on the Carts. Colors shall be uniform throughout the City, and be colorfast and resistant to fading as a result of weathering or ultraviolet degradation. Refuse, Recycling and Green Waste Carts will be provided in sizes of approximately 96, 67 and 35-gallons (with minor variations in such capacities subject to approval by City.)

Company shall be responsible for Cart repair and maintenance, graffiti removal, and replacing lost, stolen or damaged Carts at no additional charge to the Customer or to the City. Company repair or replace Carts for the foregoing within seven (7) days of the date upon which a Customer requests such service, with repair or replacement occurring on the next regularly scheduled Collection day following the service request applicable to the Customer requesting the service. If approved in advance by the City on a case by case basis, Company may charge Customer a fee no higher than the Company's actual cost of repair and replacement in the event of willful neglect or abuse of a Cart by the Customer.

All Carts provided by Company hereunder shall remain the property of Company at the end of this Agreement. Company shall Collect all Carts and remove them

from all Customers' Premises at the end of the Term at no additional charge. If Company fails to Collect and remove any Cart within 30 days following the end of the Term, it shall be deemed to have abandoned said Cart(s) and: (i) City may take possession of such Carts for any purpose it desires; and (ii) Company shall reimburse City for any costs it incurs in removing said Carts from any Premises, as well as any costs City incurs in destroying, disposing of, reusing or recycling said Carts.

4.8.4.2 Distribution of Carts

Within thirty (30) days of the Effective Date, Company shall distribute a mailer announcing the availability of Carts of different sizes as set forth herein to all Customers utilizing Carts for Solid Waste Handling Services pursuant to Company's pre-existing franchise agreement with City. The mailer shall be approved in advance by City and shall include a postage-paid reply card that enables Customers to request different size Carts. The mailer shall explain that Customers may request any combination of Refuse, Recycling and Green Waste Cart sizes, with a Customer's rate to be based only on the size and number of Refuse Carts requested. Customers shall be given thirty (30) days to respond to the mailer and request Cart sizes differing from those they received under the pre-existing franchise. On or before the Commencement Date, Company shall have distributed/exchanged Cart sizes for all Customers who timely respond to the mailer as set forth herein. Following the Commencement Date, Company shall exchange Cart sizes at no charge for any Customer who so requests within one week of the request from the Customer.

4.8.4.3 Bins and Roll-Off Boxes

4.8.4.3.1 Specifications

Bins and Rolloff Boxes provided by Company for Collection of Solid Waste hereunder shall be maintained in a clean, sound condition free from Putrescible residue. Such Containers shall be constructed of heavy metal, or other suitable, durable material, and shall be watertight and professionally painted. Wheels, forklift slots, and other appurtenances designed for movement, loading, or unloading of the Container shall be maintained in good repair and shall not leak. The make, model and general design of Bins and Rolloff Boxes shall be subject to approval by the City Manager.

4.8.4.3.2 Cleaning

Company shall clean or replace all Bins and Rolloffs provided for Collection of Solid Waste hereunder at least once per year at no charge. Company shall perform cleaning or replacement of Containers more frequently if necessary, for an additional fee, to prevent a nuisance caused by odors or vector harborage. Customer may request additional cleanings at \$35 per cleaning.

4.8.4.3.3 Graffiti

Graffiti shall be removed from any Container within twenty-four (24) hours of request by City or Customers. Company shall provide one free graffiti removal per Customer (repairing multiple Containers damaged in one incident is considered one removal) per year. Company may charge Bin Customers \$25 for each additional Bin damaged by Graffiti after the first incident each year.

4.8.4.3.4 Labeling

Each Bin or Rolloff Container used by Company for Solid Waste Collection hereunder shall have the name and phone number of Company in letters not less than three inches high on its exterior so as to be visible when the Container is placed for use. Bins or Rolloffs designated for Recycling and/or Green Waste shall be labeled, using both words and graphics to indicate the materials to be placed in each Container. All Bins shall contain a label alerting users to "Keep Lid Closed."

4.8.4.3.5 Overflow Clean-up

Company will service overflowing bins and clean out bin enclosures within 24 hours notice from City at no additional charge.

4.8.4.4 Minimization of Spills.

Company shall use exceptional care to prevent Solid Waste or fluids from leaking, being spilled and/or scattered during the Collection or transportation process. If any Solid Waste or fluids leak or are spilled during Collection, the Company shall promptly clean up all such materials. Each Collection Vehicle shall carry a broom, liquid absorption materials and shovel at all times for this purpose. Leaks must be contained and cleaned and shall not be directed to storm drains. Company shall not transfer loads from one vehicle to another on any public street, unless it is necessary to do so because of mechanical failure, accidental damage to a vehicle, or a pre-approved method of Solid Waste transfer between vehicles, without prior written approval by the City. Company shall be responsible for any fines and or cleanup charges resulting from or relating to NPDES regulations in the event any spill enters a storm drain or waterway.

4.8.4.5 Clean Up.

During the Collection or transportation process, Company shall clean up litter or liquids in the immediate vicinity of any Solid Waste storage or Collection area (including the areas on private and public property where Collection Containers are delivered for Collection) whether or not the Company has caused the litter. The Company shall identify instances of repeated spillage not caused by it directly with the Customer responsible and will report such instances to the City. City will attempt to rectify such situations with the Customer if the Company has already attempted to do so without success.

4.8.4.6 Covering of Loads.

The Company shall properly cover all open Rolloff Boxes during transportation of Solid Waste.

4.8.4.7 Special Clean-Up.

City may hire Company for special clean-up situations in accordance with the approved rate schedule.

4.8.5 Personnel

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

Company agrees to establish and vigorously enforce an educational program which will train the Company's employees regarding water quality issues and regulations, and in the identification of Hazardous Substances. Company's employees shall not violate NPDES water quality regulations or knowingly place Hazardous Substances in the Collection vehicles, nor knowingly Dispose of such Hazardous Substances at any processing Facility or Disposal site (excepting sites or Facilities properly permitted to receive and handle such materials.)

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

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

4.8.6 Identification Required

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

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

4.8.7 Fees and Gratuities

Company shall not, nor shall it permit any agent or employee, to request, solicit, demand, or accept, either directly or indirectly, any compensation or gratuity for the service provided under this Agreement.

4.8.8 Non-Discrimination

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

4.8.9 Approval of and Change in Collection Schedule

Company shall notify the City forty-five (45) days prior to, and Customers utilizing Refuse Carts at Dwelling Units not later than fourteen (14) days prior to, any change in operations which results in a change in the day on which Solid Waste Collection occurs. The Company will not permit any Customer to go more than seven (7) days without service in connection with a Collection schedule change. No change will occur to the Collection days for Customers utilizing Refuse Carts without the City's prior written consent.

Company shall provide a route map and Collection schedule to City, which shall be subject to approval by the City Manager. Any changes in the route map or Collection schedule shall require the prior approval of the City, and the City may require changes in the route map or Collection schedule as it deems necessary or appropriate.

4.8.10 Report of Accumulation of Solid Waste; Unauthorized Dumping

Company shall direct its drivers to note the addresses of any Premises at which they observe that Solid Waste is accumulating and is not being delivered for Collection; and the address, or other location description, at which Solid Waste has been dumped in an apparently unauthorized manner. The Company shall deliver the address or description to the City within two (2) working days of such observation. Company shall cooperate with City in the investigation and prosecution of any related violations of the Dana Point Municipal Code.

4.9 Transportation of Refuse

Company shall transport all Solid Waste Collected hereunder to an appropriate facility and shall maintain complete, accurate and up-to-date records of the quantities of Solid Waste Collected, and the location to which they are transported. Company will cooperate with the City in any audits or investigations of such quantities.

4.10 Disposal of Solid Waste

Company expressly acknowledges its awareness of the agreement between the County of Orange and the City, attached hereto as Exhibit 2, relating to use of the Orange County landfill system (the "County Agreement"). Company represents and warrants that it can and will perform its duties in connection with this Agreement in such a manner as to ensure that City complies with, and does not breach the terms of the County Agreement as a result of Company's actions or inactions. As of the Commencement Date, and unless and until otherwise directed by City, Company may deliver Solid Waste Collected hereunder to any facility it deems appropriate to meet the requirements of this Agreement, including the related requirements of the County Agreement. Nevertheless, City shall have the option to direct and/or approve which transformation facility, landfill, processing facility, MRF or other facility Company shall use to retain, process, and dispose of Solid Waste generated within the Franchise Area. Company 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.

4.11 Route Audit

Company shall complete an audit at its expense of its Collection routes for all Customers utilizing Bins and/or Rolloff Boxes for Collection hereunder at such times as may be requested by City. The City may require the route audit to be expanded to include all Customers. The timing of such audits is at the City's discretion and may be required to be timed with the issuance of a request for proposals for a new agreement. The route audit, at minimum, shall consist of an independent physical observation by Person(s) other than the route driver or route supervisor of each Customer in the City. The route audit shall include, as a minimum, the following information for each account:

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

- Graffiti.

Within thirty (30) days after the completion of the route audit, the Company shall submit to the City a report summarizing the results thereof which shall include:

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

The report shall include a description of the procedures followed to complete the audit, and shall include the names and titles of those supervising the route audits and the name and titles of those performing the observations. Additionally, the report shall include a description of the pre-audit training of the route auditors, particularly if temporary personnel are used. The report shall also include a description of the changes and the Company's plans to resolve any exceptions. The results of the audit shall be available for review by the City or its representative.

4.12 Service Exceptions; Hazardous Waste Notifications

4.12.1 Failure to Collect.

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

4.12.2 Hazardous Substance Inspection and Reporting.

Except as otherwise expressly set forth herein, the Company reserves the right and has the duty under law to inspect Solid Waste put out for Collection and to reject and not Collect Solid Waste observed to be contaminated with Hazardous Substances. The Company shall notify all agencies with jurisdiction, if appropriate, including the California Department of Toxic Substances Control and Local Emergency Response

Providers and the National Response Center of reportable quantities of Hazardous Substances, found or observed in Solid Waste anywhere within the City. In addition to other required notifications, if the Company observes any substances which it or its employees reasonably believe or suspect to contain Hazardous Substances unlawfully disposed of or released on any City property, including storm drains, streets or other public rights of way, the Company will immediately notify the Public Works Director or the Public Works Director's designee.

4.12.3 Hazardous Substance Diversion Records.

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

4.13 Disaster Preparedness Plan

Within sixty (60) days of execution of this Agreement, Company shall submit to City a written contingency plan demonstrating Company's arrangements to provide vehicles and personnel and to maintain uninterrupted service during breakdowns, and in case of natural disaster or other emergency satisfactory to City Disaster Preparedness Coordinator.

ARTICLE 5 OTHER SERVICES

5.1 Services and Customer Billing

5.1.1 Service Description

Company shall periodically, at least thirty (30) days prior to the effective date of a rate change, and a minimum of once per year, prepare and distribute subject to the direction of City, a notice to each Customer containing the following: a listing of Company's Collection rates, the annual holiday schedule, the street sweeping schedule and a general summary of services required to be provided hereunder including optional service which may be furnished by Company. Such notice shall be in a form subject to City's approval prior to its distribution and may be included with Billings made by Company. Company shall include in each Billing the phone number for residents to call for Bulky Item pickups.

5.1.2 Billing

Company shall provide services pursuant to this Agreement at rates it sets, charges to, and collects from Customers; provided, however, Company's rates shall not exceed those set forth in the attached Exhibit 1, which sets out the maximum rates that may be charged by Company for the various different service options that may occur hereunder, as such maximum rates may be adjusted from time to time pursuant to the terms hereof. Company shall provide all Customers with itemized Bills, detailing charges for all services, including charges for late payments, as well as the period of service to which the Bill applies. Company acknowledges that it, and not Customers, is to pay a franchise

fee and the other fees noted herein to City as consideration for this Agreement. Accordingly, Company's Bills shall not include separate itemization of a "franchise fee" or other similar designation relating to fees which Company is required to pay to City. Company shall reproduce and include in any Billing, at no additional cost, one page informational "inserts" provided by City.

Billings may be made on a quarterly basis in advance for all Customers at Single Family or Multi-Family Dwellings utilizing Carts for Collection, and on a monthly basis in advance for all other Customers.

5.1.3 Suspension of Service Due to Non-Payment

Customers who have not remitted payments within thirty (30) days after the date of Billing may be notified by a letter approved by the City stating that service may be discontinued fifteen (15) days from the date of notice if payment is not made before that time, and/or notified that the account is being turned over to a collection agency. Company may suspend a Customer's service for non-payment, and/or utilize the services of a collection agency, but only after compliance with the provisions of this Section. Upon payment of delinquent fees by any Customer who's service is suspended, Company shall resume Collection on the next regularly scheduled Collection day, and Company may charge a restart fee (including a redelivery fee if applicable) in accordance with the maximum rates set forth in Exhibit 1. Company may not charge for service during any period in which service was suspended. Notwithstanding the above, in the event of a Billing dispute and/or to avoid negatively impacting public health or safety, Company shall not suspend service to any Customer at a Dwelling Unit without the City's prior consent, and shall continue to provide service to any Customer if directed to do so by City without regard to the status of said Customer's account.

5.1.4 Unoccupied Premises.

During any time when a Premises is unoccupied for more than forty-five (45) days, and Collection services are not provided by Company, Company shall not Bill such Premises for Solid Waste Handling Service. Company shall remove its Containers from any Premises after being notified by a Customer that service is to be cancelled as a result of the Premises being unoccupied. The Customer at any such Premises shall be responsible to provide notice to Company to cease service due to a vacancy, as well as reasonable evidence pursuant to such guidelines as the City Manager is hereby authorized to develop, demonstrating the Premises was vacant for the period in question. Any Customer grievance regarding a claim that a Premises was unoccupied and received no service, and hence should not be Billed for a given period pursuant to this Section, may be appealed by the Customer to the City Manager whose decision shall be final.

5.2 Customer Service

5.2.1 Local Office

Company shall maintain an office within the County of Orange and said office shall be open ("Office hours"), at a minimum, from 8:00 A.M. to 5:00 P.M., Monday through Friday, and on Saturdays during Collection hours, exclusive of holidays. A responsible

and qualified representative of Company, capable of communicating fluently in both English and Spanish (or multiple persons having the capability to so communicate) shall be available during Office Hours for personal, live communication with the public at the local office, and a similarly qualified person(s) shall be available for communication with the public by phone during any times other than Office Hours when Collection is occurring.

5.2.2 Telephone Customer Service Requirements

Company shall maintain a toll free telephone number that rings at its office within Orange County during Office Hours, and Company's telephone system shall be adequate to handle the volume of calls typically experienced on the busiest days. Company shall also maintain a toll free telephone number for use at times other than Office Hours, which number shall be published in the Dana Point telephone directory at the Company's expense. Company shall have a representative, answering or message providing/receiving (voice-mail) service available at said non-Office Hours telephone number. Calls received at times other than during Office Hours shall be responded to on the next business day. Company shall provide City with a 24-hour emergency number to a live person, not voice-mail.

Company shall record Customer complaints regarding Customer service personnel in accordance with Section 5.2.3. Customer service representatives receiving multiple complaints are to be transferred from Customer service duties or disciplined and appropriately trained. City may require that any employee that the City deems not up to the City's customer service standards not to be used for contact with the public/customers.

5.2.3 Complaint Documentation

All service complaints shall be directed to Company. Daily logs of complaints shall be retained for a minimum of twenty-four (24) months and shall be available to City at all times upon request.

Company shall log all complaints received by telephone and said log shall include the date and time the complaint was received, the name, address and telephone number of the caller, a description of the complaint, the name of the employee recording the complaint and the action taken by Company to respond to and remedy the complaint.

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

All Customer service records and logs kept by Company shall be available to City upon request. City shall, at any time during regular Office Hours, have access to Company's Customer service department for purposes that may include monitoring the quality of Customer service or researching Customer complaints.

5.2.4 Resolution of Customer Complaints

Disputes between Company and its Customers regarding the services provided in accordance with this Agreement may be resolved by the City. The City's decision shall be final and binding. Should Company and Customers not be able to establish a mutually acceptable fee to be charged for special hauling services, the matter shall also be determined by the City, and the City's decision shall be final.

Intervention by the City is not a condition precedent to any rights or remedies third parties might otherwise have in any dispute with Company. Nothing in this Section is intended to effect the remedies of third parties against Company.

5.2.5 Government Liaison

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

5.3 Education and Public Awareness

5.3.1 General

Company acknowledges and agrees that education and public awareness are critical, key and essential elements of any efforts to achieve AB 939 requirements. Accordingly, Company agrees to implement a public education program to expand public and Customer awareness concerning the need to and methods of reducing, reusing and Recycling Solid Waste. Company shall cooperate fully with City in this regard. A Public Education Plan shall be submitted to the City for review and approval within 60 days of the Effective Date. The plan shall address the items described in this Section, as well as programs from the City's SRRE and HHW Element.

5.3.2 Certified Recycling Outreach Coordinator

During the Term hereof, Company shall at all times retain on its staff a Recycling coordinator, responsible for conducting waste surveys of Customers and developing site-specific plans for Recycling and diversion of Solid Waste generated by Customers. The coordinator shall be appropriately trained and City shall have the right to approve Company's choice for the person holding this position.

5.3.3 Implementation and On-going Education Requirements

In order to promote public education, in addition to any other materials it develops, Company shall create the following public education materials and programs at its expense, which will be distributed as indicated below. All of these materials and programs shall be produced and/or available in both English and Spanish languages, and/or, with City's approval, pictures or graphics.

5.3.3.1 Instructional Packet

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

5.3.3.2 Container Labels

Recyclables and Green Waste Containers shall carry stickers/labels or other identifying markings in both English and Spanish and/or, with City's approval, pictures or graphics, indicating the materials that should and should not be placed in each Container.

5.3.3.3 Annual Brochures

Annually, each Customer shall receive a four (4) page, full color brochure, informing Customers of how to use available services. Three (3) separate brochures shall be developed: one for Customers at Single-Family and Multi-Family Dwellings utilizing Carts; one for Customers at Multiple-Family Dwellings utilizing Bins or Rolloff Boxes; and one for Customers at all other Commercial Premises. Brochures shall, at a minimum, include all information listed under Quarterly Billing Inserts/Notices below.

5.3.3.4 Quarterly Newsletter

Not less than four times per year during each Rate Year Company shall prepare and distribute to each Customer a brochure providing relevant information about Company's services, including, at a minimum, information regarding access to and use of available services, holiday collection schedules, and Company's Customer service numbers. This brochure shall be at least four (4) pages, and printed in full color.

5.3.3.5 Quarterly Billing Inserts/Notices

Not less than once each Calendar quarter, Company shall prepare and mail notices to each Customer promoting and explaining: programs (such as Recycling, Green Waste, Holiday Tree and Bulky Item Collections, proper Household Hazardous Waste Disposal and related events); and providing information on used oil and oil filter drop-off centers, Collection schedules, including holiday schedules, Customer service numbers, the procedures to begin and terminate services, and the illegality of and environmental damage caused by improper disposal. These materials may be included with Billings and shall be subject to review and approval by City.

5.3.3.6 Corrective Action Notice

Company shall develop a corrective action notification form for use in instances where a Customer sets out inappropriate materials for Collection, that explains the appropriate manner for disposal of such items.

5.3.3.7 Company Representative

Company shall retain on its staff an individual who shall as part of his or her job function routinely visits civic groups, school assemblies, building managers at Multi-Family Dwellings and commercial businesses, and homeowners' associations, to promote and explain the Recycling programs Company offers, and participates in demonstrations, and civic events. This representative will attend or provide, at a minimum, two meetings per year directed at each of the following target groups: schools, business owners, and homeowners associations.

5.3.3.8 Web Site Page

Company shall dedicate one page of a Company web site to City services, which shall include at least the following information: all of the City's Solid Waste Collection and Recycling Programs; a listing of contact names and numbers for Customer Service; information on Bulky Item Collection; proper HHW and used oil disposal procedures; Collection schedules, including holiday schedules; and the procedures to begin and terminate services. Company shall assist the City in establishing a link to this web page from the City's web site.

5.3.3.9 Recycling Curriculum

Company shall provide a Recycling education curriculum for use in classroom visits and workshops, and shall develop materials for use with such curriculum such as posters, coloring books, puzzles and quizzes.

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

5.3.4 Community Events

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

5.4 Waste Generation/Characterization Studies

Company acknowledges that City must perform Solid Waste generation and Disposal characterization studies periodically to comply with the requirements of AB 939. Company agrees to participate and cooperate with City and its agents and to accomplish studies and data collection and prepare reports, as needed and directed by City, to

determine weights and volumes of Solid Waste Collected and characterize Solid Waste generated, disposed, transformed, diverted or otherwise handled/processed to satisfy the requirements of AB 939. Company shall also conduct waste composition studies for individual Commercial Customers, at no cost to such Customers, to assist in establishing Recycling programs and mixed waste processing routes.

5.5 Free Mulch Give-A-Way

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

ARTICLE 6 COMPANY COMPENSATION AND RATES

6.1 General

The maximum rates set forth in Exhibit 1, shall be the maximum amount Company may charge Customers as full, entire and complete compensation due pursuant to this Agreement for all labor, equipment, materials and supplies, taxes, insurance, bonds, letters of credit, overhead, Disposal, transfer, profit and all other things necessary to perform all the services required by this Agreement in the manner and at the times prescribed. No charges other than those for which a maximum rate has been established on Exhibit 1 shall be imposed by Company for services provided to Customers unless approved by the City Manager. The parties agree that until January 1, 2007, the maximum rates set forth in the Pre-existing Franchise Agreement shall apply to any service provided pursuant to this Agreement which was also provided pursuant to the Pre-existing Franchise Agreement. After January 1, 2007, the maximum rates set forth in Exhibit 1 shall apply to all services provided hereunder, and such maximum rates shall apply as of the Commencement Date with respect to any service not provided pursuant to the Pre-existing Franchise.

6.2 Low-Income Assistance Discount

City may administer a Low Income Solid Waste Rate Assistance Program for qualified Persons residing in Dwelling Units in City and who receive Collection utilizing Carts. Company will provide Customers who qualify for City's Low Income Solid Waste Rate Assistance Program a discount of Two Dollars (\$2.00) per month as compared to the rate Charged to Customers receiving the same service but who do not qualify for said program. Company shall not be required absorb this discount to more than 100 Customers, and City shall reimburse Company for the discount provided to any Customers in excess of 100. City shall keep Company advised of all Customers in City which qualify for this discount.

6.3 Annual Adjustments

Beginning with the Rate Year that commences on January 1, 2008 and for all subsequent Rate Years, Company may request an annual adjustment to the maximum rates shown in

Exhibit 1. The Company shall submit its request in writing, to be received by City in Person or via certified mail, by the preceding October 1, and shall be based on the method of adjustment described below. Failure to submit a written request by October 1 shall result in Company permanently waiving the right to request such an increase for the applicable Rate Year. Adjustment to the maximum rates is subject to the approval of the City Manager, and the City Manager shall approve such a request unless he determines, based upon substantial evidence, either that the requested maximum rate adjustment does not meet the requirements as set forth herein, or that Company did not comply with the requirements of this Agreement (including, without limitation, diversion requirements, payment obligations, or service obligations) during the Rate Year preceding the Rate Year to which the adjustment is intended to apply.

6.4 Cost Components and Rate Adjustment Indices

The following formula shall be utilized to calculate the adjustment to the maximum rate Company may charge Customers. Examples pertaining to the use of this formula are attached hereto as Exhibit 3.

Determination of the Rate Components - The maximum rates set forth on Exhibit 1 consist of the following components, and shall be set at the start of the Agreement by the following weightings and adjusted using changes in the following specified rate adjustment indices.

Cost Category	Rate Adjustment Index
Labor	Producer Price Index, PCU4212#2, Local trucking without storage, Waste collection
Fuel	Producer Price Index, WPU057303 not seasonally adjusted, Fuels and related products and power, #2 diesel fuel ; or Producer Price Index, WPU0531 not seasonally adjusted, Fuels and related products and power, Natural gas [index dependent upon fuel type used]
Equipment	Producer Price Index, PCU3713#139, Truck and bus bodies, Refuse and garbage (packer type)
Disposal	Change in actual per ton gate rate paid by Company at the Orange County Landfill System.
All Other	50% of change in Consumer Price Index for All Urban Consumers, CUURA421SA0 not seasonally adjusted, all items index (CPI-U) – Los Angeles County, Riverside County, Orange County average.

6.4.1 Refuse Cart and Bin Adjustments

The maximum rate Company may charge for Collection in Refuse Carts, Bins and Rolloff Boxes will be adjusted either upward or downward using the following method, but will be calculated separately due to the differences in cost components for each Collection type.

Step One – Calculate the percentage increase or decrease in each index listed in Section 6.4. The increase or decrease in the indices will be for the twelve-month period ending six months prior to the Rate Year anniversary date.

Step Two – For the first rate adjustment effective January 1, 2008: Report the actual costs for each cost component listed in Section 6.4 based on actual costs for the twelve months ended the preceding June 30. Determine each cost component, other than the disposal cost component, as a percentage of the service cost component. For rate adjustments in subsequent years: Cost components as a percentage of the service component are calculated in Step Five of the rate adjustment. For Step Two of each subsequent rate adjustment, use the cost components recalculated in Step Five during the previous rate adjustment.

Multiply the percentage changes for each rate adjustment component by that component's weighting as a percentage of the service cost component.

Step Three – For the first rate adjustment effective January 1, 2008: Determine the total service cost component and the disposal cost component as percentages of entire cost. For rate adjustments in subsequent years: Service cost component and disposal cost component as a percentage of the total cost are re-calculated in Step 5 of the rate adjustment. For Step Three of each subsequent rate adjustment, use the cost components recalculated in Step Five during the previous rate adjustment.

Multiply the total weighted change in service component indices, as calculated in Step Two by the service component's percentage weighting. Multiply the change in the disposal component index by the disposal component's percentage weighting. Add the weighted percentage changes for the service and disposal components together.

Step Four – Multiply the weighted percent change from Step Three by the existing maximum Bin and Cart Collection rates to determine the increase or decrease in maximum rates. Then add the change in rates to the existing maximum rates to determine the new maximum rates.

Step Five – Adjust the cost components as a percentage of the service component, and the service and disposal components as a percentage of total costs, by the change in indices as the percentage changes were applied in Step Two and Step Three. Recalculate the weighting of these percentages to equal one hundred percent (100%) for use in the next rate adjustment calculation.

Note – Bin cleaning and emergency service rates may be adjusted by the percentage change in the weighted service component as determined for Customers utilizing Bins (see Exhibit 3B).

6.4.2 Rolloff Box Adjustments

The approved Rolloff Box rates consist of the service component, which is the pull rate, and the disposal component, which is the actual cost per ton paid by Company multiplied by the actual tons disposed of or processed.

Service Component - The service component or "pull rate" is to be adjusted in the same manner as the Single Family and Bin rates with the disposal component excluded, as detailed below. See Exhibit 3C for example rate adjustment.

Step One – Calculate the percentage increase or decrease in each index listed in Section 6.4, excluding the disposal index. The increase or decrease in the indices will be for the twelve-month period ending six months prior to the Rate Year anniversary date.

Step Two – For the first rate adjustment effective January 1, 2008: Report the actual costs for each cost component listed in Section 6.4 (excluding disposal) based on actual costs for the twelve months ending the preceding June 30. Determine each cost component (excluding the disposal cost component) as a percentage of the service cost component. For rate adjustments in subsequent years: Cost components as a percentage of the service component are calculated in Step Four of the rate adjustment. For Step Two of each subsequent rate adjustment, use the cost components recalculated in Step Four during the previous rate adjustment.

Multiply the percentage changes for each rate adjustment component by that component's weighting as a percentage of the service cost component.

Step Three – Multiply the weighted percent change from Step Two by the existing maximum pull rates to determine the increase or decrease in maximum pull rates. Then add the change in rates to the existing maximum rates to determine the new maximum pull rates.

Step Four – Adjust the cost components as a percentage of the service component by the change in indices as the percentage changes were applied in Step Two. Recalculate the weighting of these percentages to equal 100% for use in the next rate adjustment calculation.

Disposal/Processing Component – Separately, calculate adjustments to the per ton disposal and processing charges, using Steps 1 through 4 above, based upon the following indices:

Rate	Index
Per ton disposal rate	Change in the gate rate paid in the Orange County Landfill System
Per ton processed: Mixed Wastes, C&D debris, Recyclables, Green Waste	Consumer Price Index for All Urban Consumers, CUURA421SA0 not seasonally adjusted, all items index (CPI-U) – Los Angeles County, Riverside County, Orange County average.

6.5 Quad City Linkage Program

Notwithstanding anything to the contrary herein, the maximum rate Company may charge Customers utilizing Refuse Carts for Collection at Single Family Dwellings shall at all times be equal to or lower than the lowest rate charged in the cities of Laguna Niguel, San Clemente and San Juan Capistrano for Solid Waste Handling Services, inclusive of all fees, utilizing Refuse Carts of approximately the same size as used in City (recognizing there are minor variations in Cart sizes in the cities in question). This comparison shall not take into account any programs, services, or terms or conditions of service. Any dispute regarding the application of this Section shall be decided by the City Manager in his sole and absolute discretion. No increase to the maximum rate otherwise authorized by this Agreement shall be approved if such approval would be contrary to the requirements of this Section.

6.6 Cap on Adjustments to Maximum Rate

No adjustment to the maximum rate as determined by the application of the formula set forth in Section 6.4 may cause an adjustment that exceeds five percent (5%) for any Rate Year, nor may any such adjustment cause an increase in the maximum rate that would exceed the limit set forth in Section 6.5. The difference between five percent (5%) and the change calculated in Section 6.4 shall be carried forward and added to future approved rate increases, providing the total increase for any one Rate Year is no more than five percent (5%). Any unused increase may be carried forward until fully applied, except that any unused increases remaining at the end of the Term hereof will expire unused. If an adjustment to the maximum rate is limited by the provisions of Section 6.5, the provisions of this paragraph relating to a maximum five percent (5%) increase, and the carrying forward of unused increases, shall not apply.

6.7 Extraordinary Adjustments

Company or the City may request an adjustment to rates at reasonable times other than as set forth in Section 6.3 for unusual changes in the cost of providing service under this Agreement. For each request for an adjustment to the maximum rates brought pursuant to this Section Company 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 Company in preparing the estimate. City shall review the Company's request and, in City'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. City may consider increases or decreases in the Company's total revenues and total cost of services when reviewing an extraordinary rate adjustment request.

Company 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 Green Waste; inaccurate estimates by the Company of its cost of operations; or costs of compliance with South Coast Air Quality Management District and Air Resource Board rules and standards for Collection Vehicles.

6.8 Supporting Information

Any request for an adjustment to the maximum rates due to extraordinary circumstances and made pursuant to Section 6.7 shall be accompanied by all information requested by the City to review the reasonableness of the extraordinary rate adjustment request, including, but not limited to, financial and operating data regarding Company's operations in the City. City may require an audit of the supporting information by an auditor selected by the City to be paid for by Company, and may impose any other requirements it deems appropriate in the consideration of an extraordinary rate increase, including changes to this Agreement.

6.9 Grants

From time to time, Federal, State or local agencies including the City may provide to Company grants to assist in financing qualified programs provided by Company in the City (including, without limitation, grants for diversion programs and related equipment, alternative fuel vehicles and equipment, and Household Hazardous Waste Collection and Disposal.) Company shall notify City upon receipt of any such grant funds that may be used to fund services provided pursuant to the terms of this Agreement. Company agrees that the total amount of compensation it receives from Customers hereunder, shall be reduced by the amount of any such grant, unless the grant is used exclusively to pay for new services. The City Council shall determine whether the reduction in Company's compensation shall be: (1) passed through to certain Waste Generators designated by City as a reduction to maximum rates; (2) as an offset to the next increase to maximum rates requested by Company as calculated in accordance with Sections 6.2 through 6.5; (3) paid to City for use as City directs; or, (4) applied in any combination of (1) through (3).

ARTICLE 7 REVIEW OF SERVICES AND PERFORMANCE

7.1 Performance Hearing

In or about July 2008, and once in each Rate Year thereafter City may hold a public hearing to review Company's Solid Waste Collection efforts, source reduction, processing and other diversion services and overall performance under this Agreement (the "Solid Waste Services and Performance Review Hearing.") The purpose of the Solid Waste Services and Performance Review Hearing is to provide for a discussion and review of technological, economic, and regulatory changes in Collection, source reduction, Recycling, processing and Disposal to achieve a continuing, advanced Solid Waste Collection, source reduction and Recycling and Disposal system; and to ensure services are being provided by Company with adequate quality, effectiveness and economy and in full compliance with the terms of this Agreement. Topics for discussion and review at the Solid Waste Services and Performance Review Hearing shall include, but shall not be limited to, services provided, feasibility of providing new services, application of new technologies, Customer complaints, amendments to this Agreement, developments in the law, new initiatives for meeting or exceeding AB 939's goals, regulatory constraints and Company performance. City and Company may each select

additional topics for discussion at any Solid Waste Services and Performance Review Hearing.

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

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

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

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

7.2 Performance Satisfaction Survey

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

ARTICLE 8
RECORDS, REPORTS AND INFORMATION REQUIREMENTS

8.1 General

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

8.2 Records

8.2.1 General

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

Company agrees that all required records relating to operations addressed in this Agreement shall be provided or made available to City and its official representatives during normal business hours. City may have access to, review, copy or otherwise utilize any of the records described in this Section for any purpose whatsoever. Such records include, but are not limited to financial, solid waste, CERCLA and disposal records.

8.2.2 Financial Records

Company shall maintain financial records relating to its operations pursuant to this Agreement separate and segregated from such records relating to its other operations.

Company shall maintain at least the following records:

- a. Audited financial statements for the Company as a whole (which, to the degree permitted by law, shall not be deemed to be public records and shall be kept confidential by City as provided in Section 12.16);
- b. Statements of revenue and expense for this Agreement segregated from the other operations of Company (including without limitation those operations of

Company in surrounding jurisdictions which are not covered by this Agreement), including a description of segregation methodology; and,

- c. Complete descriptions of related party transactions (corporate and/or regional management fees, inter-company profits from transfer, processing or disposal operations).

8.2.3 Solid Waste Records

Company shall maintain the following records relating to its operations pursuant to this Agreement:

- a. Customer services and Billing records;
- b. Records of tons Collected, processed, diverted and disposed by waste stream (Refuse, Recycling, Green Waste), and the Facility used for such tonnages (transfer station, MRF, Transformation Facility or landfill);
- c. Quantity of Recyclable Materials recovered by material type, as well as quantity of material diverted from landfills in compliance with AB 939;
- d. Special annual cleanup event results, including tons disposed and diverted;
- e. Routes;
- f. Facilities, equipment and personnel used;
- g. Facilities and equipment operations, maintenance and repair;
- h. Number of Refuse, Recycling, and Green Waste Containers in service pursuant to this Agreement, and their locations;
- i. Complaints; and,
- j. Missed pickups.

8.2.4 CERCLA Defense Records

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

The requirements of this Section shall survive the expiration of the Term of this Agreement.

8.2.5 Disposal Records

Company shall maintain records of Disposal of all Solid Waste Collected in City for the period of this Agreement and all extensions to this Agreement or successor Agreements. In the event Company discontinues providing Solid Waste Handling Services to City, Company shall provide all records of Disposal or processing of all Solid Waste Collected in City within thirty (30) days of discontinuing service. Records shall be in chronological and organized form and readily and easily interpreted.

8.2.6 Other Programs' Records

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

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

8.2.7 Cost of Audit

City may conduct an audit of the Company's records or operations at any time to verify its performance of the terms of this Agreement, including in connection with verifying billing and rates, Franchise Fee or Recycling Fee payments, tonnage reports, general performance, route requirements, or any other information or obligation required under this Agreement. Company shall pay up to Fifty Thousand Dollars (\$50,000.00) of the cost of audits (if conducted) every two Rate Years. Should any audit conducted or authorized by the City disclose that Franchise Fees or other fees payable by the Company were underpaid by two percent (2%) or more, or that more than two percent (2%) of the Customers were inaccurately Billed, for the period under review, Company shall pay for the full cost of the audit. Company shall also pay the full cost of any audit intended to determine its compliance with the Solid Waste diversion requirements set forth herein should the stated diversion requirements not be met.

8.2.8 Payments and Refunds

Should an audit disclose that the Franchise Fees payable by the Company were underpaid or that Customers were overcharged for the period under review, Company shall pay to City any underpayment of Franchise Fees and/or refund to Company's Customers any overcharges within thirty (30) days following the date upon which the audit report is issued. Undercharges shall not be Billed in arrears for more than ninety (90) days of service, with any remaining undercharges absorbed by the Company. Should an audit disclose that Franchise Fees were overpaid, City shall credit such amounts against future Franchise Fees payable by Company.

8.3 Reports

8.3.1 Report Formats and Schedule

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

- a. Determine and adjust the maximum allowable rates and evaluate the financial efficacy of operations;
- b. Evaluate past and expected progress towards achieving AB 939 goals and objectives;
- c. Determine needs for adjustment to programs; and,
- d. Evaluate Customer service and complaints.

Company may propose report formats that are responsive to the objectives and audiences for each report. The format of each report shall be approved by City. In addition to submitting all reports on paper, Company agrees to submit all reports in an electronic format approved by the City, compatible with City's software/computers at no additional charge.

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

All reports shall be submitted to:

City Manager
City of Dana Point
33282 Golden Lantern
Dana Point, CA 92620

8.3.2 Monthly Reports

The information listed below shall be the minimum reported by Company to City on a monthly basis:

8.3.2.1 Regular Services

Solid Waste Collected by Company for each month, sorted by type of Solid Waste (Refuse, Recycling, Green Waste) in tons, and the Facilities where the tons were processed or disposed.

Warning notices issued for contaminated Recyclable Materials, and Green Waste Containers.

Narrative summary of problems encountered (including scavenging) and actions taken with recommendations for City, as appropriate.

8.3.3 Quarterly Reports

The following information shall be the minimum reported by Company to City on a quarterly basis:

- a. The information required in the monthly reports;
- b. The complaint summary for the quarter summarized by nature of complaints on a compatible computer disc.
- c. Copies of promotional and public education materials sent during the quarter.
- d. Description of Company outreach activities conducted the previous quarter.
- e. Such other information or reports that the City may reasonably request or require.

8.3.4 Annual Report

The following information is the minimum which shall be reported by Company to City on an annual basis. The annual report is to be essentially in the form and content of the monthly and quarterly reports, but shall also include:

- a. A complete inventory of equipment used to provide all services (such as vehicles and Containers by size and waste stream type Container is used for).
- b. Results of route audits, including a summary of the number of Containers by size and type of service (Refuse, Recycling, Green Waste).
- c. Environmental Litigation Defense records required under Section 8.2.4.
- d. General information about the Company, including a list of officers and members of its board of directors, most recent annual report and other periodic public financial reports of the Company and its subsidiaries and Affiliated companies, and of other entities that may perform services under this Agreement, as the City may request.
- e. Copy of Hazardous Substance diversion records showing types and quantities, if any, of Hazardous Substances that were inadvertently Collected, but diverted from landfilling.
- f. Number of routes and route hours per day by type of service.

8.3.5 Financial Report

The City may require that Company provide Company's financial reports/statements for the most recently completed fiscal year in connection with an extraordinary rate adjustment request, any audit, or any effort to verify information required under this Agreement.

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

8.4 Adverse Information

8.4.1 Reporting Adverse Information.

Company shall provide City two copies (one to the City Manager, one to the City Attorney) of all reports, pleadings, applications, notifications, Notices of Violation, communications or other material relating in any way to Company's performance of services pursuant to this Agreement, submitted by Company to, or received by Company from, the United States or California Environmental Protection Agency, the CIWMB, the Securities and Exchange Commission or any other federal, state or local agency, including any federal or state court. Copies shall be submitted to City within 30 days of receipt by Company, or sooner if reasonably apparent that to do so is materially relevant, and any responses by Company shall be submitted to City simultaneously with Company's filing or submission of such matters with said agencies. Company's routine correspondence to said agencies need not be routinely submitted to City, but shall be made available to City promptly upon City's written request.

8.5 Right to Inspect Records

City shall have the right to inspect, copy or review the specific documents or records required expressly or by inference pursuant to this Agreement, or any other similar records or reports of Company or its Affiliates that City shall deem, in its sole discretion, necessary to evaluate annual reports, compensation applications provided for in this Agreement and Company's performance provided for in this Agreement. Company shall make all records and documents to be reviewed and inspected by the City as a part of any audit or other record review conducted by the City, available for the City's review, inspection and copying within forty-eight (48) hours of receiving written notice from the City requesting the same.

8.6 Failure to Report

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

ARTICLE 9

INDEMNIFICATION, INSURANCE, BOND AND LETTER OF CREDIT

9.1 Indemnification

Company hereby agrees to and shall indemnify and hold harmless City, its elected and appointed boards, commissions, officers, employees, and agents (collectively, indemnities) from and against any and all loss, liability, penalty, forfeiture, claim, demand, action, proceeding or suit in law or equity of any and every kind and description (including, but not limited to, injury to and death of any Person and damage to property, or for contribution or indemnity claimed by third parties) arising or resulting from and in any way connected with (1) the negligence or willful misconduct of Company, its officers, employees, agents, Companies and/or subcontractors in performing services under this Agreement; (2) the failure of Company, its officers, employees, agents, Companies and/or subcontractors to comply in all respects with the provisions of this Agreement, applicable laws (including, without limitation, the Environmental Laws), ordinances and regulations, and/or applicable permits and licenses; (3) the acts of Company, its officers, employees, agents, Companies and/or subcontractors in performing services under this Agreement for which strict liability is imposed by law (including, without limitation, the Environmental Laws). The foregoing indemnity shall apply regardless of whether such loss, liability, penalty, forfeiture, claim, demand, action, proceeding, suit, injury, death or damage is also caused in part by any of the indemnities negligence, but shall not extend to matters resulting from the indemnities gross negligence, or willful misconduct. Company further agrees to and shall, upon demand of City, at Company'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 Company elects to provide such defense, including any and all costs incurred in overseeing any defense to be provided herein by Company.

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

otherwise, asserting rights under the Dormant Commerce Clause or any other federal or state laws to provide Solid Waste Handling Services in the City.

The obligations of Company set forth in this Section shall not terminate or expire, shall be given the broadest possible interpretation, and shall survive the expiration or earlier termination of this Agreement.

9.2 Hazardous Substances Indemnification

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

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

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

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

- c. any Claims based on or arising out of or alleged to be arising out of the marketing, sale, distribution, storage, transportation, disposal, processing or use of any materials recovered by Company;
- d. any Claims based on or arising out of or alleged to be arising out of any breach of any express or implied warranty, representation or covenant arising out of or in connection with this Agreement.

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

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

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

9.3 AB 939 Obligations, Guarantee, and Indemnification.

9.3.1 Warranties and Representations.

Company warrants and represents that it is aware of and familiar with City's Source Reduction and Recycling Element (the "SRRE"), that it is familiar with City's waste stream, that it is familiar with City's efforts to comply with AB 939 (including the fact City was granted an SB 1066 extension, and the fact City has received a Letter of Concern regarding its compliance with AB 939 from the CIWMB), and that it has the ability to and will provide sufficient programs and services to ensure that 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) imposed by State Law, and the CIWMB, including those set forth in AB 939, and all amendments thereto and related legislation, and that it shall do so without imposing any costs or fees other than those for which maximum rates are set forth on the attached Exhibit 1 (including if new programs are implemented which are not called out herein as more fully set forth below.) Notwithstanding any other provision of this Agreement to the contrary, should the 50% diversion goal currently set forth in AB 939 be increased by any subsequent law or regulation, Company may thereafter notify City in writing that as a

result of said increase it is either unable or unwilling comply with the warranties and representations, and/or the other obligations, set forth in Section 9.3.1 through Section 9.3.4 hereof, and this Agreement will automatically terminate 12 months following the date of such notice; provided, however, Company shall not be excused of its obligations set forth in Sections 9.3.1 through 9.3.4 as applicable to AB 939's current 50% diversion goal prior to termination.

9.3.2 Waste reduction and program implementation.

Company 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 Commencement Date, and will implement any programs required by any amendments or modifications thereto. Company's monthly, quarterly and annual written reports shall be in a form adequate to meet City's filing and reporting requirements to the CIWMB, including as required by AB 939. Company shall be responsible to prepare, or assist City with the preparation of, all reports and other information that are in any way related to the Collection of Solid Waste and the diversion of Solid Waste from landfills, as may be required by any agency, including specifically, the State of California.

9.3.3 Guarantee and Indemnification.

Company warrants and guaranties that it will carry out its obligations under this Agreement such that both it and City will at all times be in compliance with the requirements of AB 939 and to ensure that 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) imposed by the State, including as set forth in AB 939, and all amendments thereto as well as related legislation. In this regard Company agrees that it will, in addition to any other requirement contained herein, at its sole cost and expense:

- a. to the extent legally permitted, defend, with counsel approved by City, indemnify, and hold harmless City and City's officials, employees, and agents from and against all fines and/or penalties and other liabilities which may be imposed by the CIWMB or any other regulatory agency if: (1) Company fails or refuses to timely provide information relating to its operations which is required pursuant to this Agreement or AB 939 and such failure or refusal prevents or delays City from submitting reports required by AB 939 in a timely manner; or (2) the source reduction and Recycling goals, diversion goals, program implementation requirements, or any other requirements of AB 939 are not met with respect to the waste stream Collected under this Agreement.
- b. assist City in responding to inquires from the CIWMB;
- c. assist City in preparing for, and participating in, the CIWMB's biannual review of City's SRRE pursuant to Public Resources Code Section 41825;
- d. assist City in applying for any extension, including under Public Resources Code Section 41820, if so directed by City;

- e. assist City in any hearing conducted by the CIWMB relating to City's compliance with AB 939;
- f. assist City with the development of and implement a public awareness and education program that is consistent with the City's SRRE and Household Hazardous Waste Element, as well as any related requirements of AB 939;
- g. provide City with Recycling, source reduction, and other AB 939 related technical assistance;
- h. defend, with counsel acceptable to City, City and City's officials, employees, and agents against the imposition of fines and/or penalties, or any other liabilities, issued by the CIWMB pursuant to AB 939;
- i. be responsible for and pay, any fees, penalties or other costs imposed against the City by the CIWMB, and indemnify and hold harmless City from and against any fines, penalties, or other liabilities, levied against it for violation of AB 939's diversion requirements, or violation of any other provision of AB 939, arising from or in any way related to Company's performance of its obligations under this Agreement;

9.3.4 Implementation of Additional Diversion Services

In the event City does not meet the diversion requirements imposed by State Law, including those imposed by AB 939, with respect to all waste generated in City, and implements any programs in order to comply with the requirements thereof, either voluntarily or due to any requirement that may be imposed upon it, City may direct Company to perform additional services (including new diversion programs) or modify the manner in which it performs existing services or Bills for services pursuant to the provisions of this Agreement. Pilot programs and innovative services which may entail new Collection methods, different kinds of services and/or new requirements for Waste Generators, and use of new or alternative waste processing and disposal technologies are included among the kinds of changes which City may direct.

9.4 Insurance

Company shall procure and maintain during the entire Term of this Agreement the following types of insurance, and shall maintain the following minimum levels of coverage, which shall apply to any claims which may arise from or in connection with Company's performance hereunder or the actions or inactions of any of Company's officers, agents, representatives, employees, or subcontractors in connection with Company's performance. The insurance requirements hereunder in no way limit Company's various defense and indemnification obligations, or any other obligations as set forth herein.

9.4.1 Minimum Scope of Insurance.

Coverage shall be at least as broad as:

1. The most recent editions of Insurance Services Office Commercial General Liability coverage ("occurrence" form CG 00 01).
2. The most recent editions of Insurance Services Office form number CA 00 01 1001 covering Automobile Liability, code 1 "any auto".
3. Workers' Compensation insurance as required by the Labor Code of the State of California and Employers Liability insurance.

9.4.2 Minimum Limits of Insurance.

Company shall maintain in force for the term of this Agreement limits no less than:

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

9.4.3 Deductibles and Self-Insured Retentions.

Any deductibles or self-insured retentions must be declared to and approved by City. If, in the reasonable opinion of the City, Company does not have sufficient financial resources to protect the City from exposure with respect to any deductibles or self-insured retentions, at the option of City, either: the insurer shall reduce or eliminate such deductibles or self-insured retention's as respects City, its officials, employees and agents; or Company shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.

9.4.4 Other Insurance Provisions.

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

9.4.4.1 General Liability and Automobile Liability Coverages

City, its elective and appointive boards, commissions, officials, employees, agents and volunteers are to be named as additional insureds as respects: liability arising out of activities performed by or on behalf of Company; Premises owned, leased or used by Company; or vehicles owned, leased, hired or borrowed by Company. The coverage shall contain no special limitations on the scope of protection

afforded to City, its elective and appointive boards, commissions, officials, employees, agents or volunteers.

Company's insurance coverage shall be primary insurance as respects City, its elective and appointive boards, commissions, officials, employees, agents and volunteers. Any insurance or self-insurance maintained by City, its officials, elective and appointive boards, commissions, employees, agents or volunteers shall be excess of Company's insurance and shall not contribute with it.

Any failure to comply with reporting provisions of the policies shall not affect coverage provided to City, its officials, elective and appointive boards, commissions, employees, agents or volunteers.

Coverage shall state that Company'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.

9.4.4.2 Workers' Compensation and Employers Liability Coverage

The insurer shall agree to waive all rights of subrogation against City, its officials, elective and appointive boards, commissions, employees, agents and volunteers for losses arising from work performed by Company for City.

9.4.4.3 All Coverages

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

9.4.5 Acceptability of Insurers.

The insurance policies required by this Section shall be issued by an insurance company or companies authorized to do business in the State of California and with a rating in the most recent edition of Best's Insurance Reports of size category VII or larger and a rating classification of A or better, unless otherwise approved by the City Manager.

9.4.6 Verification of Coverage.

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

9.5 Faithful Performance Bond

Concurrently with execution of this Agreement, Company shall deliver to City a performance bond in the sum of the amount of Two Hundred Fifty Thousand Dollars (\$250,000.00), in a form subject to the approval of the City Attorney and substantially similar to the form provided in Exhibit 4, which secures the faithful performance of this Agreement, including, without limitation, payment of any penalty and the funding of any work to cure a breach of this Agreement, unless such requirement is waived by the City Manager. The bond shall contain the original notarized signature of an authorized officer of the surety and affixed thereto shall be a certified and current copy of his power of attorney. The bond shall be unconditional and remain in force during the entire term of the Agreement and shall be null and void at the conclusion of the term of this Agreement only if the Company promptly and faithfully performs all terms and conditions of this Agreement.

9.6 Faithful Performance Letter of Credit

In addition to the performance bond noted in Section 9.5 above, Company shall furnish an irrevocable letter of credit drawn upon a financial institution with an office within Fifty (50) miles of City in the amount of Two Hundred Fifty Thousand Dollars (\$250,000), in a form acceptable to the City attorney as security for the performance of this Agreement (the "LOC"). The LOC shall be the sole responsibility of Company, and shall be released within thirty days after both (i) the expiration of the term of this Agreement, or upon the earlier termination hereof; and (ii) Company's satisfactory performance of all obligations hereunder.

9.7 Forfeiture of Performance Bond

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

9.8 Forfeiture of Letter Of Credit

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

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

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

ARTICLE 10 CITY'S RIGHT TO PERFORM SERVICE

10.1 General

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

Notice of Company's failure, refusal or neglect to provide Solid Waste Handling Services as required by this Agreement may be given orally by telephone to Company at its principal office and shall be effective immediately. Written confirmation of such oral notification shall be sent to Company within twenty-four (24) hours of the oral notification.

Company further agrees that in such event:

- a. It will take direction from City to effect the transfer of possession of equipment and property to City for City's use, or for use by any Person or entity designated by the City.
- b. It will, if City so requests, keep in good repair and condition all of such equipment and property, provide all motor vehicles with fuel, oil and other service, and provide such other service as may be necessary to maintain said property in operational condition. City agrees that it assumes complete responsibility for the proper and normal use of such equipment and facilities while in its possession.
- c. City may immediately engage all or any personnel necessary or useful for the Collection and transportation of Solid Waste, including, if City so desires, employees previously or then employed by Company, Company further agrees, if City so requests, to furnish City the services of any or all management or office Personnel employed by Company whose services are necessary or useful for Solid

Waste Collection, transportation, processing and Disposal operations and for the Billing and Collection of fees for these services.

10.2 Billing and Compensation to City During City's Possession

During such time that City is providing Solid Waste Handling Services, as above provided, Company shall Bill and collect payment from all Customers who are provided services by City. Company further agrees that, in such event, it shall reimburse City for any and all costs and expenses incurred by City in taking over possession of the above-mentioned equipment and facilities and in providing Solid Waste Handling Services in such manner and to an extent as would otherwise be required of Company under the Terms of this Agreement. Such reimbursement shall be made from time to time after submission by City to Company of each statement listing such costs and expenses, but in no event later than five (5) working days from and after each such submission. In addition, Company shall pay City an amount equal to the profits Company is entitled to receive from Billings sent to Customers for Solid Waste Handling Services which services are not provided by Company due to the conditions noted in this Section. Such payment shall be due on the date which is 30 days following the date upon which both the City's temporary possession of Company's equipment has ended and Company's Bills to Customers for such period have become due.

10.3 City's Possession Not A Taking

It is expressly agreed between the Parties that City's exercise of its rights under this Article (1) does not constitute a taking of private property for which compensation must be paid, (2) shall not create any liability on the part of City to Company, and (3) does not exempt Company from any of the indemnity and insurance provisions of this Agreement, which are meant to extend to circumstances arising under this Section provided that the Company is not required to indemnify the City against claims and damages arising from the sole negligence of the City, its elective and appointive boards, commissions, officers, employees and agents in the operation of Collection Vehicles during the time the City has taken possession of such vehicles.

10.4 Duration of City's Possession

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

ARTICLE 11
DEFAULT, REMEDIES AND LIQUIDATED DAMAGES

11.1 Events of Default

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

11.1.1 Fraud or Deceit or Misrepresentation.

If the Company engages in, or attempts to practice, any fraud or deceit upon the City or makes a misrepresentation regarding material information to the City.

11.1.2 Insolvency or Bankruptcy.

If Company becomes insolvent, unable, or unwilling to pay its debts, files a bankruptcy petition or takes steps to liquidate its assets.

11.1.3 Failure to Maintain Coverage.

If Company fails to provide or maintain in full force and effect any insurance coverage, or the performance bond or letter of credit, as required by this Agreement.

11.1.4 Violations of Regulation.

If Company violates any orders or filings of any regulatory body having jurisdiction over Company which violation is material to Company's performance under this Agreement, provided that Company may contest any such orders or filings by appropriate proceedings conducted in good faith, in which case no breach of the Franchise and this Agreement shall be deemed to have occurred until a final decision adverse to the Company is entered.

11.1.5 Failure to Perform.

If Company ceases to provide all or a portion of the Solid Waste Handling Services as required under this Agreement for a period of five (5) consecutive days or more, for any reason within the control of Company, including labor disputes; or if Company fails to perform its obligations in such a manner as to achieve the required diversion levels as set forth herein.

11.1.6 Failure to Pay.

If Company fails to make any payments required under this Agreement within ten (10) days of when due.

11.1.7 Failure to Cooperate with Audits.

If Company fails to complete, perform or cooperate with any audit as described by this agreement.

11.1.8 Failure to Submit Reports or Documentation.

If Company fails to complete or to provide required reports or documents to the City as required by this agreement within sixty (60) days of their due date.

11.1.9 Acts or Omissions.

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

11.1.10 Attachment.

The seizure of, attachment of, or levy on, the operating equipment of Company, including without limits its equipment, maintenance or office facilities, or any part thereof, any or all of which would have a material and adverse effect upon Company's ability to perform its obligations under this Agreement.

11.1.11 Failure to Provide Assurance of Performance.

If Company fails to provide reasonable assurances of performance as required under Section 11.7.

11.2 Right to Cure

Company shall have forty-eight (48) hours from the time it is given notification by City to cure any default arising under subsections 11.1.6 to 11.1.8, and 11.1.10 through 11.1.11 provided, however, that the City shall not be obligated to provide Company with a notice and cure opportunity if the Company has committed the same or similar breach within a twenty-four month period. It is expressly understood that Company is not entitled to receive notice of default, or to cure such default, with respect to those matters listed in subsections 11.1.1 through 11.1.5 and 11.1.9 above.

11.3 Right to Terminate Upon Default and Right to Specific Performance

If Company commits a material breach, including specifically any of the matters listed in Section 11.1 above (and, if permitted to cure, does not cure it within the time specified to cure), City shall be entitled to unilaterally terminate this Agreement. Should City decide to terminate this Agreement upon a default by Company, City shall have the right to do so upon giving ten (10) days notice to Company, and shall not be required to take any further action (such as holding any hearing, bringing any suit or taking any other action.)

City's right to terminate this Agreement is not an exclusive remedy, and City's termination of this Agreement shall not constitute an election of remedies. Instead, such remedies shall be in addition to any and all other legal and equitable rights and remedies which City may have.

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

11.4 Liquidated Damages

11.4.1 General.

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

11.4.2 Service Performance Standards; Liquidated Damages for Failure to Meet Standards.

The parties further acknowledge that consistent, reliable Solid Waste Handling Service is of utmost importance to City and that City has considered and relied on Company's representations as to its quality of service commitment in entering this Agreement with it. The parties further recognize that some quantified standards of performance are necessary and appropriate to ensure consistent and reliable service and performance. The

parties further recognize that if Company fails to achieve the performance standards, or fails to submit required documents in a timely manner, City and its residents will suffer damages and that it is and will be impractical and extremely difficult to ascertain and determine the exact amount of damages which City will suffer. Therefore, without prejudice to City's right to treat such breaches as an event of default under this Article 11, the parties agree that the following liquidated damage amounts represent a reasonable estimate of the amount of such damages for such specific breaches, considering all of the circumstances existing on the date of this Agreement, including the relationship of the sums to the range of harm to City that reasonably could be anticipated and the anticipation that proof of actual damages would be costly or impractical. In placing their initials at the places provided, each party specifically confirms the accuracy of the statements made above and the fact that each party has had ample opportunity to consult with legal counsel and obtain an explanation of the liquidated damage provisions at the time that the Agreement was made.

Company
Initial Here

City Initial
Here

 L

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

11.4.2.1 Collection Reliability

- a. For each failure to commence service to a new Customer account within seven (7) days after order, which exceed five (5) such failures annually: \$150.00
- b. For each failure, which exceeds ten (10) such failures annually, to Collect Solid Waste from any established Customer account on the scheduled Collection day and not Collected within the period described in this Agreement : \$150.00
- c. For each failure to Collect Solid Waste, which has been properly set out for Collection, from the same Customer on two (2) consecutive scheduled pickup days: \$150.00

11.4.2.2 Collection Quality

- a. For each occurrence of failure to properly return empty Containers to avoid pedestrian or vehicular traffic impediments or to place cans upright with lids secured which exceeds ten (10) such occurrences annually: \$150.00
- b. For each occurrence of excessive noise or discourteous behavior: \$250.00
- c. For each occurrence of Collecting Solid Waste during unauthorized hours which exceeds five (5) such occurrences annually: \$250.00

- d. For each occurrence of damage to private property which exceeds five (5) such occurrences annually: \$250.00
- e. For each failure to clean up Solid Waste spilled from Solid Waste Containers within 90 minutes that exceeds ten (10) such failures annually: \$150.00

11.4.2.3 Customer Responsiveness

- a. For each failure to initially respond to a Customer complaint within forty-eight (48) hours, and for each additional twenty four (24) hour period, or portion thereof, thereafter in which the complaint is not addressed: \$250.00
- b. For each failure to process Customer complaints to City as required by Article 5: \$250.00
- c. For each failure to carry out responsibilities for establishing service to an individual resident: \$250.00
- d. For each failure to notify City within one (1) day from the time Company has remedied a complaint forwarded by City. \$ 10.00
- e. For each failure to remove graffiti from Containers, or to replace with Containers bearing no graffiti, within forty-eight (48) hours of request from City or a Customer. \$150.00

11.4.2.4 Timeliness of Submissions to City

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

- a) Monthly reports: \$100 per day
- b) Quarterly reports: \$250 per day
- c) Annual reports: \$350 per day

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

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

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

11.4.3 Amount.

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

11.4.4 Timing of Payment.

Company shall pay any liquidated damages assessed by City within ten (10) days after they are assessed. If they are not paid within the ten (10) day period, City may proceed against the performance bond or letter of credit required by the Agreement or find Company in default and terminate this Agreement, or both.

11.5 Excuse from Performance

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

The party claiming excuse from performance shall, within five (5) days after such party has notice of such cause, give the other party notice of the facts constituting such cause and asserting its claim to excuse under this Section.

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

11.6 Notice, Hearing and Appeal of City Breach

11.6.1 Administrative Hearing.

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

11.6.2 Other Remedies; Claims.

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

11.6.3 Actions for Damages.

As a prerequisite to the filing and maintenance of any action for damages by Company against City arising out of this Agreement, Company shall present a claim to City, as required by Government Code Section 910 et seq., within 60 days of the date of the occurrence giving rise to the claim for damages.

11.7 Assurance of Performance

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

ARTICLE 12 OTHER AGREEMENTS OF THE PARTIES

12.1 Relationship of Parties

The parties intend that Company shall perform the services required by this Agreement as an independent Company engaged by City and not as an officer or employee of City nor as a partner of or joint venture with City. No employee or agent of Company shall be or shall be deemed to be an employee or agent of City. Except as expressly provided herein, Company shall have the exclusive control over the manner and means of conducting the Solid Waste Handling Services performed under this Agreement, and all Persons

performing such services. Company shall be solely responsible for the acts and omissions of its officers, employees, Companies, subcontractors and agents. Neither Company nor its officers, employees, Affiliates, subcontractors and agents shall obtain any rights to retirement benefits, workers' compensation benefits, or any other benefits which accrue to City employees by virtue of their providing service to the City.

12.2 Compliance with Law

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

12.3 Governing Law

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

12.4 Jurisdiction

Except for those matters where Federal Courts have exclusive jurisdiction, any lawsuits between the parties arising out of this Agreement shall be brought and concluded in the courts of the State of California, which shall have exclusive jurisdiction over such lawsuits.

The parties agree that venue for any dispute related to this Agreement will be Orange County, California.

12.5 Assignment

Except as may be provided in Article 10 (City's Right to Perform Service), Company shall not assign its rights, nor delegate, subcontract or otherwise transfer its obligations under this Agreement (collectively referred to as an "assignment") to any other Person without the prior written consent of City. Any such assignment made without the consent of City shall be void and the attempted assignment shall constitute a material breach of this Agreement.

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 Company's assets dedicated to service under this Agreement to a third party; (ii) a sale, exchange or other transfer of outstanding common stock of Company to a third party provided said sale, exchange or transfer may result in a change of control of Company; (iii) any dissolution, reorganization, consolidation, merger, recapitalization, 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 Company; (iv) any assignment by operation of law, including those resulting from mergers or acquisitions by or of Company of any of its Affiliates, insolvency or bankruptcy, making assignment for the benefit of creditors, writ of attachment for an execution being levied against this Agreement, appointment of a receiver taking

possession of Company's property, or transfer occurring in the event of a probate proceeding; and (v) any combination of the foregoing (whether or not in related or contemporaneous transactions) which has the effect of any such transfer or change of ownership, or change of control of Company.

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

If Company requests City's consideration of and consent to an assignment, City may deny or approve such request in its sole and absolute discretion. Any request for an assignment shall be made in a manner to be prescribed by the City Manager, and no request by Company for consent to an assignment need be considered by City unless and until Company 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:

- a. Company shall undertake to pay City its reasonable expenses for attorney's fees and investigation costs necessary to investigate the suitability of any proposed assignee, and to review and finalize any documentation required as a condition for approving any such assignment. An advance payment of \$50,000 towards expenses shall be paid to the City prior to City consideration of any assignment request and Company 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.
- b. Company shall pay the City a transfer fee equal to 1% of the Gross Receipts it will receive during the remaining Term of the Agreement, as estimated by City.
- c. Company shall furnish City with audited financial statements of the proposed assignee's operations for the immediately preceding three (3) operating years.
- d. Company 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 Company under this Agreement; (ii) that in the last five (5) years, the proposed assignee has not suffered any significant citations or other censure from any federal, state or local agency having jurisdiction over its Solid Waste management operations due to any significant failure to comply with state, federal or local Environmental Laws and that the assignee has provided 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 Agreement in a timely, safe and effective manner.

Under no circumstances shall City be obliged to consider any proposed assignment by City if Company 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.

12.6 Binding on Assigns

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

12.7 Cooperation Following Termination

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

12.8 Parties in Interest

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

12.9 Waiver

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

12.10 Company's Investigation

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

12.11 Notice

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

If to City: City Manager
 City of Dana Point
 33282 Golden Lantern
 Dana Point, CA 91355

If to Company: Division President
 CR&R, Incorporated
 31641 Ortega Highway
 San Jaun Capistrano, CA. 92675

The address to which communications may be delivered may be changed from time to time by a written notice given in accordance with this Section.

Notice shall be deemed given on the day it is personally delivered or, if mailed, three days from the date it is deposited in the mail.

12.12 Representatives of the Parties

The City Manager shall be the City's designated representative for matters set forth in this Agreement. Company shall upon the Effective Date, designate in writing a responsible officer who shall serve as the representative of Company in all matters related to the Agreement and shall inform City in writing of such designation and of any limitations upon his or her authority to bind Company. City may rely upon action taken by such designated representative as actions of Company unless they are outside the scope of the authority expressly delegated to him/her by Company as communicated to City.

12.13 City Free to Negotiate with Third Parties

City may investigate all options for the Collection, transporting, Recycling, processing and Disposal of Solid Waste for periods after this agreement has expired or been terminated. Without limiting the generality of the foregoing, City may solicit proposals from Company and from third parties for the provision of Solid Waste Handling Services which are the subject of this Agreement, including without limitation Collection services, Disposal services, Recycling services, Green Waste services and processing, and any combination thereof, and may negotiate and execute agreements for such services which will take effect upon the expiration or earlier termination of this Agreement pursuant to Section 11.1 or otherwise.

12.14 Compliance with Municipal Code

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

12.15 Privacy

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

12.16 Proprietary Information, Public Records

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

ARTICLE 13 MISCELLANEOUS AGREEMENTS

13.1 Entire Agreement

This Agreement contains the entire integrated agreement and understanding concerning the subject matter herein and supersedes and replaces any prior negotiations, promises, proposals, and agreements between the Parties, whether written or oral. The Parties 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 Agreement, to induce the other party to execute this instrument.

13.2 Section Headings

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

13.3 References to Laws and Other Agreements

All references in this Agreement to laws shall be understood to include such laws as they may be subsequently amended or recodified, unless otherwise specifically provided.

13.4 Interpretation

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

13.5 Agreement

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

13.6 Severability

If any non-material provision of this Agreement is for any reason deemed to be invalid and unenforceable, the invalidity or unenforceability of such provision shall not affect any of the remaining provisions of this Agreement which shall be enforced as if such invalid or unenforceable provision had not been contained herein.

13.7 Exhibits

Each of Exhibits identified as Exhibit "1" through "4" is attached hereto and incorporated herein and made a part hereof by this reference.

13.8 Attorneys' Fees

If either party to this Agreement is required to initiate or defend or made a party to any action or proceeding in any way connected with this Agreement, the prevailing party in such action or proceeding, in addition to any other relief which may be granted, whether legal or equitable, shall be entitled to recover its reasonable attorney's fees and costs. Attorney's fees shall include attorney's fees on any appeal, and in addition a party entitled to attorney's fees shall be entitled to all other reasonable costs for investigating such action, taking depositions and discovery and all other necessary costs the court allows which are incurred in such litigation. All such fees shall be deemed to have accrued on commencement of such action and shall be enforceable whether or not such action is prosecuted to judgment.

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

("City")

CITY OF DANA POINT

By: [Signature]
City Manager, City Of Dana Point

ATTEST:

[Signature]
City Clerk

APPROVED AS TO FORM:

By: [Signature]

("Company")

CR&R, Incorporated

By: [Signature]

Name: David E. Fabris

Title: President
Solid Waste Division

EXHIBIT 1
INITIAL MAXIMUM RATES

**EXHIBIT 1
MAXIMUM RATES**

Residential Cart Rates

Following are the rates for January 1, 2007 through December 31, 2007:

Residential* Cart Service - One each refuse, recycling and green waste cart	Rate
35-gallon refuse cart	\$ 12.25 per month
67-gallon refuse cart	\$ 12.75 per month
96-gallon refuse cart	\$ 13.75 per month
Each additional refuse cart - any size	\$ 5.00 per month
Each additional recycling cart - any size	No Charge
One additional green waste cart - any size	No Charge
Each additional green waste cart above two - any size	\$ 5.00 per month
Additional Special Overage Pickup for Automated Cart Customers (in excess of two pickups per year)	\$ 5.00 per pickup
Additional Bulky Item pickups (in excess of two per year)	\$ 25.00 per pickup
Walkout Service for Disabled Customers	No Charge
Low-Income Assistance Discount (reduction to standard cart rates)	\$ 2.00 discount per month

* Both single and multi-family cart customers.

**EXHIBIT 1
MAXIMUM RATES (continued)**

Multi-Family Bin and Commercial Rates

Following are the rates for January 1, 2007 through December 31, 2007:

Multi-Family Bin Rates - Per Month						
Container Size	Pickups per week					
	1	2	3	4	5	6
Multi-Family 3-yard bin	\$ 109.00	\$ 179.00	\$ 229.00	\$ 299.00	\$ 329.00	\$ 389.00
Locking Bin	\$ 10.00	\$ 20.00	\$ 30.00	\$ 40.00	\$ 50.00	\$ 60.00

Commercial Bin Rates - Per Month						
Container Size	Pickups per week					
	1	2	3	4	5	6
3 cubic yard	\$ 89.00	\$ 136.00	\$ 196.00	\$ 246.00	\$ 309.00	\$ 356.00
4 cubic yard	\$ 119.00	\$ 182.00	\$ 216.00	\$ 276.00	\$ 336.00	\$ 396.00
3 cubic yard recycling bin	\$ 51.45	\$ 81.45	\$ 111.45	\$ 141.45	\$ 171.45	\$ 201.45
4 cubic yard recycling bin	\$ 67.45	\$ 102.45	\$ 137.45	\$ 172.45	\$ 207.45	\$ 242.45
Locking Bin	\$ 10.00	\$ 20.00	\$ 30.00	\$ 40.00	\$ 50.00	\$ 60.00

Commercial Cart* Services	Monthly Rate
67-gallon refuse cart, recycling cart - 1x week pickup	\$ 22.00 per month
Additional 67-gallon refuse cart - 1x week pickup	\$ 15.00 per month
Additional 67-gallon recycling cart - 1x week pickup	No Charge
96-gallon refuse cart, recycling cart - 1x week pickup	\$ 24.00 per month
Additional 67-gallon refuse cart - 1x week pickup	\$ 18.00 per month
Additional 67-gallon recycling cart - 1x week pickup	No Charge
67 or 96-gallon recycling cart - 1x week pickup, bin customers	\$ 25.00 per month

* Rates for multiple pickups per week are calculated as a multiple of the monthly rate.

EXHIBIT 1
MAXIMUM RATES (continued)

Roll-off Box and Other Services Rates

Following are the rates for January 1, 2007 through December 31, 2007:

Roll-off Box Charges	Rate
Rate per pull - Standard Roll-off Box Refuse Load (10 to 40-yard)	\$ 175.00
Rate per pull - Compactors (excluding compactor rental)	\$ 215.00
Tonnage Charge, per ton, including mixed waste processing, and residue disposal - Standard and Compactor Roll-off Box Loads, and Mixed Construction and Demolition Debris Loads	\$ 45.40
Rate per pull - Green Waste and Mixed Construction and Demolition Roll-off Box loads	\$ 150.00
Tonnage Charge, per ton - Green Waste	\$ 26.95
Mixed Recyclable Loads - 40-yard box, including pull and processing/residue disposal	\$ 275.00
Mixed Recyclable Loads - 10-yard box, including pull and processing/residue disposal	\$ 275.00
Source Separated Clean Recyclable Loads (including concrete, asphalt, cardboard and paper) - per load, including pull plus processing/residue disposal	\$ 220.00
Temporary 3-cubic-yard Construction and Demolition Bin - per pickup	\$ 62.00

Other Services	Rate
Restart Fee (including container delivery)	\$ 25.00
Extra 3-yard bin pickup, per pickup	\$ 45.00
Extra 4-yard bin pickup, per pickup	\$ 55.00
Bin Exchange/Cleaning (in excess of one free per year)	\$ 25.00
Container Graffiti Removal Service (in excess of one free per year)	\$ 25.00
Emergency Collection, hourly rate for one crew and one vehicle	\$ 75.00
Optional HHW Event, cost to City per event	\$100,000.00

Exhibit 2
County Agreement

WASTE DISPOSAL AGREEMENT

Between

THE COUNTY OF ORANGE, CALIFORNIA

and

THE CITY OF DANA POINT, CALIFORNIA

Dated April 8, 1997

County Authorization Date:

April 8, 1997

City Authorization Date:

June 13, 1997

County Notice Address:

Director
Integrated Waste Management Dept.

City Notice Address:

Office of the City Clerk
City of Dana Point

320 N. Flower, Suite 300

33282 Golden Lantern

Santa Ana, CA 92703

Dana Point, CA 92629

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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 four 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, which mandates the diversion of 50% of waste from landfill disposal by 2000, has already significantly reduced the volume of waste delivered to the landfills. The Disposal System, which was designed to accept approximately 16,000 tons of waste per day, now receives on average less than 10,000 tons per day of Orange County waste. The reduction in tonnage disposed reduced revenues to the system at the same time that federal and state statutes and regulations mandated the installation of costly infrastructure at the landfills to protect air and water.

Based on reduced revenues and increased costs, the County was actively exploring opportunities to remedy the shortfall when the bankruptcy occurred. The impact of the County's bankruptcy petition in December 1994 precipitated a series of profound changes because the Disposal System was identified as one of the County's most valuable assets. These changes included importation of out-of-County waste to raise revenues, restructuring the department like a business enterprise to reduce costs and operate more efficiently, and development of a strategic study of the options available to the County for the future use or disposition of the system.

In January 1996, the County began accepting out-of-County municipal solid waste for disposal in the Disposal System in order to utilize the unused landfill capacity to raise revenues to assist in bankruptcy recovery. Contracts for disposal of imported waste are intended to produce net revenues of \$15 million per year for twenty (20) years, which revenues are committed to the County's Plan of Adjustment for bankruptcy recovery.

In March 1996, the Integrated Waste Management Department ("IWMD") began implementing a departmental restructuring plan focused on reducing overhead charges and costs applied by other County department/agencies that provide support services to IWMD, reducing the contract services costs through performance-based contract practices, and reducing staff costs identified in the internal department reorganization. In addition, IWMD continued to work with the Solid Waste Working Group ("SWWG") of the City Managers Association ("CMA") and the Orange County Division of the League of California Cities ("LOCC") to resolve city issues and concerns regarding their future use of the Disposal System.

To assist in determining the future use of the Disposal System, the County engaged the services of independent consultants to identify and study available options for disposition of the Disposal System. On November 20, 1996, the Orange County Board of Supervisors considered the consultant's report and based on recommendations from the cities and waste haulers, directed the IWMD to commence negotiations to secure mutually acceptable long-term disposal contracts with Orange County cities and return within 90 days.

In directing this action, the Board recognized the cities' interest in the procurement of competitive and stable disposal fees, the assurance of long term capacity, and the continuation of sound environmental management of the landfill system. In order to assure these goals, the County requires long term, financially sound, disposal contracts with the cities. Long-term disposal contracts between the County and Orange County cities will also serve the public health, safety and welfare of the residents of Orange County by maintaining public ownership and stewardship over the Orange County Landfill Disposal System.

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.

The 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.

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.

The City and the County acknowledge that execution of this Agreement will result in significant cost savings for the residents of the County. The tipping fee currently charged for the disposal of solid waste at the Disposal System is \$27 per ton. If this Agreement is executed by a sufficient number of cities, the Agreement provides for a Contract Rate of \$22 per ton, effective July 1, 1997.

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 which are acceptable at Class III landfills under Applicable Law.

"Act" means the California Integrated Waste Management Act of 1989 (Division 30 of the California Public Resources Code), as amended, supplemented, superseded and replaced from time to time.

"Agreement" means this Waste Disposal Agreement between the County and the City as the same may be amended or modified from time to time in accordance herewith.

"Annual Imported Tonnage Target" means the amount of Imported Acceptable Waste specified in Appendix 2.

"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.

"CEQA" means the California Environmental Quality Act, codified at Cal. Pub. Res. Code Section 21000 et seq. (West 1996) as amended or superseded, and the regulations promulgated thereunder.

"CERCLA" means the Comprehensive Environmental Responsibility Compensation and Liability Act, 42 U.S.C.A. Section 9601 et seq. (West 1995 & Supp. 1996, 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.

"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 date of delivery of this Agreement as executed by the 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 Waste Management 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 the Orange County Integrated Waste Management Department, 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 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 four active landfills (Olinda Alpha, Frank R. Bowerman, Prima Deshecha and Santiago); four regional Household Hazardous Waste Collection Centers; as well as services, such as monitoring and other activities, at 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.

"Excess Import Revenues" has the meaning ascribed thereto in Section 3.6(E).

"Franchise Hauler" means any hauler or collector who provides Acceptable Waste collection services within the City pursuant to, or under authority granted by, a 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.) (West 1992

& Supp. 1996), and Titles 22 and 26 of the California Code of Regulations and other regulations promulgated thereunder.

"Hazardous Waste" means (a) any waste which by reason of its quality, concentration, composition or physical, chemical or infectious characteristics may do either of the following: cause, or significantly contribute to, an increase in mortality or an increase in serious irreversible, or incapacitating reversible, illness, or pose a substantial threat or potential hazard to human health or the environment, or any waste which is defined or regulated as a hazardous waste, toxic substance, hazardous chemical substance or mixture, or asbestos under Applicable Law, as amended from time to time including, but not limited to: (1) the Resource Conservation and Recovery Act and the regulations contained in 40 CFR Parts 260-281; (2) the Toxic Substances Control Act (15 U.S.C. Sections 2601 et seq.) and the regulations contained in 40 CFR Parts 761-766; (3) the California Health and Safety Code, Section 25117 (West 1992 & Supp. 1996); (4) the California Public Resources Code, Section 40141 (West 1996); and (5) future additional or substitute Applicable Law pertaining to the identification, treatment, storage or disposal of toxic substances or hazardous wastes; or (b) radioactive materials which are source, special nuclear or by-product material as defined by the Atomic Energy Act of 1954 (42 U.S.C. Section 2011 et seq.) and the regulations contained in 10 CFR Part 40.

"Imported Acceptable Waste" means Acceptable Waste that is generated outside of the geographical boundaries of the County and delivered to the Disposal System.

"Independent Haulers" means those waste collection/hauler companies primarily engaged as a principal business in the collection and transportation of municipal solid waste generated in the County of Orange and not under a franchise or other contract 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.

"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 Plan of Adjustment as approved by the County Board of Supervisors in August, 1995.

"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/significant/corrosive/reactive; and
- (3) Carcinogenic/mutagenic/teratogenic;

which are discarded from households as opposed to businesses. Qualified Household Hazardous Waste shall not include Unacceptable Waste.

"Recycled City Acceptable Waste" means any otherwise Controllable Waste which is separated from Acceptable Waste by the generator thereof or by processing and which is "recycled" within the meaning of Section 40180 of the Public Resources Code.

"Renewal Term" has the meaning specified in Subsection 6.1(B) hereof.

"Residue" means any material remaining from the processing, by any means and to any extent, of City Acceptable Waste or Recycled City Acceptable Waste; provided, however, that Residue shall not include minimal amounts of material remaining after such processing (which minimal amounts shall in no event exceed 10% of the amount of such City Acceptable Waste or Recycled City Acceptable Waste prior to processing).

"Resource Conservation and Recovery Act" or "RCRA" means the Resource Conservation and Recovery Act, 42 U.S.C.A. Section 6901 et seq. (West, 1983 & Supp 1989), as amended and superseded.

"Restricted Reserves" has the meaning specified in Section 4.5.

"Sanitary Districts" means the sanitary districts in the County formed pursuant to the Sanitary District Act of 1923, codified at Cal. Ann. Health & Safety Code Section 6400 et seq. (West 1970 & Supp. 1996), 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 Initial Term of this Agreement.

"Ton" means a "short ton" of 2,000 pounds.

"Transfer Station" means any materials recovery facility, composting facility, intermediate processing facility, recycling center, transfer station or other waste handling or management facility to which solid waste collected for the City is delivered for processing before disposal in the Disposal System.

"Unacceptable Waste" means Hazardous Waste; Hazardous Substances; Prohibited Medical Waste; Qualified Household Hazardous Waste separated from Acceptable Waste; explosives, ordnance, highly flammable substances, and noxious materials and lead-acid batteries (except if delivered in minimal quantities); drums and closed containers; liquid waste, oil, human wastes; machinery and equipment from commercial or industrial sources, such as hardened gears, shafts, motor vehicles or major components thereof, agricultural equipment, trailers, marine vessels and steel cable; hot loads; and any waste which the Disposal System is prohibited from receiving under Applicable Law.

"Uncontrollable Circumstance" means any act, event or condition affecting the Disposal System, the County, the City, or any of their Franchise Haulers, contractors or suppliers to the extent that it materially and adversely affects the ability of either party to perform any obligation under the Agreement (except for payment obligations), if such act, event or condition is beyond the reasonable control 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 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) Entire Agreement. This Agreement contains the entire agreement between the parties hereto with respect to the transactions contemplated by this Agreement and, except as expressly provided otherwise herein, 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, 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, currently under negotiation, between the City of San Clemente, the Orange County Flood Control District and the County of Orange regarding the Prima Deshecha Landfill

(J) Recitals. The recitals to this Agreement are not intended to bind the parties hereto. In the event of a conflict between the recitals and the operative provisions of this Agreement, the operative provisions shall prevail. The recitals shall not be used to interpret the provisions of the Agreement.

ARTICLE II
REPRESENTATIONS AND WARRANTIES

SECTION 2.1. REPRESENTATIONS AND WARRANTIES OF THE CITY. The City represents and warrants that:

(A) Existence. The City is a general law or charter city validly existing under the Constitution and laws of the State.

(B) Due Authorization. The City has duly authorized the execution and delivery of this Agreement, and this Agreement has been duly executed and delivered by the City.

SECTION 2.2. REPRESENTATIONS AND WARRANTIES OF THE COUNTY. The County represents and warrants that:

(A) Existence. The County is a political subdivision of the State of California validly existing under the Constitution and laws of the State.

(B) Due Authorization. The County has duly authorized the execution and delivery of this Agreement, and this Agreement has been duly executed and delivered by the County.

ARTICLE III
DELIVERY AND ACCEPTANCE OF WASTE
AND PROVISION OF DISPOSAL SERVICE

SECTION 3.1. DELIVERY OF WASTE. (A) Waste Disposal Covenant. Subject to the occurrence of the Commencement Date and throughout the Term of this Agreement, the City shall exercise all legal and contractual power and authority which it may possess from time to time to deliver or cause the delivery of all Controllable Waste to the Disposal System in accordance herewith beginning on July 1, 1997.

(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 July 1, 1997, (i) any City franchise, contract, lease, or other agreement which is lawfully in effect relating to or affecting Controllable Waste shall provide, or shall have been amended to provide, that the City shall have the right without material restriction on and after the Commencement Date to direct the delivery of all Controllable Waste to a disposal location selected by the City (whether or not such Controllable Waste is delivered to a

transfer station as an intermediate step prior to landfill disposal) and otherwise to comply with its obligations under this Agreement with respect to Controllable Waste and Franchise Haulers, and (ii) the City shall designate the Disposal System as the disposal location pursuant to such franchise, contract, lease or other agreement. On and after the Commencement Date and throughout the Term of this Agreement the City (a) shall not enter into any franchise, contract, lease, agreement or obligation, issue any permit, license or approval, or adopt any ordinance, resolution or law which is materially inconsistent with the requirements of the Waste Disposal Covenant, and (b) shall maintain non-exclusive or exclusive franchises or other contractual arrangements over any City Acceptable Waste which, as of the Contract Date, is subject to non-exclusive or exclusive franchise or other contractual arrangements. The City agrees that the County shall be a third party beneficiary of the obligation of Franchise Haulers to deliver Controllable Waste to the Disposal System, and may directly enforce such obligation through any legal means available. The City shall notify in writing each Franchise Hauler of the County's third party beneficiary rights.

(E) Waste Flow Enforcement (1) The City, in cooperation with the Department, shall establish, implement, carry out and enforce a waste flow enforcement program which is sufficient to assure the delivery of all Controllable Waste to the Disposal System pursuant to and in accordance with the Waste Disposal Covenant for disposal at the times and in the manner provided herein. The waste flow enforcement program shall consist of amending City franchises with all Franchise Haulers, to the extent required by this Section, 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 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(G)) 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. 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 County 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 County 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.

(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 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, 1997, 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 July 1, 1997, 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 Deshchca 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 accordance with subsection 3.2(C) hereof.

(C) Compliance with Service Covenant not Excused for any Reason. Commencing July 1, 1997, 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; and
- (4) Waste that is delivered by any party which has not executed a Waste Disposal Agreement.

(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 on to 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 1996-97 as adjusted by changes in the Producer Price Index.

(F) Environmental Insurance. The County will explore the availability of insurance for potential CERCLA or other environmental liability of the Disposal System, and will acquire such insurance to the extent that such insurance is, in the judgment of the County, commercially available at a reasonable rate.

SECTION 3.4. UNINCORPORATED AREA ACCEPTABLE WASTE. Commencing July 1, 1997, 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.

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, 1997, 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 June 30, 1997. On or before June 30, 1997, the County shall have the right to enter into waste disposal agreements with other cities in the County, Sanitary Districts, Transfer Stations and Independent Haulers, to be effective on July 1, 1997, 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 June 30, 1997. After June 30, 1997, the County shall have the right to enter into waste disposal agreements with 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. Notwithstanding the foregoing, the County shall be permitted to enter into a Waste Disposal Agreement with the City of Garden Grove in accordance with Section 3.6(A) if such Waste Disposal Agreement is executed by the City of Garden Grove within 90 days after the date on which Garden Grove assumes responsibility for solid waste collection within the City of Garden Grove.

(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. 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 applicable the Disposal Agreements throughout the Term thereof.

(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: Excess Import Revenues. 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 Waste Management 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) from the disposal of Imported Acceptable Waste by the Disposal System in an amount of \$15,000,000 per year. 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. All net revenues in excess of the \$15,000,000 per year shall be considered "Excess Import Revenues" and shall be (i) retained in the County Waste Management Enterprise Fund or (ii) deposited in the County debt repayment reserve for future bond defeasance established by Resolution No. 96-473 of the County Board of Supervisors on June 25, 1996 ("Debt Repayment Reserve"). Amounts from the Disposal System so deposited in the Debt Repayment Reserve shall only be used for the purposes of repayment of County bankruptcy related obligations and defeasance of bankruptcy related financings as set forth in the Debt Repayment Policy approved pursuant to Resolution No. 96-473 unless the Board, by a four fifths majority vote, determines to use such amounts for other purposes. 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 Waste Management 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) Initial Term. Effective July 1, 1997, the Contract Rate payable by each Franchise Hauler shall be \$22.00 per ton, 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 potential adjustment necessary to reflect the circumstances set forth below:

- (i) increased costs incurred by the County (in excess of available insurance proceeds) due to the occurrence of one or more Uncontrollable Circumstances, including Changes in Law;
- (ii) average annual inflation at any point during the Term of this Agreement in excess of four per cent, compounded annually, calculated in accordance with Section 4.2 (F);
- (iii) 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 (but not including costs of obtaining insurance pursuant to Section 3.3(F)); or
- (iv) tonnage shortfalls to the extent permitted by Sections 4.2(B) and 4.2(C).

Prior to adjusting the Contract Rate as a result of any of the circumstances described above, the County shall utilize the following remedies in the following order of priority:

- (i) reduce the costs of operating the Disposal System to the extent practicable;
- (ii) utilize Excess Import Revenues to pay costs of the Disposal System; and
- (iii) utilize Unrestricted Reserves to pay costs of the Disposal System.

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.

(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 Excess Import Revenues to pay costs of the Disposal System;
- (iii) utilize Restricted Reserves described in clause (iii) of Section 4.5 to pay costs of the Disposal System;
- (iv) utilize Unrestricted Reserves to pay costs of the Disposal System; and
- (v) adjust the Contract Rate.

In the event that implementation of the steps described above do 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) Imported Acceptable Waste Shortfall. In the event that the actual amount of Imported Acceptable Waste delivered to the Disposal System at the end of any Contract Year is less than the Annual Imported Tonnage Target for such Contract Year for Imported Acceptable Waste, as specified in Appendix 2, the County shall utilize the following options, in the following order of priority, in order to (i) provide the net annual payment to the County described in Section 3.6(E) of at least \$15,000,000 and (ii) generate sufficient revenues from the acceptance of Imported Acceptable Waste to continue to accept County Acceptable Waste for the then applicable Contract Rate:

- (i) reduce the costs of operating the Disposal System to the extent practicable;
- (ii) utilize Excess Import Revenues to pay costs of the Disposal System; and
- (iii) utilize Unrestricted Reserves to pay costs of the Disposal System.

In the event that, after implementation of the options described above, the sufficient revenues from the acceptance of Imported Acceptable Waste are not available to both (i) provide the net annual payment to the County described in Section 3.6(E) of at least \$15,000,000 and (ii) generate sufficient revenues from the acceptance of Imported Acceptable Waste to continue to accept County Acceptable Waste for the then applicable Contract Rate, then the County may propose in writing to the Participating Cities an adjustment to the then applicable Contract Rate intended to achieve both requirements described above. The Participating Cities shall then have the right to either (i) accept the proposed adjustment to the Contract Rate or (ii) terminate the Agreement in writing. Any Participating City which does not terminate the Agreement within 45 days after receipt of notice of the proposed adjustment from the County shall be irrevocably deemed to have agreed to the proposed adjustment. In the event that a sufficient number of Participating Cities (as reasonably determined by the County in light of then current circumstances) do not agree in writing to the proposed adjustment to the Contract Rate within such 45 day period, then the County may terminate the Disposal Agreements.

(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 or Annual Imported 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) or 4.2(C), as applicable prior to the end of such Contract Year; provided, however, that if at the end of such Contract Year, the Cumulative Tonnage Target or Annual Imported Tonnage Target (as applicable) are 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, tires and sludge. Such special charges shall be calculated to reflect the reasonable incremental costs to the County of accepting such hard to handle materials.

(F) Calculation of Average Annual Inflation. For purposes of Section 4.2(A)(ii), the inflation shall be calculated as the change in the Producer Price Index, Finished Goods ("PPI"), reported by the Bureau of Labor Statistics of the United States Department of Labor between July of the year of calculation and July 1, 1997. Average annual inflation shall be deemed to exceed 4% if the ratio between the PPI Index for July for the year of calculation (calculated in accordance with the formula below) and July 1997 exceeds the ratio corresponding to such year of calculation on the table below. The ratio shall be calculated in accordance with the following formula:

(July PPI Index of calculation year / PPI Index for July 1997)

<u>Year of Calculation</u>	<u>Ratio</u>
July 1, 1997	1.0000
July 1, 1998	1.0400
July 1, 1999	1.0816
July 1, 2000	1.1248
July 1, 2001	1.1698
July 1, 2002	1.2166
July 1, 2003	1.2653
July 1, 2004	1.3159
July 1, 2005	1.3685
July 1, 2006	1.4233
July 1, 2007	1.4802

In the event the PPI 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 PPI shall be used for purposes of this Service Agreement.

(G) 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, it shall utilize the procedures described in this Section 4.2(G). The County shall be required to provide the City with at least 60 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 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(H) are utilized, but subject to potential reimbursement pursuant to clause (11) of Section 4.2(H).

(H) 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(G), 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(H), then the provisions of this Section 4.2(H) 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(H).

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(H) (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(H) 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(H).

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(G), any materials filed or lodged with the Board of Supervisors and the Orange County Waste Management Commission, the transcript of the proceedings of the Board of Supervisors meeting and the Orange County Waste Management Commission, the minutes of the Board of Supervisors and the Orange County Waste Management Commission meeting, and the resolution and/or other documentation evidencing action by the Board of Supervisors and the Orange County Waste Management Commission to adjust the Contract Rate pursuant to this Section 4.2. 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(H)(4), or such other date and time ordered by the court. No evidence other than the Record shall be admitted into evidence or considered at the hearing of the Expedited Rate Determination, and no testimony shall be taken. The hearing shall consist of oral argument and responses to inquiries from the court, as well as the evidence contained in the Record. 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. The City and the County hereby waive any and all rights of reconsideration or new trial with respect to the court's determination of any of the issues raised in the Expedited Rate Determination, and the City and the County waive any and all rights to appeal the judgment or the determination of any issue raised 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 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(H) 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(H) 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

of 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 July 1, 1997, 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) 75% of the amount reserved by the County for funding of post closure maintenance and monitoring with respect to components of the Disposal System (provided, however, that if a Change in Law occurs which requires the County to separately maintain post closure reserves at levels higher than 75% of the amount then currently maintained by the County, such higher amount shall constitute "Restricted Reserves");

(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; and

(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).

SECTION 4.6. AUDITED FINANCIAL STATEMENTS. The County shall annually, on or before January 1 each year commencing on January 1, 1998, 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 Waste Disposal Enterprise Fund, and including statements in reasonable detail of the financial condition of the County 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, commencing May 1, 1998, 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, commencing May 1, 1998.

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(G)) 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 the tenth anniversary of the first day of the Contract Year following the Contract Year in which the Commencement Date occurs, 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, 2004, 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, 2004. If the parties do not renew this Agreement by June 30, 2004, the Agreement shall expire on June 30, 2007.

(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, 2004, 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.

(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.

(B) Condition to the Commencement Date. The Commencement Date for the Agreement shall be the date on which the Aggregate Estimated Annual Tonnage attributable to Participating Cities, Transfer Stations and Independent Haulers which have executed and delivered Disposal Agreements shall be 1,842,000 tons per year (using the amounts attributed to such Cities, Independent Haulers or Transfer Stations in Appendix 1).

(C) Satisfaction of Condition and Commencement Date. Each party shall give the other prompt notice when the condition to the Commencement Date has been satisfied. Upon the satisfaction or waiver of such Commencement Date condition, 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. Original or certified 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 March 30, 1997, 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.

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, that 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 negotiations with respect to the sale of the Disposal System prior to June 30, 2004. In addition, 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 expiration or 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 CITIES have caused this Agreement to be executed by their duly authorized officers or representatives as of the day and year first above written.

COUNTY OF ORANGE

Date 6-24-97

By *Wicki L. Wilson*
Director, Integrated Waste Management Department

Date 6-13-97

By *WJ Cl*
William L. Ossenmacher, Mayor

ATTEST *Kathie M. Mendoza*
Kathie Mendoza, City Clerk

Michele R. Vadon
Michele R. Vadon, City Attorney

APPROVED AS TO FORM:
COUNTY COUNSEL
ORANGE COUNTY, CALIFORNIA

By *[Signature]*

Date 5/28/97

APPENDIX 1

ESTIMATED ANNUAL TONNAGE

**APPENDIX 1
ESTIMATED ANNUAL TONNAGE FOR PURPOSE OF SECTION 6.2(B)**

CATEGORY 1		CATEGORY 2		CATEGORY 3	
Anaheim	267,011	Huntington Beach	165,610	Sunset Environmental	91,014
Santa Ana	266,980	Fountain Valley	45,732	Western Waste	44,040
Orange, City	141,616	Dana Point	29,673	South Coast Refuse	32,323
Fullerton	108,113	Mission Viejo	26,458	Great Western	27,672
Unincorp County	101,928	Mission Viejo	26,435	CR&R-Costa Mesa	26,039
Garden Grove San Dist	78,920	Stanton	21,723	Rainbow	15,601
Tustin	59,968	Seal Beach	18,369	Fivestar Rubbish	14,002
Buena Park	56,042	Los Alamitos	15,952	Waste Mgmt of OC	11,197
Midway City San Dist	53,206	Los Alamitos	5	National Refuse	3,647
Newport Bch-CR&R+City	48,167	La Palma	8,720	C R&R-irvine	3,325
La Habra	47,418	La Palma	19	Federal Disposal	3,219
Lake Forest	44,015			Ware Disposal	2,868
Laguna Niguel	41,520			Orange Res/Recov	344
Irvine - residential	34,490			A Trojan Disposal	224
San Clemente	33,789			SOLAG Disposal	214
San Juan Capistrano	31,643			Taormina	133
Laguna Beach	31,236			Orange Disposal	100
Cypress	31,194			BFI/Organics	85
Yorba Linda	30,586			Briggeman	12
Brea	29,335			MG Disposal	9
Placentia	23,467				
Costa Mesa San Dist	22,810				
Laguna Hills	19,609				
Villa Park	3,607				

This Appendix 1 shall be used to determine if the Aggregate Estimate Annual Tonnage threshold of 1,842,000 tons has been met for purposes of Section 6.2(B). The amount attributable to any City in Category 1 above shall be included for purposes of such determination upon execution of a Waste Disposal Agreement by that City. The amount attributable to any City in Category 2 above shall only be included for purposes of such determination upon:

- (1) execution of a Waste Disposal Agreement by such City and
- (2) execution of a Hauler Acknowledgment (in substantially the form set forth in Appendix 3) or Hauler Waste Disposal Agreement by the Franchise Hauler corresponding to such Category 2 City in the table above.

The amount attributable to any hauler in Category 3 above shall be included for purposes of such determination upon execution by such hauler of a Waste Disposal Agreement.

APPENDIX 2.

CUMULATIVE TONNAGE TARGETS

APPENDIX 2

**Cumulative Tonnage Target to be Used
for Purposes of Section 4.2 (B)**

Fiscal Year	Tonnage	Cumulative Tonnage
FY 1997-98	2,277	2,277
FY 1998-99	2,134	4,411
FY 1999-2000	2,007	6,418
FY 2000-01	2,025	8,443
FY 2001-02	2,042	10,485
FY 2002-03	2,060	12,545
FY 2003-04	2,079	14,624
FY 2004-05	2,096	16,720
FY 2005-06	2,111	18,831
FY 2006-07	2,128	20,959

Note: Tons are expressed in thousands.

**Annual Importation Tonnage Target
to be Used for Purposes
of Sections 4.2 (C)**

Year	Fiscal Year	Import Tonnage Contracted
1	1997-98	1,428
2	1998-99	1,428
3	1999-2000	1,428
4	2000-01	1,428
5	2001-02	1,428
6	2002-03	1,428
7	2003-04	1,428
8	2004-05	1,428
9	2005-06	1,428
10	2006-07	1,428

Note: Tons are expressed in thousands.

APPENDIX 3

FORM OF HAULER ACKNOWLEDGMENT

FRANCHISE HAULER ACKNOWLEDGMENT

THIS FRANCHISE HAULER ACKNOWLEDGMENT, dated as of _____, 1997 (the "Acknowledgment"), by and between the City of _____ (the "City") and _____ (the "Franchise Hauler").

WITNESSETH

WHEREAS, the City and the Hauler have heretofore entered into an agreement entitled _____, dated as of _____ (the "Franchise"); and

WHEREAS, the Franchise 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 _____, 1997 (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 Hauler;

WHEREAS, notwithstanding any Franchise provisions to the contrary, the Franchise Hauler explicitly acknowledges the aforementioned benefits to the City, the County and the 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 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 3.1 of the Disposal Agreement.
5. The Franchise Hauler shall not haul Controllable Waste to any materials recovery facility, composting facility, intermediate processing facility, recycling center, transfer station or other waste handling or management facility unless the contract or other agreement or arrangement between the Franchise Hauler and the operator of such facility is sufficient in the opinion of the County to assure that the Residue from such facility constituting City Acceptable Waste (or Tonnage equivalencies) and the City Acceptable Waste transferred by such facility shall be delivered to the Designated Disposal Facility in compliance with the Waste Disposal Covenant.
6. The Franchise Hauler shall pay the Contract Rate imposed by the County at the Designated Disposal Facility for the disposal of all Controllable Waste, which rate shall be subject to potential adjustment necessary to reflect the circumstances set forth in the Disposal Agreement.
7. Nothing in this Acknowledgment is intended to restrict any right or responsibility explicitly given the Franchise Hauler in the Franchise to recycle City Acceptable Waste, except as provided in paragraph 5 above with respect to Residue from any such recycling operations.
8. The obligations of the Franchise Hauler under this Acknowledgment shall apply notwithstanding any provision of the Franchise which may conflict herewith.
9. This Acknowledgment may be enforced by the City by any available legal means. In any enforcement action by the City, the burden of proof shall be on the Franchise Hauler to demonstrate compliance herewith.

10. This Acknowledgment shall be in full force and effect and shall be legally binding upon the City and Franchise Hauler from the dated hereof and shall continue in full force and effect until the earlier of (i) the end of the term of the Franchise or (ii) the end of the term of the Disposal Agreement.

11. The City and Hauler agree that the County shall be an express third party beneficiary of this Acknowledgment, and shall be entitled to independently enforce the obligations of the Hauler hereunder.

IN WITNESS WHEREOF, the parties have caused this Acknowledgment to be executed by their duly authorized officers or representatives as of ___ day of _____, 1997.

CITY OF _____

Signature: _____

Printed Name: _____

Title: _____

(Franchise Hauler)

Signature: _____

Printed Name: _____

Title: _____

**AMENDMENT NO. 1
TO WASTE DISPOSAL AGREEMENT
WITH CITY OF**

DANA POINT

This Amendment No. 1 is made and entered into on this 22nd day of June 2004, by and between the COUNTY OF ORANGE, a political subdivision of the State of California (hereinafter "COUNTY") and CITY designated above (hereinafter "CITY"). The CITY is a general law or charter city and political subdivision of the State of California.

RECITALS

WHEREAS, COUNTY and CITY entered into a Waste Disposal Agreement (hereinafter "Agreement") on April 8, 1997, guaranteeing that CITY shall deliver or cause to be delivered to the Orange County Landfill Disposal System, all of the municipal solid waste generated within its jurisdiction for ten years; and

WHEREAS, COUNTY and CITY have agreed to a three-year extension of the Agreement, amending the provisions for the Initial Term, Option to Renew, Calculation of Average Annual Inflation, and Cumulative Tonnage Targets for County and Importation Acceptable Waste.

NOW, THEREFORE, the parties hereto agree as follows:

1. Section 6.1. subparagraphs (A), (B), and (C) are deleted and replaced with the following:

(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, 2010, 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, 2008, 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, 2008. If the parties do not renew this Agreement by June 30, 2008, the Agreement shall expire on June 30, 2010.

(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, 2008, negotiate an applicable change to 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.

2. Section 4.2 (F) is deleted and replaced with the following:
 (F) Calculation of Average Annual Inflation. For purposes of Section 4.2(A)(ii), the inflation shall be calculated as the change in the Producer Price Index, Finished Goods ("PPI"), reported by the Bureau of Labor Statistics of the United States Department of Labor between July of the year of calculation and July 1, 1997. Average annual inflation shall be deemed to exceed 4% if the ratio between the PPI Index for July for the year of calculation (calculated in accordance with the formula below) and July 1997 exceeds the ratio corresponding to such year of calculation on the table below. The ratio shall be calculated in accordance with the following formula:

(July PPI Index of Calculation Year / PPI Index for July 1997)

<u>Year of Calculation</u>	<u>Ratio</u>
July 1, 1997	1.0000
July 1, 1998	1.0400
July 1, 1999	1.0816
July 1, 2000	1.1248
July 1, 2001	1.1698
July 1, 2002	1.2166
July 1, 2003	1.2653
July 1, 2004	1.3159
July 1, 2005	1.3685
July 1, 2006	1.4233
July 1, 2007	1.4802
July 1, 2008	1.5394
July 1, 2009	1.6010
July 1, 2010	1.6650

In the event the PPI 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 PPI shall be used for purposes of this Service Agreement.

3. APPENDIX 2 is deleted and replaced with the following:

This space intentionally left blank.

APPENDIX 2

**Cumulative In-County Tonnage Target to be Used
for Purposes of Section 4.2 (B)**

Fiscal Year	Tonnage	Cumulative Tonnage
1997 - 1998	2,277	2,277
1998 - 1999	2,134	4,411
1999 - 2000	2,007	6,418
2000 - 2001	2,025	8,443
2001 - 2002	2,042	10,485
2002 - 2003	2,060	12,545
2003 - 2004	2,079	14,624
2004 - 2005	2,096	16,720
2005 - 2006	2,111	18,831
2006 - 2007	2,128	20,959
2007 - 2008 *	4,033	24,992
2008 - 2009 *	4,437	29,429
2009 - 2010 *	4,556	33,985

Note: Tons are expressed in thousands.

* Fiscal years reflect the minimum tonnage necessary to support the Contract Rate.

**Annual Importation Tonnage Target to be Used
for Purposes of Section 4.2 (C)**

Year	Fiscal Year	Import Tonnage
1	1997 - 1998	1,428
2	1998 - 1999	1,428
3	1999 - 2000	1,428
4	2000 - 2001	1,428
5	2001 - 2002	1,428
6	2002 - 2003	1,428
7	2003 - 2004	1,428
8	2004 - 2005	1,428
9	2005 - 2006	1,428
10	2006 - 2007	1,428
11	2007 - 2008 *	1,166
12	2008 - 2009 *	1,166
13	2009 - 2010 *	1,166

Note: Tons are expressed in thousands.

* Fiscal years reflect the minimum tonnage necessary to support the Contract Rate.

4. All other terms and conditions of the Agreement will remain unchanged and CITY agrees to comply with all terms and conditions of the Agreement.

This space intentionally left blank.

IN WITNESS WHEREOF, the parties have executed this First Amendment to Agreement the day and year first above written.

"COUNTY"
COUNTY OF ORANGE

Date: 7/14/04

By: Janice V. Goss
Janice V. Goss, Director
Integrated Waste Management Department

APPROVED AS TO FORM:
OFFICE OF THE COUNTY COUNSEL
ORANGE COUNTY, CALIFORNIA

Date: 6/9/2004

By: [Signature]

"CITY"
CITY OF DANA POINT

Date: 5/26/04

By: [Signature]
City Manager, Douglas Chotkevys

ATTEST

Date: 5/26/04

By: Sharon Street
City Clerk, Sharon Street

APPROVED AS TO FORM

Date: 5/26/04

By: [Signature]
City Attorney, Patrick Minoz

Exhibit 3A Example Rate Adjustment - Single Family Rates

Step One: Calculate percentage change in indices

Line	Adjustment Factor	Index	A Old Index Value	B New Index Value	C Percent Change In Index ((Column B/ Column A) -1)	D Percent of Index Change Allowed for Rate Adjustment	E Percent Change for Rate Adjustment (Column C x Column D)
1	Service Component						
2	Labor	(1)	129.5	132.5	2.3%	100%	2.3%
3	Fuel	(2)	56.2	86.8	54.4%	100%	54.4%
4	Equipment	(3)	189.7	190.4	0.4%	100%	0.4%
5	All Other	(4)	176.7	180.9	2.4%	50%	1.2%
6	Disposal Component		(5) \$ 22.00	\$ 22.00	0.0%	100%	0.0%

Step Two: Determine Components

Line	Adjustment Factor	Index	F Initial Cost Component (6)	G Cost Factor Category Weighted as a % of Component Total (7)	H Percent Change In Index (from Column E)	I Total Weighted Change
7	Service Component					
8	Labor	(1)	\$ 328,000	32.8%	2.3%	0.8%
9	Fuel	(2)	\$ 75,000	7.5%	54.4%	4.1%
10	Equipment	(3)	\$ 224,000	22.4%	0.4%	0.1%
11	All Other	(4)	\$ 373,000	37.3%	1.2%	0.4%
12	Service Component Total		\$ 1,000,000	100.0%		5.4%
13	Disposal Component		(5) \$ 300,000	100.0%	0.0%	0.0%

Step Three: Apply Weighted Changes to Cost Components

Line	Cost Component Category	J Initial Cost Component (6)	K Component Weighted in Total Rate (7)	L Percent Change (from Step 2, Column I)	M Weighted Percent Change
14	Service Component	\$ 1,000,000	76.9%	5.4% (8)	4.2%
15	Disposal Component	\$ 300,000	23.1%	0.0% (9)	0.0%
16	Total	\$ 1,300,000	100.0%		4.2%

Step Four: Apply percentage change to rates

Line	Rate Category	N Current Monthly Customer Rate	O Total Weighted Percentage Change (from Column M)	P Rate Increase or Decrease (Column N x Column O)	Q Adjusted Monthly Rate (Column N + Column P)
17	32-gallon 3-cart service	\$ 11.04	4.2%	\$ 0.46	\$ 11.50
18	67-gallon 3-cart service	\$ 12.24	4.2%	\$ 0.51	\$ 12.75
19	Extra 35-gallon refuse cart	\$ 3.36	4.2%	\$ 0.14	\$ 3.50
20	Extra 67-gallon refuse cart	\$ 3.48	4.2%	\$ 0.15	\$ 3.63

Step Five: Determine Cost Components for Future Rate Adjustment Calculation

Line	Adjustment Factor	Index	R Cost Component (Column G)	S Percent Change as Applied to Rate Adjustment (Column I)	T Increase in Cost Components (Column R x Column S)	U Cost Component Increased (Column R + Column T)	V Cost Components Reweighted to Equal 100% for Future Adjustments
21	Service Component						
22	Labor	(1)	32.8%	0.8%	0.3%	33.1%	32.9%
23	Fuel	(2)	7.5%	4.1%	0.3%	7.8%	7.8%
24	Equipment	(3)	22.4%	0.1%	0.0%	22.4%	22.2%
25	All Other	(4)	37.3%	0.4%	0.1%	37.4%	37.1%
26	Service Component Total		100.0%			100.7%	100.0%
27	Service Component		76.9%	5.4%	4.2%	81.1%	77.8%
28	Disposal Component		23.1%	0.0%	0.0%	23.1%	22.2%
29	Total		100.0%			104.2%	100.0%

- (1) Producer Price Index, PCU4212#2, Local trucking without storage, Waste collection
(2) Producer Price Index, WPU057303 not seasonally adjusted, Fuels and related products and power, #2 diesel fuel
(3) Producer Price Index, PCU3713# 139, Truck and bus bodies, Refuse and garbage (packer type)
(4) 50% of Consumer Price Index for All Urban Consumers, CUUR0000SA0 not seasonally adjusted, all items index (CPI-U) - U.S. city average
(5) Gate rate at the Orange County Landfill System
(6) The initial cost component dollar amount is only used to determine the cost factor category weightings for the first rate adjustment effective January 1, 2008. In subsequent years, this column is not needed because the weightings for column G are obtained from Column V of the prior year's rate adjustment calculation.
(7) After the first rate adjustment, this column comes from Column V of the previous year's rate adjustment worksheet
(8) From Step 2, Column I, Line 12
(9) From Step 2, Column I, Line 13

Exhibit 3B

Example Rate Adjustment - Bin Rates

Step One: Calculate percentage change in indices							
Line	Adjustment Factor	Index	A Old Index Value	B New Index Value	C Percent Change In Index ((Column B/Column A) -1)	D Percent of Index Change Allowed for Rate Adjustment	E Percent Change for Rate Adjustment (Column C x Column D)
1	Service Component						
2	Labor	(1)	129.5	132.5	2.3%	100%	2.3%
3	Fuel	(2)	56.2	86.8	54.4%	100%	54.4%
4	Equipment	(3)	189.7	190.4	0.4%	100%	0.4%
5	All Other	(4)	176.7	180.9	2.4%	50%	1.2%
6	Disposal Component	(5)	\$ 22.00	\$ 22.00	0.0%	100%	0.0%
Step Two: Determine Components							
Line	Adjustment Factor	Index	F Initial Cost Component (6)	G Cost Factor Category Weighted as a % of Component Total (7)	H Percent Change In Index (from Column E)	I Total Weighted Change	
7	Service Component						
8	Labor	(1)	\$ 328,000	32.8%	2.3%	0.8%	
9	Fuel	(2)	\$ 75,000	7.5%	54.4%	4.1%	
10	Equipment	(3)	\$ 224,000	22.4%	0.4%	0.1%	
11	All Other	(4)	\$ 373,000	37.3%	1.2%	0.4%	
12	Service Component Total		\$ 1,000,000	100.0%		5.4%	
13	Disposal Component	(5)	\$ 300,000	100.0%	0.0%	0.0%	
Step Three: Apply Weighted Changes In Cost Components							
Line	Cost Component Category	J Initial Cost Component (6)	K Component Weighted in Total Rate (7)	L Percent Change (from Step 2, Column I)	M Weighted Percent Change		
14	Service Component	\$ 1,000,000	76.9%	5.4% (8)	4.2%		
15	Disposal Component	\$ 300,000	23.1%	0.0% (9)	0.0%		
16	Total	\$ 1,300,000	100.0%		4.2%		
Step Four: Apply percentage change to rates							
Line	Rate Category	N Current Monthly Customer Rate	O Total Weighted Percentage Change (from Column M)	P Rate Increase or Decrease (Column N x Column O)	Q Adjusted Monthly Rate (Column N + Column P)		
17	3 yard bin, 1 pickup/week	\$ 44.00	4.2%	\$ 1.85	\$ 45.85		
18	3 yard bin, 2 pickups/week	\$ 64.00	4.2%	\$ 2.69	\$ 66.69		
19	3 yard bin, 3 pickups/week	\$ 84.00	4.2%	\$ 3.53	\$ 87.53		
20	3 yard bin, 4 pickups/week	\$ 149.00	4.2%	\$ 6.26	\$ 155.26		
21	3 yard bin, 5 pickups/week	\$ 179.00	4.2%	\$ 7.52	\$ 186.52		
22	3 yard bin, 6 pickups/week	\$ 199.00	4.2%	\$ 8.36	\$ 207.36		
23	Bulky Item Pickup	\$ 229.00	4.2%	\$ 9.62	\$ 238.62		
Rates to be adjusted by service component only			(from Column L)				
24	Emergency Service Hourly Rate	\$ 35.00		\$ 1.89	\$ 36.89		
25	Extra Bin Cleaning	\$ 35.00		\$ 1.89	\$ 36.89		
Step Five: Determine Cost Components for Future Rate Adjustment Calculation							
Line	Adjustment Factor	Index	R Cost Component (Column G)	S Percent Change as Applied to Rate Adjustment (Column I)	T Increase in Cost Components (Column R x Column S)	U Cost Component Increased (Column R + Column T)	V Cost Components Reweighted to Equal 100% for Future Adjustments
26	Service Component						
27	Labor	(1)	32.8%	0.8%	0.3%	33.1%	32.9%
28	Fuel	(2)	7.5%	4.1%	0.3%	7.8%	7.8%
29	Equipment	(3)	22.4%	0.1%	0.0%	22.4%	22.2%
30	All Other	(4)	37.3%	0.4%	0.1%	37.4%	37.1%
31	Service Component Total		100.0%			100.7%	100.0%
32	Service Component		76.9%	5.4%	4.2%	81.1%	77.8%
33	Disposal Component		23.1%	0.0%	0.0%	23.1%	22.2%
34	Total		100.0%			104.2%	100.0%

(1) Producer Price Index, PCU4212#2, Local trucking without storage, Waste collection
 (2) Producer Price Index, WPU057303 not seasonally adjusted, Fuels and related products and power, #2 diesel fuel
 (3) Producer Price Index, PCU3713#139, Truck and bus bodies, Refuse and garbage (paper type)
 (4) 50% of Consumer Price Index for All Urban Consumers, CUUR000SA0 not seasonally adjusted, all items index (CPI-U) - U.S. city average
 (5) Gate rate at the Orange County Landfill System
 (6) The initial cost component dollar amount is only used to determine the cost factor category weightings for the first rate adjustment effective January 1, 2008. In subsequent years, this column is not needed because the weightings for column G are obtained from Column V of the prior year's rate adjustment calculation.
 (7) After the first rate adjustment, this column comes from Column V of the previous year's rate adjustment worksheet.
 (8) From Step 2, Column I, Line 12
 (9) From Step 2, Column I, Line 13

EXHIBIT 3C

Example Rate Adjustment - Roll-off Rates

Step One: Calculate percentage change in indices							
Line	Adjustment Factor	Index	A Old Index Value	B New Index Value	C Percent Change In Index ((Column B/Column A) -1)	D Percent of Index Change Allowed for Rate Adjustment	E Percent Change for Rate Adjustment (Column C x Column D)
1	Service Component (Pull Rate)						
2	Labor	(1)	129.5	132.5	2.3%	100%	2.3%
3	Fuel	(2)	56.2	86.8	54.4%	100%	54.4%
4	Equipment	(3)	189.7	190.4	0.4%	100%	0.4%
5	All Other	(4)	176.7	180.9	2.4%	50%	1.2%
6	Disposal	(5)	\$ 22.00	\$ 22.00	0.0%	100%	0.0%
7	Processing	(6)	176.7	180.9	2.4%	50%	1.2%
Step Two: Determine Components							
Line	Adjustment Factor	Index	F Initial Cost Component (6)	G Cost Factor Category Weighted as n % of Component Total (7)	H Percent Change In Index (from Step One, Column E)	I Total Weighted Change	
8	Service Component (Pull Rate)						
9	Labor	(1)	\$ 164,000	32.8%	2.3%	0.8%	
10	Fuel	(2)	\$ 38,000	7.5%	54.4%	4.1%	
11	Equipment	(3)	\$ 112,000	22.4%	0.4%	0.1%	
12	All Other	(4)	\$ 186,000	37.3%	1.2%	0.4%	
13	Service Component Total		\$ 500,000	100.0%		5.4%	
14	Disposal	(5)			0.0%	0.0%	
15	Processing	(6)			1.2%	1.2%	
Step Three: Apply percentage change to rates, up to 3%							
Line	Rate Category		J Current Monthly Customer Rate	K Total Weighted Percentage Change (from Column I)	L Rate Increase or Decrease (Column J x Column K)	M Adjusted Monthly Rate (Column J + Column L)	
12	Standard Rolloff Box		\$ 95.00	5.4%	\$ 5.13	\$ 100.13	
13	Compactor Rolloff Box		\$ 95.00	5.4%	\$ 5.13	\$ 100.13	
14	Disposal Cost Per Ton		\$ 23.16	0.0%	\$ -	\$ 23.16	
15	C&D Processing Per Ton		\$ 40.00	1.2%	\$ 0.48	\$ 40.48	
16	Mixed Waste Processing Per Ton		\$ 40.00	1.2%	\$ 0.48	\$ 40.48	
17	Green Waste Processing Per Ton		\$ 26.31	1.2%	\$ 0.32	\$ 26.63	
18	Recyclables Processing Per Ton		\$ 40.00	1.2%	\$ 0.48	\$ 40.48	
Step Four: Determine Cost Components for Future Rate Adjustment Calculation							
Line	Adjustment Factor	Index	N Cost Component (Column G)	O Percent Change as Applied to Rate Adjustment (Column I)	P Increase in Cost Components (Column N x Column O)	Q Cost Component Increased (Column N + Column P)	R Cost Components Reweighted to Equal 100% for Future Adjustments
19	Service Component						
20	Labor	(1)	32.8%	0.8%	0.3%	33.1%	33.0%
21	Fuel	(2)	7.5%	4.1%	0.3%	7.8%	7.7%
22	Equipment	(3)	22.4%	0.1%	0.0%	22.4%	22.2%
23	All Other	(4)	37.3%	0.4%	0.1%	37.4%	37.1%
24	Service Component Total		100.0%			100.7%	100.0%

(1) Producer Price Index, PCU4212#2, Local trucking without storage, Waste collection
 (2) Producer Price Index, WPU057303 not seasonally adjusted, Fuels and related products and power, #2 diesel fuel
 (3) Producer Price Index, PCU3713#139, Truck and bus bodies, Refuse and garbage (packer type)
 (4) 50% of Consumer Price Index for All Urban Consumers, CUUR0000SA0 not seasonally adjusted, all items index (CPI-U) - U.S. city average
 (5) Gate rate at the Orange County Landfill System
 (6) The initial cost component dollar amount is only used to determine the cost factor category weightings for the first rate adjustment effective January 1, 2008. In subsequent years, this column is not needed because the weightings for column G is obtained from column R of the prior year's rate adjustment calculation.
 (7) After the first rate adjustment, this column comes from Column R of the previous year's rate adjustment worksheet

EXHIBIT 4

Company's Faithful Performance Bond

KNOW ALL MEN BY THESE PRESENTS:

That _____, a California _____, as PRINCIPAL, and _____, a Corporation organized and doing business by virtue of the laws of the State of California, and duly licensed for the purpose of making, guaranteeing, or becoming sole surety upon bonds or undertakings required or authorized by the laws of the State of California, as SURETY, are held and firmly bound to City, hereinafter called OBLIGEE, in the penal sum of five-hundred thousand dollars (\$500,000) lawful money of the United States, for the payment of which, well and truly to be made, we and each of us hereby bind ourselves, and our and each of our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

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

WHEREAS, the above bounden PRINCIPAL has entered into a contract, entitled "RESIDENTIAL SOLID WASTE MANAGEMENT SERVICES" with City, to do and perform the following work, to wit: Collect, Process and Dispose of Solid Waste generated within City, in accordance with the contract.

NOW, THEREFORE, if the above bounden PRINCIPAL shall well and truly perform, or cause to be performed each and all of the requirements and obligations of said contract to be performed by said PRINCIPAL, as in said contract set forth, then this BOND shall be null and void; otherwise it will remain in full force and effect.

And the said Surety, for value received hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the contract or to the work to be performed thereunder or the specifications accompanying the same shall in any wise affect its obligations on this BOND, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the contract or to the work or to the specifications.

IN WITNESS WHEREOF, said PRINCIPAL and said SURETY have caused these presents to be duly signed and sealed this ____ day of _____, 200_.

_____ a California
Corporation

SURETY

By: _____
(PRINCIPAL)

By: _____
(ATTORNEY IN FACT)

(SEAL)

(SEAL)

**SECOND AMENDMENT
TO FRANCHISE AGREEMENTS BETWEEN
THE CITY OF DANA POINT AND
CR&R, INCORPORATED FOR
SOLID WASTE HANDLING SERVICES AND
AGREEMENT FOR COLLECTION AND HANDLING
OF TEMPORARY WASTE.**

This agreement (the "Second Amendment") is made and entered into as of December 3, 2013 by and between the ***CITY OF DANA POINT***, hereinafter referred to as the "CITY" and ***CR&R INCORPORATED***, hereinafter referred to as the "Contractor" or "Company". The City and Contractor are jointly referred to in this Second Amendment as the "Parties".

RECTIALS

A. On March 22, 2006, the CITY and CONTRACTOR entered into two agreements, one entitled AGREEMENT BETWEEN THE CITY OF DANA POINT AND CR&R INCORPORATED FOR SOLID WASTE HANDLING SERVICES (the "Agreement"), and one entitled AGREEMENT BETWEEN THE CITY OF DANA POINT AND CR&R INCORPORATED FOR COLLECTION AND HANDLING OF TEMPORARY WASTE (the "Temporary Waste Agreement").

B. The Agreement and the Temporary Waste Agreement were amended by an amendment dated January 25, 2010 (the "First Amendment").

C. In an effort to improve water quality the City Council desires to limit household hazardous waste from being improperly disposed of so as to enable it to leach into the water table, and seeks to deter residents from washing dirty Solid Waste Collection Containers which may contain bacteria and other harmful substances in a manner in which such substances, as well as cleaning agents, may enter City storm drains.

D. In order to achieve the above goal the City Council desires to amend the Agreements (as amended by the First Amendment) to provide for the curbside or doorside collection of Household Hazardous Waste (HHW), and further to allow residents to exchange their Collection Containers at no cost in order to attempt to eliminate the practice of residents washing them in a manner such that water used for cleaning enters the City's storm drains.

E. As more fully set forth below, Contractor has agreed to City's request to provide the above services, and to do so at no charge, in exchange for City agreeing to extend the term of the Agreement and the Temporary Waste Agreement (as amended by the First Amendment) for a period of two (2) years, and accordingly the Parties hereby enter this Second Amendment in order to set forth their agreement related to the foregoing.

COVENANTS

Section 1. The Parties agree to amend the Agreement so as to include the following provision:

Household Special Waste Collection Program:

Company shall provide a Household Special Waste Collection service that conforms with the general description set forth in the accompanying Exhibit A. If and to the degree any discrepancies, ambiguities, or conflicts exist between Exhibit A and any of the terms of the Agreement, or the Temporary Waste Agreement, as amended by the First Amendment, then the terms of the Agreement shall control. Each Customer at a Single Family Dwelling or Multi-Family Dwelling receiving service via Refuse Carts shall be entitled to up to four (4) Collections per calendar year, on an on-call basis, of Household Special Wastes at no cost ("No Charge Collections"). On-call Household Special Waste Collection service shall be responded to within a reasonable time but not longer than seven (7) days from the date of the Customer's call for service, or the next scheduled Collection day excluding Saturdays, whichever shall occur sooner. To the degree Household Special Waste Collection service described in this Section is duplicative in any way of the Bulky Item Collection services set forth in the Agreement (i.e., such as with regards to certain electronic waste which meets the definitions of both Bulky Waste and Household Universal Waste), the services set forth in this Section are intended to be in addition to such Bulky Item service, and hence Customers shall be entitled to both including the No Charge aspects of both. Contractor shall produce, keep current, and provide public information specifically outlining its Household Special Waste Collection service quarterly within the first year of the curbside collection program via special billing inserts and at a minimum, annually thereafter.

Section 2. The Parties agree to amend Article 4, to add a new Section 4.8.4.2.A that reads in its entirety as follows:

Residential Cart Exchange Program:

In order to allow for clean and well maintained Carts, and to discourage residents from washing Carts in a manner by which the water and cleaning agents used might run into the City's storm drains, Company shall annually advertise the option of exchanging Carts, at no charge, for any Customer at a Single Family or Multi-Family dwelling utilizing Carts for service who requests that it do so. Company shall use refreshed Carts (i.e., cleaned carts) that otherwise meet the standards of this Agreement applicable to Carts. Customers shall be notified of the existence of this service not less than twice during calendar year 2014 by including notice (approved by the City) in the second and fourth quarter Quarterly Billing Inserts, and thereafter shall be notified not less than one time annually with notices approved by City to be included in the Quarterly Billing Inserts.

Section 3. The Parties agree to amend Section 2.4 of the Agreement to read as follows:

Term of Agreement

The term of this Agreement (the "Term") shall be approximately fourteen (14) years, commencing at midnight January 1, 2007 (the "Commencement Date"), and expiring at midnight June 30, 2021.

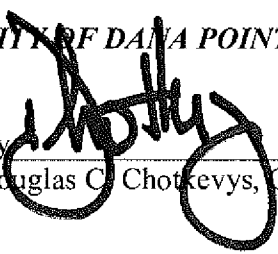
Section 4. The Parties agree to amend Section 2 of the Temporary Waste Agreement to read as follows:

TERM OF CONTRACT: CONTINUATION RIGHTS

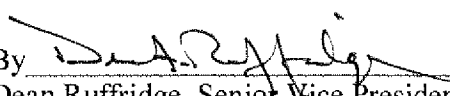
The term of this Agreement shall begin on the date of execution and shall extend through June 30, 2021. Contractor acknowledges that, to the extent applicable, the terms and conditions of this Agreement constitute the mailed notification required to be given by the City under Public Resources Code Section 49520, et seq. prior to the City's award of exclusive solid waste handling services.

Section 4. Except as explicitly set forth herein, all of other terms and conditions of the Agreement and the Temporary Waste Agreement, as amended by the First Amendment, shall remain in full force and effect

CITY OF DANA POINT

By 
Douglas C. Chotkevys, City Manager

CR&R INCORPORATED

By 
Dean Ruffridge, Senior Vice President

Attest:


Kathy Ward, City Clerk

Approved As to Form:

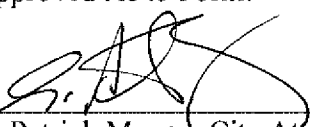

A. Patrick Munoz, City Attorney

EXHIBIT A

Specifications for Household Special Waste Collection Services

Overview

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

Wastes accepted

- Wastes identified as universal wastes in Section 66261.9 of Title 22 of the California Code of Regulations, generated by a single family or multifamily residence, including but not necessarily limited to:
 - Fluorescent bulbs and tubes (not longer than 4 feet), and other mercury-containing lamps, including high intensity discharge (HID), metal halide, sodium, and neon bulbs;
 - Common household batteries (e.g. D, C, AA, AAA, button-type, etc.);
 - Non-empty aerosol cans;
 - Electronic devices (e.g. televisions; computers, monitors, keyboards, mice, printers, desk copiers, scanners and multi-function machines; VCR's and DVD/CD/Tape players; cell phones; microwaves, toasters, irons, stereos, speakers, and cables); and
 - Mercury containing devices (e.g. lamps, thermometers, thermostats, gauges, electronic switches, etc.).
- Household hazardous waste, generated by a single family or multifamily residence, including but not necessarily limited to:
 - Automotive maintenance and repair products (e.g. motor oil, oil filters, antifreeze; lead-acid batteries, brake fluid, etc.);
 - Lawn and garden chemicals (e.g. pesticides, herbicides, fungicides, etc.);
 - Cleaning products (e.g. bathroom cleaners, drain cleaners, chlorine bleach, solvents, oven cleaners, etc.); and
 - Home improvement supplies (e.g. stains, paints, varnish, paint thinners, chemical strippers, glue, pool chemicals, etc.).
- Wastes identified as home generated sharps waste in Section 117671 of Title 22 of the California Code of Regulations, generated by a single family or multifamily residence, including but not necessarily limited to:
 - Syringes; hypodermic needles, pen needles, intravenous needles, lancets, and other devices that are used to penetrate the skin for the delivery of medications.
- Pharmaceutical and personal care product waste, generated by a single family or multifamily residence, including but not necessarily limited to the following:
 - Prescription and over-the-counter human drugs, veterinary drugs, diagnostic agents (not including controlled substances);
 - Nutritional supplements; and
 - Consumer products such as fragrances, cosmetics and sunscreen agents
 - This aspect of the program will not begin until all regulatory approvals are obtained and CR&R shall diligently pursue obtaining such approvals.

Wastes Not Accepted

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

Notification and Outreach

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

Basic Program Operation

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

Operations

- CR&R will use cube-type, two-axle vans for this collection service. The minimum standards for collection as set forth in the Agreement shall apply.
- CR&R will use a separate property apart from any existing solid waste site for the consolidation and packaging of these materials for proper recycling or disposal.
- CR&R shall strive to maximize recycling of collected wastes.
- CR&R shall maintain Environmental Pollution Control Insurance coverage, in an amount not less than \$1,000,000, covering its activities under this program and naming the City as an additional insured.
- Wastes collected within the City shall not be commingled with loads from other cities, unless CR&R provides a means acceptable to the City to accurately identify and report the waste collected from both outside and within City limits.
- CR&R shall maintain registration as a registered hazardous waste transporter in good standing with the State of California and the County of Orange.
- Vehicle drivers must have a Department of Motor Vehicle issued HAZMAT endorsement on the operator's license.
- Collection personnel must have 8-hour of HAZWOPER training and current certifications.
- Prior to transport, collected materials must be separated and secured to avoid contact with incompatible substances. All materials must be packaged and transported in compliance with applicable local, State and Federal regulations.
- CR&R Customer Services Representatives will have listings of accepted wastes.
- Sharps will only be collected when contained within special "one-way" containers available at participating Dana Point pharmacies as indicated within the City's Solid Waste and Recycling page at www.danapoint.org.
- Materials must be weighed or counted as appropriate at the time of pickup to ensure accurate reporting of data. Estimated weights or quantities may be accepted subject to review and approval by City of CR&R estimation procedures.

Reporting and Documentation

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

Pickups under this program will be in addition to and separate from the bulky item Collection Service required by this Agreement.