

**AGREEMENT
BETWEEN
CITY OF NEWPORT BEACH
AND
CR&R INCORPORATED
FOR
RESIDENTIAL SOLID WASTE COLLECTION AND RECYCLING SERVICES**



Dated _____

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RESIDENTIAL SOLID WASTE COLLECTION AND RECYCLING SERVICES AGREEMENT

THIS RESIDENTIAL SOLID WASTE COLLECTION AND RECYCLING SERVICES AGREEMENT ("Agreement") is made and entered into as of this ___ day of _____, 2013, by and between the **CITY OF NEWPORT BEACH**, a charter City and municipal corporation ("City"), and CR&R Incorporated, a California corporation whose address is 11292 Western Avenue, Stanton, California 90680, ("Hauler"), and is made with reference to the following:

RECITALS

- A. City is a municipal corporation duly organized and validly existing under the laws of the State of California with the power to carry on its business as it is now being conducted under the statutes of the State of California and the Charter of City.
- B. The Legislature of the State of California, by enactment of the California Integrated Waste Management Act of 1989 ("AB 939") and subsequent modifications thereto, established a solid waste management process that requires the City to implement source reduction, reuse and recycling as integrated waste management practices.
- C. California Public Resources Code Section 40059 authorizes the City to determine aspects of solid waste handling that are of local concern, including, but not limited to, frequency of collection, means of collection and transportation, level of services, charges and fees, location, and extent of providing solid waste handling services, and whether the services are to be provided by means of partially exclusive or wholly exclusive agreements, contracts, licenses, permits or otherwise.
- D. The City has historically provided solid waste collection services to City residents through its internal Municipal Operations Department.
- E. City has determined it is in the City and its residents' best interest to contract with Hauler to provide solid waste collection services for residential properties currently serviced by City crews.
- F. Pursuant to Newport Beach Municipal Code (NBMC") Section 6.04.170, the costs for the non-extended solid waste collection services provided under this Agreement will continue to be defrayed exclusively from Ad Valorem Taxes, with no additional costs to City's residents.
- G. This Agreement provides for the collection of solid waste from residential units within the City and is therefore exempt from the franchise requirements in NBMC Chapter 12.63 and City Charter Sections 1300 *et seq.*

- H. The City determines and finds that the public interest, health, safety and well-being are served by the Hauler providing solid waste collection services through this Agreement.
- I. In accordance with California Public Resources Code Section 40059, the City is authorized to enter into this Agreement with Hauler and to prescribe the terms and conditions contained herein.
- J. The principal member[s] of Hauler for purposes of Project shall be Dean A. Ruffridge, Senior Vice President.
- K. City solicited and received a proposal from Hauler through a competitive process and desires to retain Hauler to render residential solid waste hauling services under the terms and conditions set forth in this Agreement.

NOW, THEREFORE, it is mutually agreed by and between the undersigned parties as follows:

ARTICLE 1 DEFINITIONS

The terms used in this Agreement shall have the meaning set forth in this Article 1, or as defined in the body of the Agreement. In the event a term is not defined in this Article 1 or in the body of the Agreement, then it shall have the meaning set forth in the NBMC or in Division 30, Part 1, Chapter 2 of the California Public Resources Code (with precedence given to definitions in the NBMC over conflicting definitions contained in the Public Resources Code). Generally, words beginning with lower case letters are being used with their common ordinary meanings, not as defined terms. Otherwise, the following capitalized words and terms shall have the following meanings:

1.1 AB 939

“AB 939” means the California Integrated Waste Management Act of 1989 (California Public Resources Code Sections 40000 *et seq.*), as it may be amended from time to time.

1.2 CalRecycle

“CalRecycle” means the State of California’s Department of Resources Recycling and Recovery, and, as this department was structured prior to January 1, 2010, the California Integrated Waste Management Board, or CIWMB.

1.3 Can

“Can(s)” means a barrel of no more than 35-gallons in size provided by Customers to contain Solid Waste for Collection by Hauler.

1.3A Cart

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

1.4 City

“City” means the City of Newport Beach acting through its City Council. Any authority or decision delegated to the City in this Agreement shall be to the City Council.

1.5 Collect/Collection

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

1.6~~5~~ Compensation Year

“Compensation Year” means the period July 1 to June 30 for each year during the Term of this Agreement (the first compensation year is from the start of Collection service under this Agreement through June 30, 2015).

1.7~~6~~ Contract Services

“Contract Services” means the Collection, transfer, transport, Recycling, processing, and Disposal of Solid Waste and other materials as described under this Agreement.

1.87 Container

“Container” means any and all types of Solid Waste receptacles, including Carts, Cans, bags, boxes, bins and roll-off boxes.

1.98 CPI

“CPI” means the Consumer Price Index for All Urban Consumers (CUUR0000SA0L1E), all items less food and energy index – U.S. city average.

1.109 Customer

“Customer” means residential Premises at which Solid Waste Collection services are funded through the City pursuant to NBMC Section 6.04.170. Customers are located in the Area defined in Exhibit “A,” which is incorporated by reference herein. Such Customers receive individual Collection service using Cans, bags and/or boxes, versus bins.

1.1140 Dispose/Disposal

“Dispose” or “Disposal” means the ultimate disposition of Solid Waste Collected by Hauler at the Disposal Site.

1.1244 Disposal Site

“Disposal Site” means the Solid Waste handling Facility or Facilities utilized for the ultimate Disposal of Solid Waste Collected by Hauler, agreed to be the Orange County Landfill System, which includes the Frank R. Bowerman, Olinda Alpha and Prima Deshecha landfills.

1.1342 Diversion

“Diversion” means any combination of Recycling, reuse and composting activities that reduces waste disposed at landfills, provided such activities are recognized by CalRecycle as Diversion in its determination of the City’s Diversion rate and compliance with AB 939.

1.1443 Electronic Waste

“Electronic Waste” means electronic equipment, including stereos, televisions, computers and monitors, VCRs, DVDs, microwaves and other similar items commonly known as “brown goods” and “e-waste”.

1.1514 Environmental Laws

“Environmental Laws” means any and all present and future federal, state or local laws (whether common law, statute, rule, regulation or otherwise), permits, orders and any other requirements of governmental authorities relating to the environment or any “Hazardous Substance” or “Hazardous Substance Activity” (as defined herein) (including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. §§9601 *et seq.*) as amended from time to time and the applicable provisions of the California Health and Safety Code and California Water Code).

1.1615 Hauler Compensation

“Hauler Compensation” means the revenue received by Hauler from City, and from Customers for select approved extended services included on the approved rates schedule for services [such as extra Enhanced Bulky Item pickups – if applicable], in return for providing services in accordance with this Agreement.

1.1716 Hazardous Substance

“Hazardous Substance” shall mean any (a) chemical, compound, material, mixture or substance that is now or hereinafter defined or listed in, or otherwise classified pursuant to any Environmental Law as a “hazardous substance,” “hazardous material,” “hazardous waste,” “extremely hazardous waste,” “infectious waste,” “toxic waste,” “toxic pollutant,” or any other formulation intended to define, list or classify substances by reason of deleterious properties or affect and (b) petroleum, petroleum by-products, natural gas, natural gas liquids, liquefied natural gas, synthetic gas usable for fuel (or mixtures of natural gas in such synthetic gas), ash, municipal Solid Waste, steam, drilling fluids, produced waters and other wastes associated with the exploration, development and production of crude oil, natural gas or geothermal resources.”

1.1817 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 Sections 25110.02, 25115, and 25117 or in the future amendments to or re-codifications 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.

1.1918 Household Hazardous Waste (“HHW”)

“Household Hazardous Waste” means Hazardous Waste generated at residential Premises.

1.2019 Materials Recovery Facility (“MRF”)

“Materials Recovery Facility” and “MRF” mean a permitted Solid Waste Facility where Solid Wastes or Recyclable Materials are sorted or separated for the purposes of Recycling, processing or composting.

1.2120 Person

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

1.2221 Premises

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

1.2322 Recycle/Recycling

“Recycle” or “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. Recycling does not include use of Solid Waste for conversion to energy.

1.2423 Refuse

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

1.2524 Service Area

“Service Area” means the area of the City defined in Exhibit “A.,” excluding the communities of Newport Coast and Santa Ana Heights that receive Solid Waste Collection services under separate agreements.

1.2625 Solid Waste

“Solid Waste” means all discarded putrescible and non-putrescible solid, semisolid, and liquid wastes, including Refuse, Construction and Demolition

Debris Basic and Enhanced, 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.

1.27~~26~~ **State**

“State” means the State of California.

1.28~~27~~ **Transformation**

“Transformation” means incineration, pyrolysis, distillation, gasification or biological conversion other than composting.

1.29~~28~~ **Transfer Station**

“Transfer Station” means a Facility that receives Solid Waste from Collection vehicles and transfers the material to larger vehicles for transport to landfills and other destinations. Transfer Stations may include MRFs, transferring residual Refuse (Refuse left after the sorting of Recyclable Materials) to landfills and Recyclable Materials, including Green Waste and/or Construction and Demolition debris, to processors, brokers or end-users.

ARTICLE 2 AGREEMENT

2.1 Services to Be Performed

Hauler shall diligently perform all the services described herein and in the Scope of Services attached hereto as Exhibit "B" and incorporated herein by reference ("Contract Services") to all Customers. The City may elect to delete certain tasks of the Scope of Services at its sole discretion.

2.2. Term

2.2.1 Effective Date

The "Effective Date" of this Agreement shall be the date on which this Agreement is executed by City and Hauler.

2.2.2 Initial Term

The term of this Agreement during which Hauler will provide Collection services (the "Term") shall be seven (7) years, commencing on March 31, 2014, and expiring March 31, 2021, subject to extension as provided in Section 2.2.3. Notwithstanding the foregoing, the unexcused failure or refusal of Hauler to perform any material term, covenant, obligation or condition contained in this Agreement shall give rise to the right, in favor of City, for earlier termination of this Agreement for cause in accordance with the procedures contained herein.

City Contract Administrator may delay the March 31, 2014 start date for up to sixty (60) days upon thirty (30) days' written notice to Hauler. If the first day of services provided by the Hauler is delayed, the expiration date will be delayed so that the term is exactly seven years.

2.2.3 City's Option to Extend Term

City shall have the sole option to extend the Term of this Agreement up to thirty-six (36) months following the initial Term under Section 2.2.2. City may, upon at least ninety-day (90-day) advance written notice to Hauler prior to the expiration of the Term of this Agreement, exercise this extension option. If City provides this extension notice, the Agreement will automatically renew monthly, up to a maximum of thirty-six (36) months. This extension period shall terminate, upon the earlier of: (i) the expiration of the aforementioned thirty-six (36) months, or (ii) the date City instructs Hauler that the Agreement will end, provided written notice

of termination is provided to Hauler by City at least ninety (90) days prior to this termination date.

2.3 Time of Performance

Time is of the essence in the performance of services under this Agreement and Hauler shall perform the services in accordance with the schedule included in Exhibit "B." The failure by Hauler to strictly adhere to the schedule may result in termination of this Agreement by City.

2.4 Services

2.4.1 Ownership of Solid Waste

All Solid Waste, in addition to recyclables, Collected by Hauler shall become the property of Hauler upon placement by the Customer for Collection. If Hauler violates the terms in Exhibit "B," Hauler agrees that the City has the future right to direct that Solid Waste be delivered to a permitted facility designated by City. This exercise of "flow control" by the City shall be made upon at least thirty (30) calendar days prior written notice to Hauler, and written notice shall include the violation(s) prompting the City's action regarding "flow control." Failure to comply with the Recycling/Diversion requirements and delivery/Disposal of materials to a certified/licensed facility shall be a material breach of this Agreement.

2.4.2 Performance of Services

Hauler shall perform Contract Services as requested by the Project Administrator (as defined in this Agreement), as described herein and as noted on Exhibit "B."

City may direct Hauler to perform additional services (including new Diversion programs, *etc.*) or modify the manner in which it performs existing services. Pilot programs and innovative services that may entail new Collection methods, different kinds of services and/or new requirements for Customers, and alternative compensation structures are included among the kinds of changes that the City may direct. Hauler may be entitled to an adjustment in its Hauler Compensation for providing such additional or modified services, if Hauler demonstrates to satisfaction of City ~~Manager~~ that its cost of service would increase.

2.4.3 New Diversion Programs

Hauler shall present, within thirty (30) calendar days of a request to do so by the City, a proposal to provide additional or expanded Diversion services. The proposal shall contain a complete description of the following:

- Collection methodology to be employed (equipment, manpower, etc.);
- Equipment to be utilized (vehicle number, types, capacity, age, etc.);
- Labor requirements (number of employees by classification);
- Type of materials containers to be utilized;
- Provision for program publicity/education/marketing; and,
- Three (3) year projection of the financial results of the program's operations in an operating statement format, including documentation of the key assumptions underlying the projections and the support for those assumptions.

2.4.4 City's Right to Acquire Services

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

ARTICLE 3 HAULER COMPENSATION

3.1 Hauler Compensation

The Hauler Compensation provided for in this Article shall be the full, entire and complete compensation due to Hauler pursuant to this Agreement for all services, labor, equipment, materials and supplies, taxes, insurance, bonds, overhead, Disposal, transfer, processing, profit and all other things necessary to perform all the services required and reasonably anticipated by this Agreement in the manner and at the times prescribed. No additional charge shall be made for any service described in this Agreement unless this Agreement specifically provides for such compensation. Except as expressly provided herein or in Exhibit "C," which is incorporated by reference herein, Hauler shall be responsible for all other costs and expenses related to Hauler's performance under this Agreement.

3.2 Initial Hauler Compensation

Hauler Compensation from the start of service under this Agreement through June 30, 2015 shall not exceed that set forth in Exhibit "C," unless adjusted by a written amendment to this Agreement entered into by and between the City ~~Manager or his/her designee ("City Manager")~~ and Hauler and approved as to form by City Attorney. Unless and until the compensation set forth in Exhibit "C" is adjusted, Hauler will provide the services required by this Agreement, receiving no more than the Hauler Compensation authorized by Exhibit "C," except as provided in this Article 3.

3.3 Schedule of Future Adjustments

Beginning with the Compensation Year beginning July 1, 2015 and for all subsequent Compensation Years, Hauler may request an annual adjustment to the Hauler Compensation for all compensation categories shown in Exhibit "C" (including Basic Services and Extended Services), as adjusted in accordance with this Section 3.3. Transfer Station Operating payments are adjusted annually per the Transfer Station Operating Agreement attached as Exhibit F. Hauler shall submit its request in writing, to be received by the City in person or via certified mail, at least ninety (90) calendar days prior to the start of the new Compensation Year based on the method of adjustment described in Section 3.4. Failure to submit a written request at least ninety (90) calendar days prior to the start of the new Compensation Year shall result in Hauler waiving the right to request such an increase for the subsequent year.

The City may, at its discretion, decrease the compensation in accordance with Section 3.4 in the event that the compensation adjustment formula produces a decline. If compensation would decline based upon Section 3.4 calculations and a compensation decrease is not implemented, the subsequent compensation adjustment shall be based upon the change in indices since previous compensation adjustment instead of the change over the prior year.

3.4 Method of Adjustments

3.4.1 General

Hauler may request an adjustment to Hauler Compensation listed in Exhibit “C” according to the method described below and the formulas shown in Exhibit “D,” which is incorporated herein by reference, subject to review and approval of City.

3.4.2 Cost Components for Compensation Adjustment Indices

The approved Hauler Compensation consists of the following cost component categories. Each cost component may be adjusted by the change in the corresponding index below.

<u>Cost Category</u>	<u>Initial Weightings</u>	<u>Rate Adjustment Factor (1)</u>
Disposal	28%	Actual gate rate at the Orange County Landfill System as of the effective date of the rate adjustment
Fuel	5%	Producer Price Index WPU 0531, Not seasonally adjusted, Fuels and related products and power, natural gas
All Other	67%	Consumer Price Index for All Urban Consumers (CUUR0000SA0L1E), all items less food and energy index – U.S. city average, or 2.5%, whichever is lower
Total	100%	Total change not to exceed 5% increase in any year

(1) If an index is discontinued, an alternative index must be approved by the Project Administrator.

3.4.3 Compensation Adjustment Steps

Hauler’s compensation included in Exhibit “C” will be adjusted using the cost component weightings identified above.

Step One – Calculate the percentage increase or decrease in each index listed in Section 3.4.2. The increase or decrease in the published indices for fuel, and all other (CPI) will be the change in the average annual published index between the calendar year ended the December prior to the Compensation Year anniversary date and prior twelve (12) month period (See Exhibit D), unless the change in CPI exceeds a 2.5% increase, in which case “all other” would adjust by 2.5%. The increase or decrease in the Disposal component will be the change in the City’s waste disposal agreement gate rate as of the first day of the new Compensation Year over the gate rate one (1) year prior.

Step Two – Cost components as a percentage of total costs for the first compensation adjustment are provided in Section 3.4.2 above, with subsequent components calculated in Step Four of the compensation adjustment. For Step Two of each subsequent compensation adjustment, use the cost components recalculated in Step Four during the previous compensation adjustment.

Multiply the percentage changes for each compensation adjustment component by that component’s weighting and add these resulting percentages together to get the total weighted change to the compensation. The annual compensation adjustment would be the lower of this weighted change or 5%.

Step Three – Multiply the total weighted percent change from Step Two by the existing compensation to calculate the increase or decrease to the maximum compensation. Add the compensation increase or decrease to the existing compensation to derive the newly adjusted compensation.

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

3.5 Extraordinary Compensation Adjustments

Hauler may request that City consider a compensation adjustment for extraordinary events outside its control that result in a significant increase in its cost of operations that exceeds the value of the compensation adjustments granted under Section 3.4. No compensation adjustments may be made for a change in:

- The market value of Recyclables;
- Processing costs for Recyclables and Green Waste;
- Inaccurate estimates or assumptions by Hauler of its proposed cost of operations;

- Unionization of Hauler's workforce;
- Change in wage rates or employee benefits;
- Implementation or discontinuation of mandatory State or local Recycling requirements(1); or
- Costs to comply with SCAQMD regulations including Rule 1193, the Air Resource Board's regulations, and other Federal, State and local laws and regulations that may be enacted during the term of this Agreement.

(1) Refers to changes in mandatory recycling regulations that may change recycling participation levels without changing agreed-upon programs or minimum diversion rates. Should changes to the Agreement be necessary, this would be addressed under Section 2.4.3.)

For each request for an adjustment to Hauler Compensation brought pursuant to this section, Hauler 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 Hauler in preparing the request. Hauler shall also submit a schedule showing how its total costs and total revenues have changed over the past three (3) years for the Contract Services provided under this Agreement. City may request a copy of Hauler's annual financial statements for Contract Services and/or other financial records in connection with the City's review of Hauler's Compensation adjustment request. City may review tonnage reports and all other applicable documentation to determine the accuracy of the compensation adjustment request, including the tonnage to which it applies, the impact on compensation, the possible reweighting of cost components and any other issues City determines to be relevant to this review.

City shall review Hauler's request and, in City's sole judgment and absolute discretion, make the final determination as to whether an adjustment to Compensation will be made, and, if an adjustment is permitted, the appropriate amount of the adjustment. City may consider increases or decreases in Hauler's total revenues and total cost of Contract Services when reviewing an extraordinary compensation adjustment request.

3.6 Hauler Invoicing and Payment

Hauler shall submit invoices for Contract Services provided to City on a monthly basis and all invoices submitted to the City shall be accompanied by a monthly report indicating in detail all Contract Services performed. City shall pay invoices within thirty (30) calendar days after approval by the City. Payment shall be deemed made when deposited in the United States mail, first class postage pre-paid, and addressed to Hauler as specified in the Section entitled "Notices."

3.7 Disputes Pertaining to Payment for Work

Should any dispute arise respecting whether any delay is excusable, or its duration, the value of any extra work done, or any work omitted, or any extra work which Hauler may be required to do, or respecting any payment to Hauler during the performance of the Agreement, such dispute shall be decided by the Project Administrator with any appeal to the City Manager. The City Manger's decision shall be final.

3.8 Reimbursement for Expenses

Except as provided in this Agreement, Hauler shall not be reimbursed for any Disposal fees or other costs and expenses unless prior written authorization is obtained from the Project Administrator.

ARTICLE 4 RECORDS, REPORTS AND AUDITS

4.1. Records

Hauler shall maintain a complete and accurate books and other business records with respect to the costs incurred under this Agreement including any labor and Disposal costs incurred under this Agreement, any Contract Services performed under this Agreement, and any expenditures and/or disbursements charged to City, for a minimum period of three (3) years, or for any longer period required by law, from the date of final payment to Hauler under this Agreement. All such records shall be clearly identifiable. All Hauler's books and other business records, or such part as may be used in performance of this Agreement, shall be subject to inspection and audit by authorized City representative during regular business hours upon two (2) business days' notice. Hauler shall allow inspection of all work, data, records, proceedings and activities related to the Agreement for a period of three (3) years from the date of final payment to Hauler under this Agreement.

4.2 Reports

Records shall be maintained in forms and by methods that facilitate flexible use of data contained in them to structure reports, as needed. Hauler 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. Hauler will assist the City, providing data as needed for reports due to CalRecycle under AB 939, AB 341 and similar legislation.

4.2.1 Monthly Reports

Within thirty (30) calendar days of the end of each calendar month, Hauler shall submit to City for the preceding month reports setting forth, at a minimum, the following information for services provided and tonnage Collected under this Agreement:

- Any complaints (e.g., written or oral comments received by Hauler expressing dissatisfaction with Hauler or any services provided by Hauler that relate in any manner to this Agreement);
- The total amount (in tons) of Solid Waste which Hauler Collected in the City of Newport Beach during the reportable month, categorized as follows:

- Waste Collected by Hauler under this Agreement, identified by waste stream (e.g., Refuse route, Recyclables route, Bulky Item route, City-sponsored event waste, etc.);
 - Waste delivered to City's transfer station by City crews and third-party vendors, which Hauler is required to Collect from City's transfer station and process/Dispose under this Agreement (abandoned items and City litter container waste); and
 - All other waste delivered to City's transfer station, as permitted under the transfer station operating agreement included in Exhibit F, to be itemized by jurisdiction of origin.
- The total weight (in tons) of Solid Waste ultimately disposed of during the reportable month;
 - The total weight and the weight by material category (in tons) of Solid Waste Collected that was Diverted prior to landfilling during the reportable month which Hauler Collected in the City of Newport Beach;
 - The name and location of all Solid Waste, Transformation, composting and Recycling facilities where City of Newport Beach materials were delivered; and,
 - Such other tonnage or other information as requested by the Project Administrator including, but not limited to, weigh tickets and Recycling records.

Such monthly reports shall be prepared on such form as required by the Project Administrator.

4.2.2 Quarterly Reports

In addition, on a quarterly basis, Hauler shall submit to City any equipment, terminal safety, employee safety and inspection reports, citations, records and other documents for all Hauler's operations and activities that relate in any way to this Agreement including, but not limited to, periodic California Highway Patrol biennial terminal inspection reports; vehicle citations; California Highway Patrol Incident reports; citations issued to drivers/operators; other citations issued to the Hauler or its employees; California Occupational Safety and Health Administration 300 reports; and Lead Environmental Agency inspection/compliance reports.

Each quarterly report and accompanying reports/citations shall be submitted on or before the thirtieth (30th) day of the month following the end of the quarter (*i.e.*, report due January 30 for first quarter after the Effective Date).

4.3 Report Submittal

Monthly and quarterly reports shall be submitted electronically to the City in a format approved by the City and also submitted in hard copy to:

Municipal Operations Director
City of Newport Beach
100 Civic Center Drive
Newport Beach, CA 92658

4.4 Audits

City has the right to audit the Hauler at any time to verify that Hauler is in compliance with the terms and conditions of this Agreement including, but not limited to, the auditing of facility Recycling and other Diversion records, Diversion statistics, landfill rate increases, vehicle records and safety records. Should an audit conducted or authorized by the City disclose that diverted or disposed tonnage was inaccurately reported to the City by more than two percent (2%), Hauler shall reimburse the City's audit costs.

4.5 Report/Audit Disclosure

No report, information or other data given to or prepared or assembled by Hauler pursuant to this Agreement may be made available to any individual or organization without prior approval by City unless such disclosure is required by law or court proceedings.

ARTICLE 5 OPERATIONS

5.1 Vehicles and Equipment

5.1.1 Containers

5.1.1.1 Residential Carts

Carts for curbside/alley/backyard Collection of Customer Solid Waste will be supplied by Hauler (though Solid Waste may be placed for Collection in disposable bags or boxes, and items may be placed for Collection without containerization).

A. Cart Design Requirements

Hauler shall provide Customers with Carts at the start of service under this Agreement. Carts and Cart lids must meet color, size, uniformity and quality requirements of the City. All Carts and Cart lids must be the colors specified in Section 5.1.1.1(c) and be in good condition, as determined by City. City may require Contractor to replace Carts not in the required color or in good condition.

All Carts provided by Hauler utilized in the performance of this Agreement shall be manufactured by Toter, unless otherwise approved in advance in writing by the City, and meet the Cart design and performance requirements as specified below. All Carts selected shall be subject to City's approval.

B. Capacity

The references in Section B.1.2 to Cart sizes of 96, 64 and 32-gallons may be approximate. The Cart size, excluding lid capacity, may fall within the following range:

- 30 – 35 gallons
- 60 – 70 gallons
- 90 – 101 gallons

The selected sizes must be consistent throughout the City for a uniform appearance (e.g., same shape, colors, texture, *etc.*).

C. Cart Age, Color and Appearance

Hauler will distribute all new Carts at the start of service under this Agreement. All Carts shall be the same, uniform color and each Cart type shall carry a different color lid. The Refuse Cart lid color shall be black and The Recycling Cart lid color shall be blue. Cart bodies shall have Toter's "granite" look.

The colors shall be colorfast and resistant to fading as a result of weathering or ultraviolet degradation. Color must be approved in advance by the City.

D. Cart Labeling and Hot Stamping

Carts shall be hot stamped. The design for both the hot stamping must be approved by City prior to ordering Carts. City shall approve what information is included in the hot stamp, as well as approve design and quality. Hot stamps will include written and graphic instruction on what materials should and should not be placed in each Cart. Information on the Carts shall include the telephone number to call for Hauler, Bulky Item pickups and HHW disposal information.

5.1.1.2 Cart Maintenance and Replacement Responsibilities

Contractor shall be responsible for Cart repair and maintenance, graffiti removal, and replacing lost, stolen or damaged Carts within two (2) business days of notice by Customer or City, at no charge to the Customer or to City. All repairs must restore the Cart to its full functionality. Unsightly/worn-out Carts shall be replaced by Contractor upon Customer request.

5.1.1.3 Containers for Other Services

Containers for other services, such as City event Collection, shall be supplied by Hauler. Any and all containers provided by Hauler for storage, Collection or transportation of Solid Wastes shall meet the requirements designated by the Project Administrator as well as State of California minimum standards for Solid Waste handling established under Public Resources Code Section 43020 and applicable health requirements. The Project Administrator shall have the right to approve the color of containers, manufacturer of containers, and lettering and decals used on containers. Hauler shall repair or replace any container which is damaged, broken, lost or stolen with a Container approved by the Project Administrator at no cost to the City.

5.1.2 Hauler Container and Vehicle Markings.

All Containers provided by Hauler and all vehicles used by Hauler in the performance of Solid Waste handling services shall be marked with Hauler's name and telephone number in letters which are easily read by the general public. All of Hauler's Solid Waste Containers used in the performance of this Agreement shall be kept clean and in good repair to the satisfaction of the Project Administrator.

5.1.3 Vehicle Specifications.

A. Vehicle Markings. The vehicles used pursuant to this Agreement shall have the name of the Hauler, the Hauler's local telephone number, and a unique vehicle identification number for each vehicle prominently displayed on all Collection vehicles. The vehicles shall also display a statement as to the type of alternative fuel being used.

B. Vehicle Fuel Usage. The Hauler shall use alternative fuel vehicles, using liquefied natural gas ("LNG") or compressed natural gas ("CNG") only, approved by the South Coast Air Quality Management District ("SCAQMD") for Solid Waste Collection services. Vehicles shall meet all requirements specified per AQMD Rule 1193. Hauler may use non-LNG/CNG vehicles for no more than the first twelve (12) months, provided Hauler obtains a waiver from the SCAQMD permitting the temporary use of non-LNG or CNG vehicles during the period, and that all other applicable laws and regulations are met.

C. Vehicle Age. Hauler vehicles used in the City shall, at no time during the agreement term, be more than ten (10) years old.

D. Number of Vehicles. Hauler shall, at all times, provide such number of vehicles and such equipment as will be adequate for the Collection, transportation and Disposal services which it is authorized to provide under this Agreement.

E. DMV and BIT Inspections. All vehicles utilized by Hauler in the performance of this Agreement shall be registered with the California Department of Motor Vehicles. All vehicles shall pass the required periodic California Highway Patrol biennial inspection of the terminals ("BIT"). Within fifteen (15) calendar days of the BIT inspection, Hauler shall provide records from all of the terminal(s) responsible for the maintenance and repair of equipment used in the City. All vehicles and equipment used by Hauler in the performance of this

Agreement shall be subject to inspection by the City upon twenty-four (24) hours' notice by the Project Administrator.

F. Vehicle Maintenance. All vehicles shall be properly maintained, kept clean and in good repair, and shall be uniformly painted. Hauler agrees to replace or repair to City's satisfaction, any vehicle that City determines to be of unsightly appearance, leaking, or in unsatisfactory operating condition.

G. Drivers. All drivers employed by Hauler and operating equipment in the City shall be properly licensed for the class of vehicle they drive, enrolled in the Department of Motor Vehicles Employee Pull Notice ("EPN") program, and abide by all State and federal regulations for driver hours and alcohol and controlled substances testing.

H. Spills. Each vehicle shall be so constructed and used in a manner so that no rubbish, garbage, debris, oil, grease or other material will blow, fall, or leak out of the vehicle. All Solid Waste shall be transported by means of vehicles which are covered in such a manner as to securely contain all Solid Waste and to prevent such Solid Waste from projecting, blowing, falling or leaking out of the vehicles. Any Solid Waste dropped or spilled in Collection, transfer or transportation shall be immediately cleaned up by Hauler. A broom and a shovel shall be carried at all times on each vehicle for this purpose. Should a hydraulic fluid or other type of material spill occur as a result of Collection services, Hauler shall notify the City within one (1) hour of learning of the spill. A liquid spill kit shall be carried at all times on each vehicle for this purpose. Hauler shall not transfer loads from one vehicle to another on any public street or private roadway, unless it is necessary to do so because of mechanical failure or damage to a Collection vehicle which renders it inoperable and the vehicle cannot be towed. In addition, each Collection vehicle shall be equipped with trash bags, masking tape and notice of non-collection tags for the purpose of separating Hazardous Waste for return to the generator. A communications device such as a two-way radio or a cellular telephone shall also be maintained on each vehicle at all times.

I. No Equipment Storage in Public Right-of-Way. Hauler shall not store any vehicle or equipment on any public street, public right-of-way or other public property in the City of Newport Beach without obtaining a Temporary Street Closure Permit from the Public Works Department and prior written consent of the Project Administrator.

J. Vehicle Removal From Service. Should the Project Administrator at any time give written notification to Hauler that any vehicle does not comply with the standards hereunder, the vehicle shall be promptly removed from service by Hauler and not used again until inspected and authorized in writing by the Project Administrator.

K. Driver Citations. All vehicles used in performance of this Agreement shall be maintained and operated in conformance with all applicable laws, statutes, rules and regulations. In performance of this Agreement, the issuance of four (4) or more vehicle, driver/operator or other citations that relate in any way to this Agreement within a twelve (12) month period shall be deemed to be breach of this Agreement.

L. Litter Abatement. Hauler shall use due care to prevent any waste material Collected pursuant to this Agreement from being spilled or scattered during the Collection or transportation process. If any waste material is spilled, Hauler shall promptly clean up all spilled materials on public property. Hauler shall clean up existing litter in the immediate vicinity of any Collection Container (including the areas on private and public property where Collection Containers are delivered for Collection) whether or not Hauler has caused the litter.

M. S.M.A.R.T. Vehicles. Collection trucks used in the City will be equipped with video recording that can provide a time-stamped record of service location from at least two (2) angles, provides live video feed to Hauler's dispatch, and with GPS that will track and record the time and location of each vehicle.

5.1.4 City Fueling Station

City benefits from the sale of compressed natural gas ("CNG") at the CNG fueling station adjoining its transfer station property. Hauler agrees to purchase CNG from this fueling station, with this station and Hauler's facility on Lampson in Garden Grove as the primary facilities for fueling all of Hauler's Residential Collection vehicles servicing the City under this Agreement.

5.2 Administration

This Agreement will be administered by the Municipal Operations Department. The Municipal Operations Director, or his/her designee, shall be the Project Administrator and shall have the authority to act for City under this Agreement. The Project Administrator or his/her authorized representative shall represent City in all matters pertaining to the services to be rendered pursuant to this Agreement.

5.3 City's Responsibilities

To assist Hauler in the execution of its responsibilities under this Agreement, City agrees to, where applicable, provide access to and upon request of Hauler, one (1) copy of all existing relevant information on file at City. City will provide all such materials in a timely manner so as not to cause delays in Hauler's work schedule.

5.4 Standard of Care, Workmanship, Supervision

- A. The Hauler shall provide a work force sufficient to perform the Contract Services and all members of the work force shall be hired in compliance with State and Federal law.
- B. All Contract Services shall be performed by competent and trained employees. Hauler represents that it possesses the professional and technical personnel required to perform the services required by this Agreement, and that it will perform all services in a manner commensurate with community professional standards. All services shall be performed by qualified and trained personnel who are not employed by City, nor have any contractual relationship with City. Hauler hereby certifies that all work performed under this Agreement will conform to the requirements of this Agreement and all applicable federal, state and local laws and the professional standard of care.
- C. The work force shall include thoroughly skilled, experienced and competent supervisors who shall be responsible for adherence to the terms of this Agreement by directly overseeing the Contract Services operations. All supervisory personnel must be able to communicate effectively in English (both orally and in writing). An order given to supervisory personnel shall be deemed delivered to the Hauler. Hauler shall provide City with a designated supervisors name(s) and shall notify the City of the name of any successor within ten (10) calendar days of change in supervision.
- D. All Hauler personnel working in the City shall be neat in appearance and in uniform.
- E. Hauler represents and warrants to City that it has, shall obtain, and shall keep in full force in effect during the term hereof, at its sole cost and expense, all licenses, permits, qualifications, insurance and approvals of whatsoever nature that is legally required of Hauler to practice its

profession. Hauler shall maintain a City of Newport Beach business license during the term of this Agreement.

- F. Whenever Hauler has knowledge that any actual or potential labor dispute is delaying or threatens to delay the timely performance of this Agreement, Hauler shall immediately give notice to City of any and all relevant information. In the event of a labor dispute which delays or impacts the performance of Contract Services, City reserves the right to use its own forces or to contract with other haulers to perform the Contract Services. City and Hauler agree that it will be deemed a breach of this Agreement if Hauler cannot provide full Contract Services seven (7) calendar days after services have been impacted or delayed as a result of a labor dispute.
- G. Hauler shall attend meetings, special events and public meetings as requested by the City. Hauler shall provide all necessary and appropriate personnel to attend each meeting and any requested promotional material so that the topics on the agenda can be addressed fully and completely.

5.5 Customer Privacy

Hauler shall strictly observe and protect the rights of privacy of Customers. Information identifying the contents and composition of a Customer's Containers shall not be revealed to any Person, governmental unit, agency or company, unless authorized by the Customer or by order of a court of law, or by statute. This provision shall not be construed to prohibit Hauler from preparing, participating in, or assisting in the preparation of Solid Waste characterization studies, waste stream analyses that may be required by any law or regulation, in preparing or assisting in the preparation of any reports/audits required pursuant to this Agreement, or providing any information required to be provided to City by other provisions of this Agreement or that is necessary for City to comply with any law or regulation. Hauler shall not market or distribute Customer mailing lists to any party except the City.

5.6 Customer Service Surveys

Hauler shall conduct Customer service studies to help the City evaluate performance. City shall provide a list of questions that shall be used in the Customer service survey, and final survey shall be subject to City approval prior to distribution. At Hauler's expense, Hauler will prepare and mail a survey form/card to each Newport Beach residence serviced by Hauler pursuant to this Agreement. City will provide Hauler with a Customer mailing list. All survey forms and cards will be mailed directly from the resident to the City at Hauler's

expense, via business reply mail. City shall share the results of the survey with Hauler. Upon receipt of the results from the initial survey, City and Hauler will meet and mutually determine the future service levels to be incorporated into this Agreement. The first Customer service survey shall be conducted at the completion of six (6) months from the start of Collection services under this Agreement, and thereafter upon City request, but no more than once every two (2) years thereafter to determine whether Hauler is meeting the agreed performance requirements.

5.7 Independent Contractor

It is understood that City retains Hauler on an independent contractor basis and Hauler is not an agent or employee of City. The manner and means of conducting the work are under the control of Hauler, except to the extent they are limited by statute, rule or regulation and the express terms of this Agreement. Nothing in this Agreement shall be deemed to constitute approval for Hauler or any of Hauler's employees or agents, to be the agents or employees of City. Hauler shall have the responsibility for and control over the means of performing the work, provided that Hauler is in compliance with the terms of this Agreement.

5.8 Cooperation

Hauler agrees to work closely and cooperate fully with City's designated Project Administrator and any other agencies that may have jurisdiction or interest in the work to be performed. City agrees to cooperate with the Hauler on the Project.

5.9 City Policy

Hauler shall discuss and review all matters relating to policy and direction with City's Project Administrator in advance of all critical decision points in order to ensure the Contract Services proceed in a manner consistent with City goals and policies.

5.10 Hazardous Waste

A. General. Hauler shall be aware of, and comply with, all laws and regulations relating to the handling and transportation of Hazardous Substances, as defined in this Agreement, including those requiring training and documentation. If Hauler observes any substances which it believes to contain a Hazardous Substance within the City, including but not limited to in Containers designed for waste, Hauler shall not Collect such Hazardous Substance and shall, as appropriate for the material

found, immediately notify the appropriate regulatory agencies, the City, and/or the Customer.

- B. Notice to Customers. Hauler shall notify all Customers at least once a year in writing by mail of: (i) the prohibition against the Disposal of Hazardous Substance in authorized containers; and (ii) the obligation of each Customer to provide for the proper handling and disposition of Hazardous Substance. To the extent that Hauler has actual knowledge of the existence of such Hazardous Substance in a Container placed for Collection, Hauler shall not Collect such Container. Hauler shall, prior to leaving the location where such Hazardous Substance has been observed, leave a tag at least 2" x 6" which informs the Customer why the Collection was not made and lists the telephone number for the Orange County Department of Environmental Management.
- C. Hauler to Segregate and Dispose. In the event Hauler inadvertently Collects any Hazardous Substance and during the course of transportation and disposition becomes aware that it has Collected such Hazardous Substance, Hauler shall segregate Hazardous Substance, and shall arrange for its transport and disposal to a properly permitted Recycling, treatment or disposal facility of Hauler's choosing at Hauler's sole expense. Hauler shall be solely responsible for the transport and disposition of all Hazardous Substance that is Collected by Hauler. Hauler will cooperate with City attempts to locate and Collect the costs of such transport and disposition from the responsible Customer.
- D. Operating Procedures and Employee Training. Hauler shall establish, implement and maintain written operating procedures designed to ensure Hauler's utilization of techniques generally accepted in the waste hauling industry for cities of the size and nature of the City of Newport Beach, to handle and dispose of Hazardous Substance and its compliance with the provisions of this Section. Hauler shall establish, implement and maintain an employee training program and shall ensure that employees responsible for the identification of Hazardous Substance are fully trained. Hauler shall maintain documentation which describes the training received by its employees.

5.11 Load Check Program

Hauler shall implement a load check program that includes, at a minimum, a visual check of all Containers to be emptied to protect against inclusion of

Hazardous Waste and shall prepare a written record of all Hazardous Waste discovered during the process. The records shall comply with all State and Federal Hazardous Waste Regulations, shall be maintained for the length of the term of the Agreement, and shall be provided to the City on or before the fifteenth (15th) day of the month following the end of the previous calendar month.

5.12 Employment of Former City Employees

Hauler shall interview all former employees of the City's Municipal Operations Department to be displaced by the privatization of Solid Waste Collection under this Agreement. Hauler shall make offers of employment to all such applicants qualified for positions with Hauler, and shall offer each such qualified applicant the same base hourly rate the applicant was paid by City just prior to starting with Hauler.

5.13 Dedicated Route Supervisor

Hauler shall employ a route supervisor dedicated exclusively to supervising and assisting with residential Collection services provided in the City of Newport Beach.

5.14 City's Transfer Station

Hauler will enter into an operating agreement with the City to operate the City's transfer station in accordance with the Transfer Station Operating Agreement included as Exhibit F, attached hereto and incorporated herein by reference.

5.15 Purchase of City Collection Vehicles

Hauler will purchase from the City the vehicles listed in Exhibit G, attached hereto and incorporated herein by reference, for a price of One Million Five Hundred Thousand Dollars (\$1,500,000), payable to the City prior to or at the time of delivery of the vehicles.

ARTICLE 6
INSURANCE, BONDS AND INDEMNIFICATIONS

6.1 Insurance Requirements

Without limiting Hauler's indemnification of City, Hauler shall obtain, provide and maintain at its own expense during the term of this Agreement, a policy or policies of liability insurance of the type and amounts described below and in a form satisfactory to City. If the Hauler maintains higher limits than the minimums shown below, the City shall be entitled to coverage for the higher limits.

- A. Certificates of Insurance. Hauler shall provide certificates of insurance with original endorsements to City as evidence of the insurance coverage required herein. Insurance certificates must be approved by City's Risk Manager prior to commencement of the Agreement. Current certification of insurance shall be kept on file with City at all times during the term of this Agreement.
- B. Signature. A person authorized by the insurer to bind coverage on its behalf shall sign certification of all required policies.
- C. Acceptable Insurers. All insurance policies shall be issued by an insurance company currently authorized by the Insurance Commissioner to transact business of insurance in the State of California, with an assigned policyholders' Rating of A (or higher) and Financial Size Category Class VII (or larger) in accordance with the latest edition of Best's Key Rating Guide, unless otherwise approved by the City's Risk Manager.
- D. Coverage Requirements.
 - 1. Workers' Compensation Coverage. Hauler shall maintain Workers' Compensation Insurance and one million dollars (\$1,000,000) Employer's Liability Insurance for his or her employees in accordance with the laws of the State of California. Any notice of cancellation or non-renewal of all Workers' Compensation policies must be received by City at least thirty (30) calendar days (ten (10) calendar days written notice of non-payment of premium) prior to such change. The insurer shall agree to waive all rights of subrogation against City, its officers, agents, employees and volunteers for losses arising from work performed by Hauler that relates in any way to this Agreement.

2. General Liability Coverage. Hauler shall maintain commercial general liability insurance in an amount not less than five million dollars (\$5,000,000) per occurrence for bodily injury, personal injury, and property damage, including without limitation, contractual liability. If commercial general liability insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to the work to be performed under this Agreement, or the general aggregate limit shall be at least twice the required occurrence limit.

3. Automobile Liability Coverage. Hauler shall maintain automobile insurance covering bodily injury and property damage for all activities of the Hauler arising out of or in connection with work to be performed under this Agreement, including coverage for any owned, hired, non-owned or rented vehicles, in an amount not less than five million dollars (\$5,000,000) combined single limit for each occurrence. The Automobile Liability policy shall be endorsed to include Transportation Pollution Liability insurance, covering materials to be transported by Hauler pursuant to this Agreement. This coverage may also be provided on the Contractors Pollution Liability policy.

4. Pollution Liability Coverage. Hauler shall maintain Hauler's environmental liability insurance with limits in an amount of not less than One Million Dollars (\$1,000,000) per occurrence and annual aggregate covering claims for on-site, under-site, or off-site bodily injury and property damage and regulatory fines as a result of pollution conditions arising out of its operations under this Agreement.

E. Endorsements. Each general liability, automobile liability and pollution liability insurance policy shall be endorsed with the following specific language:

1. The City, its elected or appointed officers, officials, employees, agents and volunteers are to be covered as additional insureds with respect to liability arising out of work performed by or on behalf of the Hauler.

2. This policy shall be considered primary insurance as respects to City, its elected or appointed officers, officials, employees, agents and volunteers as respects to all claims, losses, or liability arising directly or

indirectly from the Hauler's operations or services provided to City. Any insurance maintained by City, including any self-insured retention City may have, shall be considered excess insurance only and not contributory with the insurance provided hereunder.

3. This insurance shall act for each insured and additional insured as though a separate policy had been written for each, except with respect to the limits of liability of the insuring company.

4. The insurer waives all rights of subrogation against City, its elected or appointed officers, officials, employees, agents and volunteers.

5. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to City, its elected or appointed officers, officials, employees, agents or volunteers.

6. The insurance provided by this policy shall not be suspended, voided, canceled, or reduced in coverage or in limits, by either party except after thirty (30) calendar days (ten (10) calendar days written notice of non-payment of premium) written notice has been received by City.

- F. Timely Notice of Claims. Hauler shall give City prompt and timely notice of claim(s) made or suit instituted arising out of or resulting from Hauler's performance under this Agreement.
- G. Additional Insurance. Hauler shall also procure and maintain, at its own cost and expense, any additional kinds of insurance, which in its own judgment may be necessary for its proper protection and prosecution of the work.
- H. Deductibles and Self-insured Retentions must be declared to and approved by the City. At the option of the City, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City; or the Hauler shall provide a financial guarantee satisfactory to the City guaranteeing payment of losses and related investigations, claim administration, and defense expenses.
- I. If General Liability and/or Contractors Pollution Liability coverages are written on a claims-made form:

1. The retroactive date must be shown, and must be before the date of the Agreement or the beginning of Contract Services.
2. Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after termination/expiration of this Agreement or any amendments thereto.
3. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a retroactive date prior to this Agreement's effective date, the Hauler must purchase an extended period coverage for a minimum of five (5) years after termination/expiration of this Agreement.
4. A copy of the claims reporting requirements must be submitted to the City for review.

6.2 Responsibility for Damages and Injury/Indemnification

6.2.1 Hauler Responsibility

Hauler shall be responsible for any damages caused as a result of Haulers acts or omissions including, but not limited to injuries to or death of any person or damage to public and/or private property and damages public improvements as a result of Haulers placement and retrieval of the Solid Waste containers.

1. City shall refer complaints about damage to private property, including common areas in common-area subdivisions, to Hauler. Hauler shall promptly repair, or arrange for the repair of, all damage to private property caused by its employees at Hauler's sole expense.
2. Hauler shall use commercially reasonable efforts to prevent damage to all streets over which its Collection equipment may be operated, and Hauler shall obtain all required approvals for operation of its Collection vehicles on private streets.
3. Hauler shall use commercially reasonable efforts to prevent spills of fuel, fluids (such as oil, hydraulic fluid, brake fluid, etc.) on streets, and if such a spill occurs, Hauler shall within one (1) hour notify the City (including the Project Administrator) and all proper regulatory authorities of said spill and release of fluids, and shall clean, at Hauler's expense, the spilled fluids in coordination with, and to the satisfaction of, City and applicable regulatory agencies. Upon a release of such fluids, the driver shall immediately park the vehicle and it shall

remain parked until the leak is repaired. In such event, Hauler shall not park the leaking vehicle within two hundred (200) feet of a storm drain and shall utilize absorbent, sand bags or other appropriate means to prevent leaking fluids from entering storm drains. In the event of any type of spill or other emergency, Hauler shall be responsible for securing the immediate safety of the vehicle driver, all other employees of Hauler and all persons and property in the surrounding vicinity.

6.2.2 General Indemnification

Hauler shall indemnify, hold harmless, and defend City, and each of its past, present and future elected officials, officers, employees, agents, consultants, volunteers, affiliates, assignees, representatives, attorneys, subsidiaries, and affiliated entities and their respective successors, heirs and assigns (collectively, "Indemnified Parties") for, from and against any costs, expenses, damages, and losses, including actual attorneys' fees ("Losses") of any kind or character to any Person or property arising directly or indirectly from or caused by any of the following: (i) any act or omission of Hauler or its respective officers, directors, shareholder members, partners, employees, agents, contractors, subcontractors, suppliers, representatives and affiliates ("Hauler Representatives"); (ii) Hauler's or Hauler Representative's activities; (iii) any accident or casualty within or arising out of the services/work performed under the Agreement; (iv) any violation or alleged violation of any law, ordinance or statute now or hereafter enacted arising out of services/work performed pursuant to the Agreement; (v) the negligence or willful misconduct of Hauler or any of Hauler Representatives in the performance of the services/work under the Agreement; and (vi) any breach of the Agreement.

Hauler shall not be required to indemnify, hold harmless and defend the Indemnified Parties from the sole negligence, active negligence or willful misconduct of the Indemnified Parties. Nothing in this indemnity shall be construed as authorizing any award of attorney's fees in any action on or to enforce the terms of this Agreement. This indemnity shall apply to all claims and liability regardless of whether any insurance policies are applicable. The policy limits do not act as a limitation upon the amount of indemnification to be provided by the Hauler.

6.2.3 Hazardous Substances Indemnification

Hauler shall indemnify the Indemnified Parties from and against all claims, actual damages including, but not limited to, special and consequential damages, natural resource damage, punitive damages, injuries, costs, response,

remediation, and removal costs, losses, demands, debts, liens, liabilities, causes of action, suits, legal or administrative proceedings, interest, fines, charges, penalties and expenses attorneys' and expert witness fees and costs incurred in connection with defending against any of the foregoing or in enforcing this indemnity of any kind whatsoever paid, incurred or suffered by, or asserted against, the Indemnified Parties or Hauler arising directly or indirectly from or caused by any of the following: (i) the violation of any Environmental Laws or the failure to clean up and mitigate the consequences of the spill or release of any Hazardous Substance; and (ii) Hauler's activities under this Agreement concerning any Hazardous Substance at any place where Hauler stores or disposes of solid or Hazardous Waste pursuant to this Agreement, or preceding Agreements between City and Hauler. The foregoing indemnity is intended to operate as an agreement pursuant to the Comprehensive Environmental Response, Compensation and Liability Act 42. U.S.C. Section 9607(e) and any amendments thereto; California Health and Safety Code Section 25364, to insure, protect, hold harmless, and indemnify City from liability.

6.2.4 AB 939 Indemnification

Hauler agrees to meet the Diversion requirements set forth in this Agreement and all requirements of City's Source Reduction and Recycling Element as to the portion of the Solid Waste stream handled by Hauler. Hauler agrees to protect, defend, indemnify and hold City harmless against all fines or penalties imposed by the California Integrated Waste Management Board, or other entity, arising from the failure of Hauler to meet the Diversion requirements set forth in Exhibit "B" of this Agreement and the Integrated Waste Management Act Diversion requirements with respect to the portion of the Solid Waste stream Collected by Hauler.

6.2.5 Intellectual Property Indemnity

Hauler shall defend and indemnify City, its agents, officers, representatives and employees against any and all liability, including costs, for infringement of any United States' letters patent, trademark or copyright infringement.

6.2.6 Notice of Claim

City agrees to give notice to Hauler when the City receives a claim for damages or other liability for which Hauler has provided indemnification under this Agreement.

6.3 Labor and Performance Bond

Hauler shall furnish, concurrently with the Effective Date of this Agreement, a bond or other instrument satisfactory to the Project Administrator in an amount equal to \$1,000,000 as security for the faithful performance of this Agreement. The Labor and Performance Bond shall continue to be renewed annually and remain in effect throughout the term of this Agreement.

In the event Hauler 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 labor and performance bond which is necessary to recompense and make whole the City forfeited to the City. Upon partial or full forfeiture of the bond, Hauler shall restore the bond obligation to its face amount, by providing a new bond or other form of guarantee acceptable to the City, within thirty (30) calendar days of the City's declaration. Failure to replace the labor and performance bond obligation with another form of guarantee or to provide a new bond in the full amount, within thirty (30) calendar days shall be a material breach of the Agreement and grounds for termination.

Some Agreement requirements extend beyond the Term of this Agreement and other requirements, such as minimum Diversion rates per Exhibit "B," will not be substantiated until after the final service date. Therefore, Hauler shall not terminate the labor performance bond, and will renew it to ensure continuous availability to City, until receiving a written release from City. Permission from City to discontinue holding the bond does not relieve Hauler of payments to the City that may be due, or may become due.

**ARTICLE 7
DEFAULT AND DAMAGES**

7.1 Liquidated Damages

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

B. Service Performance Standards; Liquidated Damages for Failure to Meet Standards. The parties further acknowledge that consistent, reliable Contract Service is of utmost importance to City and that City has considered and relied on Hauler'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 Hauler fails to achieve the performance standards, or fails to submit required documents in a timely manner, City and Customers 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 7, 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

3. Customer Responsiveness

- a) For each failure to initially respond to a Customer complaint within one (1) business day, and for each additional day in which the complaint is not addressed, which exceed five (5) annually: \$150.00
- b) For each failure to process Customer complaints as required by Exhibit "B," which exceed five (5) annually: \$150.00
- c) For each failure to process a claim for damages within thirty (30) calendar days from the date submitted to Hauler: \$100.00
- d) For each additional thirty (30) day increment of time in which Hauler has failed to resolve a claim for damages within thirty (30) calendar days from the claim date: \$100.00
- e) For each failure to remove graffiti from Containers, or to replace with Containers bearing no graffiti, within two (2) business day of request from City or Customer: \$50.00 per day
- f) For each failure to repair or replace a damaged or missing Container within two (2) business days of request from City or Customer: \$ 50.00 per day

4. Diversion Efforts

For each calendar year in which Hauler fails to provide documentation to the City within thirty (30) calendar days of calendar year-end, documenting that it diverted at least the minimum tonnage required by Exhibit "B," Section B.2.4 under this Agreement:

\$25 for each ton below tonnage level necessary to meet Diversion goal

5. Timeliness of Submissions to City

Any report shall be considered late until such time as a correct and complete report is received by City. For each calendar day a report is late, the daily liquidated damage amount shall be: \$100 per day

6. Cooperation with Service Provider Transition

- a) For each day routing information requested by City in accordance with Exhibit "B," Section B.8, is received after City-established due dates,

both for preparation of a request for proposals and for new service provider's implementation of service:

\$1,000/day

- b) For each day delivery of keys, access codes, remote controls, or other means of access to Solid Waste Containers is delayed beyond one (1) day prior to new service provider servicing Customers with access issues, as described in Exhibit "B," Section B.8:

\$1,000/day

- c) For delay in not meeting the requirements contained in Exhibit "B," Section B.8 in a timely manner, in addition to the daily liquidated damages for breach under 6(a) and 6(b) above, liquidated damages of:

\$25,000

7. General Contract Adherence

For each day that Hauler fails to provide any other services required under the Agreement, or comply with terms of the Agreement, five (5) business days after receipt of written notification from City that such services are not being provided or terms are not being met: \$250.00/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 Hauler notice of its intention to do so. The notice will include a brief description of the incident(s)/non-performance. Hauler may review (and make copies at its own expense) all information in the possession of City relating to incident(s)/non-performance. Hauler may, within ten (10) calendar days after receiving the notice, request a meeting with City. Hauler may present evidence in writing and through testimony of its employees and others relevant to the incident(s)/non-performance. City will provide Hauler with a written explanation of its determination on each incident(s)/non-performance prior to authorizing the assessment of liquidated damages. The decision of City shall be final.

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

D. Timing of Payment. Hauler shall pay any liquidated damages assessed by City within ten (10) calendar days after they are assessed. If they are not paid within the ten (10) calendar day period, City may proceed against the performance bond required by the Agreement or find Hauler in default and terminate this Agreement pursuant to Sections 7.2 and/or 7.3.

7.2 Default/Termination

The following list of events shall constitute an event of default by the Hauler. This is not an exclusive list of defaults and failure to perform other Agreement terms may be considered material.

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

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

C. Failure to Maintain Coverage. If Hauler fails to provide or maintain in full force and effect all insurance coverage (general liability, automotive, Workers' Compensation and pollution) and performance bonds as required under this Agreement.

D. Violations of Regulation. If Hauler violates any orders or filings of any regulatory body having jurisdiction over Hauler relative to this Agreement, provided that Hauler may contest any such orders or filings by appropriate proceedings conducted in good faith, in which case no breach of this Agreement shall be deemed to have occurred until a final decision adverse to Hauler is entered.

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

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

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

H. Acts or Omissions.

A. Any act or omission by Hauler relative to the Contract Services provided under this Agreement which violates the terms, conditions, or requirements of this Agreement, or AB 939, or any law, statute, ordinance, order, directive, rule, or regulation issued pursuant to AB 939 shall constitute a default by Hauler. Any failure to correct or remedy any such violation within the time set in the written notice of the violation or, if Hauler cannot reasonably correct or remedy the breach within the time set forth in such notice, if Hauler 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 shall constitute a default by Hauler.

B. Any situation in which Hauler or any of its officers, directors or employees are found guilty of any crime related to the performance of this Agreement, or of any crime related to anti-trust activities, illegal transport or Disposal of hazardous or toxic materials, or bribery of public officials shall constitute a default by Hauler. The term "found guilty" shall be deemed to include any judicial determination that Hauler or any of Hauler's officers, directors or employees is guilty as well as any admission of guilt by Hauler or any of Hauler's officers, directors or employees including, but not limited to, the plea of "guilty," "nolo contendere," "no contest," and "guilty to a lesser charge."

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

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

K. Suspension or Termination of Service. If Hauler ceases to provide all or a portion of the Collection or processing services, or any other Contract Services as required under this Agreement for a period of two (2) consecutive

calendar days or more, or seven (7) calendar days for a labor dispute as described in Section 5.4.F, unless all requirements of Section 7.4 are met.

L. Failure to Provide Assurance of Performance. If Hauler fails to provide reasonable assurances of performance as required under Section 7.5.

M. Commingling of Recyclables With Refuse/Landfilling of Recyclables. If Hauler empties Containers of properly set out Recyclable Materials or Green Waste into a Refuse load, or transports Recyclable Materials or Green Waste to a landfill or other location at which the material will not be diverted from landfilling (with the exception of Green Waste used as alternative daily cover provided full Diversion credit is received).

N. Failure to Meet Exhibit “B” Diversion Goal. Failure to meet the minimum Diversion requirements identified in Exhibit “B” for two (2) consecutive calendar years (the initial period from the start of Collection service under this Agreement through the end of that calendar year is considered a “calendar year” for the purposes of this section).

Hauler shall have forty-eight (48) hours from the time it is given notification by City to cure any default arising under subsections E, F, G, J, K, L, and M provided, however, that City shall not be obligated to provide Hauler with a notice and cure opportunity if Hauler has committed the same or similar breach within a twenty-four (24) month period. It is expressly understood that Hauler is not entitled to receive notice of default, or to cure such default, with respect to those matters listed in subsections A, B, C, D, H, I and N above.

7.3 Right to Terminate Upon Default and Right to Specific Performance

If Hauler commits a material breach, including specifically any of the matters listed in subsections A through N of Section 7.2 above (and, if permitted to cure, does not cure it within the forty-eight (48) hours), City shall be entitled to unilaterally terminate this Agreement or impose other such sanctions (which may include financial sanctions, temporary suspensions or any other conditions it deems appropriate short of termination) as it shall deem proper. Should City decide to terminate this Agreement upon a default by Hauler, City shall have the right to do so upon giving ten (10) calendar days’ notice to Hauler, 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 exclusive, 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 Hauler, the remedy of damages for a breach hereof by Hauler is inadequate and City shall be entitled to seek injunctive relief and/or specific performance of any breach of this Agreement.

7.4 Excuse from Performance

7.4.1 Force Majeure

Parties shall be excused from performing their respective obligations hereunder in the event they are prevented from so performing by reason of floods, earthquakes, other natural disasters, war, civil insurrection, riots, acts of any government (including judicial action), and other similar catastrophic events which are beyond the control of and not the fault of the party claiming excuse from performance hereunder.

If the Hauler is excused from performing its obligations for any of the causes listed in this Section 7.4.1 for a period of thirty (30) calendar days or more, City shall nevertheless have the right, in its sole discretion, to terminate this Agreement by giving ten (10) calendar days' notice.

7.4.2 Labor Unrest

In the event of, or threat of, labor unrest, including but not limited to strike, work stoppage or slowdown, sick-out, picketing or other concerted job action conducted by Hauler's employees or directed at Hauler, Hauler must follow requirements of Section 5.4.F and is not excused from performance beyond seven (7) calendar days.

7.4.3 Procedures In Event of Excused Performance

The party claiming excuse from performance under Section 7.4.1 or 7.4.2 shall, within two (2) calendar 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. Throughout service disruption, Hauler shall:

- 1) Provide City with a minimum of daily service updates.
- 2) Notify Customers on a real-time basis as to alternative Collection procedures. At a minimum, Hauler shall update its website and shall provide ongoing updates to City for use on its website, and a “reverse 411” contact method to reach all possible Customers. Should enhanced contact technologies become available, Hauler shall use such methods upon prior written approval from City.

7.5 Assurance of Performance

City may, at its option and in addition to all other remedies it may have, demand from Hauler reasonable assurances of timely and proper performance of this Agreement, in such form and substance as City may require. If Hauler 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 8 ADDITIONAL CONTRACT TERMS

8.1 Assignment

Except as specifically authorized under this Agreement, the services to be provided under this Agreement shall not be assigned, transferred contracted or subcontracted out without the prior written approval of City, subject to the requirements of this section. Any of the following shall be construed as an assignment: the sale, assignment, transfer or other disposition of any of the issued and outstanding capital stock of Hauler, or of the interest of any general partner or joint venturer or syndicate member or cotenant if Hauler is a partnership or joint venture or syndicate or co-tenancy, which shall result in changing the control of Hauler. Control means fifty percent (50%) or more of the voting power, or twenty-five percent (25%) or more of the assets of the corporation, partnership or joint venture.

Hauler acknowledges that this Agreement involved rendering a vital service to City, and that City has selected Hauler to perform the services specified herein based on (1) Hauler's experience, skill and reputation for conducting its Contract 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) Hauler'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 Hauler to perform the services to be rendered by Hauler under this Agreement.

If Hauler 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 must be approved by the City-~~Manager~~, and no request by Hauler for consent to an assignment need be considered by City unless and until Hauler 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) Hauler shall 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 towards expenses may be requested by City prior to City consideration of

any assignment request and Hauler 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) Hauler shall pay the City a transfer fee equal to one percent (1%) of the Gross Receipts it, or its assignee, will receive during the remaining term of the Agreement, as estimated by City.
- c) Hauler shall furnish City with audited financial statements for itself, and the proposed assignee's operations for the immediately preceding three (3) operating years.
- d) A pro forma financial statement (income statement and balance sheet) for the proposed assignee with the projected results of operations assuming that the assignment is completed. Such pro forma financial statement shall reflect any debt to be incurred by the assignee as part of the acquisition of Hauler's operations.
- e) Hauler 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 Hauler 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 any 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 Hauler is in default at any time during the period of

consideration. Should City consent to any assignment request, such assignment shall not take effect until all conditions relating to City's approval have been met.

8.2 Subcontractors

The parties recognize that a substantial inducement to City for entering into this Agreement is the professional reputation, experience and competence of Hauler. Assignments of any or all rights, duties or obligations of the Hauler under this Agreement will be permitted only with the express written consent of City. Hauler shall not subcontract any portion of the work to be performed under this Agreement without the prior written authorization of City.

8.3 Confidentiality

All documents, including drafts, preliminary drawings or plans, notes and communications that result from the services in this Agreement, shall be kept confidential unless City authorizes in writing the release of information.

8.4 Withholdings

City may withhold payment to Hauler of any disputed sums until satisfaction of the dispute with respect to such payment provided that City notifies Hauler in writing as soon as possible specifying the reason for such withholding. Such withholding shall not be deemed to constitute a failure to pay according to the terms of this Agreement. Hauler shall not discontinue work as a result of such withholding. Hauler shall have an immediate right to appeal to the City Manager or his/her designee with respect to such disputed sums. Hauler shall be entitled to receive interest on any withheld sums at the rate of return that City earned on its investments during the time period, from the date of withholding of any amounts found to have been improperly withheld.

8.5 Conflicts of Interest

Hauler or its employees may be subject to the provisions of the California Political Reform Act of 1974 (the "Act"), which (1) requires such Persons to disclose any financial interest that may foreseeably be materially affected by the work performed under this Agreement, and (2) prohibits such Persons from making, or participating in making, decisions that will foreseeably financially affect such interest.

If subject to the Act, Hauler shall conform to all requirements of the Act. Failure to do so constitutes a material breach and is grounds for immediate termination

of this Agreement by City. Hauler shall indemnify and hold harmless City for any and all claims for damages resulting from Hauler's violation of this Section.

8.6 Notices

All notices, demands, requests or approvals to be given under the terms of this Agreement shall be given in writing, and conclusively shall be deemed served when delivered personally, or on the third business day after the deposit thereof in the United States mail, postage prepaid, first-class mail, addressed as hereinafter provided. All notices, demands, requests or approvals from Hauler to City shall be addressed to City at:

Attn: Municipal Operations Director
Municipal Operations Department
City of Newport Beach
100 Civic Center Drive
Newport Beach, CA, 92658
Phone: 949-644-3055 Fax: 949-650-0747

All notices, demands, requests or approvals from City to Hauler shall be addressed to Hauler at:

Attention: Dean A. Ruffridge, Sr. Vice President
CR&R Incorporated
11292 Western Avenue
Stanton, California 90680
Phone: (714) 826-9049 Fax: (714) 890-6347

8.7 Compliance With All Laws

Hauler shall at its own cost and expense comply with all statutes, ordinances, regulations and requirements of all governmental entities, including federal, state, county or municipal, whether now in force or hereinafter enacted. Hauler shall conform to all applicable provisions of State and Federal law, including applicable provisions of the California Labor Code and the Federal Fair Labor Standards Act. In addition, all work performed by Hauler shall conform to applicable City, county, state and federal laws, rules, regulations and permit requirements and be subject to approval of the Project Administrator and City.

8.8 Waiver

A waiver by either party of any breach of any term, covenant or condition contained herein shall not be deemed to be a waiver of any subsequent breach of the same or any other term, covenant or condition contained herein, whether of the same or a different character.

8.9 Integrated Contract

This Agreement represents the full and complete understanding of every kind or nature whatsoever between the parties hereto, and all preliminary negotiations and agreements of whatsoever kind or nature are merged herein. No verbal agreement or implied covenant shall be held to vary the provisions herein. All exhibits referenced in this Agreement are incorporated by reference.

8.10 Conflicts or Inconsistencies

In the event there are any conflicts or inconsistencies between this Agreement and the Scope of Services or any other attachments attached hereto, the terms of this Agreement shall govern.

8.11 Interpretation

The terms of this Agreement shall be construed in accordance with the meaning of the language used and shall not be construed for or against either party by reason of the authorship of the Agreement or any other rule of construction which might otherwise apply.

8.12 Amendments

This Agreement may be modified or amended only by a written document executed by both Hauler and the Project Administrator and approved as to form by the City Attorney.

8.13 Severability

If any term or portion of this Agreement is held to be invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions of this Agreement shall continue in full force and effect.

8.14 Controlling Law and Venue

The laws of the State of California shall govern this Agreement and all matters relating to it and any action brought relating to this Agreement shall be adjudicated in a court of competent jurisdiction in the County of Orange.

8.15 Equal Opportunity Employment

Hauler represents that it is an equal opportunity employer and it shall not discriminate against any subcontractor, employee or applicant for employment because of race, religion, color, national origin, handicap, ancestry, sex or age.

8.16 No Attorneys' Fees

In the event of any dispute or action arising under this Agreement the prevailing party shall not be entitled to attorneys' fees.

[SIGNATURES ON NEXT PAGE]

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on the day and year first written above.

APPROVED AS TO FORM:
The City Attorney's Office

CITY OF NEWPORT BEACH,
A Municipal Corporation

By: _____
Aaron C. Harp
City Attorney

By: _____
Keith D. Curry
Mayor

ATTEST:

CR&R, Incorporated:

By: _____
Leilani I. Brown
City Clerk

By: _____
David Ronnenberg
Chief Operating Officer

By: _____
Joyce Amato
Chief Financial Officer

[END OF SIGNATURES]

**EXHIBIT A
MAP OF SERVICE AREA**

EXHIBIT B DIRECT SERVICES

B.1 Refuse and Recyclables Collection

B.1.1 General

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

B.1.2 Weekly Solid Waste Collection

Hauler shall Collect, at least once weekly, Monday through Friday, all Solid Waste placed for Collection in accordance with this section. Collection quantity shall not be limited. Hauler shall immediately pick up any Solid Waste overflowing Customer Containers, or that spills from Customers' Containers during Collection.

B.1.2.1 Containerized Collection

B.1.2.1.1 Containerized Refuse Collection

Hauler shall provide all Customers to be serviced under this Agreement with Refuse Carts for semi- or fully automated Collection. Customers shall have the option to request Carts approximately 32, 64, or 96-gallons in size, and in the quantity as may be needed to service the regularly containerized wastestream at each Customer location.

Customers may place Refuse in Refuse Cart(s), Customer-provided Cans, boxes or bags, provided no Container is heavier than fifty pounds (50 lbs). Customers that regularly generate more Refuse than will fit in its Carts may be offered, or may request, additional Carts. If there is a dispute between Hauler and the Customer as to whether additional Carts should be provided to a Customer the

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City, or its Contract Administrator, shall make the final decision. Hauler shall continue to provide Collection services to the Customer during the dispute resolution process.

B.1.2.1.2 Recyclables Collection

Hauler shall provide all Customers the option to participate in a source separated Recyclables Collection program, with Hauler providing semi- or fully automated Collection. Customers shall not be required to participate. Customers shall have the option to request Carts approximately 32, 64, or 96-gallons in size, and in the quantity as may be needed to regularly containerize each Customer's wastestream.

Customers may place Recyclables in Recycling Cart(s) and clear Customer-provided plastic bags for Collection, provided the bag is no heavier than fifth pounds (50 lbs). Recyclables placed in opaque bags, barrels or boxes may be Collected as Refuse. Customers that regularly generate more Recyclable Materials than will fit in its Carts may be offered, or may request, additional Recycling Carts. If there is a dispute between Hauler and the Customer as to whether additional Carts should be provided to a Customer the City shall make the final decision.

B.1.2.1.3 Manual Service

If the use of Carts is not feasible at certain properties, Hauler shall Collect Refuse from such Customers in Customer-provided Containers, at no additional charge to City or Customer. Hauler shall provide City with a list of such service addresses for advance City approval to provide manual service.

B.1.2.1.4 Cart Distribution

Hauler will distribute Carts to Customers prior to the start of Collection service under this Agreement. Prior to Cart Distribution Hauler will mail each Customer a return postage-paid post card for each Customer to select its preferred size and number of Refuse and Recycling Carts. Hauler will include information in the mailing regarding the Collection program changes and to assist in the Customers' Cart selection process. If a Customer does not return the selection card, the default Cart delivery count and size will be one 64-gallon Refuse Cart and one 64-gallon Recycling Cart. With prior written City approval, Hauler may distribute alternative default Cart counts and sizes if it has determined an alternative option better suits Collection needs in certain areas of the City (such as providing smaller Carts in space constrained areas). Customers may request to have Hauler exchange Cart sizes throughout the Agreement term at no additional charge.

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B.1.2.1.5 Removal of Residents' Existing Cans

Customers may want Hauler to remove previously-used Customer-provided Containers. Hauler will provide Customers with a method by which to identify Containers to be removed as opposed to Containers that Customers intend to retain for occasional extra Solid Waste that does not fit in the Carts provided. Hauler shall promptly remove all Containers identified for removal, and shall Recycle all such Containers that are Recyclable.

B.1.2.2 Unlimited Basic Bulky Item Collection

In addition to containerized Solid Waste, at no additional cost, Hauler will Collect unlimited "Basic Bulky Items" under this section that could be Collected in a standard size rear-loader Collection vehicle (though Hauler may use alternative Collection vehicles), including but not limited to the following:

- Mattresses
- Couches and loveseats, excluding sleeper couches
- Chairs and other small pieces of furniture
- Water heaters

Hauler may request that Customers call in for Collection of this Basic Bulky Items, but shall ensure all Solid Waste properly placed for Collection is removed whether or not it has been called in. In the event there is a dispute as to whether an item meets the definition of "Basic Bulky Item" under this section, City's Contract Administrator shall make the final determination.

B.1.2.3 Unacceptable Material

This weekly Collection service does not include the Collection of debris from remodeling or other construction or demolition projects to the extent this material exceeds the capacity of six (6) Cans of construction and demolition debris per week, subject to Can size limit of thirty-five (35) gallons and weight limit of fifty pounds (50 lbs). Solid Waste not permitted in a landfill is not intended to be Collected on the weekly Collection routes as described in this section; however, such materials may be Collected per this Agreement under other programs. If there is a dispute between Customer and Hauler as to whether material is to be Collected under this Exhibit "B," the Project Administrator shall make the final determination.

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B.1.3 Summer Saturday Collection

In addition to the one (1) weekly Collection provided under Exhibit “B,” areas of the City, as defined in Exhibit E, require a second weekly Collection on Saturday from two Saturdays prior to July 4th through the Saturday prior to Labor Day each year. These Saturday Collections will be required on all Saturdays in this time period, including the Saturday following the Fourth of July. For these Customers, the year-round weekly Collection day shall not change during this Summer Saturday Collection period.

B.1.4 Collection Location and Container Placement

Collection locations, where Customers may place Solid Waste for Hauler Collection, may be curbside, alley, or set back up to ten (10) feet from the property line. If Customer and Hauler dispute the Collection location, City will make the final determination and Hauler will continue Collection service during the resolution period. Due to space restrictions, Hauler may need to enter Customers’ property and enclosures for regular weekly Collection. All Carts and Cans must be returned to the point of Collection upright after Collection.

B.1.5 Holiday Tree Collection Program

Hauler shall advertise and conduct an annual holiday tree Collection program from December 26 through January 15 (three (3) full Collection weeks). During this period, all holiday trees placed out for Collection by Customers shall be Collected by Hauler and diverted from landfilling unless tree is flocked, contains decorations, or otherwise cannot be diverted. After this period, trees will be Collected as a Basic Bulky Items. Trees up to six (6) feet in length will be Collected and diverted without Customers needing to cut them. Hauler may request that Customers with larger trees cut the trees to pieces no longer than six (6) feet in public education materials and by tagging the tree.

B.1.6 Container Pull-Out Service for Disabled

For no additional compensation, Hauler shall provide disabled Customers with Container pull-out service to those who request it. Hauler will remove Solid Waste Containers (Carts, Cans, bags, boxes and other items) from Customer’s storage area for Collection and return emptied Containers to Customer’s storage area after Collection, ensuring that all doors or gates are closed securely. In order to qualify as disabled under this section, Customers must have been issued a handicap placard from the Department of Motor Vehicles, received written documentation from a medical doctor, or otherwise obtain approval to receive such service from the City. If there is a dispute as to whether a

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Customer is entitled to this service, the Project Administrator shall make the final determination.

Note that some Customers already receive a form of “backyard service” due to Collection location storage constraints. This section does not impact those Customers, which will continue to receive Collection from other than curb or alley-side without regard to physical disability.

Container pull-out service for Customers not covered under this section is not included in this Agreement or regulated by City.

B.1.7 Limited On-Call Enhanced Bulky Item Pickup

Hauler shall provide Collection service to Customers for “Enhanced Bulky items” that are larger or heavier than items to be Collected under Section B.1.2.2, and for select electronic and universal wastes, including but not limited to:

- Sleeper couches;
- Electrical appliances (including refrigerators, ranges, washers, dryers, dishwashers, small household appliances and other similar items, commonly known as “white goods”);
- Electronic waste, including computers and televisions;
- Fluorescent bulbs;
- Household batteries; and
- Other items, provided they are not more than eight (8) feet in length, four (4) feet wide, one hundred fifty (150) pounds, or otherwise excluded.

Items to be Collected under this section do not include:

- Car bodies;
- Tires;
- Oil, antifreeze and other hazardous substances (For the purposes of this section, universal wastes such as fluorescent bulbs, household batteries, and televisions, monitors and other items referred to as Electronic Waste are not considered hazardous);
- Construction and Demolition Debris; and
- Items requiring more than two (2) persons to remove.

Each Customer shall be entitled to four (4) Enhanced Bulky Item pickups per calendar year at no additional charge. Customers may put out up to four (4) Enhanced Bulky Items at each pickup. Hauler may require Customers to contact Hauler and request the pickup at least one (1) business day in advance of Collection to request this service, Collection will be on Customer’s regular Collection day.

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In the event a question ever arises as to whether a specific item or category of items meets the definition of Enhanced Bulky Item under this section, Basic Bulky Item under Exhibit B.1.2.2, or neither, the Project Administrator shall be responsible to determine whether said definition shall apply, which determination shall be final and binding on the parties. If requested by City, Hauler will continue to Collect disputed items during the resolution process.

See Exhibit C for Hauler's additional Compensation for this program. Hauler may directly bill Customers that request Enhanced Bulky Item pickups in excess of four (4) per year in accordance with the approved compensation schedule in Exhibit C.

B.1.8 Bulky Item Diversion

Basic [and Enhanced] Bulky Items Collected under this Agreement, may not be landfilled or disposed of until the following hierarchy of Diversion efforts has been followed by Hauler:

- 1) Reuse as is;
- 2) Disassemble for reuse or Recycling;
- 3) Recycle; or
- 4) Dispose.

B.1.9 Disposal of Electronic and Other Special Wastes

Hauler shall divert waste requiring special handling, such as Electronic Waste, fluorescent bulbs and household batteries Collected under this Agreement, by taking these goods to a properly permitted Facility, and not by landfilling.

B.1.10 Sharps Collection Program

Hauler will provide Customers with pre-paid, postage-paid mail-back containers to safely collect used Sharps and send Sharps for proper disposal. Customers will be provided with a toll-free number to call to arrange to receive a Sharps container. Hauler will also make Sharps containers available at a pick-up location in the City as an alternative for the Customer. See Exhibit C for Hauler's additional Compensation for this program.

B.1.11 Household Hazardous Waste Door-to-Door Collection Program

Hauler will Collect Household Hazardous Waste ("HHW") materials from Customers on a call in basis. Hauler will schedule a collection appointment with Customer for pickup on the Customer's next regularly scheduled Refuse

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Collection day, and mail or deliver any bags or other materials necessary for Customer to properly place HHW for collection. Hauler will collect Customer's HHW from an agreed-upon collection location, away from curbside.

Materials to be Collected under this program include:

- Electronic Waste, including but not limited to televisions, computer-related items, printers, copiers, cell phones, stereos, speakers, scanners, cables and other small appliances.
- Universal Waste, including but not limited to household batteries, Fluorescent tubes and bulbs and other mercury-containing lamps, and neon, high intensity discharge, metal halide and sodium bulbs, mercury thermostats, electrical switches, pilot light sensors, mercury gauges, mercury-added novelties, and emptied aerosol cans.
- Household Hazardous Wastes, including but not limited to:
 - Cleaning products including aerosols, bathroom cleaners, chlorine bleach, solvents, spot removers, oven cleaners, rug and floor cleaners, furniture polish, drain cleaners, and solvents.
 - Automobile maintenance products, including car waxes, starting fluids, solvent cleaners, antifreeze, repair products, batteries, brake fluid, motor oil, and gasoline.
 - Home improvement products, including oil based stains and paints, liquid latex paint, caulking, varnish, paint thinners, chemical strippers, blue, contact cement, fire extinguishers, flea collars and sprays, insect repellents, insecticides, kerosene, lighter fluid, and pool chemicals.
 - Personal care items including nail polish and remover, and hair color.
 - Lawn and garden care, including weed and pest killers, herbicides, fungicides, and other lawn chemicals.
- Sharps, such as needles and syringes.
- Pharmaceutical wastes, when regulations have been revised to permit collection of these materials under this type of collection program.

Hauler will provide special collection assistance when Collecting materials from seniors and disabled persons. Hauler will recycle over 80% of the material Collected under this Section B.1.11 and provide monthly reports to the City of activities including quantities Collected and participant counts. Hauler will provide documentation of each Collection, including proof of final disposition. Hauler will provide bi-annual comprehensive reports and analysis of the program. Hauler will provide a hot-line to address both program and non-program HHW items.

Hauler will provide environmental pollution control insurance coverage, naming the City as an additional insured.

See Exhibit C for Hauler's additional Compensation for this program.

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B.1.12 Community Shred Day

For no additional compensation, Hauler will promote and conduct two (2) shred events each contract year, whereby Customers can bring an unlimited quantity of paper for shredding. Event dates shall be mutually agreed to by City and hauler, and hauler will promote the events through its website and mailings included in Section B.7.3.

B.1.13 Mulch Give-A-Way Events

For no additional compensation, Hauler will conduct a local annual compost give-a-way event staffed by Hauler employees, whereby Hauler provides free compost to City residents. Event dates shall be mutually agreed to by City and hauler, and hauler will promote the events through its website and mailings included in Section B.7.3.

B.1.14 Alternative Organics Collection Program

City retains the option to transition the two-Cart Refuse and Recyclables program to a two-Cart Refuse/Recyclables and Organics Cart program upon sixty (60) calendar days' notice. Under the alternative program, Refuse and Recyclables would be co-Collected in one (1) Cart, and processed to recover sufficient Recyclables to meet the minimum diversion requirement. Organics, including food waste and yard waste, would be Collected in the second Cart for delivery to Hauler's anaerobic digester in the City of Perris for processing for diversion credit. Hauler is responsible for providing education and outreach materials to Customers prior to implementation of this program. The minimum diversion rate under Section B.2.4 will be increased to sixty-five percent (65%) under this alternative program.

If City requests this service, upon commencement of the new program, Hauler's compensation will increase by \$77,115 per month (\$925,380 per year), adjusted annually by the change in CPI capped at 2.5% per year, calculated in the same manner as "all other" costs are calculated per Sections 3.4.2 and 3.4.3, with the first adjustment effective July 1, 2015.

B.2 Diversion Requirements

B.2.1 Recyclables Processing

Hauler shall deliver all material Collected in the Recycling Cart, and all other separated Recyclables, to a Recyclables processing facility to recover recyclables, with any residual waste remaining after processing being directed to the Orange County Landfill System.

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The following items, at a minimum, will be recovered:

- Papers (including cardboard, pizza boxes, junk mail, phone books, cereal boxes, cracker boxes, newspaper, computer paper, white paper, and mixed colored paper)
- Plastics (including clothes hangers, beverage bottles, plastic toys, detergent containers, water bottles, milk containers, and plastics labeled 1 through 7)
- Metals (including empty aerosol cans, aluminum cans, tin cans, food and juice cans, empty paint cans, and dried paint cans)
- Glass (including food bottles, beverage bottles, liquor bottles, and jars)
- Clothing (including used clothes, shoes bedding, and other cloth items)
- Electronics (including cell phones and radios) – Note: electronics are only permitted in the source separated Recycling Container.

B.2.2 Mixed Waste Processing

Hauler shall deliver sufficient mixed Solid Waste Collected under this Agreement to a materials processing facility for the removal of recyclables prior to landfilling to ensure that Hauler meets diversion requirements under Section B.2.4 below.

B.2.3 Marketing and Sale of Recyclable Materials

Hauler shall be responsible for marketing and sale of all Recyclable Materials recovered pursuant to this Agreement. Hauler may retain revenue from the sale of Recyclable Materials, and shall report the amount of such revenues to City upon request.

B.2.4 Minimum Recycling Requirements

Except as expressly provided in this Section, Hauler shall comply with all Recycling and Diversion requirements imposed by law, ordinance or regulation on the City and/or Hauler.

On an annual basis, Hauler shall divert Forty-Five percent (45%) of all Solid Waste Collected by Hauler under this Agreement from being landfilled. In no event shall Hauler deposit Fifty-Five percent (55%) or more of the Solid Waste Collected pursuant to this Agreement at any landfill during any calendar year. Diversion of materials not Collected by the Hauler is not to be counted towards meeting this requirement. For the purposes of this section, Diversion includes Recycling, Transformation and other forms of converting Solid Waste into energy to the extent that such Diversion is accepted by the State toward meeting the City's Diversion goal under AB 939. However, if CalRecycle ceases to accept waste sent

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to Transformation or used as Alternative Daily Cover as Diversion, there will be no adjustment to compensation or the minimum Diversion rate due to this limitation.

On or before the thirtieth (30th) day of the month following the end of the previous calendar month, Hauler shall provide all documents and information designated by the Project Administrator to prove that Hauler has complied with this minimum Diversion requirement, any applicable law, ordinance, regulation, or condition related to Recycling and Diversion of Solid Waste. See Monthly Reports.

B.3 City Services

B.3.1 City Sponsored Events

Hauler shall provide and service Solid Waste containers (bins and/or roll-off boxes) at City events, processing, Recycling and Disposing of all Solid Waste Collected at the City's Fourth of July and Corona Del Mar 5K events at no additional cost. City will instruct Hauler where and when to place Containers. City shall empty event litter boxes into the Containers, and instruct Hauler when to dump and/or replace Containers throughout events. City may instruct Hauler to provide separate Recycling bins or roll-off boxes. The City may require Hauler to service additional events at a cost to be negotiated.

B.3.2 Abandoned Item Collection, Alley Sweeps and City Litter Containers

City crews will Collect abandoned items from public rights-of-way and place items at the City's Transfer Station or a City yard. City vendors will Collect waste from City and park litter Containers and deliver it to the City's Transfer Station or a City yard as determined by City. Hauler is responsible for Collecting, processing and Disposing of all abandoned items and City/park litter Container waste placed for Collection at City locations by City crews or third party vendors under contract with City.

B.3.3 Emergency Collection and Disposal Service

Hauler will assist City at the City's request with emergency Collection and Disposal service (in the event of major disaster, such as an earthquake, storm, riot or civil disturbance), or as otherwise determined necessary by the City, by providing Collection equipment and drivers normally assigned to City. Hauler may charge City per the approved compensation schedule.

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B.3.4 Compost and Wood Chips for City

At no additional cost, Hauler will provide the City with compost and wood chips for City's use in municipal open areas, landscaped medians, parks and other similar areas.

B.4 Operations

B.4.1 Schedules

B.4.1.1 Collection Days and Hours

To preserve peace and quiet, Solid Waste shall only be Collected between 7:00 a.m. and 7:00 p.m., Monday through Friday. Saturday Collection is permitted for "Summer Saturday Collection" and for Holiday Collection makeup. If the regularly scheduled Collection day falls on New Year's Day, Memorial Day, Fourth of July, Labor Day, Thanksgiving Day, or Christmas Day, Collection days for the remainder of that week shall all be postponed one (1) Collection day. Hauler may not make exceptions to these Collection days and times without advanced written approval from City.

B.4.1.2 Change of Schedules and Routing

Routing and Collection day changes are subject to approval of City. If requesting a change, Hauler shall submit a copy of its Collection schedule and route map to City. City may require Hauler to revise request, incorporating any changes necessary to make it satisfactory to City, or may reject it. No change in schedules and routing shall be implemented for fifteen (15) calendar days after Hauler receives written approval from City and notifies Customers.

B.4.1.3 Missed Pickups

Hauler shall Collect a missed pickup by close of business the following business day after notification, whether miss was due to Hauler error or delay in Customer set out.

B.4.2 Personnel

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

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B. Hazardous Waste Employee Training. Hauler shall establish and vigorously enforce an educational program which will train Hauler's employees in the identification of Hazardous Waste. Hauler's employees shall not knowingly place such Hazardous Waste in the Collection vehicles, nor knowingly dispose of such Hazardous Wastes at the Transfer Station, MRF or Disposal Site.

C. Customer Courtesy. Hauler shall train its employees in Customer courtesy, shall prohibit the use of loud or profane language, and shall instruct Collection crews to perform the work quietly. Hauler 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, Hauler shall take all necessary corrective measures including, but not limited to, transfer, discipline or termination. If City has notified Hauler of a complaint related to discourteous or improper behavior, Hauler will consider reassigning the employee to duties not entailing contact with the public while Hauler is pursuing its investigation and corrective action process.

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

E. Training. Hauler 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.

F. Compliance with Immigration Laws. Hauler shall be knowledgeable of and comply with all local, state and federal laws which may apply to the performance of this Agreement. Hauler warrants and represents that all of its employees, including any and all prospective employees hired to perform services for the City under this Agreement and the employees of any subcontractor retained by Hauler to perform a portion of the services under this Agreement, are and will be authorized to perform the services contemplated by this Agreement in full compliance with all applicable state and federal laws, rules and regulations, including, but not limited to, the Immigration Nationality Act of 1952 (commencing with Section 1101 of Title 8 of the United States Code), and the Immigration Nationality and the Immigration Reform and Control Act of 1986 (commencing with Section 1324a of Title 8 of the United States Code), as amended. Hauler agrees to verify the legal status of all of its employees and provide documentation of such verification whenever requested by the City. If Hauler discovers that any employee it has retained is not in compliance with

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Immigration Laws, Hauler agrees to take appropriate action in compliance with applicable laws.

G. Identification Required. Hauler shall provide its employees, companies and subcontractors who may make personal contact with Customers in City with identification. City may require Hauler to notify Customers yearly of the form of said identification. Hauler shall provide a list of current employees, companies, and subcontractors to City upon request.

City reserves the right to perform a security and identification check through the City's Police Department on the Hauler and all present and future employees employed by Hauler to work in the City, in accordance with accepted procedures established by City, or for probable cause.

H. Fees and Gratuities. Hauler shall not, nor shall it permit, any agent, employee, or subcontractors employed by it to request, solicit, demand, or accept, either directly or indirectly, any compensation or gratuity for services authorized to be performed under this Agreement except as described in this Agreement, in accordance with Exhibit C as updated and approved by City throughout the Term of the Agreement.

I. Non-Discrimination. Hauler 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 Solid Waste law.

J. English Language Fluency. All of Hauler's drivers operating in the City of Newport Beach under this Agreement shall be fluent in the English language.

B.4.3 Dedicated Route Supervisor

Hauler shall provide a full-time route supervisor dedicated exclusively to supporting Collection services required under this Agreement in the City of Newport Beach.

B.4.4 Routing and Coordination With Street Sweeping Services

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

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B.4.5 Report of Accumulation of Solid Waste; Unauthorized Dumping

Hauler shall direct its drivers to note: (a) the addresses of any Premises at which they observe that Solid Waste is accumulating and is not being delivered for Collection; and (b) the address, or other location description, at which Solid Waste has been dumped in an apparently unauthorized manner. Hauler shall deliver the address or description to City within one (1) working day of such observation.

B.4.6 Transportation of Solid Waste

Hauler shall transport all Refuse Collected to a City-approved Facility (e.g., Transfer Station, waste-to-energy Facility, Green Waste Processing Facility, MRF, Disposal Site). Hauler agrees to make all reasonable efforts to separate Recyclable Materials from Refuse for Diversion from landfill Disposal.

Hauler shall maintain accurate records of the quantities of Solid Waste transported to all Facilities utilized and will cooperate with City in any audits or investigations of such quantities.

Hauler shall cooperate with the operator of any Facility it uses with regard to operations therein, including, for example, complying with directions from the operator to unload Collection vehicles in designated areas, accommodating maintenance operations and construction of new facilities, cooperating with its Hazardous Waste exclusion program, and so forth.

B.5 Approved Facilities

Hauler shall dispose of Solid Waste Collected or transported by Hauler only by taking such Solid Waste to a State certified/licensed landfill, State certified/licensed Transfer Station, State certified/licensed Recycling facility or State certified/licensed materials recovery facility which is lawfully authorized to accept that specific type of Solid Waste material. Hauler shall not dispose of Solid Waste by depositing it on any land (except a permitted facility), whether public or private, or in any river, stream or other waterway, or in any sanitary sewer or storm drainage system. Nothing in this Agreement shall be deemed or construed as authorizing Hauler to operate a landfill, Recycling center or other Solid Waste Disposal facility.

Facilities approved for use under this Agreement are:

- CR Transfer (CRT), 11232 Knott Avenue, Stanton, CA
- CR&R Western Avenue MRF, 11292 Western Avenue, Stanton, CA
- Newport Beach Transfer Station, 592 Superior Avenue, Newport Beach, CA

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- Orange County Landfill System (the “Disposal Site”)
- Lakeview Facility, 30932 Palm Avenue, Lakeview, CA
- Sage Ranch, 41801 E. Benton Road, Hemet, CA
- San Juan Facility, 31641 & 31643 Ortega Hwy., San Juan Capistrano, CA
- Lampson Facility, 7571 Lampson Ave., Garden Grove, CA

Hauler will ensure that all residue from processing, and any other Solid Waste Collected under this agreement that is to be Disposed, will be Disposed of at the Disposal Site, regardless of whether Hauler owns or operates the MRF or Transfer Station delivering the Solid Waste for Disposal. Hauler must receive written advance approval from City to use any Facility not listed above. Hauler is responsible for ensuring that each Facility it uses is properly permitted prior to requesting City approval to use such Facility.

B.6 Dedicated Routes

Solid Waste Collected in the City under this Agreement may not be commingled in Collection vehicles with Solid Waste from other jurisdictions or from the commercial or other non-Agreement waste Collected in the City, unless the City approves, at its sole discretion, in writing of such an arrangement, including the tonnage allocation method to be used for reporting purposes.

B.7 Education and Public Awareness

B.7.1 General

Hauler acknowledges and agrees that education and public awareness are critical, key and essential elements of any efforts to meeting AB 939 and other State environmental requirements. Accordingly, Hauler agrees to implement a public education plan for City Customers, with strategies and timetables, to expand public and Customer awareness concerning the need to and methods of reducing, reusing and Recycling Solid Waste. Hauler will provide and distribute outreach material in the form of online resources, fliers, cards, magnets or other methods acceptable to City. Hauler shall submit a public education plan for approval by City prior to the start of Collection services under the Agreement. All public education materials shall be approved in advance by City. All printed materials shall be printed on recycled paper.

B.7.2 Hauler-Mailing Procedures

Hauler is responsible for costs associated with developing and distributing public outreach materials. As Hauler does not bill Customers, City will provide Hauler

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with mailing lists for Hauler's use in distributing mailings. Alternatively, Hauler may arrange for City to send mailing and compensate City for applicable costs.

B.7.3 Implementation and On-going Education Requirements

Hauler will provide a minimum of the following public education items to be developed at Hauler's expense and distributed, after City approval, as indicated below:

- **Initial Transition Mailing** – At least thirty (30) calendar days prior the start of Collection services being provided by Hauler, Hauler will prepare and distribute a mailing to Customers explaining the transition from City crew Collection to Hauler Collection. The mailing will describe program changes, route changes, dates of program implementation, and other necessary information.

The mailing should also clearly indicate what materials, such as syringes and other Household Hazardous Wastes (HHW), should not be placed in refuse containers, and shall include instructions on how Customers should dispose of HHW, such as information on the available County HHW drop-off facilities.

- **City Council Presentations** – Upon the written request of City, Hauler shall provide, at no additional charge at least two (2) presentations to the City Council regarding new programs, the status of the transition to services under this Agreement, and other solid waste matters on an annual basis.
- **Website** – Hauler shall develop and maintain a website to enable Customers to contact Hauler and to display holiday schedules, proper HHW disposal procedures, and other useful information.
- **Semi-Annual Notice/Newsletter** – Hauler shall prepare and distribute two (2) mailings each calendar year updating Customers on holiday Collection schedules, holiday tree Collection [Basic and Enhanced], Bulky Item Collection, proper HHW handling, upcoming Solid Waste and/or environmental-related events, and other timely Solid Waste information.
- **Quarterly Notice/Newsletter** – Hauler prepares a quarterly Orange County newsletter to support diversion activities. Hauler will provide copies of this newsletter to the City as an insert in City mailings, if requested by City.
- **Corrective Action Notice** – Hauler shall develop a corrective action notification form for use in instances where a Customer sets out inappropriate materials for Collection and explains the appropriate manner for Disposal of

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such items. Examples include inclusion of Hazardous Waste (See Section 5.10.B), or placement for Collection of material that would not fit in the Collection truck (and may need to be called in).

- **Cart Auditing and Education** – If instructed by City, Hauler will tag Refuse Carts that contain Recyclables with educational material instructing Customers on what materials may be placed in the Recycling Carts. As the Recycling program is voluntary, Hauler shall not implement this program or tag any Refuse Carts unless Hauler receives prior written instruction to do so from City.
- **Classroom Education Curriculum** – Hauler will provide curriculum to schools in the City, offering the curriculum to the School District.

B.8 Cooperation in Preparation for Termination or Expiration of Contract

Prior to, and at, the end of the Term or in the event this Agreement is terminated for cause prior to the end of the Term, Hauler shall cooperate fully with City and any subsequent Solid Waste enterprise it designates to assure a smooth transition of Contract Services. Hauler's cooperation shall include, but not be limited to, providing route lists 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.

Hauler shall provide a new service provider with all keys, security codes and remote controls, if any, needed to access gated communities or other Collection locations. Hauler shall be responsible for coordinating transfer immediately after Hauler's final pickups, so as not to disrupt service. Hauler shall provide City with detailed route sheets containing service names and addresses, at least ninety (90) calendar days prior to the transition date, and provide an updated list two (2) weeks before the transition and a final list of changes the day before the transition. Hauler shall provide means of access to the new service provider at least one (1) full business day prior to the first day of Collection by another party, and always within sufficient time so as not to impede in any way the new service provider from easily servicing all Customers.

Hauler is responsible for removing its Carts from the City at the end of service, unless otherwise agreed in writing with the City. Hauler shall work with the new service provider to coordinate the removal of its Carts with the distribution of the new service provider's Containers.

EXHIBIT B – SCOPE OF SERVICES

B.9 Customer Service

B.9.1 Local Office, Telephone Access

Hauler shall maintain an office at 11292 Western Avenue, Stanton, which shall be open (“Office Hours”), at a minimum, from 8:00 a.m. to 5:00 p.m., Monday through Friday, exclusive of holidays. A responsible and qualified representative of Hauler shall be available during Office Hours for personal communication with the public at the local office. Hauler’s telephone system shall be adequate to handle the volume of calls typically experienced on the busiest days. If City receives more than five (5) complaints in thirty (30) calendar days that Customers are unable to contact Hauler by phone, City may require Hauler to increase capacity. Hauler shall have a representative, a message machine, or an answering service available outside of Office Hours. Calls received outside of Office Hours shall be responded to on the next business day. Hauler shall provide City with a twenty-four (24) hour emergency number to a live person, not voice-mail.

Hauler shall record Customer complaints regarding Customer service personnel in accordance with Exhibit B.9.2. Customer service representatives receiving multiple complaints are to be transferred from Customer service duties or, with City approval, disciplined and appropriately trained.

B.9.2 Complaint Documentation

Service complaints received by City shall be directed to Hauler. Hauler shall keep daily logs of complaints forwarded to it for a minimum of three (3) years.

Hauler shall log all complaints received and said log shall include the date and time the complaint was received, the name, address and telephone number of the caller/complainant, a description of the complaint, the name of the employee recording the complaint and the action taken by Hauler to respond to and remedy the complaint. Log shall also include each instance that Solid Waste is not Collected and the form of notification used to inform the participants of the reasons of non-Collection and the end result or means of resolution of the incident.

All written Customer complaints and inquiries shall be date-stamped when received. All complaints shall be initially responded to within one (1) business day of receipt. Hauler shall use best efforts to resolve complaints within two (2) business days. Hauler shall log action taken by Hauler to respond to and remedy the complaint.

EXHIBIT B – SCOPE OF SERVICES

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

B.9.3 Resolution of Customer Complaints

Disputes between Hauler and Customers regarding the services provided in accordance with this Agreement may be resolved by the Project Administrator whose decision shall be final and binding.

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

B.10 Hauler Representatives

B.10.1 Contract Liaison

Hauler shall designate in writing a "Contract Liaison" who shall be responsible for working with City and/or City's designated representative(s) to resolve Agreement-related issues. City shall have the right to approve the Hauler's choice for a liaison. City shall be notified in writing in advance of any change in Contract Liaison.

B.10.2 Service Liaison

Hauler shall designate in writing a field supervisor as "Service Liaison" who shall be responsible for working with City and/or City's designated representative(s) to resolve Customer service related complaints. City shall have the right to approve the Hauler's choice for a liaison. City shall be notified in writing in advance of any change in Service Liaison.

B.11 Waste Generation/Characterization Studies

Hauler acknowledges that City must perform Solid Waste generation and Disposal characterization studies periodically to comply with the requirements of AB 939. Hauler 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 and to assist with tonnage audits. Hauler will, at its sole expense, conduct such a waste

EXHIBIT B – SCOPE OF SERVICES

generation and characterization study upon request of City, but not more than once every two (2) years.

**EXHIBIT C
COMPENSATION SCHEDULE**

Compensation applicable through June 30, 2015

Basic Service	Compensation Amount
Customer Collection (excluding Extended Services)	\$304,220/month
Extended Services	
Enhanced Bulky Item Collection (billed to City)	
Billed to City for Program	\$500/month
Billed to Customers for Pickups Above Four per Year	\$35.00/pickup
Container Pull-Out Service for Disabled	no charge
Sharps Collection Program	\$2,083/month
HHW Door-to-Door Collection Program	\$10,417/month
Annual Shred Day	no charge
Emergency Collection Services – one crew and truck (disposal at actual cost per ton)	\$125.00/hour
Transfer Station Operating Agreement Payment	Payment To City
Monthly Payment to City by Hauler – See Exhibit F	\$35,000/month

EXHIBIT D COMPENSATION ADJUSTMENT EXAMPLE

Step One: Calculate percentage change in indices

Row	Adjustment Factor	Index	A	B	C
			Old Index Value	New Index Value	Percent Change In Index ((Column B/ Column A) -1)
1	Disposal	(1)	109.7	112.2	2.3%
2	Fuel	(2)	170.6	173.2	1.5%
3	All Other	(3)	219.960	221.931	0.9%

Step Two: Determine components

Row	Adjustment Factor	Index	D	E	F
			Cost Factor Category Weighted as a % of Component Total (4)	Percent Change In Index (from Column C)	Total Weighted Change (Columns D x E)
4	Disposal	(1)	28.0%	2.3%	0.6%
5	Fuel	(2)	5.0%	1.5%	0.1%
6	All Other	(3)	<u>67.0%</u>	0.9%	<u>0.6%</u>
7	Total		100.0%		1.3% (5)

Step Three: Apply percentage change to rates

Row	Example Rate Categories	G	H	I	J
		Current Customer Rate (6)	Total Weighted Percentage Change (from Column F)	Rate Increase or Decrease (Column G x Column H)	Adjusted Rate (Column G + Column I)
8	Monthly Collection	\$ 304,220	1.3%	\$ 3,955	\$ 308,175
9	Enhanded Bulky/mo.	\$ 500	1.3%	\$ 7	\$ 507
10	Enhanded Bulky/Extra	\$ 35	1.3%	\$ -	\$ 35
11	Sharps Collection/mo.	\$ 2,083	1.3%	\$ 27	\$ 2,110
12	HHW Door-to-Door/mo.	\$ 10,417	1.3%	\$ 135	\$ 10,552
13	Emergency/hour	\$ 125	1.3%	\$ 2	\$ 127

Step Four: Re-weight cost components

Row	Adjustment Factor	Index	K	L	M	N	O
			Cost Component (Column D)	Percent Change in Index (Column E)	Change in Cost Component Weightings (Column K x Column L)	Adjusted Cost Component Weightings (Column K + Column M)	Cost Components Reweighted to Equal 100% (Column N Row divided by Column N Total)
14	Disposal	(1)	28.0%	2.3%	0.6%	28.6%	28.2%
15	Fuel	(2)	5.0%	1.5%	0.1%	5.1%	5.0%
16	All Other	(3)	<u>67.0%</u>	0.9%	0.6%	<u>67.6%</u>	<u>66.8%</u>
17	Total		100.0%			101.3%	100.0%

(1) WDA gate rate at the Orange County Landfill system.

(2) Producer Price Index, WPU 0531 not seasonally adjusted, Fuels and related products and power, natural gas - average annual change.*

(3) Consumer Price Index for All Urban Consumers, less food and energy, U.S. city average (CUUR0000SAOL1E) - average annual change, limited to 2.5% per year.*

(4) First year based on Section 3.4.2. After the first adjustment, this column comes from Column O of the previous year's rate adjustment worksheet.

(5) Total annual change in compensation limited to 5% per year.

(6) Example shown. Adjustment applies to all applicable compensation categories.

* See Exhibit D-2 for example calculation of average annual change.

EXHIBIT E
SUMMER COLLECTION AREA

EXHIBIT F
TRANSFER STATION OPERATING AGREEMENT

EXHIBIT G**CITY COLLECTION VEHICLES FOR PURCHASE BY HAULER ***

City Vehicle Number	Vehicle Identification Number (VIN)	Vehicle License Plate Number	Vehicle Model Year	Make
5003	1GDM7C1G68F401664	1268561	2008	GMC
5020	4VMDAKHE2WN744855	999199	1998	Volvo
5021	4VMDAKHE6WN744857	999198	1998	Volvo
5023	4VMDAKHE4WN744756	999197	1998	Volvo
5026	3BPZH28X7AF108809	1242726	2010	Peterbilt
5027	3BPZH28X3AF108810	1242727	2010	Peterbilt
5030	1FVABXAK13DL67790	1129395	2003	Freightliner
5031	1FVACFAK03RL67788	1129391	2003	Freightliner
5007	4V2HCFH06RN685994	378551	1994	White/GMC
5010	4VMHCMFE4WNT44849	999218	1998	White/GMC
5011	4V2HCFH08RN685995	378552	1994	White/GMC
5014	4VMHCMFE2WN744852	999219	1998	White/GMC
5019	4VMHCMHE6XN766771	1007324	1998	White/GMC
5032	1FVHCFAK43RL67789	1156905	2003	Freightliner
5033	4V2HC6HEX1N313023	1064338	2001	Volvo
5034	5VCACSLE3AH210385	1347755	2010	Autocar
5035	5VCACSLE3AH210386	1347756	2010	Autocar
5036	4V2HC2HE0YN252848	1056020	2000	Volvo