

**AGREEMENT
BETWEEN
CITY OF ARTESIA
AND
CR&R INCORPORATED
FOR
SOLID WASTE HANDLING SERVICES**

FOR SERVICES COMMENCING NOVEMBER 9, 2015

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AGREEMENT

This Agreement ("Agreement") is entered into to be effective as of the 20th day of July, 2015, by and between the City of Artesia ("City") and CR&R Incorporated, a California corporation ("Contractor") (collectively, the "Parties") to provide an exclusive franchise for Solid Waste Handling Services within the City Limits.

R E C I T A L S:

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

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

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

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

C O V E N A N T S:

Based upon the foregoing Recitals and for good and valuable consideration, the receipt and sufficiency of which is acknowledged by each of the Parties, City and Contractor hereby agree as follows:

**SECTION 1.
RECITALS INCORPORATED**

The Parties acknowledge the above recitals are true and correct and incorporate them herein as if they were fully restated.

**SECTION 2.
DEFINITIONS**

Whenever any term used in this Agreement has been defined by the California Public Resources Code, or Title 14 (Division 7, Chapter 3, Article 4) of the California Code of Regulations, the definition of such term set forth therein shall apply unless the term is otherwise defined in this Agreement.

2.1 AB 341

“AB 341” shall mean Assembly Bill 341 from the 2011-2012 Regular Session of the California Legislature (Chapter 476, Statutes 2011).

2.2 AB 939 or the Act

“AB 939” or “the Act” shall mean the California Integrated Waste Management Act of 1989, currently codified as California Public Resources Code Section 40000 et seq., as it may be amended from time to time.

2.3 Affiliate

“Affiliate” means a business in which Contractor owns a direct or indirect ownership interest, a business (including corporations, limited and general partnerships and sole proprietorships) which has a direct or indirect ownership interest in Contractor and/or a business which is also owned, controlled or managed by any business or individual which has a direct or indirect ownership interest in Contractor. For purposes of determining whether an indirect ownership interest exists, the constructive ownership provisions of Section 318(a) of the Internal Revenue Code of 1986, as in effect on the date of this Agreement, shall apply; provided, however, that (i) “ten percent (10%)” shall be substituted for “fifty percent (50%)” in Section 318(a)(2)(C) and in Section 318(a)(3)(C) thereof; and (ii) Section 318(a)(5)(C) shall be disregarded. For purposes of determining ownership under this paragraph and constructive or indirect ownership under Section 318(a), ownership interest of less than ten percent (10%) shall be disregarded and percentage interests shall be determined on the basis of the percentage of voting interest or value which the ownership interest represents, whichever is greater.

2.4 Animal Waste

“Animal Waste” shall mean animal carcasses, dead animals, and/or parts or portions of dead animals. Animal Waste shall not include animal excrement.

2.5 Applicable Laws

“Applicable Laws” shall mean all federal, state, county, and local laws, regulations, rules, orders, judgments, decrees, permits, approvals, or other requirements of any governmental agency having jurisdiction over an aspect of this Agreement that are in force on the Effective Date, and as may be enacted, issued or amended thereafter, including without limitation City’s Municipal Code, the Act and AB 341.

2.6 Bill/Billing

“Bill” or “Billing” means the statements of charges provided to Customers for services rendered by Contractor pursuant to the terms of this Agreement.

2.7 Bins

“Bins” shall mean a Container, including dumpsters, compactors, and any similar such devices with a capacity of under ten (10) cubic yards.

2.8 Bulky Items

“Bulky Items” means Solid Waste that cannot and/or would not typically be accommodated within a Cart including specifically: furniture (including chairs, sofas, mattresses, and rugs); appliances (including refrigerators with and without freon, ranges, washers, dryers, water heaters, dishwashers, plumbing, small household appliances and other similar items, commonly known as “white goods”); residential wastes (including wood waste, tree branches, scrap wood, in the aggregate not exceeding one (1) cubic yard per Collection); and clothing. For purposes of this Agreement, and notwithstanding any provision hereof to the contrary, Bulky Items shall specifically include items commonly known in the waste industry as “brown goods,” “E-waste” and “universal waste” (including, without limitation all types of electronic waste, stereos, televisions, computers and monitors, cellular phones, VCRs, microwaves and other similar type of equipment and products), batteries, and fluorescent light tubes. Bulky Items do not include car bodies, Construction and Demolition Debris or (with the exception of appliances/white goods described above) items that cannot reasonably and safely be loaded and unloaded into a vehicle by two (2) people using equipment of the type which, pursuant to industry standards, would normally be carried in a vehicle used in Collecting Bulky Items. In the event a question arises as to whether a specific item or category of items meets the definition of Bulky Items, City shall be responsible to determine whether the definition shall apply, which determination shall be final and binding on the Parties.

2.9 Cart

“Cart” means a plastic Container with a hinged lid and wheels serviced by an automated or semi-automated process, as opposed to a manual process of lifting and dumping.

2.10 City

“City” shall mean the City of Artesia, a municipal corporation, located in Los Angeles County, California.

2.11 City Council

“City Council” shall mean the City Council of City.

2.12 City Limits

“City Limits” shall mean the territorial boundaries of City together with all amendments and changes thereto, which boundaries are depicted on maps, incorporated herein by reference, that are kept on file in the office of the City Clerk of the City of Artesia, and which are from time to time amended to reflect changes.

2.13 City Manager

“City Manager” shall mean the City Manager of the City of Artesia or his or her designee.

2.14 Collect/Collection/Collected

“Collect”, “Collection” or “Collected” shall mean to take physical possession of, transport, and remove Solid Waste from a Premises.

2.15 Collection Vehicle

“Collection Vehicle” has the meaning ascribed in Section 9.1.

2.16 Commercial Premises

“Commercial Premises” means Premises upon which business activity is conducted, including but not limited to retail sales, services, wholesale operations, manufacturing and industrial operations, but excluding Residential Premises upon which business activities are conducted when such activities are permitted under applicable zoning regulations and are not the primary use of the property. Notwithstanding any provision to the contrary herein, in the Municipal Code, or otherwise, for purposes of this Agreement, Premises upon which hotels and motels are operated or upon which Multi-Family Dwellings exist shall be deemed to be Commercial Premises.

2.17 Container

“Container” means any and all types of Solid Waste receptacles, including Carts and Bins.

2.18 Contractor

“Contractor” shall mean CR&R Incorporated, a California corporation, the entity granted the franchise pursuant to this Agreement, or any party permitted pursuant to the terms hereof permitted to become the successor or assignee thereof.

2.19 Customer/Customers

“Customer” or “Customers” shall mean any person receiving Solid Waste Collection services from Contractor within the Franchise Area.

2.20 Dwelling Unit

“Dwelling Unit” shall mean one (1) or more rooms designed for occupancy by one (1) family for living and sleeping purposes and containing kitchen facilities or an area designed for the preparation of food for use solely by one (1) family.

2.21 E-waste

“E-waste shall mean consumer and business electronic equipment such as computers, monitors, televisions, VCRs, stereos, copiers, fax machines, cellular phones, microwaves, and other similar type of equipment and products.

2.22 Effective Date

“Effective Date” shall mean September 1, 2015, or such later date as all conditions in Section 7 have been satisfied.

2.23 Environmental Laws

“Environmental Laws” means all federal and state statutes, county, local and City ordinances concerning public health, safety and the environment including, by way of example and not limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. § 9601 et seq.; the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 et seq.; the Federal Clean Water Act, 33 U.S.C. § 1251 et seq.; the Toxic Substances Control Act, 15 U.S.C. § 2601 et seq.; the Occupational Safety and Health Act, 29 U.S.C. § 651 et seq.; the California Hazardous Waste Control Act, California Health and Safety Code § 25100 et seq.; the Carpenter-Presley-Tanner Hazardous Substance Account Act, California Health and Safety Code § 25300 et seq.; the Porter-Cologne Water Quality Control Act, California Water Code § 13000 et seq.; the Safe Drinking Water and Toxic Enforcement Act, California Health and Safety Code § 25249.5 et seq., as currently in force or as hereafter amended; and all rules and regulations promulgated thereunder.

2.24 Food Waste

“Food Waste” shall mean compostable organic materials, excluding Green Waste, including but not limited to: (i) all food (including fruits, vegetables, meat, poultry, seafood, shellfish, bones, rice, beans, pasta, bread, cheese and eggshells); (ii) food-soiled paper (including napkins, paper towels, paper plates); and (iii) tea bags, coffee grounds and filters.

2.25 Franchise Area

“Franchise Area” shall mean all Premises within the City Limits, including Premises which may be annexed and thereby added to the City Limits following the Effective Date.

2.26 Franchise Fee

“Franchise Fee” shall mean the franchise fee set forth and more fully defined in Section 11 hereof.

2.27 Green Waste

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

2.28 Gross Receipts

“Gross Receipts” shall mean and include all monies, fees, charges, consideration, and revenue received by or imputed to Contractor and any Affiliate of Contractor, in connection with, arising from, or in any way attributable to the Solid Waste Handling Services carried out by or on behalf of Contractor pursuant to this Agreement. Gross Receipts includes, without limitation, monthly or quarterly Customer charges that are received by Contractor for Collection of Solid Waste, without subtracting Franchise Fees, fees imposed and collected pursuant to this Agreement, sums collected in connection with Temporary Services, and transportation charges. Gross Receipts does not include revenue from the sale of Recyclable Material, Green Waste, Food Waste, and other material which is diverted from disposal.

2.29 Hazardous Substance

“Hazardous Substance” shall mean any of the following: (a) any substances defined, regulated or listed (directly or by reference) as “Hazardous Substances,” “hazardous materials,” “Hazardous Wastes,” “toxic waste,” “pollutant” or “toxic substances” or similarly identified as hazardous to human health or the environment, in or pursuant to (i) the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. § 9601 et seq. (CERCLA); (ii) the Hazardous Materials Transportation Act, 49 U.S.C. § 5 101, et seq.; (iii) the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 et seq.; (iv) the Clean Water Act, 33 U.S.C. § 1251 et seq.; (v) California Health and Safety Code §§ 25115-25117, 25249.8, 25281, and 25316; (vi) the Clean Air Act, 42 U.S.C. § 7401 et seq.; and (vii) California Water Code § 13050; (b) any amendments, rules or regulations promulgated thereunder to such enumerated statutes or acts currently existing or hereafter enacted; and (c) any other hazardous or toxic substance, material, chemical, waste or pollutant identified as hazardous or toxic or regulated under any other applicable federal, state or local laws or regulations, including any of the Environmental Laws, currently existing or hereinafter enacted, including, without limitation, friable asbestos, polychlorinated biphenyl’s (“PCBs”), petroleum, natural gas and synthetic fuel products, and by-products.

2.30 Hazardous Waste

“Hazardous Waste” means all substances defined as Hazardous Waste, acutely Hazardous Waste, or extremely Hazardous Waste by the State of California in Health and Safety Code §§ 25110.02, 25115, and 25117 or in the future amendments to or recodifications of such statutes or identified and listed as Hazardous Waste by the U.S. Environmental Protection

Agency (EPA), pursuant to the Federal Resource Conservation and Recovery Act (42 U.S.C. § 6901 et seq.), all future amendments thereto, and all rules and regulations promulgated thereunder.

2.31 Holiday

“Holiday” shall mean any of the following: New Years Day, Presidents Day, Memorial Day, July 4th, Labor Day, Thanksgiving Day, and December 25th.

2.32 LARA

“LARA” means the Los Angeles Area Integrated Waste Management Authority, a regional agency formed pursuant to California Public Resources Code §§ 40970-40975.

2.33 Multi-Family Dwelling

“Multi-Family Dwelling” means any building or lot containing more than one (1) Dwelling Unit at which Contractor determines (and City agrees) the Dwelling Units must receive Solid Waste Collection services through the use of shared Bins, since they are not reasonably able to store Carts or otherwise receive individualized Solid Waste Collection services through the use of the automated Collection system utilizing Carts contemplated by this Agreement for Single Family Dwellings. Unless otherwise determined as set forth above, any Premises upon which four (4) or more Dwelling Units exists shall be deemed to be a Multi-Family Dwelling. Any ambiguity as to whether a Customer’s Premises qualifies for purposes of this Agreement as a Single Family Dwelling or Multi-Family Dwelling shall be resolved by the City Manager whose decision shall be final.

2.34 Municipal Code

“Municipal Code” shall mean the Artesia Municipal Code.

2.35 Organic Waste

“Organic Waste” shall mean Food Waste, FOG (Fats, Oils and Grease), Green Waste, nonhazardous wood waste, and food-soiled paper waste that is mixed in with food waste.

2.36 Organic Waste Recycling Requirement

“Organic Waste Recycling Requirement” shall mean the requirements of Chapter 12.9 (commencing with Section 42649.8) of Part 3 of Division 30 of the Public Resources Code.

2.37 Organic Waste Service

“Organic Waste Service” shall mean The Organic Waste recycling services required by Section 8.3.6.1.

2.38 Person

“Person” shall mean any individual, firm, association, organization, partnership, corporation, business trust, joint venture, the United States, the State of California, the County of Los Angeles, towns, cities, and special purpose districts.

2.39 Premises

“Premises” shall mean any land, building, and/or structure within the City Limits where Solid Waste is generated or accumulated.

2.40 Push Out Service

“Push Out Service” shall have the meaning ascribed in Section 8.3.5.

2.41 Recyclable Material

“Recyclable Material” or “Recyclables” shall mean that Solid Waste discarded within the Franchise Area which is capable of being recycled, including Green Waste.

2.42 Residential Premises

“Residential Premises” shall mean all premises upon which Dwelling Units exist. Notwithstanding any provision to the contrary herein, in the Municipal Code, or otherwise, for purposes of this Agreement, Premises upon which hotels and motels are operated or upon which Multi-Family Dwellings exist shall be deemed to be Commercial Premises.

2.43 Rolloff Box

“Rolloff Box” means Solid Waste Collection Containers of ten (10) yards or larger, including compactors.

2.44 Scout Service

“Scout Service” shall have the meaning ascribed in Section 8.3.5.

2.45 Service Commencement Date

“Service Commencement Date” has the meaning ascribed in Section 6.

2.46 Single Family Dwelling

“Single Family Dwelling” means a building or lot containing one (1) Dwelling Unit, and for purposes of this Agreement includes buildings and lots with more than one (1) Dwelling Unit where such Dwelling Units are determined by the City to be reasonably able to receive individualized Solid Waste Collection service by the automated process utilizing Carts contemplated herein. Any ambiguity as to whether a Customer’s Premises qualifies as a Single Family Dwelling or Multi-Family Dwelling shall be resolved by the City Manager whose decision shall be final.

2.47 Solid Waste

“Solid Waste” shall mean and include all discarded putrescible and nonputrescible solid, semisolid, and liquid wastes, including garbage, trash, Refuse, rubbish, construction waste, industrial waste, commercial Solid Waste, Bulky Items, and any other discarded solid, semisolid, and liquid waste permitted to be disposed of at a Class III landfill and which are included within the definition of “Nonhazardous Solid Waste” set forth in the California Code of Regulations, as it may be amended from time to time. Solid Waste does not include hazardous (Class I) waste, low-level radioactive waste, untreated medical waste, or Special Wastes as defined herein.

2.48 Solid Waste Handling Services

“Solid Waste Handling Services” means the Collection, transfer, transport, recycling, processing, and disposal of Solid Waste for Premises within the City Limits.

2.49 Special Wastes

“Special Wastes” shall mean wastes other than Solid Waste including sewage, sludge, industrial sludge, asbestos, auto bodies, tires, used motor oil, Hazardous Waste, Animal Waste, explosive substances, radioactive materials, and other materials which may not be disposed of at a Class III landfill or which require special handling.

2.50 Temporary Service

“Temporary Service” shall mean Solid Waste Handling Services provided by Contractor on an as-needed and temporary basis to any Premises within the City in conjunction with construction, demolition, cleanup or other projects, and by use of temporarily placed Bins or Rolloff Boxes.

2.51 Term

“Term” shall have the meaning ascribed in Section 6 of this Agreement.

2.52 Transformation

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

2.53 Working Day

“Working Day” means any day of the week except Sunday and Holidays.

SECTION 3.
**GRANT OF EXCLUSIVE FRANCHISE FOR SOLID WASTE
HANDLING SERVICES FROM RESIDENTIAL AND
COMMERCIAL PREMISES, AND FOR PROVIDING
TEMPORARY SOLID WASTE HANDLING SERVICE**

3.1 Scope of Franchise

Except as hereinafter expressly set forth, City hereby grants to Contractor and Contractor hereby accepts from City, for the Term hereof, the exclusive contract, right, and privilege to Collect, transport, and dispose of all Solid Waste generated or accumulated within the Franchise Area. The exclusive franchise, right and privilege to provide Solid Waste Handling Services within the City Limits granted to Contractor by this Agreement shall be interpreted to be consistent with all applicable state and federal laws, now in effect and adopted during the Term of this Agreement, and the scope of this Agreement shall be limited by all applicable current and developing laws and regulations. In the event that future interpretations of current law or future enactments limit the ability of City to lawfully grant Contractor the scope of services as specifically set forth herein, Contractor agrees that the scope of this Agreement will be limited to those services and materials which may be lawfully provided, and that City shall not be responsible for any lost profits claimed by Contractor as a result thereof.

3.2 Matters Excluded from Scope of Franchise

Notwithstanding any other provisions set forth in this Agreement to the contrary, the exclusive franchise granted herein shall exclude the following:

(A) any Solid Waste otherwise within the scope of this Agreement which is transported by a Self Hauler as that term is used in the Municipal Code, or any other City ordinance, resolution, regulation or policy, as such may be adopted or amended from time to time;

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

(C) the Collection, transportation, recycling, and disposal of any Solid Waste otherwise within the scope of this Agreement which is Collected or transported to a disposal or recycling facility by City employees in the course and scope of their employment with City;

(D) the Collection, transportation, or disposal of Hazardous Waste, Universal Waste, E-waste, biohazardous waste, untreated medical waste, infectious waste, Animal Waste, or other materials which do not constitute Solid Waste;

(E) the Collection, transportation, and disposal of Construction and Demolition Waste by a contractor, handyman, repairman, or other similar service provider, using its own equipment, as an incidental part of the services provided to its Customers, rather than as a hauling service, provided that such waste is not Collected or transported by a third party hired for the primary purpose of Collecting and transporting the materials;

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

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

(H) Emergency and Disaster Response Collection Services provided pursuant to Section 8.9.

SECTION 4. ENFORCEMENT OF EXCLUSIVITY

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

SECTION 5. ACCEPTANCE; WAIVER; REPRESENTATIONS AND WARRANTIES

5.1 Acceptance and Waiver

Contractor agrees to be bound by and comply with all the requirements of this Agreement. Contractor waives Contractor's right to challenge the terms of this Agreement under federal, state, or local law, or administrative regulation. Contractor waives any right or claim to serve City or any part of City under any prior grant of franchise, contract, license, or permit

issued or granted by any governmental entity including any right under Section 49520 of the Public Resources Code.

5.2 Representations and Warranties

Contractor, by acceptance of this Agreement, represents and warrants the conditions presented in this Section.

5.2.1 Corporate Status

Contractor is a limited liability company, duly organized, validly existing and in good standing under the laws of the California. It is in good standing and qualified to transact business in the State of California and has the power to own its properties and to carry on its business as now owned and operated and as required by this Agreement.

5.2.2 Corporate Authorization

Contractor has the authority to enter this Agreement and perform its obligations under this Agreement. The members of Contractor have taken all actions required by law, its articles of organization, its operating agreement, or otherwise, to authorize the execution of this Agreement. The person signing this Agreement on behalf of Contractor represents and warrants that he has authority to do so. This Agreement constitutes the legal, valid, and binding obligation of Contractor.

5.2.3 Agreement will not Cause Breach

To the best of Contractor's knowledge after reasonable investigation, the execution or delivery of this Agreement or the performance by Contractor of its obligations hereunder does not conflict with, violate, or result in a breach: (i) of any law or governmental regulation applicable to Contractor; or (ii) any term or condition of any judgment, order, or decree of any court, administrative agency or other governmental authority, or any Agreement or instrument to which Contractor is a party or by which Contractor or any of its properties or assets are bound, or constitutes a default thereunder.

5.2.4 No Litigation

To the best of Contractor's knowledge after reasonable investigation, there is no action, suit, proceeding or investigation, at law or in equity, before or by any court or governmental authority, commission, board, agency or instrumentality decided, pending or threatened against Contractor wherein an unfavorable decision, ruling or finding, in any single case or in the aggregate, would:

(A) Materially, adversely affect the performance by Contractor of its obligations hereunder;

(B) Adversely affect the validity or enforceability of this Agreement; or

(C) Have a material adverse effect on the financial condition of Contractor, or any surety or entity guaranteeing Contractor's performance under this Agreement.

5.2.5 No Adverse Judicial Decisions

To the best of Contractor's knowledge after reasonable investigation, there is no judicial decision that would prohibit this Agreement or subject this Agreement to legal challenge.

5.2.6 No Legal Prohibition

To the best of Contractor's knowledge after reasonable investigation, there is no Applicable Law in effect on the date Contractor signed this Agreement that would prohibit Contractor's performance of its obligations under this Agreement and the transactions contemplated hereby.

5.2.7 Contractor's Statements

All information submitted by Contractor to City, which City has relied on in awarding and entering this Agreement, does not: (i) contain any untrue statement of a material fact, or (ii) omit to state a material fact that is necessary in order to make the statements made, in light of the circumstances in which they were made, not misleading.

5.2.8 Contractor's Investigation

Contractor has made an independent investigation (satisfactory to it) of the conditions and circumstances surrounding the Agreement and the work to be performed hereunder. Contractor has considered such matters in entering this Agreement to provide services in exchange for the compensation provided for under the terms of this Agreement.

5.2.9 Ability to Perform

Contractor possesses the business, professional, and technical expertise to provide the services described in this Agreement in the Franchise Area. Contractor possesses the equipment, facility(ies), and employee resources required to perform its obligations under this Agreement.

5.2.10 Voluntary Use of Designated Facilities

Contractor, without constraint and as a free-market business decision in accepting this Agreement, proposed and agrees to use the facilities listed in Exhibit C for the processing and disposal of all Solid Waste Collected in the Franchise Area. Such decision by Contractor in no way constitutes a restraint of trade notwithstanding any change in law regarding flow control limitations or any definition thereof.

5.2.11 Designated Facilities – Compliance with Applicable Law

Each facility listed on Exhibit C possesses, and is in full compliance with, all permits from federal, state, regional, county and municipal agencies necessary for it to operate, and is in compliance with Applicable Law.

SECTION 6. TERM

The term of this Agreement (the “Term”) shall be for a period of seven (7) years commencing on the Service Commencement Date. The Solid Waste Handling Services provided to Customers shall commence on November 9, 2015 (“Service Commencement Date”). The Term shall end at midnight on October 31, 2022, unless this Agreement is terminated sooner pursuant to Section 18 hereof, or otherwise.

On October 31, 2022, the Term shall automatically be extended (without any actions by either Party) for an additional five and one-half (5-1/2) year period to April 30, 2028, unless City determines, in its reasonable discretion, that there has been any form of non-performance or uncured service deficiency as defined by Section 18 herein.

In addition to the above term extension, an additional two and one-half (2-1/2) year term extension to October 31, 2030, may be granted at the sole discretion of the City Council.

SECTION 7. CONDITIONS TO EFFECTIVENESS OF AGREEMENT

This Agreement shall become effective on the Effective Date. The satisfaction of each and all of the conditions set out in this Section 7, each of which may be waived in whole or in part by City in writing, is a condition precedent to the effectiveness of this Agreement, and a condition of Contractor’s continued right to the benefits conveyed herein. If all of the conditions are not satisfied by September 1, 2015, City shall have the right to terminate this Agreement upon ten (10) days written notice to Contractor.

7.1 Accuracy of Representation

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

7.2 Absence of Litigation

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

7.3 Furnishing of Insurance and Surety

Contractor shall have furnished evidence of the insurance and sureties required by Sections 14 and 15 hereof, and shall comply with all ongoing requirements relating thereto.

7.4 Effectiveness of City Council Action

The City Council's Resolution approving this Agreement shall have become effective pursuant to California law.

7.5 Payment of Fees and Costs

Contractor shall have made payment to City of all fees, costs and other payments due as more fully set forth in Section 11.

SECTION 8. SOLID WASTE HANDLING SERVICES PROVIDED BY CONTRACTOR

8.1 General

8.1.1 Transition Plan

Contractor has previously submitted, and City has approved, a transition plan ("Transition Plan") setting forth how Contractor would implement the transition to the provision of services by Contractor from the waste hauling firm providing Solid Waste Handling Services within the City Limits prior to the Service Commencement Date (the "Former Service Provider"). Contractor shall implement the Transition Plan during the period between the Effective Date and the Service Commencement Date, and thereafter to the extent warranted.

City shall make its reasonable best efforts to provide to Contractor all information reasonably necessary for Contractor to begin servicing Customers in City. City shall provide all information currently in its possession that is reasonably requested by Contractor. To the extent that requested information is not under City's control, City shall contact the former service provider and request such information as is reasonably necessary for Contractor to make a smooth transition, including route lists, billing information and other operating records needed to service all Premises covered under this Agreement.

8.1.2 Equipment and Facilities

Contractor shall furnish all labor, supervision, materials, supplies, and equipment necessary to provide for all services required by the terms of this Agreement. Except for those facilities described in Section 8.1.3.1 and listed on Exhibit C, Contractor shall use its facility located at 11292 Western Avenue, Stanton, CA 90680 to perform all Solid Waste Handling Services. Notwithstanding the preceding sentence, in the event of emergency conditions, Contractor may temporarily use an alternative facility. In that event, the Contractor must report the temporary use of the alternative facility to the City Manager within five (5) Working Days after first using the alternative facility, along with an explanation of the emergency condition. In no case may the use of an alternative facility extend beyond the duration of the emergency condition. For purposes of this Section 8.1.2, "emergency conditions" means any of the events excusing performance listed in Section 29.1 of this Agreement. In no event shall use of an alternative facility entitle Contractor to increase its rates. The Parties may alter the Contractor facility named in this Section by amendment to this Agreement.

8.1.3 Disposal and Processing Facilities

8.1.3.1 Contractor has provided a list of facilities that it intends to use for the disposal, processing, and/or reuse of Solid Waste Collected pursuant to this Agreement, which is attached hereto as Exhibit C. Contractor shall not utilize other facilities for these purposes without first updating Exhibit C and obtaining the prior written consent of the City Manager, which consent shall not be unreasonably withheld. Notwithstanding the preceding sentence, in the event of emergency conditions Contractor may temporarily use an alternative facility without prior written consent of the City Manager. In that event, Contractor must report the temporary use of the alternative site or sites to the City Manager within ten (10) Working Days after first using the alternative facilities, along with (i) an explanation of the emergency condition requiring such use and (ii) a request for approval for their ongoing use if required to ensure continuity of the services Contractor is obligated to perform under this Agreement. For any continued use of the alternative facility(ies) beyond the period of the emergency conditions, Contractor must first obtain the prior written consent of the City Manager. For purposes of this Section 8.1.3.2, "emergency conditions" means any of the events excusing performance listed in Section 29.1 of this Agreement. In no event shall use of an alternative facility entitle Contractor to increase its rates.

8.1.3.2 Contractor shall ensure that any landfill used by Contractor has been issued all permits from federal, state, regional, county and municipal agencies necessary for it to operate as a Class III Sanitary Landfill and is in full compliance with those permits and Applicable Law at all times. Similarly, Contractor shall ensure that any processing facility used by Contractor has been issued all permits from federal, state, regional, county and municipal agencies necessary for its operation and is in full compliance with those permits and Applicable Law at all times. Contractor shall provide copies of notices of violation or permit modifications to the City Manager within five (5) Working Days of receipt.

8.1.3.3 In the event any disposal or processing facility is located within the City Limits, City may require Contractor to utilize such facility if doing so would not increase Contractor's overall company costs, including, but not limited to any disposal or operating facilities operated by Contractor. If City requires Contractor to utilize a disposal or processing facility within the City Limits and there would be an increase to Contractor's costs to do so, Contractor and City shall meet and confer in good faith to determine a fair and reasonable adjustment to the maximum rates set forth on Exhibit A or the Franchise Fee in order to compensate Contractor for using a facility within the City Limits.

8.1.4 Performance Standards

Contractor shall perform Solid Waste Handling Services as required hereunder in a workmanlike manner consistent with good housekeeping standards and all relevant provisions of Applicable Laws.

8.1.5 Noise and Disruption

Contractor shall perform Solid Waste Handling Services as required hereunder in such a manner as to minimize noise and other disruptive impacts including, without limitation, those

upon traffic. Contractor shall use its best efforts to coordinate its Collection schedules such that street sweeping on any given street shall occur the Working Day following Collection of Solid Waste by Contractor.

8.1.6 Collection Times

Contractor shall not commence Collection of Solid Waste for Customers at Commercial Premises (excepting Multi-Family Dwellings) until 6:00 a.m. and for Customers at Residential Premises and at Multi-Family Dwellings until 7:00 a.m., nor shall such activities occur after 7:00 p.m. for Customers at Commercial Premises (excepting Multi-Family Dwellings) and 6:00 p.m. for Customers at Residential Premises and at Multi-Family Dwellings. The City Manager may require Contractor to comply with time frames applicable to Residential Premises in connection with Collection of Solid Waste for Customers at Commercial Premises whose premises are in close proximity to Residential Premises. Close proximity is typically considered five hundred (500) feet, but the ultimate distance shall be determined by the City Manager in his or her sole discretion and may result in an established distance that is more or less than five hundred (500) feet. Solid Waste Collection at Residential Premises and at Multi-Family Dwellings shall not occur on Saturdays; excepting Temporary Bin Services and Collection occurring on Saturdays following such Holidays as may be approved by the City Manager. No Solid Waste Collection shall occur on Sundays at Residential Premises or at Multi-Family Dwellings, except in exceptional circumstances for which specific approval is given by the City Manager. Except as noted herein, Solid Waste Collection may occur at Commercial Premises on Saturdays and Sundays; provided, however, no such service shall occur on Sundays in connection with any Premises at which the City Manager determines such service would be contrary to the public interest.

8.1.7 Collection Schedule

During the Term of the Agreement, City shall use its best efforts to work with Contractor and City's street sweeper to establish efficient and cost effective Collection routes. All Collection routes shall be subject to final approval by the City Manager. Customers at all Residential and Commercial Premises within the City will have not less than one (1) established Collection day each week. Contractor shall provide notice to each Customer of its established Collection day(s), and shall provide at least one (1) week's notice to Customers of any change in their established Collection day(s). Notwithstanding any provision herein to the contrary, should any established Collection day fall on a Holiday, or on any other holiday which is observed by either a landfill or other lawful disposal site to which Solid Waste is taken for disposal, or a recycling facility to which Recyclable Material is taken, Contractor shall provide for Collection one (1) day later during the pickup week, and the regular Collection schedule shall be resumed the following week. A pickup week shall be defined as Monday through Saturday for Residential Premises and Multi-Family Dwellings and as Monday through Sunday for Commercial Premises (excepting Multi-Family Dwellings). Contractor may not change its established Collection schedules without obtaining the prior written consent from the City Manager.

8.1.8 Commingling of Routes

Contractor shall not during its Collection process commingle Solid Waste Collected hereunder with Solid Waste Collected in any other City, or on behalf of any other entity operating or existing within the City that is not subject to this Agreement, and is specifically prohibited from combining Collection routes related to services provided pursuant to this Agreement with Collection routes for other jurisdictions it may service. Notwithstanding the preceding sentence, the Parties acknowledge that in certain limited circumstances, where the specific waste materials constitute a minor sub-stream of City's Solid Waste, a dedicated route may not be warranted. In those circumstances, City may allow Contractor to commingle the Solid Waste included within that sub-stream on a very limited basis, using an allocation methodology approved by the City Manager to account for the origin of the waste.

8.1.9 Replacement of Containers

Contractor shall, whenever possible, return Carts to the parkway adjacent to the curb, and not the street gutter, upon completing Collection. Contractor shall replace all Bins in the location upon the property of each Customer utilizing Bins designated for storage of Bins, and shall secure gates, doors, and/or enclosures when applicable.

8.1.10 Contractor's Containers

(A) Contractor's Containers shall meet the minimum standards set forth on the attached Exhibit B.

(B) Contractor shall provide three (3) sizes of Carts (small, medium and large) having capacities of approximately thirty-five (35) gallons, sixty-four (64) gallons and ninety-six (96) gallons. Notwithstanding the foregoing, the Parties recognize that different vendors provide Carts of slightly different dimensions, and hence the capacity of Cart sizes specified in this Agreement may vary slightly, but in no case by more than ten percent (10%) of the noted capacities.

(C) Contractor shall be responsible to maintain and replace, as necessary, all of its Containers.

(D) All Containers shall be maintained by Contractor in good repair, and any question as to the meaning of this standard shall be resolved by the City Manager.

(E) Contractor shall deliver and retrieve Containers to each Customer at no additional charge.

(F) Contractor shall ensure it maintains an accurate list that contains the total number of Carts at each service address and the serial number or other identifying information associated with each Cart located at such address. Contractor shall keep this list up-to-date at all times, provide it to City upon request, and shall include a current updated list with each annual report as set forth in Section 23.3. In addition, Contractor shall provide this list to City within thirty (30) days of the Service Commencement Date.

(G) All Carts shall be maintained by Contractor in a watertight condition, as shall all Bins which are used primarily for the disposal of Solid Waste containing liquids.

(H) Upon request and up to one (1) time per calendar year, Contractor shall exchange a Customer's Cart for a "like new" Cart at no additional charge. In addition, within twenty-four (24) hours after notification (Sundays and Holidays excepted), Contractor shall repair and maintain, remove graffiti from, and replace lost, stolen or damaged Carts at no charge to Customer. However, Contractor shall be entitled to charge Customer for the replacement of any Cart that has been damaged by a Customer's willful neglect or abuse, ordinary wear and tear excepted, with such charges being subject to the City Manager's approval and at a fee no higher than Contractor's actual cost of repair and replacement.

(I) Contractor shall at Customer's request annually refurbish, replace, and steam clean as necessary all Bins and Rolloff Boxes at no charge to Customer. City may require the steam cleaning or replacement of Bins utilized at restaurants, bars and grocery stores/markets more frequently if it determines such action is needed to protect public health and safety. Additional steam cleaning or replacement shall be provided when required by City or requested by a Customer at a charge not to exceed the maximum rate set forth in Exhibit A.

(J) Contractor shall remove any graffiti that appears on its Containers within twenty-four (24) hours (Sundays and Holidays excepted) after becoming aware of it at no charge to Customers.

(K) All Bins and Rolloff Boxes shall be kept freshly painted in a uniform fashion and shall be identified with Contractor's name and phone number in letters not less than three inches (3") high on its exterior-so as to be visible when the Container is placed for use.

(L) At a Customer's request, Contractor shall provide Bins with locking lids and locks and may charge rates to Customer for locking Bins which do not exceed the maximum rates set forth in Exhibit A.

8.1.11 Missed Pickups

In case of a missed pickup called in by a Customer, Contractor shall Collect Solid Waste and Recyclable Material from such Customer no later than the next day of the pickup week following the date of the call. Records of the addresses of all missed pickups shall be maintained by Contractor, and shall be reported to City upon request. If Contractor demonstrates to the satisfaction of the City Manager a pattern of ongoing late "set-outs" by a given Customer, missed pickups resulting from late set-outs by that Customer shall not be counted as missed pickups in evaluating Contractor's performance hereunder. The Customer service phone system required by Section 10.8.2 hereof is intended, among other things, to serve as a "hotline" for Customers to call in the event Solid Waste placed for Collection is not Collected by Contractor and to facilitate having such Solid Waste Collected as soon as reasonably possible, and in no event later than as required by the provisions hereof.

8.1.12 Record of Non-collection

As more fully set forth herein, Contractor shall Collect all Solid Waste placed for Collection by Customers in Containers, excepting materials that do not meet the definition of Solid Waste (such as hazardous materials) or which are commingled with such materials. Whenever Contractor determines not to Collect any Solid Waste deposited for Collection, Contractor shall leave a tag at least two inches (2") by six inches (6") in size, indicating the reason for Contractor's refusal to do so. This information may be either handwritten or left by means of a check system (i.e., checking off boxes on a preprinted form). The tag shall provide Contractor's business name and its local telephone number and shall be securely fastened to the Container or the article refused. Contractor shall maintain a record of all such taggings at its place of business. Such record shall contain the date of such notice, street address, reason for non-collection, and a summary of any communications between Contractor and the Customer involved. Such notice shall be retained so that it may be inspected by representatives of City upon request.

8.2 Residential Solid Waste Handling Service

8.2.1 Single Family Dwellings – Automated Collection

Contractor shall provide each Customer at a Single Family Dwelling with one (1) Cart designated for the Collection of mixed Solid Waste (a "Refuse Cart"). Contractor shall provide each such Customer with a ninety-six (96) gallon Refuse Cart, excepting that any Customer requesting a smaller Refuse Cart shall be provided with a sixty-four (64) gallon or thirty-five (35) gallon Refuse Cart instead, whichever size is requested by the Customer. Contractor shall Collect all Solid Waste placed out for Collection in a Refuse Cart by each Customer at a Single Family Dwelling not less than once per week using an automated Collection system at rates that do not exceed the maximum rates set forth in Exhibit A. Upon request from any Customer at a Single Family Dwelling, Contractor shall provide such Customer with one (1) or more additional Refuse Carts, and shall Collect all Solid Waste placed for Collection in such additional Refuse Carts at rates that do not exceed the maximum rates set forth in Exhibit A. Wherever feasible, Customers shall be directed by Contractor to place Carts for Collection either on the parkway adjacent to the curb, in front of their Premises, or adjacent to their Premises in the alley or easement in the rear of their Premises. If a Customer and Contractor cannot agree upon a Collection location, or if City determines the selected location may cause safety or other concerns, City may make the final determination of the Collection location. It is the intent of the Parties that the services provided under this Agreement will result in an automated Collection system that includes source separation of recyclable materials. Accordingly, if Solid Waste is routinely placed for Collection other than in a Refuse Cart, Contractor shall work with the Customer involved to determine if the Customer is in need of additional or larger Refuse Carts. The City Manager is authorized to require Contractor to deliver additional Refuse Carts to any such Customers or to require such other action of Contractor as is reasonably deemed necessary to ensure the Collection system, including specifically the recycling programs, contemplated by this Agreement is achieved.

8.2.2 Walk-Out Service

Contractor shall provide eligible Customers with "walk-out service" as set forth in this paragraph at no additional charge. This service shall require Contractor to use its own forces to bring a Customer's Carts from a Customer's backyard, side yard, or such other location at which Customer's Containers are regularly stored, to Contractor's Collection Vehicle; and, after disposal of the contents thereof, return the Containers to the location where they are regularly stored. To be eligible for this service, a Customer shall have a California DMV issued disabled person placard/license plates, and provide a letter to Contractor from a physician confirming the Customer is unable to move his/her Carts to the curb, and that to the best of the physician's knowledge there is no other capable persons living in Customer's household to provide this service. Contractor may require each eligible Customer to provide a new letter from a physician on an annual basis in order to maintain eligibility for walk-out service. Any dispute regarding a Customer's eligibility for walk-out service shall be resolved by the City Manager. Contractor may provide Customers who are not eligible for free walk-out service pursuant to the forgoing with walk-out service at a rate which shall not exceed the maximum rate set forth in Exhibit A. Contractor may require as a condition of walk-out service that a Customer sign a standardized agreement, the terms of which shall be subject to City's approval, which authorizes entry onto the Customer's property and holds Contractor harmless from liability (including specifically liability related to pets escaping) associated with Contractor providing such service.

8.2.3 Recycling Program for Single Family Dwellings Using Carts

Contractor shall provide each Customer at a Single Family Dwelling with one (1) ninety-six (96) gallon Cart designated for the Collection of Recyclables (a "Recycling Cart") at no additional charge. Any Customer requesting a smaller Recycling Cart shall be provided with a sixty-four (64) gallon or thirty-five (35) gallon Recycling Cart by Contractor instead of the standard ninety-six (96) gallon Cart noted above, whichever size is requested by the Customer. Upon request from any Customer at a Single Family Dwelling, Contractor shall provide such Customer with one additional Recycling Cart at no additional charge, and with such additional Recycling Carts as the Customer may request for a rate that does not exceed that authorized in Exhibit A. Contractor shall Collect Recyclable Material placed in Recycling Carts for Collection from each Customer at a Single Family Dwelling on the same day as such Customer's Refuse Cart is Collected, utilizing an automated Collection process. Customers shall be directed to place Recycling Carts in the same location for Collection as Refuse Carts. At a minimum the following materials shall be allowed to be deposited by Customers for Collection in Recycling Carts: aluminum cans; glass jars and bottles; bi-metal and tin cans; empty aerosol containers; polyethylene terephthalate plastic ("PET"); high density polyethylene plastic ("HDPE"); plastics types 3 - 7; plastic bags, shrink wrap, plastic toys and tools, and other plastic materials (if readily identifiable as being recyclable); juice boxes and milk cartons (aseptic packaging, Tetra Pak® and waxed cardboard); coat hangers and metal foil; newspaper; mixed paper (e.g., ledger, computer, junk mail, magazines, paperback books, cereal boxes, envelopes, paper shopping bags and non-metallic wrapping paper); corrugated cardboard; and telephone books. This listing may be changed as markets demand, upon the written approval of the City Manager.

8.2.4 Curbside Food Waste and FOG Collection Program

If ever required by Applicable Law, or the applicable sanitation district or other regulatory agency, or requested by City, Contractor shall design a program for the collection of Food Waste and/or grease, fat, oils and similar waste generated from household cooking activities (the "Curbside Organic Waste Collection Program"), and present the proposed program to the City Manager for approval. Contractor shall revise the program as reasonably required by the City Manager. Contractor shall be responsible to ensure the Curbside Organic Waste Collection Program complies with all Applicable Laws and regulations. At such time as a Curbside Grease Collection Program is implemented, Contractor and City shall meet and confer in good faith to determine a fair and reasonable adjustment to the maximum rates set forth in Exhibit A in order to compensate Contractor for implementing such a program.

8.2.5 Green Waste Program for Single Family Dwellings Using Carts

Contractor shall provide all Customers at Single Family Dwellings to whom it provides Refuse Carts, with a ninety-six (96) gallon Cart for Collection of commingled green waste (a "Green Waste Cart") at no additional charge. Any Customer requesting a smaller Green Waste Cart shall be provided with a sixty-four (64) gallon or a thirty-five (35) gallon Green Waste Cart by Contractor instead of the standard ninety-six (96) gallon Cart noted above, whichever size is requested by the Customer. Upon request from any Customer at a Single Family Dwelling, Contractor shall provide such Customer with one (1) additional Green Waste Cart at no additional charge, and with such additional Green Waste Carts as the Customer may request for a rate that does not exceed that authorized in Exhibit A. Contractor shall Collect Green Waste placed in Green Waste Carts for Collection from each Customer on the same day as such Customer's Refuse Cart is Collected, using an automated collection process. Customers shall be directed to place Green Waste Carts in the same location for Collection as Refuse Carts.

8.2.6 Multi-Family Dwelling Customers

Contractor shall comply with all requirements applicable to Commercial Customers, set forth below, in connection with Multi-Family Dwellings, and further shall comply with the specific provisions contained herein related to such Dwellings. Contractor shall provide all Customers at Multi-Family Dwellings with Bins meeting the minimum standards set forth in Exhibit B for the Collection of mixed Solid Waste ("Mixed Waste Bins"), and shall Collect all Solid Waste placed therein for Collection not less than once per week, at rates that do not exceed the maximum rates set forth in Exhibit A. Contractor shall provide a number of Bins reasonably needed for Solid Waste Collection at each Premises at which Multi-Family Dwellings exist, bearing in mind both the number of Dwellings and space limitations. Contractor shall endeavor to provide at least one (1) Mixed Waste Bin for every ten (10) Dwelling Units located at each Multi-Family Dwelling. If warranted by specific circumstances, and upon written approval of the City Manager, at any given Multi-Family Dwelling, Mixed Waste Carts may be utilized instead of Mixed Waste Bins, and/or the minimum number of Mixed Waste Bins/Carts may be adjusted. Rates for Customers at Multi-Family Dwellings receiving Mixed Waste Carts shall not exceed the maximum rates set forth in Exhibit A for Residential Cart Service. In the case of Multi-Family Dwellings in which Carts are used instead of Bins, Contractor may charge each Dwelling Unit rates that do not exceed the maximum rates set forth in Exhibit A for Residential

Cart Service and each Dwelling Unit shall be entitled to receive one (1) Refuse Cart, one (1) Recycling Cart, and one (1) Green Waste Cart. Contractor may charge each Dwelling Unit rates that do not exceed the maximum rates set forth in Exhibit A for Residential Cart Service regardless of whether the Dwelling Unit elects to receive fewer Carts than authorized above. However, the Contractor may charge Customers for additional Carts in excess of the one (1) Refuse Cart, one (1) Recycling Cart, and one (1) Green Waste Cart at rates that do not exceed the maximum rates set forth in Exhibit A for Residential Cart Service.

The size of Mixed Waste Bins utilized, and the frequency of their Collection, shall be mutually agreed upon by Contractor and its Customers, except that Collection shall occur not less than one (1) time per week and City shall have the right to impose minimum requirements for Bin sizes and more frequent Collection should it determine such action is needed to protect public health, safety and welfare. In the event of any dispute as to the adequacy of the number of Bins at any given Multi-Family Dwelling, the City Manager shall have the ability to approve the number of Mixed Waste Bins used at such location. In the event extra pickups are required at a Multi-Family Dwelling in any given month, Contractor may charge the Person who manages or owns the Multi-Family Dwelling for such pickups an amount that does not exceed the maximum rate for "extra dumps" as set forth in Exhibit A.

8.2.7 Multi-Family Dwelling Recycling Program

Contractor shall offer and provide a recycling program to all Customers at Multi-Family Dwellings (the "Multi-Family Dwelling Recycling Program") that at a minimum meets the standards required under the Act. Contractor shall also assist City in identifying Customers at Multi-Family Dwellings that are not in compliance with the recycling requirements set forth in the Act. Contractor shall be responsible for ensuring that its Multi-Family Dwelling Recycling Program, combined with its other programs, enables it to achieve the required diversion rates specified in this Agreement and may be required to modify its program from time to time, at no additional charge to City or Customers, to meet such diversion requirements. Contractor shall produce, keep current, and provide public information specifically outlining its Multi-Family Dwelling Recycling Program, which shall specifically include the annual publication and distribution of a brochure describing this service to all applicable Customers in City.

Contractor's Multi-Family Dwelling Recycling Program shall at a minimum include the following. Contractor shall have a representative conduct a site visit for each Customer at a Multi-Family Dwelling that does not receive Collection service for Recyclable Materials from Contractor for the purpose of establishing the service. Fifty percent (50%) of the Customers shall be contacted within the first six (6) months from the Service Commencement Date of this Agreement, and one hundred percent (100%) of the Customers shall be contacted within the first twelve (12) months after the Service Commencement Date of this Agreement. Contractor shall, every six (6) months, provide to City an updated log of the above site visits that at a minimum includes: (1) the name and address of the Customer; (2) the date of the site visit; (3) the name and phone number of the person contacted; and (4) the reason provided by Customer for not establishing a recycling program.

Six (6) and twelve (12) months after the Service Commencement Date of this Agreement Contractor shall provide City with the following three (3) lists: (1) Customers at Multi-Family

Dwellings participating in Contractor's Multi-Family Dwelling Recycling Program; (2) Customers at Multi-Family Dwellings reporting to Contractor that they achieve recycling via an in-house or third party recycling program that meets the requirements under Applicable Laws; and (3) Customers at Multi-Family Dwellings without a known recycling program. The foregoing three (3) lists shall at a minimum: (1) state the Customer's name, address, and contact information; (2) indicate whether the Customers are subject to the state's recycling requirements under the Act; and (3) provide details on the Solid Waste Collection service Customer receives from Contractor, including the quantity and type of Containers, frequency of Collection, and recycling services (if applicable).

In addition to the above, Contractor shall visit all new Customers at Multi-Family Dwellings within thirty (30) days from when the new service is commenced. Contractor shall also conduct on-site visits to Customers at Multi-Family Dwellings throughout the Term of this Agreement to implement new or optimize the existing Multi-Family Dwelling Recycling Program.

Contractor shall provide all Multi-Family Dwellings with two (2) options for diverting Recyclable Materials from the landfill: (1) on-site source separated Containers; or (2) mixed waste Containers.

8.2.7.1 Source Separated Recycling Program

For Customers who wish to select an on-site separation program, Contractor shall conduct a site visit to ensure there is adequate space for source separated Containers (a separate Container for refuse and a separate Container for Recyclable Materials). Contractor shall also conduct an education and outreach program that, at a minimum, includes: (1) handout materials (including brochures) with details on the source separated program and Contractor contact information; (2) additional handouts for display on bulletin boards; (3) door hangers with program information; and (4) townhall meetings for Customers to ask follow-up questions, receive further information, and sign up for source separated service.

Customers selecting an on-site separation program shall receive Containers designed for Recycling purposes, and Contractor may charge rates for such Containers which do not exceed fifty percent (50%) of the maximum rates set forth in Exhibit A for refuse service. The intent of Contractor's program is to incentivize Customers to Recycle by saving, and accordingly Contractor intends to charge rates that are less than the rates for mixed waste processing for Customers who seek to Recycle by on-site separation. Contractor shall ensure any such programs are cost neutral such that by adding on-site separation programs a Customer's rates for all services provided by Contractor at a minimum stay the same, and ideally such rates should decrease. Contractor shall place source separated Containers in a location selected by the Customer and subject to approval by City.

8.2.7.2 Mixed Waste Processing Recycling Program

Customers who choose a mixed waste processing Bin shall be able to mix all Solid Waste, including refuse, Recyclable Materials, and Green Waste into one (1) Bin. The maximum rates set forth in Exhibit A for refuse service presume this service is provided and

Customers shall be informed of this when service options are explained. Contractor shall comply with Section 8.6.7 in processing Solid Waste from mixed waste processing Bins.

8.2.8 Bulky Item Service for Single Family Dwellings and Multi-Family Dwellings with less than Four (4) Dwelling Units

Contractor shall provide Bulky Item Collection services to residents living at all Single Family Dwellings at no charge on an on-call basis. The no-charge Bulky Item Collection service set forth in this Section shall only apply to Bulky Items generated at the Dwelling Unit at which Customer calling for service resides and is limited to up to four (4) items per scheduled Collection. Customers are entitled to one (1) free Bulky Item Collection service up to four (4) times per calendar year. Notwithstanding Section 2.8, E-waste shall not count towards the limit of four (4) items per scheduled Collection service at no charge that is applicable to Bulky Items generally.

In order to receive such service, residents shall provide Contractor with notice by phone of the number and type of Bulky Items to be collected. Bulky Item Collection service calls shall be responded to within a reasonable time but not longer than one (1) Working Day from the date of Customer's call for service.

Contractor shall produce, keep current, and provide public information specifically outlining its Bulky Item Collection service, which shall specifically include the annual publication and distribution of a brochure describing this service to residents of all Single Family Dwellings in City. Contractor may charge rates that do not exceed those set forth in Exhibit A for the Collection of each Bulky Item (exclusive of E-waste) in excess of four (4) items per scheduled pickup, or for each Bulky Item Collected as part of an additional Collection after the four (4) free Collections per calendar year.

8.2.9 Bulky Item Service for Multi-Family Dwellings

Contractor shall provide Bulky Item Collection service to Multi-Family Dwellings in the same manner as to other Commercial Premises as set forth in Section 8.3.3 below. Contractor shall also collect E-waste from Multi-Family Dwellings at each scheduled Bulky Item pickup, in accordance with Section 8.2.13. Contractor shall not charge for the Collection of E-waste, if the E-waste is collected as part of a scheduled Bulky Item pickup.

Contractor shall produce, keep current, and provide public information specifically outlining its Bulky Item Collection service (including E-waste Collection), which shall specifically include the annual publication and distribution of a brochure describing this service to residents of all Multi-Family Dwellings in City.

8.2.10 Bulky Item Diversion

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

- a. Reuse as is (if energy efficient);

- b. Disassemble for reuse or Recycling;
- c. Recycle, Transformation, other means of diversion; and
- d. Disposal.

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

8.2.11 Proper Handling of Bulky Items

Contractor shall properly handle all materials required to be collected as Bulky Items, including specifically items that require special handling pursuant to Environmental Laws, such as materials that constitute "universal waste" and/or "E-waste."

8.2.12 Residential Sharps Collection Program

Contractor shall design and implement at no cost to all Customers at Residential Premises and Multi-Family Dwellings a program for the collection of used needles (the "Sharps Collection Program") that the City Manager finds satisfactory and approves. Contractor shall be responsible to ensure the Sharps Collection Program complies with all Applicable Laws. It is anticipated that any Sharps Collection Program at a minimum will allow for Customers to mail used needles to a specific collection location, in specialized packaging with pre-paid postage provided by Contractor.

8.2.13 Electronic Waste Collection

Contractor shall provide E-waste Collection service as part of the Bulky item collection program to Customers at Single Family and Multi-Family Dwellings as described in Sections 8.2.8 and 8.2.9. In order to receive such service, Customers shall provide Contractor with notice by phone of the number and type of E-waste to be collected. E-waste Collection service calls shall be responded to within a reasonable time but not longer than one (1) Working Day from the date of Customer's call for service. Contractor shall produce, keep current, and provide public information specifically outlining its E-waste Collection service, which shall specifically include the annual publication and distribution of a brochure describing this service to residents of all Single Family and Multi-Family Dwellings in City.

8.3 Commercial Solid Waste Handling Services

8.3.1 Commercial Bins and Rolloff Boxes

Contractor shall provide all Customers at Commercial Premises ("Commercial Customers") with at least one (1) Bin and/or Rolloff Box for Collection of mixed Solid Waste, and shall Collect all Solid Waste placed therein for Collection not less than once per week, at rates that do not exceed the maximum rates set forth in Exhibit A. Contractor shall provide additional Containers to Customers and shall provide additional Collections upon request, or as

may be required by City's Municipal Code, health and safety requirements, or by the City Manager, and may charge rates for such services which do not exceed the maximum rates set forth in Exhibit A. Bins and Rolloff Boxes shall be Collected by Contractor from the location upon each Customer's property designated for their storage, and replaced to that location with gates and/or doors secured, as applicable, after Collection is completed, unless different arrangements are agreed upon by the Customer and Contractor.

8.3.2 Commercial Carts

As an alternative to the requirements of Section 8.3.1 and upon written approval of the City Manager, Contractor shall offer Collection in ninety-six (96) gallon Refuse Carts to Commercial Customers that do not have space for, or do not generate enough waste to require the use of Bins for Collection. Rates for Customers at Commercial Premises (excepting Multi-Family Dwellings) receiving such service shall not exceed the maximum rates set forth in Exhibit A for Commercial Refuse Carts. Rates for Customers at Multi-Family Dwellings receiving such service shall not exceed the maximum rates set forth in Exhibit A for residential Cart service. If Contractor and Customer have a disagreement as to whether a Refuse Cart is appropriate, or if City determines the Collection in a Refuse Cart causes health and safety or other concerns, the City Manager shall make the final determination as to whether Collection in a Refuse Cart may occur.

8.3.3 Commercial Bulky Item Service

Contractor shall provide Bulky Item Collection services to Commercial Customers on an on-call basis. Contractor may charge rates for such services which shall not exceed the maximum rates set forth in Exhibit A. Bulky Item Collection service calls shall be responded to within a reasonable time but not longer than seven (7) days from the date of the Customer's call for service. Contractor shall produce, keep current, and provide public information specifically outlining the Bulky Item pickup service. Bulky Items Collected pursuant to this Section are subject to the diversion and handling requirements set forth in Sections 8.2.11 and 8.2.12.

8.3.4 Commercial Recycling Services

Contractor shall offer and provide a commercial recycling program (the "Commercial Recycling Program") that at a minimum meets the standards required under the Act. Contractor shall assist City in identifying Commercial Customers that are not in compliance with the recycling requirements set forth in the Act. Contractor shall be responsible for ensuring that its Commercial Recycling Program, combined with its other programs, enables it to achieve the required diversion rates specified in this Agreement and may be required to modify its program from time to time, at no additional cost to the City or Customers, to meet such diversion requirements. Notwithstanding the preceding sentence, to the extent the Parties agree that failure to achieve the required diversion rates is a result of reasons beyond Contractor's control, Contractor shall have the right to request a rate adjustment pursuant to Section 24.5 to provide cost recoupment commensurate with any necessary program modifications. Contractor shall produce, keep current, and provide public information specifically outlining its Commercial Recycling Program, which shall specifically include the annual publication and distribution of a brochure describing this service to all applicable Customers in City.

Contractor's Commercial Recycling Program shall at a minimum include the following. Contractor shall have a representative conduct a site visit for each Commercial Customer that does not receive Collection service for Recyclable Materials from Contractor for the purpose of establishing the service. Fifty percent (50%) of the Customers shall be contacted within the first six (6) months from the Service Commencement Date of this Agreement, and one hundred percent (100%) of the Customers shall be contacted within the first twelve (12) months after the Service Commencement Date of this Agreement. Contractor shall, every six (6) months, provide to City an updated log of the above site visits that at a minimum includes: (1) the name and address of the Customer; (2) the date of the site visit; (3) the name and phone number of the person contacted; and (4) the reason provided by Customer for not establishing a recycling program.

Six (6) and twelve (12) months after the Service Commencement Date of this Agreement Contractor shall provide City with the following three (3) lists: (1) Commercial Customers participating in Contractor's Commercial Recycling Program; (2) Commercial Customers reporting to Contractor that they achieve recycling via an in-house or third party recycling program that meets the requirements under Applicable Laws; and (3) Commercial Customers without a known recycling program. The foregoing three (3) lists shall at a minimum: (a) state the Customer's name, address, and contact information; (b) indicate whether the Customers are subject to the state's recycling requirements under the Act; and (c) provide details on the Solid Waste Collection service Customer receives from Contractor, including the quantity and type of Containers, frequency of Collection, and recycling services (if applicable).

In addition to the above, Contractor shall visit all new Commercial Customers within two (2) weeks from when the new service is commenced. Contractor shall also conduct on-site visits to Commercial Customers throughout the Term of this Agreement to implement new or optimize the existing Commercial Recycling Program.

Contractor shall provide all Customers at Commercial Premises with two (2) options for diverting Recyclable Materials from the landfill: (1) on-site source separated Containers, or (2) mixed waste Containers.

8.3.4.1 Source Separated Recycling Program

For Customers who wish to select an on-site separation program, Contractor shall conduct a site visit to ensure there is adequate space for source separated Containers (a separate Container for refuse and a separate Container for Recyclable Materials). Contractor shall also conduct an education and outreach program that, at a minimum, includes: (1) handout materials (including brochures) with details on the source separated program and Contractor contact information; (2) educational training for owners or managers for Commercial Premises; (3) site visits, including follow-up visits to ensure source separated program is being implemented successfully; and (4) placement of brochures in areas designated by the Artesia Chamber of Commerce and within City Hall.

Customers selecting an on-site separation program shall receive Containers designed for Recycling purposes, and Contractor may charge rates for such Containers which do not exceed fifty percent (50%) of the maximum rates set forth in Exhibit A for refuse service. The intent of

Contractor's program is to incentivize Customers to Recycle by saving, and accordingly Contractor intends to charge rates that are less than the rates for mixed waste processing for Customers who seek to Recycle by on-site separation. Contractor shall ensure any such programs are cost neutral such that by adding on-site separation programs a Customer's rates for all services provided by Contractor at a minimum stay the same, and ideally such rates should decrease. Contractor shall place source separated Containers in a location selected by the Customer and subject to approval by City.

8.3.4.2 Mixed Waste Processing Recycling Program

Customers who choose a mixed waste processing Bin shall be able to mix all Solid Waste, including refuse and Recyclable Materials into one (1) Bin. The maximum rates set forth in Exhibit A for refuse service presume this service is provided and Customers shall be informed of this when service options are explained. Contractor shall comply with Section 8.6.7 in processing Solid Waste from mixed waste processing Bins.

8.3.5 Scout and Push Out Services

Certain Commercial Premises within the City Limits are uniquely configured such that Contractor may determine that a smaller vehicle may be needed to retrieve a Customer's Container in order for a regular Collection vehicle to service the Container ("Scout Service"). Certain Commercial Premises may be configured such that a Customer's Container must be manually moved in order to be serviced by a Collection Vehicle ("Push Out Service"). Contractor shall provide Scout Service and Push Out Service to Commercial Premises as it deems appropriate. The fees for Scout Service and Push Out Service shall be in an amount that does not exceed that set forth in Exhibit A. There shall be no fee for Push Out Service for a distance of fifty feet (50') or less. Contractor shall obtain advance approval from City for each Customer location where Contractor proposes to assess a fee for Scout or Push Out Service.

8.3.6 Organic Waste Program

8.3.6.1 Organic Waste Recycling Program

The Parties acknowledge Assembly Bill 1826, which became effective January 1, 2015 and added Chapter 12.9 (commencing with Section 42649.8) to Part 3 of Division 30 of the Public Resources Code ("Chapter 12.9"). Among other things, Chapter 12.9 requires that each jurisdiction, commencing January 1, 2016, implement an Organic Waste recycling program that is designed specifically to divert Organic Waste generated by commercial generators of Organic Waste.

On or before December 15, 2015, Contractor shall submit to City (a) a report setting forth all of the information required by Section 42649.82(d) of the Public Resources Code and (b) a proposal setting forth in detail the Organic Waste Service Contractor will provide within the City Limits. The proposal shall include the details of the marketing program Contractor will implement to promote the Organic Waste Service.

Pursuant to the schedule set forth in Chapter 12.9, Contractor shall implement Organic Waste Service on the following timetable:

- April 1, 2016 for generators of 8 cubic yards of Organic Waste per week or more;
- January 1, 2017 for generators of 4 cubic yards of Organic Waste per week or more;
- January 1, 2019 for generators of 4 cubic yards of Solid Waste per week or more;
- January 1, 2020 for generators of 2 cubic yards of Solid Waste per week or more

The operational elements of the Organic Waste Service shall consist, at a minimum, of the following:

(A) Contractor shall provide the collection of Food Waste from restaurants and other Businesses (as that term is defined in Public Resources Code Section 42649.8) as well as other Organic Waste from Commercial Premises. Contractor shall provide participating Customers with wheeled Carts and/or Bins, Roll-Offs, or compactors as necessary for the segregation and storage of Organic Waste to be recycled.

(B) The collected Organic Waste shall be delivered to a City approved Processing facility for recycling in accordance with Chapter 12.9.

(C) If a Customer refuses Food Waste or Organic Waste Services, Contractor shall send a brief questionnaire to the business owner and the onsite business manager or supervisor. The Questionnaire shall include at a minimum: property name, property address, contact name, contact phone number, current levels of Solid Waste Collection service, brief description of City Recycling goals and compliance with the Act, including the Organic Waste Recycling Requirement, cost comparison for Organic Waste Collections (including Food Waste collection if applicable) versus Solid Waste Collection services, and request for the reason for not implementing an Organic Waste Program. Contractor shall not distribute the questionnaire until it has been approved by the City Manager. Contractor's Recycling Coordinator shall contact the business owner and/or the manager who refused Food Waste or Organic Waste Service to determine how the objections of the manager or owner can be resolved.

(D) Contractor shall notify City of the results of the contact and shall work with and cooperate with City and to overcome the objections, space constraints, and other problems to enable the business to participate in the programs.

(E) Contractor shall maintain a list of all Organic Waste Generator accounts receiving Organic Waste Service, including Customer name, address, number and type of Containers provided and frequency of service. Contractor shall submit the list to the City annually or more often as the City requests.

For Customers who elect to received Organic Waste Service, Contractor shall conduct a site visit to ensure there is adequate space for a Cart or Bin for Organic Waste. Contractor shall also conduct an education and outreach program that, at a minimum, includes: (1) handout materials (including brochures) with details on the Organic Waste Service and Contractor contact information; (2) educational training for owners or managers for Commercial Premises; (3) site

visits, including follow-up visits to ensure source separated program is being implemented successfully; and (4) placement of brochures in areas designated by the Artesia Chamber of Commerce and within City Hall.

Customers electing to receive Organic Waste Service shall receive Containers designed for Organic Waste Collection. If Carts are used, Contractor may charge rates that do not exceed those set forth in Exhibit A for Organic Waste Cart service. If Bins are used, Contractor may charge rates for such Bins that do not exceed ninety percent (90%) of the maximum rates set forth in Exhibit A for refuse service. The intent of Contractor's program is to incentivize Customers to Recycle Organic Waste by saving, while complying with the State mandates. Contractor shall ensure that the Organic Waste Service is cost neutral such that by adding Organic Waste Service a Customer's rates for all services provided by Contractor at a minimum stay the same, and ideally such rates should decrease. Contractor shall place source separated Containers in a location selected by the Customer and subject to approval by City.

Contractor warrants that the Organic Waste Service to be implemented pursuant to this Section 8.3.6.1 will comply in all respects with Chapter 12.9 (commencing with Section 42649.8) of Part 3 of Division 30 of the Public Resources Code, including but not limited to Section 42649.82.

8.3.6.2 Additional Organic Waste Services

In addition to the Organic Waste Recycling Program required by Section 8.3.6.1, Contractor shall provide the following services:

(A) Upon request of City, Contractor shall provide Organic Waste Cart Collection service to Customer(s) at Residential Premises at rates determined under Sections 8.4 (Other Collection Programs) or 8.6.6 (Additional Diversion Services), as applicable.

(B) Upon request, Contractor shall provide Green Waste (excluding Food Waste) Cart or Bin Collection service to Customers at Multi-Family Dwellings (excepting Customers at Multi-Family Dwellings receiving Cart service who are entitled to a Green Waste Cart at no additional charge) at rates that are ten percent (10%) lower than the maximum rates set forth in Exhibit A.

8.4 Other Collection Programs as may be Required by Law

In the event that, CalRecycle, or any federal, state, or local law or regulation, imposes upon City or Contractor a requirement for the implementation of any source separated program for the Collection of any waste material (whether or not meeting the definition of Solid Waste hereunder) not already covered by this Agreement, whether Commercial or Residential in nature, Contractor shall design and present a program to City to comply with such requirement, which program shall meet the City Manager's reasonable approval ("Proposed Program"). Except with respect to programs which are required due to Contractor's failure to achieve the diversion requirements set forth herein (which programs are subject to Section 8.6.6), at such time as (if) any such Proposed Program is implemented, Contractor and City shall meet and confer in good

faith to determine a fair and reasonable adjustment to the maximum rates set forth in Exhibit A in order to compensate Contractor for implementing the Proposed Program.

In determining a fair and reasonable rate adjustment, City may consider the cost to Contractor in providing the Proposed Program. If City and Contractor cannot agree on a rate adjustment for the Proposed Program within ninety (90) days from the date City first requests Contractor design and present the Proposed Program to City, then City may enter into an agreement with another party for the services that would be provided by Contractor's Proposed Program and Contractor agrees that the Proposed Program shall be exempt from the exclusivity granted to Contractor in this Agreement.

Contractor shall present the Proposed Program within thirty (30) days of a request to do so by City. The Proposed Program shall include a detailed description of the following: (1) Containers to be used and method of Collection; (2) equipment to be used (e.g., vehicle number, models, capacity, and age); (3) number of employees required for the Proposed Program; (4) materials to be Collected; (5) promotional and public education materials; and (6) a one (1) year projected financial analysis of the Proposed Program's operations in an operating statement format including documentation of the key assumptions underlying the projections, and the support for those assumptions.

8.5 Temporary Services

Contractor shall provide Temporary Services on an on-call basis to any Customer requesting such service pursuant to the following conditions:

(A) Bins and Rolloff Boxes utilized in connection with Temporary Services shall meet the minimum standards set forth herein.

(B) No charges excepting rates not exceeding the maximum rates set forth in Exhibit A related to Bins or Rolloff Boxes utilized in connection with Temporary Services shall be imposed by Contractor, unless approved in accordance with Section 8.8.

(C) Temporarily placed three (3) cubic yard Bins may be used for small cleanup type projects at Single Family and Multi-Family Dwellings. Bins used for such purposes shall not remain at the same address for a period that exceeds four (4) consecutive weeks. Bins used for Temporary Service shall not remain in any public rights-of-way for a period exceeding two (2) consecutive weeks. Bins may not be placed in any public rights-of-way so as to create a safety hazard or so as to block any right-of-way to a degree that it is not reasonably usable. Bins placed in City's rights-of-way shall be subject to such requirements as may be imposed by City, and at a minimum shall be equipped with reflectors, reflective tape, reflective paint, or other reflective devices which, to the satisfaction of the City Manager, make such Bins reasonably visible to vehicle traffic at night.

(D) Contractor shall work with Customers requesting construction and demolition debris Collection services to ensure that requirements under City's ordinance regulating the recycling and disposal of construction and demolition waste are met, including, but not limited to, ensuring that each covered project meets the minimum

required diversion level. Contractor agrees to comply with all provisions of the ordinance, as may be amended from time to time, and to provide services for construction contractors in City as may be contemplated by any such ordinance at no charge (such as assistance in preparing plans for the collection, recycling and disposal of construction and demolition waste in accordance with this Agreement and providing data for reporting to City).

(E) In addition to complying with any related requirements that may exist in any ordinance which may be in effect in City regulating construction and demolition waste, including specific diversion levels that may be required by any such ordinance, Contractor shall make all reasonable efforts to recycle all construction and demolition waste it Collects, especially to the degree such loads contain clean inert materials. Towards this end, Contractor shall make available to Customers involved in construction separate containers within which to Collect different types of marketable materials, such as dirt, steel, concrete and wood.

8.6 Recycling Obligations and Public Education Program

8.6.1 Minimum Requirements for Recyclable Materials, Green Waste and Rolloff Boxes

Contractor shall utilize a truck dedicated for the purpose of Collecting Green Waste from Customers, such that Green Waste which has been separated prior to Collection, once Collected, is not commingled with other Solid Waste (including Recyclable Material). Similarly, Contractor shall utilize a truck dedicated for the purpose of Collecting Recyclable Materials, such that Recyclable Material Collected in Recycling Carts or Recycling Bins, once Collected, is not commingled with other Solid Waste (including Green Waste). All material Collected by Contractor in Recycling Carts or Bins pursuant to this Agreement shall be delivered to a properly permitted facility for recycling and reuse purposes. All Green Waste separated prior to Collection and thereafter Collected by Contractor pursuant to this Agreement (including specifically materials Collected in Green Waste Carts and holiday trees) shall be delivered to a properly permitted facility for recycling, mulching, composting, or alternative uses for which diversion credit is provided as may be approved by CalRecycle. All Rolloff Boxes, whether for Commercial Customers or Temporary Service shall be delivered to a properly permitted facility for recycling and reuse purposes.

8.6.2 Extent of Applicable Franchise Rights

Nothing in this Agreement shall be construed as giving Contractor the right to Collect Recyclable Material which has not been discarded and placed for Collection by Contractor in the location designated for that purpose.

8.6.3 Diversion Obligations, Guarantee, and Indemnification

8.6.3.1 Warranties and Representations

Contractor warrants and represents that it is aware of and familiar with City's Source Reduction and Recycling Element (the "SRRE"), that it is familiar with City's waste stream, and

that it has the ability to and will provide sufficient programs and services to ensure City will meet or exceed the diversion goals (including, without limitation, amounts of Solid Waste to be diverted, time frames for diversion, and any other requirements) set forth in the Act and AB 341, and all amendments thereto, and that it shall do so without imposing any costs or fees other than those set forth in Exhibit A (including if it implements new programs to achieve such goals which are not called out herein). Stated otherwise, Contractor acknowledges that it is responsible for ensuring that its various programs achieve the diversion requirements hereunder, and that it may be required to modify its programs from time to time, at no additional cost to the City or Customers, to meet such diversion requirements. Contractor specifically acknowledges that City's current mandated diversion goal as set forth pursuant to Applicable Laws is fifty percent (50%), and that this is subject to possible modification pursuant to the provisions of the Act and otherwise.

8.6.3.2 Mutual Cooperation

City and Contractor shall reasonably cooperate in good faith with all efforts by each other to meet City's diversion and other compliance requirements imposed by the Act (including AB 341) and other Applicable Laws. In this regard, City's obligations shall include, without limitation, making such petitions and applications as may be reasonably requested by Contractor for time extensions in meeting diversion goals, or other exceptions from the terms of the Act, AB 341 and other Applicable Laws.

8.6.3.3 Waste Reduction and Program Implementation

Contractor shall implement the programs identified in the SRRE and Household Hazardous Wastes Element ("HHWE") of the City's General Plan immediately upon the Service Commencement Date hereof, and will implement any programs required by any amendments or modifications thereto. On and after the Service Commencement Date, Contractor shall provide City with monthly, quarterly and annual written reports in a form adequate to meet City's filing and reporting requirements to CalRecycle, the County of Los Angeles, and to LARA throughout the Term of this Agreement wherein City's performance under the above programs shall be set forth in detail. Contractor shall be responsible to prepare, or assist City with the preparation of, all reports and other information as may be required by any agency, including specifically, the State of California, in order to comply with the Act and/or AB 341. Contractor shall reimburse City for any costs City incurs in appearing before CalRecycle and/or any other agency in relation thereto.

8.6.3.4 Guarantee and Indemnification

Contractor warrants and guaranties that it will carry out its obligations under this Agreement such that: (i) both it and City will at all times be in compliance with the requirements of all Applicable Laws including specifically the Act; and (ii) City will meet or exceed the diversion requirements (including, without limitation, amounts of Solid Waste to be diverted, time frames for diversion, and any other requirements) set forth in the Act and all amendments thereto. In this regard, Contractor agrees that it will, in addition to any other requirement contained herein, at its sole cost and expense:

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

(B) assist City in responding to inquiries from CalRecycle;

(C) assist City in preparing for, and participating in, any review of City's SRRE pursuant to Applicable Laws;

(D) assist City in applying for any extension, including under Public Resources Code Section 41820, if so directed by City;

(E) assist City in any hearing conducted by CalRecycle relating to City's compliance with Applicable Laws;

(F) assist City with the development of and implement a public awareness and education program that is consistent with the City's SRRE and HHWE, as well as any related requirements of Applicable Laws;

(G) provide City with recycling, source reduction, and other technical assistance related to compliance with Applicable Laws;

(H) defend, with counsel acceptable to City, City and City's officials, employees, and agents against the imposition of fines and/or penalties, or any other liabilities, issued by CalRecycle pursuant to the Act;

(I) be responsible for and pay, any fees, penalties or other costs imposed against City by CalRecycle, and indemnify and hold harmless City from and against any fines, penalties, or other liabilities, levied against it for violation of the Act's diversion requirements, or violation of any other provision of Applicable Laws, arising from or in any way related to Contractor's performance of its obligations under this Agreement.

8.6.4 Guaranteed Minimum Contractor Recycling Rate

(A) Contractor shall divert a minimum of fifty percent (50%) of all Solid Waste it Collects under this Agreement for each calendar year beginning January 1, 2016 ("Recycling Diversion Requirement"). Diversion of materials not Collected by Contractor shall not be counted towards meeting the Recycling Diversion Requirement. For the purposes of this Section, Contractor diversion includes only Recycling methods, Transformation, and/or other forms of converting Solid Waste into energy which are accepted by the state toward meeting the City's diversion goal under the Act. Contractor

shall not be entitled to a reduction in the Recycling Diversion Requirement, or a rate adjustment, if:

- Transformation or other facilities are no longer available for any reason; or
- CalRecycle diversion credit under the Act or other Applicable Laws is no longer provided for Solid Waste sent to a Transformation facility.

To comply with this Section, Contractor is required to submit timely tonnage reports supporting the Recycling Diversion Requirement, and to provide supporting documentation as may be requested by City or its designee as part of, or independent of, an audit. Failure to meet, and fully support, the Recycling Diversion Requirement may result in City assessing liquidated damages in accordance with Section 18.7.3.6 and/or termination of this Agreement pursuant to Section 18.6(G).

(B) The Parties acknowledge that City is member of LARA, and that City benefits from that participation in the calculation of its Diversion rate for purposes of compliance with the Act. The Parties agree that the obligation of Contractor to achieve the Recycling Diversion Requirement is absolute, and applies irrespective of any benefit City gains by participating in LARA. Stated otherwise, whatever benefit City gains in the calculation of its Diversion rate due to being a member of LARA is in addition to the Recycling Diversion Rate required by this Agreement.

8.6.5 Waste Generation/Characterization Studies

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

8.6.6 Implementation of Additional Diversion Services

In the event City does not meet (i) the current diversion goal of fifty percent (50%) imposed by the Act, (ii) diversion requirements as modified under AB 341 when applicable, or (iii) the Recycling Diversion Requirement with respect to all waste generated in City, City may direct Contractor to perform additional services (including the implementation of new diversion programs) or modify the manner in which it performs existing services, and Contractor agrees to do so at no additional charge. Notwithstanding the preceding sentence, to the extent the Parties agree that failure to achieve the required diversion rates, including the Recycling Diversion Requirement, is a result of reasons beyond Contractor's control, Contractor shall have the right to request a rate adjustment pursuant to Section 24.5 to provide cost recoupment commensurate with any necessary program modifications. Pilot programs and innovative services which may entail new Collection methods, and use of new or alternative waste processing and disposal technologies are included among the kinds of changes which City may direct.

8.6.7 Processing of Bin and Rolloff Box Solid Waste

For Customers who select mixed waste processing described in Sections 8.2.8 and 8.3.4 and for all Rolloff Boxes, Contractor shall, prior to landfilling, process all Solid Waste from each Container to recover Recyclable Materials. The material recovery facility used to process the mixed waste must maintain compliance with CalRecycle standards for a high diversion facility, as defined by CalRecycle, for the purpose of meeting mandatory commercial recycling requirements for mixed waste. Contractor shall be required to achieve the minimum recovery rate for processing Solid Waste from mixed waste Bins and Rolloffs which is required by CalRecycle to meet the above standard for a high diversion facility. The minimum recovery rate shall apply solely to the processing of mixed waste and excludes all source separated waste, including waste Collected from construction and demolition projects, as well as source separated Recyclable Materials and Green Waste.

8.7 Additional Services

As part of the consideration for entering into this Agreement, Contractor shall provide the following additional services at no charge, and shall not adjust its rates to Customers to offset costs incurred in providing any of the following services:

8.7.1 Monitoring and Cleaning of Bin Enclosures

Contractor shall work with the City Manager in identifying and resolving continual problems with overflowing Bins or Bin enclosures, and/or other unsanitary conditions caused by Customers. Contractor shall clean out any overflowing Bins or Bin enclosures within the City Limits within twenty-four (24) hours of notification by City. Contractor may bill Customers for any such services when they are required by City at rates subject to approval by City.

8.7.2 Public Service Calls from City Departments

Contractor shall, free of charge, and within twenty-four (24) hours, respond to calls from City's Maintenance and Code Enforcement Divisions and from its Police Department, to provide Containers for and/or dispose of Bulky Items and other Solid Waste as a result of illegal or unauthorized dumping, or other Code enforcement matters, occurring within the City Limits. Contractor agrees that if requested to provide such services in connection with abatement activities for which reimbursement is sought from the property owner by City through abatement liens or otherwise, Contractor will provide billing information sufficient for City to include it in its liens, and Contractor will be paid at such time as the abatement lien is paid, or reimbursement is otherwise obtained by City from the property owner. Upon receipt of a call for service from City made pursuant to this Section, Contractor shall advise City within four (4) hours as to when service will be provided, and unless otherwise agreed by City service shall be provided within twenty-four (24) hours.

8.7.3 Collection at City Sponsored Events

Contractor shall provide Solid Waste and Recyclable Materials Collection at all City-sponsored or supported non-profit events. The number, type and service requirements for these events may vary from year to year. This service shall include providing servicing and storing

Containers (cardboard boxes and liners, Carts, Bins and/or Rolloff Boxes) to Collect and Dispose of all Solid Waste Collected, and providing, servicing and storing Containers to Collect and process source separated Recyclable Materials. Contractor shall provide these services at no cost to the City or the event sponsors.

8.7.4 Portable Deluxe Toilets at City Sponsored Events

Contractor shall obtain, deliver, promptly service, and collect Porta-Kan portable toilets and wash stations (including wash basins and soap dispensers) for up to four (4) City-sponsored or supported non-profit events per year. Contractor acknowledges that the actual number of portable toilets and wash stations requested by City or the event holder will vary and Contractor agrees to obtain, deliver, promptly service, and collect the requested number of portable toilets and wash stations at no cost to the City or to the event holder. At least two (2) of the portable toilets and wash stations provided by Contractor at each event shall be handicap accessible.

In lieu of providing the toilets required by this Section, Contractor may pay to City up to Five Hundred Dollars (\$500.00) (or such lesser amount as may be requested by City), up to four (4) times per year, which City may use to provide toilets at such events.

8.7.5 Recycling Assistance for Special Events

Contractor shall assist persons designated by City (whether City employees or private individuals) who are responsible to coordinate special events or events in large venues (such as concerts or sporting events) in the implementation of recycling programs. Contractor shall be responsible to prepare and submit to City a "waste reduction and recycling plan" prior to such events, and within thirty (30) days following each such event shall submit a waste characterization report listing the amount of each material collected for disposal and recycling at the event.

8.7.6 Holiday Trees

For at least two (2) weeks following December 25th each year, Contractor shall, free of charge, pickup all holiday trees placed out for Collection by Customers. Such trees shall not be comingled with other Solid Waste and shall be delivered to a proper facility for processing, rather than disposal, as required by the provisions hereof.

8.7.7 Handling of Electronic Waste

Contractor shall Collect E-waste and/or universal waste, from any Customer in the manner set forth herein, but shall handle and dispose of such materials in accordance with all Applicable Laws.

8.7.8 City-Wide Cleanup Events

Contractor shall promote and conduct at least two (2) Bulky Item and Solid Waste drop-off events (cleanup days) per year at no cost to City. Contractor shall obtain prior approval for the date of the events (typically on a Saturday) from City, and for the location of the events. On event day, Contractor shall accept all Solid Waste, Bulky Items, and E-waste dropped off by City

residents. Residency will be proved by driver's license, utility bills, or other method approved by City. Contractor may impose the following restrictions on material Collected:

- No single item that cannot be handled by two (2) workers will be accepted.
- The following items will not be Collected: Hazardous Substances, Hazardous Waste, including waste oil or antifreeze; concrete and dirt; excepting that all materials defined as Bulky Items, including televisions, monitors and other items referred to as E-waste, shall be Collected by Contractor and be properly handled in accordance with all Applicable Laws.

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

8.7.9 Services at City Facilities

Contractor shall provide Collection services at all Premises owned and/or operated by the City, at no cost to City and shall provide Containers for such service as City deems appropriate for each of its various Premises (i.e., Carts, Bins or Rolloff Boxes). Such services shall be provided for all existing City facilities, as they may be expanded from time to time, as well as all new or additional facilities acquired/constructed during the Term hereof at no additional cost. Contractor shall carry out its obligations pursuant to this provision in a manner, and to a degree, approved by the City Manager.

Contractor shall, at no additional charge, provide City with up to six (6) sealable, lockable, watertight storage containers for City's Public Works yard.

8.7.10 Shredding Service for City Documents

Contractor shall provide, at no charge, on-site shredding and Collection of designated City documents on an on-call basis and not less than four (4) times a year. Contractor shall carry out its obligations pursuant to this provision in a manner, and to a degree, approved by the City Manager.

8.8 Special Services

Contractor may provide special pickup procedures or services in addition to the services described herein for Customers who request or require such services at reasonable rates established by Contractor, which rates are subject to approval by the City Manager. Contractor shall notify the City Manager of any such services prior to such time as they are provided in order to allow the City an opportunity to conduct necessary inspections, review the proposed rate, and impose appropriate regulations.

8.9 Disaster Plan and Response

(A) Within ninety (90) days of the Effective Date, Contractor shall prepare an updated draft disaster debris cleanup implementation plan that sets forth procedures for collection of debris following a major disaster such as an earthquake, fire or other similar event. The disaster plan shall address priorities for cleanup at critical facilities, procedures for reimbursement for costs, describe communication plans, list key contact persons, and provide maps showing proposed sites for stockpiling of disaster debris that cannot be transported to the landfill. Contractor shall coordinate the plan with City's emergency service teams. The draft plan shall be presented to the City Manager for consideration and approval. The final plan shall be distributed to those employees of Contractor and City who would have a role in implementing it in the event of a disaster.

(B) In the event of an emergency or natural disaster, and when requested by the City Manager or Public Works Director, Contractor shall provide City with the equipment and labor required to collect, cleanup, and remove debris resulting from the emergency or natural disaster. Contractor shall use commercially reasonable efforts to dispatch the requested equipment and labor to City as promptly as practicable following the request by the City Manager or Public Works Director.

(C) Notwithstanding Section 3.1 or any other provision of this Agreement or the Municipal Code, Contractor agrees that, in the event that Contractor is unable to respond within the time period requested by City for collection, cleanup and removal of debris resulting from an emergency or natural disaster, City shall have the right to engage other persons, firms, and entities to collect, cleanup and remove debris resulting from such emergency or natural disaster for a period ending on the earlier of the date such collection, cleanup and removal is complete or thirty (30) days following the original request from City.

(D) At the time when Contractor's work may continue following a natural disaster, Contractor will cooperate with City to implement the disaster debris cleanup implementation plan. This plan shall identify Contractor's plans for maximizing the amount of Recyclable Materials diverted from the waste and debris created by the disaster and to identify and secure disposal sites and capacity for such waste.

(E) City shall pay Contractor for the services provided in Sections 8.9.B and 8.9.D as specified in Exhibit A. Contractor's requests for payment for these services shall be accompanied by a full accounting of the labor hours, vehicle usage, disposal costs, and any other costs incurred by Contractor for which Contractor is seeking payment. City reserves the right to audit Contractor's books and records to ascertain the accuracy of Contractor's costs.

SECTION 9.
**MINIMUM STANDARDS FOR CONTRACTOR'S SOLID
WASTE HANDLING SERVICE COLLECTION VEHICLES**

9.1 General

Contractor shall provide vehicles for the Collection of Solid Waste ("Collection Vehicles") that are sufficient in number and capacity to efficiently perform the work required by this Agreement in strict accordance with its terms. Contractor is expressly obligated to provide such Collection Vehicles and routes as are required to meet the service standards set forth herein. Contractor shall have available on Collection days sufficient back-up vehicles for each type of Collection Vehicle used to respond to complaints and emergencies. Upon or prior to the Effective Date of this Agreement and prior to the start of any extension period of this Agreement pursuant to Section 6, Contractor shall provide City with a report containing the information required under South Coast Air Quality Management District's Rule 1193(d)(7).

9.2 Air Quality/Fuel Requirements

Contractor's Collection Vehicles shall comply with all rules and regulations of the South Coast Air Quality Management District, the Air Resource Board, and any other regulatory body that may be in effect during the Term of this Agreement, as well as other federal, state and local laws and regulations that may be enacted during the Term of this Agreement. Contractor's Collection Vehicles shall meet or exceed such air quality standards as may be adopted by the forgoing regulatory bodies during the Term. Contractor's Collection Vehicles shall comply with the requirements in the South Coast Air Quality Management District's Rule 1193.

9.3 Specific Requirements

Each Collection Vehicle utilized by Contractor in the performance of this Agreement shall meet the following minimum standards:

(A) Each Collection Vehicle must be fueled by Compressed Natural Gas ("CNG").

(B) Each Collection Vehicle shall be registered with the California Department of Motor Vehicles.

(C) Each Collection Vehicle shall be inspected regularly by Contractor to ensure it meets the requirements of the California Vehicle Code and the California Highway Patrol. Contractor shall provide copies of its Biannual Inspection of Terminal ("BIT") inspection reports to City within thirty (30) days of its receipt of such reports and shall make all records related to its vehicles, including Contractor's maintenance records, available to City upon request by the City Manager.

(D) Each Collection Vehicle shall be equipped with devices capable of covering every open section of the vehicle in which Solid Waste may be placed and, while operating upon the public rights-of-way, shall be covered so as to prevent any Solid Waste from falling or being blown or otherwise dislodged from the vehicle.

(E) Each Collection Vehicle shall be continuously maintained so as to both: (1) meet the highest industry standards with regard to efforts to prevent liquid from leaking and to the degree possible ensure each Collection Vehicle is "watertight" and "leak-proof" and, (2) at all times comply with the provisions of all laws and regulations including the Vehicle Code and any applicable NPDES permit, with regard to materials leaking from Collection Vehicles. Contractor shall be responsible to promptly clean any spillage or Solid Waste that leaks or otherwise escapes the vehicle.

(F) As frequently as determined necessary by the City Manager, each Collection Vehicle shall be painted, shall have routine body work performed, and shall be cleaned, so that such vehicles do not become unsightly, as determined by the City Manager. Each vehicle shall be painted with Contractor's colors and identifying information as required herein.

(G) Contractor's name, local or toll free telephone number, and a vehicle number shall be visibly printed or painted in letters not less than five inches (5") in height on both sides of each Collection Vehicle. Any other information or signage printed, painted, or displayed on Contractor's Collection Vehicles, when such Vehicles are providing Collection services within the City Limits, shall be subject to approval by City.

(H) Contractor shall allow City two (2) times a year, with the timing solely determined by City, and at no additional charge, to place City advertisements related to City and City sponsored events on Contractor's Collection Vehicles while such Collection Vehicles are providing Collection services within the City Limits. The cost of production and mounting the signage on the Collection Vehicles is the responsibility of Contractor. Contractor may impose reasonable sizing criteria on such signage.

(I) Each Collection Vehicle shall be maintained in a clean and sanitary condition both inside and out.

(J) Each Collection Vehicle shall carry a broom, shovel, and operable fire extinguisher, and shall be equipped with a communication device sufficient to allow the driver to communicate directly with Contractor's dispatcher and/or main office.

(K) Each Collection Vehicle shall be kept in good repair and working order, and shall be equipped with appropriate safety equipment, including any new safety related technologies that become standard in the waste industry, and at a minimum shall have a video monitor based back-up system, or its equivalent. Contractor shall keep a sufficient supply of replacement parts and equipment on hand to ensure adequate vehicle maintenance and timely and continuous performance of the services contemplated by this Agreement.

(L) Contractor shall inspect each Collection Vehicle daily to ensure that all equipment is operating properly. Collection Vehicles which are not operating properly shall be removed from service until repaired and operating properly. Contractor shall perform all scheduled maintenance functions upon Collection Vehicles in accordance with the manufacturer's specifications and schedule. Contractor shall repair, or arrange

for the repair of, all of its vehicles and equipment for which repairs are needed because of accident, breakdown or any other cause so as to maintain all equipment in a safe and operable condition. Contractor shall keep accurate records of all Collection Vehicle maintenance and repair, recorded according to date and mileage, including signed verifications that repairs and maintenance have been properly performed, and shall make such records available to City upon request.

(M) No Collection Vehicle shall be utilized if it is leaking brake, hydraulic, or other fluids, and Contractor shall cleanup any leaks or spills from its vehicles per the NPDES permit in effect at the time. No fluids shall be washed into storm drains at any time. All NPDES dry cleaning measures shall be complied with. All Collection Vehicles must be equipped with absorbent for such cleanup efforts.

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

(O) Contractor shall utilize Collection Vehicles of a size, weight, nature, and type so as to not be unreasonably intrusive on the community with respect to noise, emissions, maneuverability, safety, and other factors and to avoid or minimize pavement damage and wear and tear of the street or adjacent properties, as approved by the City Manager.

(P) Contractor shall not load Collection Vehicles in excess of the manufacturer's recommendations or limitations imposed by state or local laws or regulations. Noise levels of equipment used for Collection shall not exceed seventy-five decibels (75db) when measured at a distance of twenty-five feet (25') from the vehicle, five feet (5') from the ground.

(Q) All Collection Vehicles used in the Franchise Area shall be new when first used in the Franchise Area pursuant to this Agreement, and only those vehicles may be used in the Franchise Area. Notwithstanding the preceding sentence, during any period that a Collection Vehicle is temporarily out of service for maintenance or repairs, a replacement vehicle may be used, so long as it is no more than fifteen (15) years of age.

9.4 Costs of Operation and Damages

Contractor shall be responsible for any costs incurred in connection with ensuring all Collection Vehicles comply with all Applicable Laws, including without limitation any such laws and regulations that may now exist or hereinafter be adopted relating to noise, fuels, emission standards, or weight limits.

9.5 City Inspection

City may cause or require any Collection Vehicle used in performance of this Agreement to be inspected and tested at any time and in such manner as may be appropriate to determine that the vehicle is being maintained in compliance with the provisions of this Agreement.

9.6 Correction of Defects and Removal of Vehicles from Use within City

Contractor agrees to immediately remove from service, and replace or repair, to the City's satisfaction, any Collection Vehicle which City determines to be of unsightly appearance, unsafe, unsanitary, leaking, out of compliance with any law or regulation or this Agreement, or otherwise in an unsatisfactory operating condition; and any such vehicle shall not be returned to service until the City Manager gives his or her written consent for its return.

**SECTION 10.
CONTRACTOR'S SOLID WASTE HANDLING
SERVICE PERSONNEL**

10.1 Uniforms and Identification

Each of Contractor's Collection employees shall wear a clean uniform bearing Contractor's name. Contractor shall provide identification badges, cards or similar devices, for all of its employees, and all authorized subcontractors, who may make personal contact with Customers or residents of City. City may require Contractor to notify Customers yearly of the form of that identification.

10.2 Drivers

To the extent permitted by State and Federal law, Contractor agrees to hire drivers who are members of Teamsters Union Local 396 or other union.

10.3 Employee List

Contractor shall provide a list of current employees and authorized subcontractors to City upon request.

10.4 Driver's License

Each employee operating a vehicle as part of his or her duties shall, at all times, carry a valid operator's license for the type of vehicle he or she is operating. All employees who may have contact with Customers in the course of performing their duties shall possess the ability to communicate effectively with Customers.

10.5 Screening of Field Employees

Contractor shall make reasonable efforts to determine if its employees working in the field (i.e., drivers of Collection Vehicles and employees otherwise involved in Collection at Customer Premises) have been convicted of a felony, and shall identify any such employees known to it to City. City shall have the ability to require that any employee so identified by Contractor not work in the field within the City.

10.6 Discontinued Use of Unsatisfactory Employees

No employee shall continue to have any involvement whatsoever with regard to any work in any way relating to or arising from this Agreement if City gives notice to Contractor that such employee is determined by City to be discourteous, disorderly, inefficient, or otherwise objectionable. The term "otherwise objectionable" shall not permit City to "ban" an employee for reasons that violate public policy. City provide a reason for requesting the "ban" of any employee from engaging in work related to this Agreement.

10.7 Training and Legal Compliance

Contractor shall provide operating and safety training that meets minimum OSHA standards for all personnel and shall comply with all laws and regulations applicable to its employees and personnel.

10.8 Customer Service

10.8.1 Office Hours: Local Participation

Contractor shall maintain a local office within ten (10) miles of the City Limits for communication with the public that at a minimum will be open from 8:00 a.m. to 5:00 p.m. Monday through Friday, and 8:00 a.m. to 12:00 p.m. Saturday, Holidays excepted ("Office Hours"). At least one (1) responsible and qualified representative of Contractor, capable of communicating in English and Spanish, shall be present and available during all Office Hours for personal communication with the public regarding Billings (including the acceptance of in-person Bill payments), complaints, customer service inquiries, etc., and a similarly qualified person shall be available for communication with the public by phone during any times other than Office Hours when Collection is occurring.

Contractor shall endeavor to establish a local presence within the City Limits. Contractor may achieve such presence by joining, and maintaining a membership in the Artesia Chamber of Commerce, and by otherwise participating in the local community, such as by sponsoring local events, regularly attending City events and City Council meetings. In addition, Contractor shall employ one (1) Community Relations/Recycling Specialist designated for working within the City Limits for direct in-person contact with Customers.

10.8.2 Telephone Customer Service Requirements

10.8.2.1 Toll Free Number

Contractor shall maintain a toll free telephone number that rings at an office at all times during Office Hours. Contractor'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 any thirty (30) day period that Customers are unable to contact Contractor by phone, City may require Contractor to increase capacity. Both English and Spanish speaking personnel will be available during Office Hours to assist Customers with telephonic inquiries. Contractor shall have the ability (through the use of outside resources or otherwise) to communicate with Customers who only speak Spanish to ensure their inquiries, questions, complaints and other

matters are dealt with in a reasonably timely fashion. All such personnel shall be polite and responsive, shall be sufficiently knowledgeable, and have the authority to respond and/or advise Customers seeking assistance. Contractor's telephone system shall be adequate to handle the volume of calls typically experienced on the busiest days. Contractor shall provide City with a twenty-four (24) hour emergency number to a live person, not voicemail.

10.8.2.2 Call Responsiveness

Contractor shall make reasonable attempts to answer all phone calls within five (5) rings. If a call has been placed on hold for three (3) minutes, the caller will either be switched to a message center which shall be responsible to obtain the caller's address and phone number, or a Customer service representative will obtain the Customer's address and a phone number at which the call can be returned. Contractor shall make at least three (3) attempts within the next twenty-four (24) hour period to return the call, with the first such attempt not more than one (1) hour after the caller leaves the message. If Contractor is unsuccessful in contacting the Customer after following this procedure, it shall send a letter to the caller indicating its efforts.

10.8.3 Complaint Documentation

All service complaints shall be directed to Contractor. Contractor shall log all complaints received and the log shall include the date and time the complaint was received, the name, address and telephone number of the complaining party, a description of the complaint, the name of the employee recording the complaint and the action taken by Contractor to respond to and remedy the complaint. All written Customer complaints and inquiries shall be date-stamped when received. All complaints shall be initially responded to within one (1) Working Day (Monday through Friday) of receipt. Contractor shall log action taken to respond to and remedy the complaint. Daily logs of complaints shall be retained for a minimum of twenty-four (24) months. All Customer service records and logs kept by Contractor shall be available to City upon request. City shall, at any time during regular Office Hours, have access to Contractor's Customer service department for purposes that may include monitoring the quality of Customer service or researching Customer complaints. Contractor shall provide to City on a monthly, quarterly, and annual basis, a complaint log, in a form satisfactory to City that includes all of the complaints logged pursuant to this Section, the complainant and the resolution.

10.8.4 Resolution of Customer Complaints

Disputes between Contractor and its Customers regarding the services provided in accordance with this Agreement may be resolved by City. City's decision shall be final and binding. Should Contractor and Customers not be able to establish a mutually acceptable fee to be charged for special services as set forth in Section 8.8, the matter shall be dealt with pursuant to this Section and be determined by City and City's decision shall be final. Intervention by City is not a condition precedent to any rights or remedies third parties might otherwise have in any dispute with Contractor. Nothing in this Section is intended to affect the remedies of third parties against Contractor.

10.8.5 Government Liaison

Contractor shall designate in writing a "Government Liaison" who shall be responsible for working with City and/or City's designated representative(s) to resolve Customer complaints. City shall have the right to approve Contractor's choice for a liaison. It is anticipated that the Government Liaison will regularly attend City events involving community outreach programs and will routinely attend City Council meetings.

10.9 Education and Public Awareness

10.9.1 General

Contractor acknowledges and agrees that education and public awareness are critical, key and essential elements of any efforts to achieve the requirements of the Act, including AB 341. Accordingly, Contractor agrees to exploit opportunities to expand public and Customer knowledge concerning needs and methods to reduce, reuse and recycle Solid Waste and to cooperate fully with City in this regard.

10.9.2 Written Program Materials

Contractor shall maintain a program of providing information relevant to the need and the methods to reduce, reuse and recycle Solid Waste, and Contractor upon request from City, may include such information along with Bills provided to Customers. All public education materials shall be approved in advance by City. Contractor shall keep a record of all promotional and public education materials utilized and shall provide quarterly reports summarizing its public outreach and education efforts.

10.9.3 Public Outreach

At a minimum, Contractor shall conduct school assemblies and promote recycling through presentations and educational materials to the Chamber of Commerce, homeowners' associations, construction contractors and other civic groups. Contractor shall also provide articles on recycling for local newsletters.

10.9.4 On-going Education Requirements

In order to promote public education, in addition to any other materials it develops, Contractor shall create the following public education materials and programs at its expense, which will be distributed as indicated below. All of these materials and programs shall be produced and/or available in both English and Spanish languages, and all written materials shall be approved by City in advance of distribution, and shall bear City seal, unless otherwise approved by City.

10.9.4.1 Quarterly Newsletter

On and after the Service Commencement Date, Contractor shall produce and distribute to Customers four (4) quarterly newsletters each year during the Term of this Agreement. The content of each quarterly newsletter shall be determined by the City Manager and may include,

but is not limited to: information on City-sponsored or supported non-profit events, information on City-wide cleanup events, and other City-related articles and information.

10.9.4.2 Annual Notices

Not less than once each year during the Term of this Agreement, Contractor shall prepare and distribute to each Customer a brochure providing relevant information about Contractor's services, including, at a minimum: information regarding access to and use of available services; Collection schedules; Holiday Collection schedules; information about mandatory commercial recycling and program offerings; Contractor's Customer service numbers; procedures to begin and terminate services; and information promoting and explaining available programs, such as Recycling, Green Waste, holiday tree and Bulky Item Collections, and Organic Waste Service; the availability of Household Hazardous Waste and e-waste Collection, and the proper handling and disposal of such wastes.

10.9.4.3 How-To Brochure

Contractor will prepare and distribute a brochure packet to new Customers when they start service. This packet will contain updated information on how to use the Contractor-provided Containers, when, where and how to place Solid Waste for Collection, and who to contact with service or Billing questions.

10.9.4.4 Corrective Action Notice

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

10.9.4.5 Contractor Representative

Contractor shall retain on its staff an individual who shall as part of his or her job function routinely visit civic groups, school assemblies, and homeowners' associations, to promote and explain the Recycling and other programs that Contractor offers, and participate in demonstrations, and civic events.

10.9.4.6 Web Site Page

Contractor shall dedicate one (1) page of its web site to City services, which shall include at least the following information: a listing of contact names and numbers for Customer Service; Collection schedules, including Holiday schedules; available programs, including Recycling, Green Waste, holiday tree and Bulky Item Collections; information about mandatory commercial recycling and program offerings; and the procedures to begin and terminate services. During the first six (6) months following the implementation of new services hereunder, this web page shall also provide information explaining the new service and the proper use of Carts. Contractor shall assist City in establishing a link to this web page from City's web site.

**SECTION 11.
CONTRACTOR'S CONSIDERATION**

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

11.1 Negotiation Fees

11.1.1 Reimbursement of Negotiation Costs

Within ten (10) days after execution of this Agreement by both Parties and approval by the City Council, Contractor shall pay to City a one-time lump sum payment in the amount of Three Hundred and Fifty Thousand Dollars (\$350,000.00), to reimburse City for its actual staff expenses and out-of-pocket costs (including specifically consultant and legal fees) incurred in connection with the negotiation and ultimate award of this Agreement.

11.1.2 Negotiation Fee

Within ten (10) days after execution of this Agreement by both Parties and approval by the City Council, Contractor shall pay to City a one-time lump sum payment in the amount of One Hundred Thousand Dollars (\$100,000.00), in consideration of the right of negotiation granted by City.

11.2 Annual Administrative Cost Reimbursement

On or before July 1, 2016, and then on or before July 1 each year thereafter, Contractor shall make a payment to City in the amount more fully set forth in this paragraph intended to defray its administrative costs related to this Agreement (the "Administrative Cost Reimbursement"). The amount of the annual Administrative Cost Reimbursement shall be the sum of: (1) Fifty Thousand Dollars (\$50,000.00) [adjusted biennially by the change in CPI as calculated under Section 24.3], intended for use with ongoing compliance review as noted in Section 27.3; plus (2) City's actual legal and consultant fees and out-of-pocket costs incurred in the administration of this Agreement, including fees and costs associated with analyzing new legislation, considering requests from Contractor (including specifically, without limitation, requests for rate increases), and otherwise analyzing issues that arise in connection with this Agreement. Commencing with the payment due July 1, 2016, invoices for the Administrative Cost Reimbursement will be provided to Contractor by City and shall be due to City within thirty (30) days of the date such invoice is mailed by City, or on July 1, whichever comes later. If any Administrative Cost Reimbursement is not paid by Contractor within thirty (30) days after the above stated due date, and in addition to any other remedy provided by law, Contractor shall pay to City a penalty in an amount equal to ten percent (10%) per month, or portion thereof, of the amount owing until paid.

11.3 Franchise Fee

In consideration of this Agreement and the exclusive franchise, right and privilege to provide Solid Waste Handling Services within the Franchise Area granted by this Agreement,

Contractor shall pay to City a Franchise Fee as specified in this Section 11.3. The Franchise Fee consists of the Initial Franchise Fee Payment described in Section 11.3.1, and the Annual Franchise Fee described in Section 11.3.2.

11.3.1 Initial Franchise Fee Payment

Within ten (10) days after execution of this Agreement by both Parties and approval by the City Council, Contractor shall pay to City a one-time lump sum Franchise Fee payment in the amount of Two Million Dollars (\$2,000,000.00), as part of its consideration for entering into this Agreement.

11.3.2 Annual Franchise Fee

11.3.2.1 Annual Franchise Fee

In addition to the Initial Franchise Fee Payment set forth in Section 11.3.1, Contractor shall pay to City an annual Franchise Fee equal to the sum of Five Hundred Ten Thousand Dollars (\$510,000.00), payable in four (4) equal payments on a quarterly basis throughout the Term of this Agreement, including any extension of the Term (the "Annual Franchise Fee"). The Annual Franchise Fee shall be paid to City quarterly in four (4) equal payments on or before the twentieth (20th) day following the close of each quarterly period. Should any such due date fall on a weekend or holiday in which the City's business offices are closed, payment shall be due on the first day thereafter in which the City's business offices are open. The first payment shall be due January 15, 2016 and shall be for the two (2) months of November and December 2015; the calculation shall be prorated precisely to reflect the fifty-three days from the first day of the term to the end of the quarter. Thereafter, quarters shall be the three (3) month periods defined as January through March, April through June, July through September, and October through December of each calendar year. The last payment shall be made at the end of the Term and shall be prorated to reflect the exact number of days that the Agreement is in force for that final quarter or portion of a quarter; the calculation shall be prorated precisely from the first day of the final quarter to the last day of the Term. The amount of the Annual Franchise Fee shall be increased biennially by the percentage increase in the maximum rates authorized pursuant to Section 24.3. The amount of the Annual Franchise Fee shall also be increased by the percentage increase in the maximum rates authorized pursuant to Section 24.5, if any.

11.3.2.2 Reduction in Annual Franchise Fee

City shall have the right to unilaterally reduce the amount of the Annual Franchise Fee at any time, upon thirty (30) days written notice to Contractor. Should City reduce the amount of the Annual Franchise Fee, the maximum rates authorized by Section 24 of this Agreement shall be reduced by an amount equal to the amount by which the Annual Franchise Fee is reduced. In the event City reduces the Annual Franchise Fee, Contractor shall propose a methodology for reducing the maximum rates for both residential and commercial Customers in proportionate amounts. Contractor shall submit the proposed methodology and proposed revised schedule of maximum rates to the City Manager for approval within thirty (30) days of receipt of written notice of the reduction in the Annual Franchise Fee.

11.3.2.3 One-Time Increase in Annual Franchise Fee

If the audit process set forth in Section 24.6 documents that the projected annual Commercial Revenues will exceed the Projected Baseline (as those terms are defined in Section 24.6) by a least One Hundred Thousand Dollars (\$100,000.00), the amount of the Annual Franchise Fee shall be automatically increased by Twenty-Five Thousand Dollars (\$25,000.00) for each additional One Hundred Thousand Dollars (\$100,000.00), or any portion thereof, in excess of the first One Hundred Thousand Dollars (\$100,000.00) that the projected annual Commercial Revenues exceed the Projected Baseline. The effective date of this increase would be July 1, 2016.

SECTION 12. CHARGE FOR LATE PAYMENTS

In the event Contractor fails to timely make any of the payments provided for in this Agreement (whether reimbursements, Franchise Fees, payments of funds collected in connection with billing services, or otherwise), Contractor shall pay to City, as additional consideration, a sum of money equal to five percent (5%) of the amount due. This amount is required in order to defray those additional expenses and costs incurred by City by reason of the delinquent payment including, but not limited to, the cost of administering, accounting for, and collecting the delinquent payment and the cost to City of postponing services and projects necessitated by the delay in receiving the revenue. In addition, any amounts not paid to City by Contractor within sixty (60) days of the due date shall be subject to interest in the amount of ten percent (10%) per annum, calculated on a daily basis for each day such sums remain past due.

SECTION 13. CONTRACTOR'S BILLING SERVICES AND SYSTEMS

13.1 Billing

Contractor shall provide services pursuant to this Agreement at rates it sets, charges to, and collects from Customers; provided, however, Contractor's rates shall not exceed those set forth in Exhibit A, which sets out the maximum rates that may be charged by Contractor for the various different service options that may occur hereunder, as such maximum rates may be adjusted from time to time pursuant to the terms hereof. Contractor shall provide all Customers with itemized Bills, detailing charges for all services, including charges for late payments, as well as the period of service to which the Bill applies. Contractor acknowledges that it, and not Customers, is to pay a Franchise Fee and the other fees noted herein to City as consideration for this Agreement. Accordingly, Contractor's Bills shall not include separate itemization of a "Franchise Fee" or other similar designation relating to fees which Contractor is required to pay to City. Contractor shall reproduce and include in any Billing, at no additional cost, one (1) page informational "inserts" provided by City. (See Section 13.3.4.)

Billings may be made every two (2) months in advance of, or subsequent to services being provided for all Customers at Single Family or Multi-Family Dwellings utilizing Carts for Collection and on a monthly basis in advance for all other Customers. Premises ordering service

after the first of the month or canceling service prior to the end of the month shall be charged on a prorated per pickup basis.

13.1.1 Suspension of Service Due to Non-Payment

13.1.1.1 Residential Premises and Customers at Multi-Family Dwellings with Cart Service

Customers at Residential Premises and Customers at Multi-Family Dwellings receiving Collection services via Carts who have not remitted required payments within thirty (30) days after the date of the Billing shall be notified, on forms approved by the City Manager, that payment of the invoice is overdue and that non-payment will result in suspended service and further collection action. If payment is not made within thirty (30) days after this subsequent notice (a minimum of sixty (60) days after initial Billing), Contractor may submit a list of overdue Customers to the City Manager and, with City Manager's advance written approval, may suspend service and/or pursue collection remedies. This entire sequence of notifications must be followed by Contractor prior to suspending service or pursuing collection. City will not lien property or assist in the payment collection process.

Any delinquent fees or service charges to be imposed in connection with those delinquent accounts shall be set by Contractor and be subject to City Manager approval.

13.1.1.2 Commercial Premises

Customers at Commercial Premises (excepting Customers at Multi-Family Dwellings receiving Collection services via Carts) who have not remitted required payments within thirty (30) days after the date of the Billing shall be notified on forms approved by the City Manager. The forms shall contain a statement that the Customer's account is delinquent, must be paid within forty-five (45) days from the date of Billing to avoid delinquent fees, and services may be discontinued fifteen (15) days from the date of the notice if payment is not made before that time. If payment is not made by the expiration of that fifteen (15) day period, Contractor may discontinue service to that Customer forty-eight (48) hours thereafter. This entire sequence of notifications must be followed by Contractor prior to suspending service or pursuing collection. City will not lien property or assist in the payment collection process.

Contractor shall resume Solid Waste Collection on the next regularly scheduled Collection day for any Customer whose service is discontinued upon receipt of payment of delinquent fees and any related service restart charges in accordance with the maximum rates set forth in Exhibit A, or at such sooner time as directed to do so by City. Contractor may not charge for service during any period in which service was suspended. Any delinquent fees or service charges to be imposed in connection with delinquent accounts shall be set by Contractor and be subject to City Manager approval. A deposit equal to the maximum rate for one (1) month's service as set forth in Exhibit A, as such rates may be amended from time to time, may be required of accounts which have been discontinued for non-payment prior to re-instituting service at such accounts. Contractor shall provide City with reasonable advance notice prior to suspending service to any Customer and City reserves the right to require that Contractor

continue to provide service to any Customer to, among other things, avoid negatively impacting public health or safety.

13.1.2 Unoccupied Premises

During any time when a Premises is unoccupied for at least thirty (30) days, and Collection services are not provided by Contractor, Contractor shall not Bill such Premises for Solid Waste Collection. Contractor shall remove its Containers from any Premises after being notified by a Customer that service is to be cancelled as a result of the Premises being unoccupied. The Customer at any such Premises shall be responsible to provide notice to Contractor to cease service due to a vacancy, as well as reasonable evidence pursuant to such guidelines as the City Manager is hereby authorized to develop, demonstrating the Premises was vacant for the period in question. Such Customers shall be entitled to a refund from Contractor for any amounts paid to Contractor for each thirty (30) day period during which the vacancy exists. Any Customer grievance regarding a claim that a Premises was unoccupied and received no service and hence should not be Billed for a given period pursuant to this Section, may be appealed by the Customer to the City Manager whose decision shall be final. It is the intent of the Parties that Contractor shall not be entitled to charge for services which are not needed or used; accordingly, the time frame set forth in this Section is not intended to suggest that Contractor may bill Customers for up to thirty (30) days of service in situations in which no service is needed or used due to a vacancy.

13.2 Minimum Requirements for Billing Statements

In addition to any other pertinent data, Billing statements mailed by Contractor shall be printed to contain the following information, and the language contemplated for compliance with this requirement shall be subject to the City Manager's approval:

(A) A "statement date" indicating the date the Bill is generated and mailed.

(B) For Residential Cart service: the service address associated with the account, the billing address, an itemized quantity of each type of service the Customer receives, the maximum rate charged for each type of service, and the serial numbers or other identifying information associated with each Cart. Customers should be able to determine from the Bill the types of services they are receiving and the rates charged for each individual service. Under this Agreement, a Bill for a Single Family Dwelling may correspond with one (1) service address, but multiple Dwelling Units may exist for that service address. Thus, a Bill for a Single Family Dwelling may have more than one (1) sets of Carts (i.e., Refuse, Recycling, and Green Waste Carts) being Billed at the standard rate, and the Bill should make clear the number of sets of Cart(s) to which it applies, as well as their serial numbers or other identifying information tied to each Cart.

(C) A notice to Customers that payments are due within thirty (30) days of the statement date, an advisement that the Customer's account will become delinquent if payment is not received by the thirtieth (30) day following the statement date, an advisement of the date and time by which payments must be received in order to avoid delinquent fees (e.g., 4:00 p.m. on the forty-fifth (45th) day following the statement date),

and a notification of the amount of fees that will be imposed and the potential for service interruptions if payments are not received by the specified date and time.

(D) An advisement to Customers that payment can be made in the following manner:

(1) by mailing payment to Contractor at such address as Contractor may designate; or

(2) by automatic withdrawal from a checking account;

(3) by major credit card on-line (i.e., via the Internet); or

(4) in person at Contractor's local office pursuant to Section 10.8.1 by cash, check, credit card or other acceptable forms of payment.

(E) An advisement that inquiries relating to Solid Waste Collection should be directed to Contractor, including an address, phone number and Internet site, for such inquiries.

(F) Billings shall include Contractor's telephone number for Billing and service inquiries.

13.3 Billing System

13.3.1 Computerization of Account Information

Contractor shall provide and maintain, at its own expense, computer equipment sufficient to operate pertinent computer programs and otherwise provide the services required by this Section. Contractor shall create, at its own expense, computer programs sufficient to operate a computerized Billing system, permanently maintain all account records and otherwise meet the requirements of this Section.

13.3.2 Minimum Computer Programming Requirements

In addition to any other requirements set forth herein, the programs created by Contractor to operate and maintain the Billing system shall at a minimum be able to perform the following functions:

(A) create a permanent record of any adjustment to a Customer's account;

(B) work in connection with a backup system such that all Customer account data and records are protected from a computer failure and permanently preserved on not less than a daily basis; and

(C) allow Customers to make payments on-line (i.e., via the Internet) by a major credit card.

13.3.3 Billing Inquiries

All Billing inquiries shall be entered into the computerized Billing system. Contractor's computer programs shall keep a permanent record of all Billing inquiries and all adjustments to Customer Bills resulting therefrom.

13.3.4 Distribution of Public Information

If requested to do so by City and at no charge to City, Contractor shall insert any printed material prepared by City into its Billing statements for delivery to its Customers. City shall not request Contractor to include any printed material in its Bills if such material is of a size, shape, or weight that would increase Contractor's postage costs or if such material does not fit into the envelopes utilized by Contractor to mail the Bills. Any printed material to be included in the Bills to be mailed by Contractor shall be provided to Contractor within a reasonable time in advance of Contractor's scheduled mailing date, such that the insertion of such material into Billing envelopes does not delay their scheduled mailing date.

13.4 Payment, Accounting Systems

13.4.1 Collection and Processing of Payments

13.4.1.1 Accounting and Deposit of Funds

All payments received by Contractor shall be appropriately credited to Customer accounts, deposited in a bank account and accounted for in a businesslike manner utilizing generally accepted accounting principles. To facilitate audits and record keeping, Contractor shall make all withdrawals from its bank accounts by check, ACH debit/credit or wire, regardless of whether the withdrawal is to provide funds to City, Contractor, or any permissible subcontractor of Contractor.

13.4.1.2 Allocation of Funds

With respect to payments received from each Customer, unless a Customer specifically directs a different allocation, funds shall be allocated first to outstanding charges for Solid Waste Collection, then to any related delinquency fees or other administrative charges, up to the amount of any outstanding balance. Any overpayment shall be credited to future Bills in the same sequence, or returned to Customers as appropriate.

SECTION 14. FAITHFUL PERFORMANCE

14.1 Sureties

14.1.1 Agreement Surety

On or before October 15, 2015, as security for Contractor's faithful performance of all obligations of this Agreement, Contractor shall provide a Surety mechanism (the "Agreement Surety") as more fully defined below in the amount of One Hundred Thousand Dollars

(\$100,000.00). The Agreement Surety may be comprised of either a performance bond or an irrevocable letter of credit, or a combination of both. If a letter of credit is utilized to satisfy the Agreement Surety requirement, it shall be drawn upon a financial institution with an office within one hundred (100) miles of City, and otherwise in a form acceptable to the City Attorney. The performance bond, if any, shall be issued by a duly authorized corporate Surety company authorized to do business in California, and in the form attached as Exhibit D. The cost of the Agreement Surety shall be the sole responsibility of Contractor. The Agreement Surety shall be released within thirty (30) days after both (i) the expiration of the Term of this Agreement; and (ii) Contractor's satisfactory performance of all obligations hereunder.

14.1.2 Forfeiture of Sureties

In the event Contractor shall for any reason become unable to, or fails in any way to, perform as required by this Agreement, City may declare a portion or all of the Agreement Surety, as may be necessary to recompense and make whole City, forfeited to City. Upon partial or full forfeiture of the Agreement Surety, Contractor shall restore the Agreement Surety to its original amount within thirty (30) days of City's notice to do so. Failure to restore the Agreement Surety to its full amount within thirty (30) days shall be a material breach of this Agreement.

14.1.3 Use of Sureties by City

Notwithstanding any provision hereof to the contrary, thirty (30) days following City providing Contractor with written notice of its failure to pay City any amount owing under this Agreement, the Agreement Surety may be utilized by City for purposes including, but not limited to: (1) payment of sums due under the terms of this Agreement which Contractor has failed to timely pay to City, including specifically liquidated damages; and (2) reimbursement of costs borne by City to correct violations of this Agreement not corrected by Contractor.

14.2 Replacement Letter of Credit

City may draw upon the entire letter of credit (if any) utilized to meet Contractor's obligations pertaining to the Agreement Surety, and convert it to a cash deposit, if Contractor fails to cause the letter of credit to be extended or replaced with another satisfactory letter of credit no later than sixty (60) days prior to its expiration.

SECTION 15. INSURANCE COVERAGE

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

15.1 Minimum Scope of Insurance Coverage

Minimum scope of insurance coverage shall be at least as broad as:

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

15.2 Minimum Limits of Insurance

Contractor shall maintain in force for the Term of this Agreement limits no less than:

15.2.1 Comprehensive General Liability

Five Million Dollars (\$5,000,000.00) limit aggregate and Five Million Dollars (\$5,000,000.00) limit per occurrence for bodily injury, personal injury and property damage. Such limits can be achieved through a combination of primary and excess liability policies.

15.2.2 Automobile Liability

Five Million Dollars (\$5,000,000.00) limit aggregate and Five Million Dollars (\$5,000,000.00) limit per accident for bodily injury and property damage. Such limits can be achieved through a combination of primary and excess liability policies.

15.2.3 Workers' Compensation and Employers Liability

Workers' Compensation limits as required by the Labor Code of the State of California and Employer's Liability limits of One Million Dollars (\$1,000,000.00) per accident.

15.3 Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared to and approved by City. If, in the reasonable opinion of City, Contractor does not have sufficient financial resources to protect City from exposure with respect to any deductibles or self-insured retentions, Contractor shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.

15.4 Other Insurance Provisions

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

15.4.1 General Liability and Automobile Liability Coverage

City and its elected and appointed officials, officers, employees, agents and volunteers shall be named as additional insureds in connection with liability arising out of activities performed by or on behalf of Contractor; Premises owned, leased or used by Contractor; and vehicles owned, leased, hired or borrowed by Contractor. The coverage shall contain no special limitations on the scope of protection afforded to City or its elected and appointed officials, officers, employees, agents and volunteers. Contractor's insurance coverage shall be the primary insurance for City and its elected and appointed officials, officers, employees, agents and volunteers in connection with the above enumerated categories. Any insurance or self-insurance maintained by City or its elected and appointed officials, officers, employees, agents and volunteers shall be in excess of Contractor's insurance and shall not contribute with it. Any failure to comply with the reporting provisions of the policies shall not affect coverage provided to City or its elected and appointed officials, officers, employees, agents and volunteers. Coverage shall state that Contractor's insurance shall apply separately to each insured against whom a claim is made or suit is brought, except with respect to the limits of the insurer's liability.

15.4.2 Workers' Compensation and Employer's Liability Coverage

The insurer shall agree to waive all rights of subrogation against City and its elected and appointed officials, officers, employees, agents and volunteers for losses arising from work performed by Contractor for City.

15.4.3 All Coverages

Each insurance policy required by this Section 15 shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to City.

15.5 Acceptability of Insurers

The insurance policies required by this Section 15 shall be issued by an insurance company or companies authorized to do business in the State of California and with a rating in the most recent edition of Best's Insurance Reports of size category VII or larger and a rating classification of A or better, unless otherwise approved by the City Manager.

15.6 Verification of Coverage

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

15.7 Loss or Reduction in Insurance

In the event that Contractor fails to retain or maintain insurance with the scope and amounts of coverage required hereunder, City shall have the right, but not the obligation to either terminate this Agreement, or obtain insurance coverage as required herein on behalf of Contractor and utilize funds from the Agreement Surety defined in Section 14 to pay the cost of providing such coverage.

SECTION 16. ASSIGNMENT, SUBLETTING, AND TRANSFER; REQUIREMENTS AND LIMITATIONS

16.1 General

Contractor shall not assign its rights, nor delegate, subcontract or otherwise transfer its obligations under this Agreement (collectively referred to as an "Assignment") to any other Person without the prior approval by the City Council. The City Council has unfettered discretion to approve or deny such an Assignment. Any such Assignment made without the approval by the City Council shall be void and the attempted Assignment shall constitute a material breach of this Agreement.

16.2 Assignment to be Broadly Interpreted

For purposes of this Section, the term "Assignment" shall be given the broadest possible interpretation, and shall include, but not be limited to: (i) a sale, exchange or other transfer of substantially all of Contractor's assets dedicated to service under this Agreement to a third party; (ii) a sale, exchange or other transfer of any membership interest of Contractor to a third party; (iii) any dissolution, reorganization, consolidation, merger, re-capitalization, stock issuance or re-issuance, voting trust, pooling agreement, escrow arrangement, liquidation or other transaction which results in a change of ownership or control of Contractor; (iv) any assignment by operation of law, including those resulting from mergers or acquisitions by or of Contractor or any of its Affiliates, insolvency or bankruptcy, making assignment for the benefit of creditors, writ of attachment for an execution being levied against this Agreement, appointment of a receiver taking possession of Contractor's property, or transfer occurring in the event of a probate proceeding; and (v) any combination of the foregoing (whether or not in related or contemporaneous transactions) which has the effect of any such transfer or change of ownership, or change of control of Contractor.

16.3 Nature of Agreement – Personal to Contractor

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

among others, in choosing Contractor to perform the services to be rendered by Contractor under this Agreement.

16.4 Procedure for Consideration of Assignment

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

(A) Contractor shall pay City its reasonable direct and indirect expenses, including administrative, investigative, consulting, and attorneys fees and costs necessary to investigate the suitability of any proposed assignee, and to review and finalize any documentation required as a condition for approving any such Assignment. An advance non-refundable payment in the amount of Fifty Thousand Dollars (\$50,000.00) shall be paid to City prior to City's consideration of any Assignment request. Contractor shall be responsible to pay all costs incurred by City in considering a request for Assignment, including those in excess of the aforesaid deposit amount, regardless of whether City consents to the Assignment.

(B) Contractor shall furnish City with audited financial statements of the proposed assignee's operations for the immediately preceding three (3) operating years.

(C) Contractor shall furnish City with satisfactory proof: (i) that the proposed assignee has at least ten (10) years of Solid Waste management experience on a scale equal to or exceeding the scale of operations conducted by Contractor under this 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 laws, including Environmental Laws and that the assignee has provided City with a complete list of such citations and censures; (iii) that the proposed assignee has at all times conducted its operations in an environmentally safe and conscientious fashion; (iv) that the proposed assignee conducts its Solid Waste management practices in accordance with sound Solid Waste management practices in full compliance with all federal, state and local laws regulating the Collection and disposal of Solid Waste including Hazardous Substances; and, (v) of any other information required by City to ensure the proposed assignee can fulfill the terms of this Agreement in a timely, safe and effective manner.

(D) The proposed assignee shall execute an agreement assuming all of Contractor's rights and liabilities under this Agreement.

(E) Contractor must also pay a transfer fee to City equal to one percent (1%) of the annual revenue for the most recent twelve (12) months prior to the effective date of the proposed change of ownership, multiplied by the exact number equal to the sum of the number of remaining years plus any fraction thereof.

**SECTION 17.
REVIEW OF SERVICES AND PERFORMANCE**

17.1 Performance Hearing

(A) Commencing in or about July 2016, and on a biennial basis thereafter, City may hold a hearing to review Contractor's Solid Waste Collection efforts, source reduction, processing and other diversion services and overall performance under this Agreement (the "Solid Waste Services and Performance Review Hearing"). The purpose of the Solid Waste Services and Performance Review Hearing is to provide for a discussion and review of technological, economic, and regulatory changes in Collection, source reduction, recycling, processing and disposal to achieve a continuing, advanced Solid Waste Collection, source reduction and recycling and disposal system; and to ensure services are being provided by Contractor with adequate quality, effectiveness and economy and in full compliance with the terms of this Agreement. Topics for discussion and review at the Solid Waste Services and Performance Review Hearing shall include, but shall not be limited to, services provided, feasibility of providing new services, application of new technologies, Customer complaints, amendments to this Agreement, developments in the law, new initiatives for meeting or exceeding the Act's goals, regulatory constraints and Contractor performance. City and Contractor may each select additional topics for discussion at any Solid Waste Services and Performance Review Hearing.

(B) In addition to the Solid Waste Services and Performance Review Hearings City may hold in accordance with the immediately preceding paragraph, if the number of Customer complaints regarding Contractor's Solid Waste Collection are deemed by City to be excessive, City may, at any time (subject to the paragraph immediately below), hold a Solid Waste Services and Performance Review Hearing.

(C) City shall notify Contractor of its intent to hold a Solid Waste Services and Performance Review Hearing at least ninety (90) days in advance thereof. The notice will indicate whether the hearing will occur before City staff, the City Council, or such other body as City may designate in the notice. Forty-five (45) days after receiving notice from City of a Solid Waste Services and Performance Review Hearing, Contractor shall submit a report to City which may contain such information as it wished to have considered and shall contain the following:

(1) Current diversion rates and a report on Contractor's outreach activities for the past year.

(2) Recommended changes and/or new services to improve City's ability to meet the goals of the Act and AB 341 and to contain costs and minimize impacts on rates.

(3) Any specific plans for provision of changed or new services by Contractor.

(D) The reports required by this Agreement regarding Customer complaints shall be used as one (1) basis for review of Contractor's performance, and Contractor may submit other relevant performance information and reports for consideration at the Solid Waste Services and Performance Review Hearing. In addition to the above, City may request Contractor to submit any other specific information relating to its performance for consideration at the Solid Waste Services and Performance Review Hearing, and any Customer may submit comments or complaints during or before the Hearing, either orally or in writing. Contractor shall be present at and participate in the Solid Waste Services and Performance Review Hearing.

17.2 Performance Satisfaction Survey

If requested by City, Contractor will create and conduct a survey at Contractor's expense in preparation for any Solid Waste Services and Performance Review Hearing held pursuant to Section 17.1. City shall notify Contractor of its desire for such a survey at least ninety (90) days in advance of the Solid Waste Services and Performance Review Hearing. The purpose of the survey is to determine Customer satisfaction with current Collection services and Customer service provided by Contractor. The survey will be distributed to a minimum of ten percent (10%) of the Customers, selected at random. Contractor shall obtain City's approval of the survey's content, format, and mailing list prior to its distribution. City may require that Contractor have Customer responses to the survey returned directly to City. The survey results shall be made available to City thirty (30) days prior to the Solid Waste Services and Performance Review Hearing.

SECTION 18. CITY'S REMEDIES; DEFAULT AND TERMINATION

18.1 Notice of Default

If the City Manager determines that Contractor has defaulted in the performance of any obligation hereunder, or that Contractor's performance pursuant to this Agreement with respect to such matters has not been in conformity with reasonable industry standards which are obtained in similar cities in Southern California, the provisions of this Agreement, the requirements of the Municipal Code, the requirements of CalRecycle, including, but not limited to, requirements for source reduction and recycling or any other applicable federal, state, or local law or regulation, including but not limited to the laws governing transfer, storage, or disposal of special wastes, or hazardous wastes, the City Manager may provide written notice to Contractor of such default. The City Manager may, in such written notice, set a reasonable time within which correction of such default shall be made. Unless a longer or shorter time is otherwise specified by the City

Manager, a reasonable time for correction shall be thirty (30) days from the date such written notice is given.

18.2 Failure to Cure

If Contractor fails to correct, to the satisfaction of the City Manager, all deficiencies contained in the written notice thereof within the specified time, or if it is not reasonably possible to correct such deficiencies within the specified time, Contractor fails to commence to correct or remedy such deficiencies within the specified time and diligently effect such correction or remedy thereafter, the City Manager may refer the matter to the City Council for review, or review the matter him- or herself.

18.3 Review by City Manager

If the City Manager reviews the matter and determines that Contractor has failed to properly or adequately cure any default set forth above, the City Manager, in the exercise of his or her discretion, may terminate this Agreement, or take such other action as he or she deems appropriate to pursue any remedy available to City. A decision or order of the City Manager shall be final and binding on Contractor unless Contractor files a "Notice of Appeal" with the City Clerk within five (5) Working Days of the date the notice of the City Manager's decision is given. The City Manager shall schedule any appeal for consideration by the City Council at the earliest feasible City Council meeting following the date a Notice of Appeal is given to City.

18.4 City Council Review

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

18.5 Performance during Reviews

Contractor's performance under this Agreement is not excused during any period of time when its performance is under review as set forth above, including at any time prior to a final decision as to whether such performance is deficient.

18.6 Termination without Right to Cure

The above right of termination as a result of Contractor's failure to timely cure any deficiency is in addition to City's right to terminate this Agreement without affording Contractor an opportunity to cure in circumstances where Contractor is determined by City to have materially breached this Agreement. City shall thus be afforded the right to terminate this Agreement without affording Contractor the right to cure in the event of any action, inaction or circumstance which is a legally defined material breach, or is defined herein as a material breach,

including under any of the following circumstances, which are hereby specifically defined as material breaches:

- (A) If Contractor practices, or attempts to practice, any fraud upon City;
- (B) If Contractor becomes insolvent, unable, or unwilling to pay its debts, or upon listing of an order for relief in favor of Contractor in a bankruptcy proceeding;
- (C) If Contractor willfully violates any orders or rulings of any regulatory body having jurisdiction over Contractor relative to this Agreement. So long as City's rights are not prejudiced during the pendency of any challenge to such orders or rulings by Contractor, Contractor may contest any such orders or rulings by appropriate proceedings conducted in good faith, in which case no material breach of this Agreement shall be deemed to have occurred until a final ruling has been rendered;
- (D) If Contractor ceases to provide Solid Waste Handling Services, including Collection of Solid Waste and/or Recyclable Material, as required under this Agreement over all or any portion of the Franchise Area for a period of seven (7) days or more, for any reason not specified as a force majeure event hereunder;
- (E) If Contractor fails to materially comply with any insurance or indemnification requirement set forth in this Agreement;
- (F) If City is required to pay any fine or penalty, which is not paid on its behalf by Contractor or which Contractor fails, refuses, neglects or is unable to pay or indemnify City against, relating to any diversion or other requirement of the Act and/or AB 341;
- (G) If Contractor, Contractor's shareholders, Contractor's directors, or any senior management level employee of Contractor (defined for purposes of this provision as any representative of Contractor who regularly is in communication with or regularly has contact with any member of the City Council or City Manager, or any of Contractor's employees who communicate with any City Department Head or City employee with decision making authority on matters related to the performance of the Agreement) is convicted of a Criminal Matter (as defined herein). For purposes of this Section, the term "Criminal Matter" refers to any felony or misdemeanor offense having any relationship to either Solid Waste Handling Services or public corruption (including, without limitation, bribery, conflict of interest related allegations, vote selling, or any similar type charges); or
- (H) If Contractor fails to meet the Recycling Diversion Requirement in Section 8.6.4 for any calendar year under this Agreement.

18.7 Liquidated Damages

18.7.1 General

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

18.7.2 Service Performance Standards; Liquidated Damages for Failure to Meet Standards

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

Contractor
Initial Here

PR

City
Initial Here

MC

18.7.3 Calculations for Liquidated Damages

Contractor agrees to pay (as liquidated damages and not as a penalty) the amounts set forth below for each type of action warranting such damages:

18.7.3.1 Collection Reliability

(A) For each failure to commence service to a new Customer account within seven (7) days after order, which exceed five (5) such failures annually: \$150.00.

(B) For each failure, which exceeds ten (10) such failures annually, to Collect Solid Waste from any established Customer on the scheduled Collection day and not Collected within the period described in this Agreement: \$150.00.

(C) For each failure to Collect Solid Waste, which has been properly set out for Collection, from the same Customer on two (2) consecutive scheduled pickup days: \$150.00.

18.7.3.2 Collection Quality

(A) For each occurrence of failure to properly return empty Containers to avoid pedestrian or vehicular traffic impediments or to place Containers upright with lids secured which exceeds five (5) such occurrences annually: \$150.00.

(B) For each occurrence of excessive noise or discourteous behavior which exceeds five (5) such occurrences annually: \$250.00.

(C) For each occurrence of Collecting Solid Waste during unauthorized hours which exceeds five (5) such occurrences annually: \$250.00.

(D) For each occurrence of damage to private property in an amount in excess of \$1,000.00: \$250.00.

(E) For each failure to clean up Solid Waste spilled from Containers, excepting amounts that are so nominal in nature that they would not reasonably be expected to be noticed by the driver of a Collection Vehicle, within ninety (90) minutes that exceeds five (5) such failures annually: \$150.00.

18.7.3.3 Customer Responsiveness

(A) For each failure to initially respond to a Customer complaint within one (1) Working Day, and for each additional day in which the complaint is not addressed: \$250.00.

(B) For each failure to process Customer complaints to City as required herein, which exceeds five (5) such occurrences annually: \$250.00.

(C) For each failure to remove graffiti from Containers or to replace with Containers bearing no graffiti, within twenty-four (24) hours (Sundays and Holidays excepted) of a request from City: \$150.00.

18.7.3.4 Timeliness of Submissions to City

(A) 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 liquidated damage amount shall be:

- (1) Monthly Reports: \$100.00 per day.
- (2) Quarterly Reports: \$250.00 per day.
- (3) Annual Reports: \$350.00 per day.

18.7.3.5 Cooperation during Transition with Subsequent Solid Waste Enterprise

(A) For each day routing information, including billing information and other operating records needed to service premises, is requested by City or any subsequent solid waste enterprise in accordance with Section 28 and is received after City-established due dates, both for preparation of a request for proposals and for any subsequent solid waste enterprise's implementation of service: \$1,000.00 per day.

(B) For each day delivery of keys, security codes, remote controls used to access garages, gates and bin enclosures, or other means of access to Solid Waste Containers is delayed beyond one (1) day prior to new solid waste enterprise servicing customers: \$1,000.00 per day.

(C) For delay in not meeting the requirements from Section 28 in a timely manner, in addition to the daily liquidated damages for breach under Sections 18.7.3.5(A)-(B) above, a one-time charge of \$35,000.00.

18.7.3.6 Minimum Hauler Recycling Requirements

For each calendar year, beginning in 2016, in which Contractor fails to meet the guaranteed Recycling Diversion Requirement set forth in Section 8.6.4: \$40.00 for each ton below the tonnage level necessary to meet the Recycling Diversion Requirement.

18.7.4 Process for Assessment of Liquidated Damages

(A) City may determine the occurrence of events giving rise to liquidated damages through the observation of its own employees or representatives or through an investigation of Customer complaints. It is the desire of the Parties to work together to avoid the imposition of liquidated damages and accordingly City will endeavor to timely communicate to Contractor any information that it receives which might give rise the imposition of liquidated damages in order to facilitate Contractor's ability to correct any deficiency, or prevent the recurrence of any conduct for which liquidated damages might eventually be imposed.

(B) Prior to assessing liquidated damages, City shall give Contractor notice of its intention to do so. The notice will include a brief description of the incident(s)/non-performance. Contractor may review (and make copies at its own expense) all information in the possession of City relating to incident(s)/non-performance. Contractor may, within ten (10) days after receiving the notice, request a meeting with the City Manager. Contractor may present evidence in writing and through testimony of its employees and others relevant to the incident(s)/non-performance. The City Manager will provide Contractor with a written explanation of his or her determination on each incident(s)/non-performance prior to authorizing the assessment of liquidated damages. The decision of the City Manager shall be final.

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

18.7.5 Timing of Payment

Contractor shall pay any liquidated damages assessed by City within ten (10) days after they are assessed. If they are not paid within the ten (10) day period, City may proceed against any security required by this Agreement to obtain payment, and/or find Contractor in default and exercise its right to terminate this Agreement as set forth herein.

SECTION 19. CONTRACTOR'S REMEDIES; ADMINISTRATIVE HEARING

19.1 Administrative Hearing

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

19.2 Other Remedies; Claims

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

19.3 Actions for Damages

As a prerequisite to the filing and maintenance of any action for damages by Contractor against City arising out of this Agreement, Contractor shall present a claim to City, as required by Government Code Section 910 et seq., within thirty (30) days of the date of the occurrence giving rise to the claim for damages.

SECTION 20. CITY'S ADDITIONAL REMEDIES

In addition to any other remedies set, forth herein, City shall be entitled to any or all of the following rights and remedies in the event of a breach of this Agreement by Contractor:

(A) The right to use Contractor's equipment for the purpose of Collecting, transporting, and/or disposing of Solid Waste, including Recyclable Material, for a period not to exceed six (6) months. In the case of equipment not owned by Contractor, Contractor shall assign to City, to the extent Contractor is permitted to do so under the instruments pursuant to which Contractor possesses such equipment, the right to use and possess the equipment. If City exercises its rights under this Section, City shall pay to Contractor the reasonable rental value of the equipment for the period of City's possession thereof (although payment may, if appropriate, occur in the form of a setoff against damages otherwise owed by Contractor pursuant to the terms hereof);

(B) The right to license others to perform the services otherwise to be performed by Contractor hereunder, or to perform such services itself; and

(C) The right to obtain damages and/or injunctive relief. Both Parties recognize and agree that in the event of a breach of this Agreement by Contractor, City will suffer irreparable injury and incalculable damages sufficient to support injunctive relief, to specifically enforce the provisions of this Agreement and to enjoin the breach hereof.

SECTION 21. RIGHTS OF CITY TO PERFORM DURING EMERGENCY

21.1 Provision of Service

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

21.2 Possession of Equipment

Contractor agrees that in the event of circumstances described in Section 21.1 above, City may take temporary possession of and use all of such equipment and facilities without paying Contractor any rental or other charge. Upon Contractor giving City notice that it is able to resume its normal responsibilities under this Agreement, City shall relinquish possession of all of the above mentioned property to Contractor.

21.3 Exclusions from Right to Possession of Equipment without Compensation

Specifically excluded from the circumstances in which City may possess and utilize Contractor's equipment without compensation are circumstances in which Contractor fails or refuses to provide Solid Waste Handling Services hereunder for any reason which is not a force majeure event as defined herein. In such circumstances City's right to utilize and possess Contractor's equipment shall be subject to the provisions of Section 20.

SECTION 22. PRIVACY

Contractor shall strictly observe and protect the privacy rights of Customers. Information identifying individual Customers or the composition or contents of a Customer's Solid Waste stream, or any of the billing information pertaining to any Customers, shall not be revealed to any person, governmental unit, private agency, or company, unless upon the authority of a court of law, by statute, ordinance, or regulation of a governmental agency having jurisdiction, or upon valid authorization of the Customer. This provision shall not be construed to preclude Contractor from preparing, participating in, or assisting in the preparation of waste characterization studies or waste audits which may be required by the Act or this Agreement. Contractor shall not market mailing lists with the names and addresses of Customers, nor shall Contractor distribute such mailing lists to anyone other than to Contractor's employees and City. The rights afforded Customers pursuant to this Section shall be in addition to any other privacy right afforded Customers pursuant to federal or state law.

SECTION 23. REPORTS AND ADVERSE INFORMATION

The Parties acknowledge that City will require reporting at various intervals by which information important to City can be compiled and analyzed. Throughout the Term, the Parties agree to work together to address City's needs with respect to the information to be contained in reports prepared by Contractor. The following is intended as a starting point in order to have established an objective baseline for reporting, but the frequency and content of the reports detailed below may be changed by agreement of the Parties, provided any such change is approved by the City Manager in writing. Monthly reports shall be submitted within twenty (20) calendar days after the end of the report month. Quarterly reports shall be submitted within twenty (20) calendar days after the end of the calendar quarter.

23.1 Monthly Reports

At a minimum, Contractor shall report the following to City on a monthly basis: Solid Waste Collected by Contractor for each month, sorted by type of Solid Waste in tons broken down at a level acceptable to City (which at a minimum shall include: refuse, Green Waste, E-waste and universal waste item counts, types of recyclables including PET, HDPE, mixed plastics, aluminum, cardboard, mixed paper, sand, and concrete), as well as by Customer type (i.e., single family, multi-family, commercial, rolloff, curbside, etc.); the facilities where all Solid Waste Collected was processed or disposed; warning notices issued for contaminated Recyclable Materials, and Green Waste Containers; and a narrative summary of problems encountered (including scavenging) and actions taken with recommendations for City, as appropriate.

23.2 Quarterly Reports

At a minimum, Contractor shall report the following to City on a quarterly basis: the information required in the monthly reports; the complaint summary for the quarter summarized by nature of complaints; copies of promotional and public education materials sent during the quarter; description of Contractor outreach activities conducted the previous quarter; and such other information or reports that City may reasonably request or require. Contractor shall, upon demand by City, provide true and accurate copies of landfill tipping receipts, records showing delivery at processing or reuse facilities, and similar such documents in order to enable City to verify Contractor's quarterly reports.

23.3 Annual Reports

Within thirty (30) days of the end of each calendar year during the Term of this Agreement and within thirty (30) days after the end of the Term, Contractor shall submit a written annual report, at its sole expense, in a form approved by City, which includes, but is not limited to, the following information:

(A) A summary of the previous year's activities including, but not limited to, services begun or discontinued during the reporting year, and the number of Customers broken down on a monthly basis;

(B) A summary of the total tons of Solid Waste Collected in City in the preceding year as well as a summary of the total tonnage diverted from the state's landfill systems during that time frame;

(C) Information and reports required by City to meet its reporting obligations imposed by the Act and the regulations implementing the Act, in a form and content approved by the City Manager;

(D) A revenue statement, certified by the chief financial officer of Contractor, including specifically a breakdown of sources of revenue included in Gross Receipts and the amount of revenue derived from each such source comprising Gross Receipts;

(E) A list of Contractor's officers and the members of its Board of Directors, or as applicable a list identifying all Persons holding a membership interest in Contractor;

(F) A list of stockholders or other equity investors holding five percent (5%) or more of the interest in Contractor; and

(G) A list of each service address, the total number of Carts at each such address, types of services being Billed to each service address and the serial numbers associated or other identifying information associated with each cart at such address as required by Section 8.1.10(F).

23.4 Format of Reports

Each monthly, quarterly, and annual report shall be submitted to City, addressed to the City Manager or his or her designee. Records related to performance of this Agreement shall be maintained by Contractor in forms and by methods that facilitate flexible use of data contained in them to structure reports, as needed. The format of each report shall be approved by City. Contractor agrees to submit all reports to e-mail addresses designated by City in an electronic format approved by City, compatible with City's software/computers at no additional charge.

23.5 Adverse Information

(A) Contractor shall provide City two (2) copies of all reports and other material adversely affecting this Agreement submitted by Contractor to the United States Environmental Protection Agency, CalRecycle, the California Regional Water Quality Control Board, and any other federal, state, regional, or local regulatory agency. Copies shall be submitted to City simultaneously with Contractor's filing of such matters with said agencies. Contractor's routine correspondence to said agencies need not be automatically submitted to City, but shall be made available to City upon written request.

(B) Contractor shall submit to City copies of all pleadings, applications, notifications, communications, and documents of any kind submitted by Contractor to, as well as copies of all decisions, correspondence, and actions by, any federal, state, and local courts, regulatory agencies, and other government bodies relating in any manner to Contractor's performance of services pursuant to this Agreement. To the degree authorized by law, any confidential data exempt from public disclosure shall be retained in confidence by City and its authorized agents and shall not be made available for public inspection.

(C) Contractor shall submit to City such other information or reports in such forms and at such times as City may reasonably request or require.

(D) All reports and records required under this or any other Section hereof shall be furnished at the sole expense of Contractor.

23.6 Failure to Report

The refusal of Contractor to file any of the reports required, or the inclusion of any materially false or misleading statement or representation made knowingly by Contractor in such report shall be deemed a material breach of the Agreement, and shall subject Contractor to all remedies, legal or equitable, which are available to City under this Agreement or otherwise.

SECTION 24. COMPENSATION

24.1 Contractor Rates

Contractor shall provide services to Customers pursuant to this Agreement at rates it sets, charges to, and collects from Customers, which rates shall not exceed those set forth in Exhibit A, which sets out the maximum rates that may be charged by Contractor, as such maximum rates may be adjusted from time to time pursuant to the terms hereof. The maximum rates set forth in Exhibit A are inclusive of all services to be provided, including transportation, disposal, and Container costs, and no other charges shall be imposed by Contractor for such services unless prior approval is received from the City Manager.

24.2 Resolution of Disputes Regarding Rate Adjustments

Any dispute regarding an adjustment to the maximum rates Contractor may charge, or the computation thereof, shall be decided by the City Manager. The rates in effect at the time such dispute is submitted to the City Manager shall remain in effect pending resolution of such dispute. The effective date of the adjusted maximum rate following the resolution of any such dispute, whether retroactive or prospective, shall be determined by the City Manager.

24.3 Biennial Consumer Price Index Adjustments

Commencing on July 1, 2017, the maximum rates as set forth in Exhibit A shall be adjusted, and such rates shall be adjusted thereafter every two (2) years on July 1st during the Term hereof (the "Adjustment Dates"), by multiplying each rate by a percentage change in the average Consumer Price Index ("CPI") for All Urban Consumers, CUURA421SA0, not seasonally adjusted, all items index (CPI-U) – Los Angeles County, Riverside County, Orange County for the twenty-four (24) month period ending the December immediately prior to the applicable Adjustment Date versus the index average for the previous twenty-four (24) months.

On or before May 15, 2017, and every second May 15th thereafter, Contractor shall submit to the City Manager all necessary information to justify the requested CPI adjustment. City will make an effort to verify information provided by Contractor, but ultimately Contractor bears the burden of ensuring the submitted information is correct and supported by all necessary documentation. Contractor agrees and acknowledges that City is entitled to rely, in good faith, on information submitted by Contractor, including mathematical calculations, CPI data, and other documentation, to justify Contractor's requested rate increase. In the event that there are errors in Contractor's requested rate increase request, including, but not limited to, an inaccurate rate adjustment request, inaccurate application of the rate increase formula described above, or usage of inaccurate data, Contractor acknowledges and agrees that City is entitled to seek

recovery of damages on behalf of the public or impose future rate reductions to compensate for the errors. Contractor also waives any arguments or defenses Contractor now has or may have in the future, including estoppel, waiver, or other similar equitable remedies, with respect to any action, claim, demand, proceeding or suit in law or equity of any and every kind and description brought by or on behalf of City or Customers due to errors in Contractor's requested rate increase.

24.4 Limitations to Biennial CPI Adjustments

Notwithstanding anything to the contrary in Section 24.3 above, the maximum biennial adjustment occurring pursuant to Section 24.3 shall be limited by the provisions set forth below:

24.4.1 Eight Percent (8%) Cap

Any maximum rate may not be increased in any biennial adjustment by more than eight percent (8%) without regard to any higher increase that may otherwise be justified by the formula set forth in Section 24.3. In the event an increase that may otherwise be justified by the formula set forth in Section 24.3 exceeds the eight percent (8%) cap, the un-applied percentage may be rolled forward and applied to maximum rate increases in subsequent biennial periods, to the extent, and provided that, no biennial increase in the maximum rates exceeds the eight percent (8%) cap.

24.4.2 Compliance with Agreement

No increase to the maximum rates shall occur if the City Manager determines that Contractor did not fully comply with all terms of this Agreement in the two (2) rate years preceding the increase, including without limitation, provisions hereof relating to reporting, diversion, and Customer service standards.

24.5 Discretionary Adjustments

Contractor may request an adjustment to the maximum rates set forth in Exhibit A at reasonable times other than as set forth in Section 24.3 for unusual changes in the cost of providing service under this Agreement. For each request for an adjustment to the maximum rates brought pursuant to this Section, Contractor shall prepare a schedule documenting the extraordinary costs. Such request shall be prepared in a form acceptable to City with support for assumptions made by Contractor in preparing the estimate. City shall review Contractor's request and, in the City Council's sole judgment and absolute, unfettered discretion, make the final determination as to whether an adjustment to the maximum rates will be made, and, if an adjustment is permitted, the appropriate amount of the adjustment. City may consider increases or decreases in Contractor's total revenues and total cost of services when reviewing an extraordinary rate adjustment request. Contractor may not request an extraordinary increase in the maximum rates as a result of (i) changes in fees or taxes such as Social Security, disability or income tax; (ii) changes in the market value of Recyclables or processing costs for Recyclables or Green Waste; (iii) inaccurate estimates by Contractor of its cost of operations; or (iv) costs of compliance with South Coast Air Quality Management District and Air Resource Board rules and standards for Collection Vehicles.

24.6 One-Time Commercial Sector Structural Rate Review

Contractor asserts that it based the rates for commercial service specified in Exhibit A on Contractor's estimate that annual revenues from Commercial Services ("Commercial Revenues") will meet or exceed One Million, Five Hundred, Sixty-Seven Thousand Dollars (\$1,567,000.00) (the "Projected Baseline"). For purposes of this Section 24.6, "Commercial Services" shall mean all of the services listed in Exhibit A under the captions "Commercial Services" and "Rolloff Box Services." Due to the fact that the commercial sector account data cannot be fully ascertained at the time of execution of this Agreement, the Parties agree that after all of the programs and services required by this Agreement for Commercial Premises are implemented (exclusive of the Organic Waste Service), an audit shall be performed to verify whether the actual Commercial Revenues meet or exceed the Projected Baseline. The audit shall be performed by an independent auditor selected by City. Contractor shall pay all costs relating to performance and review of the audit. If the audit determines that the projected annual Commercial Revenues do not achieve the Projected Baseline, Contractor may request a one-time increase in the maximum rates for commercial service set forth in Exhibit A, in an amount sufficient to achieve the Projected Baseline. In no event shall any such increase exceed four percent (4%). This process shall be completed in sufficient time to permit a July 1, 2016 rate adjustment, if needed.

24.7 Grants

From time to time, federal, state or local agencies including City may provide to Contractor grants to assist in financing qualified programs provided by Contractor in City (including, without limitation, grants for diversion programs and related equipment, alternative fuel vehicles and equipment, and Household Hazardous Waste Collection and Disposal). Contractor shall notify City upon receipt of any such grant funds that may be used to fund services provided pursuant to the terms of this Agreement. With the exception of grants already received by Contractor as of the Effective Date, and grants for Collection Vehicles, any funds received through grants for services in City are intended to benefit City and its residents and businesses, and in essence are held by Contractor in trust on behalf of City. Accordingly, Contractor agrees that the total amount of compensation it receives from Customers hereunder, may be reduced by the amount of any such grant, unless the grant is used to pay for services in City. The City Council shall determine whether the reduction in Contractor's compensation shall be: (1) passed through to Customers designated by City as a reduction to maximum rates; (2) as an offset to the next increase to maximum rates requested by Contractor; (3) paid to City for use as City directs; or (4) applied in any combination of (1) through (3).

SECTION 25.

IDENTIFICATION OF CONTRACTOR

Contractor has agreed to use the name "CR&R Environmental Services" to identify itself to the public as the specific organization that shall provide all services under this Agreement. Unless otherwise approved in writing by City, this name shall be used for all correspondence, Billing statements, directory listings, references, signs, and vehicle and Bin identification.

SECTION 26.
INDEMNIFICATION

26.1 General

(A) Without regard to any insurance coverage or requirements, Contractor hereby agrees to and shall indemnify and hold harmless City, its elected and appointed boards, commissions, officers, employees, and agents (collectively the "Indemnities") from and against any and all loss, liability, penalty, forfeiture, claim, demand, action, proceeding or suit in law or equity of any and every kind and description (including, but not limited to, injury to and death of any Person and damage to property, or for contribution or indemnity claimed by third parties) arising out of, resulting from, and/or in any way connected with this Agreement including: (1) the negligence or willful misconduct of Contractor, its officers, employees, agents, and/or subcontractors in performing services under this Agreement; (2) the failure of Contractor, its officers, employees, agents, and/or subcontractors to comply in all respects with the provisions of this Agreement, all Applicable Laws (including, without limitation, Environmental Laws), ordinances and regulations, and/or applicable permits and licenses; (3) the acts of Contractor, its officers, employees, agents, and/or subcontractors in performing services under this Agreement for which strict liability is imposed by law (including, without limitation, Environmental Laws); and (4) any challenge to the award of, or any provisions of this Agreement (including any claim that the application of any provision hereof violates any provision of the California Constitution). The foregoing indemnity and hold harmless provisions shall apply, regardless of whether such loss, liability, penalty, forfeiture, claim, demand, action, proceeding, suit, injury, death or damage is also caused in part by any of Indemnities' negligence, but shall not extend to matters resulting from Indemnities' sole negligence, or willful misconduct. Contractor further agrees to and shall, upon demand of City, at Contractor's sole cost and expense, defend City (with attorneys acceptable to City), its elected and appointed boards and commissions, officers, employees, and agents against any claims, actions, suits in law or equity or other proceedings, whether judicial, quasi-judicial or administrative in nature, arising or resulting from any of the aforementioned events, and to reimburse City for any and all costs and expenses City incurs in providing any such defense, either before, during or after the time Contractor elects to provide such defense, including any and all costs incurred in overseeing any defense to be provided herein by Contractor.

(B) Contractor, upon demand of City, made by and through the City Attorney, shall protect City and appear in and defend City and its elected officials, officers, employees and agents, in any claims or actions by third parties, whether judicial, administrative or otherwise, including, but not limited to disputes and litigation over the definitions of "Solid Waste" or "Recyclable Material," the scope of the rights granted herein, conflicts between the rights granted herein and rights asserted by other Persons, or the limits of City's authority with respect to the grant of licenses, or agreements, exclusive or otherwise, asserting rights under the Dormant Commerce Clause or any other federal or state laws to provide Collection services in City.

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

26.2 Hazardous Substances Indemnification

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

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

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

(B) Contractor's obligations pursuant to this Section shall apply, without limitation, to:

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

(2) any Claims based on or arising out of or alleged to be arising out of the ownership, use, lease, sale, design, construction, maintenance or operation by Contractor of any facility;

(3) any Claims based on or arising out of or alleged to be arising out of the marketing, sale, distribution, storage, transportation, disposal, processing or use of any materials recovered by Contractor; and

(4) any Claims based on or arising out of or alleged to be arising out of any breach of any express or implied warranty, representation or covenant arising out of or in connection with this Agreement.

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

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

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

SECTION 27.

CONTRACTOR'S BOOKS AND RECORDS; AUDITS

27.1 Maintenance and Inspection of Records

Contractor shall maintain all records relating to the services provided hereunder, including but not limited to Customer lists, billing records, accounts payable records, maps, compliance records required by or otherwise related to the Act, records reflecting the number of refuse, recycling and Green Waste routes and route hours by service category (such as residential, multi-family, commercial, rolloff, and special services), records demonstrating facilities, equipment and personnel used to perform services, records reflecting the number of refuse, recycling and Green Waste Containers in service by frequency of Collection for each customer group (such as single family, multi-family, commercial, rolloff); records reflecting the number of rolloff box pulls, and such other documents and materials which reasonably relate to Contractor's compliance with the provisions of this Agreement (the "Records"), for the full Term of this Agreement, and an additional period thereafter of not less than three (3) years, or any longer period required by law. City shall have the right, upon five (5) Working Days advance

notice, to inspect the Records. Such Records shall be made available to City at Contractor's regular place of business, but in no event outside the County of Los Angeles.

27.2 CERCLA Defense Records

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

27.3 Ongoing Compliance Review

City intends review Contractor's performance on an ongoing basis to ensure compliance with the terms and provisions of this Agreement, and it is City's intent that a designated portion of the Administrative Cost Reimbursement, as more fully described in Section 11.2, will be used to fund City's costs associated with ensuring Contractor's ongoing compliance. At a minimum, City intends to have internal staff or outside consultants annually review Contractor's performance to ensure ongoing compliance with the terms hereof, including, but not limited to, the payment of required fees, performance of the services stated herein, implementation of programs required under the Agreement, Contractor's maintenance and upkeep of records, and compliance with all Applicable Laws. Contractor shall provide any and all information reasonably requested by City in connection with its efforts to ensure compliance with the terms hereof, regardless of whether such information is specifically otherwise called out herein as an item that Contractor is required to maintain and provide to City.

27.4 Audits

27.4.1 Examination of Services

From time to time, anticipated to be at least once every other year, City may request Contractor to make available any or all of its records related to performance hereunder available to an independent auditor or examiner, to be selected by City, for auditing and examination purposes (a "Discretionary Audit"). The first Discretionary Audit shall be performed in 2017 and shall be based on Contractor's reports and records through calendar year 2016. The scope of the Discretionary Audit and auditor or examiner will be determined by City and the scope may include, but is not limited to, compliance with terms of this Agreement, Customer service levels and Billing, fee payments, Gross Receipts, tonnage, and verification of diversion rates. Except as otherwise provided herein, City shall bear the cost of any Discretionary Audit above the Contractor Audit Reimbursement (defined below).

Contractor shall reimburse City for the costs of a Discretionary Audit as follows (“Contractor Audit Reimbursement”): (1) Sixty Thousand Dollars (\$60,000.00) for the first Discretionary Audit, and (2) Forty Thousand Dollars (\$40,000.00) for each subsequent Discretionary Audit (adjusted biennially by the change in CPI as calculated under Section 24.3). If a Discretionary Audit reveals inaccuracies or inconsistencies in more than five percent (5%) of all Customer accounts, either with Contractor’s operations or billing systems, Contractor shall bear the entire cost of such Discretionary Audit, including any additional audit costs associated with, to the extent deemed necessary by City, expanding the scope of the Discretionary Audit.

27.4.2 Route Audit

Contractor shall complete an audit at its expense of its Collection routes for all Customers at Residential and Commercial Premises at such times as may be requested by City; provided, however, that while City may request that such an audit occur at any time, it may not request such audits at Contractor’s expense more than ten (10) times during the Term. The timing of such audits is at City’s discretion and may be required to be timed with the issuance of a request for proposals for a new agreement. The route audit, at minimum, shall consist of an independent physical observation by Person(s) other than the route driver or route supervisor of each Customer in City. The route audit shall include, as a minimum, the following information for each account:

- Route number;
- Truck number;
- Account name;
- Account number;
- Account service address;
- Service level per Billing system (quantity, size, frequency);
- Service level per routing system;
- Observed Containers (quantity, type and size);
- Serial number (or other coding if acceptable to the City Manager) identifying each Cart and its associated service address;
- Bin condition;
- Proper signage; and
- Graffiti.

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

- Identification of the routes;
- Truck numbers;
- Number of accounts, by route and in total;
- Number of Containers (broken down by type) per service address, per route and total number of Containers;

Types of exceptions observed;

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

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

SECTION 28. TRANSITION OBLIGATIONS

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

Contractor shall provide any new solid waste enterprise with all keys, security codes and remote controls used to access garages, gates and bin enclosures. Contractor shall be responsible for coordinating transfer immediately after its final collection activities, so as to not disrupt services, including coordinating with the new solid waste enterprise on the removal of Contractor's Containers and the delivery of the new solid waste enterprise's Containers.

Contractor shall provide City with detailed route sheets containing service names and addresses, Billing names and addresses, monthly rate and service levels (number and size of containers and pickup days) at least ninety (90) days prior to the transition date, provide an updated list two (2) weeks before the transition, and a final updated list with any changes the day before the transition. Contractor shall provide means of access to the new solid waste enterprise at least one (1) full Working Day prior to its first day of collection, and within sufficient time so as to not impede in any way the new solid waste enterprise from easily servicing all Containers.

SECTION 29. GENERAL PROVISIONS

29.1 Force Majeure

Contractor shall not be in default under this Agreement in the event that its ability to provide Solid Waste Handling Services or Temporary Services, in compliance with its obligation to do so hereunder, is temporarily interrupted or discontinued for any of the following reasons: riots, wars, sabotage, civil disturbances, insurrections, strikes or other labor disturbances lasting five (5) days or less, explosion, natural disasters such as floods, earthquakes, landslides, and fires, or "other catastrophic events" which are beyond the reasonable control of Contractor. The term "other catastrophic events" does not include: (i) the financial inability of Contractor to perform; (ii) failure of Contractor to obtain any necessary permits or licenses from other governmental agencies; (iii) the failure to obtain the right, or the loss of the right, to use the facilities of any public utility where such failure is due in substantial part to the acts or omissions of Contractor; or (iv) strikes or other labor disturbances lasting longer than five (5) days. If Contractor claims excuse from performance pursuant to this Section 29.1, it shall, within two (2) Working Days after notice of such cause, give City notice of the facts constituting such cause and asserting its claim to excuse under this Section.

29.2 Independent Contractor

Contractor is an independent contractor and not an officer, agent, servant, or employee of City. Contractor is solely responsible for the acts and omissions of its officers, agents, employees, and subcontractors, if any. Nothing in this Agreement shall be construed as creating a partnership or joint venture between City and Contractor. Neither Contractor nor its officers, employees, agents, or subcontractors shall obtain any rights to retirement or other benefits which accrue to City employees.

29.3 Pavement Damage

Contractor shall be responsible for the cost of repair of any extraordinary damage to the public streets located within the City Limits resulting from providing the services required hereunder.

29.4 Property Damage

Any physical damage caused by the negligent or willful acts or omissions of employees, agents, or subcontractors of Contractor to private or public property shall be promptly repaired or replaced at Contractor's expense.

29.5 Right of Entry

Contractor shall not have the right, until Contractor receives permission from the property owner, to enter or drive on any private street, court, place, easement, or other private property for the purpose of providing Temporary Services and/or Solid Waste Handling Services pursuant to this Agreement.

29.6 Law to Govern; Venue

The laws of the State of California shall govern this Agreement. In the event of litigation between the Parties, venue in state trial courts shall lie exclusively in the County of Los Angeles.

29.7 Amendment

This Agreement is intended to carry out City's obligations to comply with the provisions of the Act, including AB 341, as implemented by regulations of CalRecycle, as they from time to time may be amended. In the event that, after the Effective Date of this Agreement, the Act is amended, or other state or federal laws or regulations are enacted and prevent or preclude compliance with one or more provisions of this Agreement, such provisions shall be modified or suspended as may be necessary to comply with such state or federal laws or regulations. Except as otherwise expressly stated herein, no other amendment of this Agreement shall be valid unless it is in writing and duly executed by the Parties.

29.8 Notices

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

To City: City of Artesia
 Attn: William Rawlings, City Manager
 18747 Clarkdale Avenue
 Artesia, CA 90701

To Contractor: CR&R Environmental Services
 Attn: Dean Ruffridge, Senior Vice President
 P. O. Box 125
 Stanton, CA 90680

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

29.9 Savings Clause

If any non-material provision of this Agreement is for any reason held to be invalid or unenforceable, the invalidity or unenforceability of such provision shall not affect the validity and enforceability of any of the remaining provisions of this Agreement.

29.10 Exhibits Incorporated

Exhibits A through D are attached to and incorporated in this Agreement by reference.

29.11 Joint Drafting

This Agreement shall be interpreted as if it were drafted jointly by the Parties to the Agreement.

29.12 Attorneys' Fees and Litigation Costs

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

29.13 City's Authorized Agent

Notwithstanding anything contained herein to the contrary, and excepting amendments hereto and such actions set forth herein specifically calling for City Council action or approval, the City Manager is designated as City's authorized agent to take any action with regard to any matter, or enforce any right, set forth herein requiring action by City.

29.14 Integrated Agreement

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

29.15 Section Headings

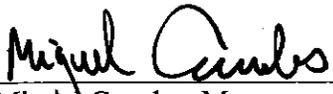
The section headings in this Agreement are for convenience of reference only and are not intended to be used in the construction of this Agreement nor to alter or affect any of its provisions.

29.16 Compliance with Law

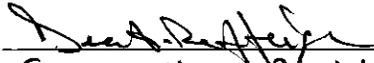
In providing the services required under this Agreement, Contractor shall at all times, at its sole cost, comply with all Applicable Laws, including the laws and regulations of the United States, the State of California, the provisions of the Municipal Code, and any federal, state, regional or local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

“City”
CITY OF ARTESIA

“Contractor”
CR&R Incorporated



Miguel Canales, Mayor

By: 
Its: Senior Vice President

ATTEST:

By: 

Gloria Considine, City Clerk

APPROVED AS TO FORM:

By: 

Kevin G. Ennis, City Attorney

EXHIBIT A

MAXIMUM RATE SCHEDULE FOR SOLID WASTE HANDLING SERVICES

Residential Cart Service

Service Category	Rate Per Month - Carts of any Size
Standard Rate Per Dwelling Unit	22.71
Mobile Home Cart Service	20.35
Additional Refuse Cart	2.00
Additional Recycling Cart (after 2nd free)	12.00
Additional Green Waste Cart (after 2nd free)	16.00
Walk-Out Service for Disabled Customers	No charge
Walk-Out Service for Other Customers	40.00
For Each Bulky Item in excess of four (4) per pickup and for each Bulky Item pickup in excess of four (4) pickups per year	25.00 per item

Commercial Services

Monthly Bin Rates							
	Pickups per week						
	1	2	3	4	5	6	7
<u>Refuse</u>							
96-gallon cart	59.00	99.00	139.00	179.00	219.00	259.00	310.00
1 yard bin	109.66	172.38	236.03	297.86	360.52	423.19	525.00
1.5 yard bin	114.93	182.82	250.30	318.78	386.64	454.46	555.00
2 yard bin	120.20	193.25	264.52	339.73	412.75	485.68	585.00
3 yard bin	167.10	245.60	323.83	402.36	480.66	559.16	660.00
3 yard w/compactor	205.00	305.00	405.00	505.00	605.00	705.00	855.00
4 yard bin	195.66	287.56	379.17	471.14	562.81	654.71	755.00
4 yard w/compactor	255.00	355.00	455.00	555.00	655.00	755.00	895.00
6 yard bin	291.70	454.05	598.70	738.53	888.63	1033.74	1200.00
<u>City-Wide</u>							
Locking Bin Service	15.00	30.00	45.00	60.00	75.00	90.00	105.00

EXHIBIT A

**MAXIMUM RATE SCHEDULE FOR SOLID WASTE HANDLING SERVICES
(CONTINUED)**

Commercial Services (continued)

Service	Rate
65-gallon Organic Waste Cart	\$35.00
Green Waste — 96-gallon cart (multi-family dwellings receiving bin service) rate includes collection frequency of once per week	\$35.00/month
Extra Refuse Bin Pickups (standard and compactor)	
1 through 3 cubic yard bin	\$55.00/pickup
4 cubic yard	\$65.00/pickup
6 cubic yard	\$75.00/pickup
Temporary 3-Yard Bin Service (delivery, dump, seven day rental)	\$129.44/dump
Temporary Bin Rental per day beyond 7 without a pull	\$5.00/day
Extra Bin Cleanings or Exchange beyond one per year (requested by City or Customer)	\$65.00/cleaning or exchange
Restart Fee	\$35.00
Bulky Items	\$25.00/item
Scout Service	\$50.00 per frequency
Push Out Service in excess of 50 feet	\$75.00 per frequency

Roll-Off Box Services

Service	Rate
Pull Rate (includes 6 tons processing/disposal, delivery, and seven-day rental)	\$596.71/month
- Standard Rolloff Box	\$596.71
- Low Boy Rolloff Box	\$596.71
- Compactor/all sizes-(includes up to 9 tons)	\$654.31
Per Ton Over 9 Tons	\$53.46/ton
Rolloff Box Rental per day beyond 7 without a pull	\$10.00/day
Rolloff Box Trip Charge (dry run, relocation)	\$75.00/trip

EXHIBIT B

CONTAINER/BIN SPECIFICATIONS

- Contractor's Container specifications shall be consistent with the specifications submitted by Contractor to City. All Containers utilized by Contractor shall meet the standards of the industry and, shall perform to the reasonable satisfaction of the City Manager in order to be utilized in City. Container sizes specified within this Agreement may vary by manufacturer type and specifications up to ten percent (10%) more or less in volume than that identified.
- Each Refuse, Green Waste and Recycling Cart utilized by Contractor shall be labeled in English and Spanish and with graphics so as to: (1) explain/depict the items for which it is designated to Collect, and (2) identify the name of Contractor and Contractor's phone number for service related issues, including complaints. In addition, each such Cart shall include information, in a format acceptable to City (such as hot stamping or stickers), regarding Contractor's Bulky Item service, and a phone number that Customers can call to access such service.
- The body of all Carts shall be a uniform granite green color. Refuse Carts shall have a lid that is a uniform black color, Recycling Carts shall have a lid that is a uniform blue color, and Green Waste Carts shall have a lid that is a uniform green color.
- Any Cart distributed by Contractor in City after the Effective Date shall have at least a ten (10) year warranty commencing as of the date the Cart is delivered to each Customer, and must perform to the satisfaction of the City Manager. All Carts delivered to Customers after the Effective Date shall be newly manufactured and have never been previously used for the Collection of Solid Waste.
- All Carts distributed pursuant to this Agreement shall have an identifying serial number hot stamped into the Cart body, or otherwise have an individual identification demarcation affixed to the Cart in a manner acceptable to the City Manager. Contractor shall keep current, and provide to City at the times set forth in this Agreement, a list of each address to which a Cart has been distributed and the serial number (or other acceptable identification) of all Carts at each such address.
- Upon request of any Customer, Contractor shall provide Bins with lids that close securely and which are capable of being locked at rates that do not exceed those set forth in Exhibit A.

EXHIBIT C

FACILITIES TO BE USED FOR DISPOSAL AND PROCESSING

Contractor has selected and shall use the following facilities for the processing, transfer, and/or disposal of all material collected under this Agreement, and shall obtain written advance approval from the City Manager prior to using alternative sites, except as otherwise provided in Section 8.1.3.

CR&R Intermediate Processing Center (Western Avenue MRF)

11291 Western Avenue
Stanton, CA

Source Separated Recyclables

CR Transfer – Stanton Material Recovery Facility (CR&R Owned Facility)

11232 Knott Avenue
Stanton, CA

Mixed Solid Waste Processing, Food Waste Transfer, Green Waste Processing, C&D Processing

Orange County Waste and Recycling Landfill System:

1. Frank R. Bowerman Landfill
11002 Bee Canyon Access Road
Irvine, CA 92602
2. Olinda Landfill
1942 North Valencia Avenue
Brea, CA 92823
3. Prima Deshecha Landfill
32250 La Pata Avenue
San Juan Capistrano, CA 92675

Savage Canyon Landfill

Whittier Utility Authority
13230 Penn Street
Whittier, CA 90602

EXHIBIT D

PERFORMANCE BOND

KNOW ALL PERSONS BY THESE PRESENTS that:

_____ a California Corporation, as PRINCIPAL, and _____, a Corporation organized and doing business by virtue of the laws of the State of California, and authorized for the purpose of making, guaranteeing, or becoming sole surety upon bonds or undertakings required or authorized by the laws of the State of California, as SURETY, are held and firmly bound to the City of Artesia, a municipal corporation of the State of California, hereinafter called "OBLIGEE", in the penal sum of One Hundred Thousand and No/100 Dollars (\$100,000.00) lawful money of the United States, for the payment of which, well and truly to be made, we and each of us hereby bind ourselves, and our and each of our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

WHEREAS, the above bounden PRINCIPAL has entered into a contract on _____, 2015, entitled "AGREEMENT BETWEEN CITY OF ARTESIA AND _____ FOR SOLID WASTE HANDLING SERVICES" with the OBLIGEE, to do and perform the following work, to wit: Collect, Transport, Process, and Dispose of Solid Waste, Recyclable Materials, and Organic Materials generated within the City of Artesia, in accordance with the contract.

THE CONDITION OF THIS OBLIGATION IS SUCH THAT, if the hereby bounded PRINCIPAL shall in all things stand to and abide by, and well and truly keep and perform the covenants, conditions and provisions in the contract and any alteration thereof made as therein provided, on the PRINCIPAL's part, to be kept and performed at the time and in the manner therein specified, and in all respects according to their true intent and meaning, and shall indemnify and save harmless the OBLIGEE, its officers, agents and employees, as therein stipulated, then this obligation shall become null and void; otherwise, it shall be and remain in full force and effect.

As a part of the obligation secured hereby and in addition to the face amount specified therefor, there shall be included costs and reasonable expenses and fees, including reasonable attorneys' fees, incurred by OBLIGEE in successfully enforcing such obligation, all to be taxed as costs and included in any judgment rendered. SURETY hereby waives any statute of limitations as it applies to an action on this Bond.

Surety hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the contract or of the work to be performed thereunder or the specifications accompanying the same shall in anywise affect its obligations under this Bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the contract or to the work or to the specifications. SURETY hereby waives the provisions of California Civil Code Sections 2845 and 2849. The City of Artesia is the principal beneficiary of this Bond and has all rights of a party hereto.

IN WITNESS WHEREOF, two (2) identical counterparts of this instrument, each of which shall for all purposes be deemed an original hereof, have been duly executed by PRINCIPAL and

SURETY, on the date set forth below, the name of each corporate party being hereto affixed and these presents duly signed by its undersigned representative(s) pursuant to authority of its governing body.

Dated: _____

“PRINCIPAL”

“SURETY”

By: _____
Its

By: _____
Its

By: _____
Its

By: _____
Its

(Seal)

(Seal)

Note: This Bond must be executed in duplicate and dated, all signatures must be notarized, and evidence of the authority of any person signing as attorney-in-fact must be attached. DATE OF BOND MUST NOT BE BEFORE DATE OF CONTRACT. Surety companies executing Bonds must appear on the Treasury Department's most current list (Circular 570 as amended) and be authorized to transact business in the State where the project is located.