

## AGREEMENT

This Agreement ("Agreement") is entered into to be effective as of the 1<sup>st</sup> day of July, 2018 by and between the Costa Mesa Sanitary District, a sanitary district ("DISTRICT"), and CR&R Incorporated, a California corporation ("HAULER") (collectively, the "Parties") to provide residential Solid Waste collection within District limits.

### Recitals

- A. The District is a California Sanitary District organized and existing under the authority of Health and Safety Code Section 6400 et seq.;
- B. The Legislature of the State of California, by enactment of the California Integrated Waste Management Act of 1989 ("AB 939") and subsequent modifications thereto, established a Solid Waste management process that requires the District to implement source reduction, reuse and recycling as integrated waste management practices.
- C. District and Hauler are mindful of the provisions of the laws governing the safe collection, transport, recycling, and disposal of Solid Waste, including AB 939, the Resource Conservation and Recovery Act ("RCRA"), and the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"). District and Contractor desire to leave no doubts as to their respective roles, and to memorialize their Agreement.
- D. District and Hauler previously entered into an Agreement that contained a six-year "evergreen" clause that renewed annually to add a year so that there would always be a six-year term unless terminated. The parties intend, by entering into this Agreement, to no longer provide an evergreen clause but to provide a ten-year term with options, as provided herein.

**NOW, THEREFORE,** DISTRICT and HAULER agree as follows:

## ARTICLE 1 DEFINITIONS

Whenever any term used in this Agreement has been defined by the California Public Resources Code, the definition of such term set forth therein shall apply unless the term is otherwise defined in this Agreement or in the District's Operations Code.

### 1.1 Green Waste

Green Waste shall be defined as Solid Waste resulting from maintenance or removal of vegetation including, but not limited to: brush, grass clippings, branches, leaves, flowers, weeds, shrubs, and small trees.

## 1.2 Organic Waste

Organic Waste shall be defined as Solid Waste that comes from plants or animals that is biodegradable including, but not limited to: fruits, vegetables, meat, poultry, seafood, eggshells, rice, beans, cheese, bones, frozen/refrigerated food, tea bags, and coffee grounds. Subject to the Anaerobic Digestion project's performance, additional items will be added to this listing subject to DISTRICT review and approval.

## 1.3 Solid Waste

Solid Waste shall be defined as all discarded putrescible and nonputrescible solid, semisolid, and liquid wastes, including garbage, trash, refuse, rubbish, 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.

## 1.4 Curbside Service

Curbside Service shall be defined as the collection, transport, recycling, and disposal of Solid Waste from residential customers who are eligible to place such waste for collection at the curb in carts or cans (and shall specifically exclude commercial or industrial service or multi-family service which is not collected curbside or is collected in bins, roll-offs or other commercial containers).

# ARTICLE 2 SERVICES TO BE PROVIDED AND TERM

## **2.1 Services to be Performed**

HAULER agrees to furnish all labor, material, and equipment necessary for the collection of all Solid Waste as hereinafter defined from single family dwellings and multi-family dwellings using Curbside Service (small multi-family dwellings) within the boundaries of the DISTRICT (including the entirety of the City of Costa Mesa and certain residences within the City of Newport Beach) as said boundaries now exist or may hereafter exist, and the disposal of such Solid Waste as hereinafter provided.

HAULER further agrees to provide containers for all single-family dwellings and small multi-family dwellings inside DISTRICT as provided hereinafter in this AGREEMENT.

HAULER further agrees to provide material recovery facility services for the acceptance of Solid Waste from DISTRICT for the purpose of recovery and reclamation of recyclable materials and the transfer of un-recyclable residue to Orange County landfill sites, as hereinafter provided or otherwise as the DISTRICT may direct.

## **2.2 Term**

### **2.2.1 Effective Date**

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

### **2.2.2 Initial Term**

The term of this Agreement during which HAULER will provide collection services shall be ten (10) years (the "Initial Term"), subject to extension as provided in Section 2.2.3. Notwithstanding the foregoing, the unexcused failure or refusal of HAULER to perform any material term, covenant, obligation or condition contained in this Agreement (collectively "Noncompliance") shall give rise to the right, in favor of DISTRICT, for earlier termination of this Agreement for cause in accordance with the procedures contained herein.

### **2.2.3 Option to Extend Terms**

The parties agree that if the Agreement is not terminated for cause or by mutual agreement, that either party shall have the option to extend the term for an additional five-years upon the expiration of the original term.

Upon the expiration of the first five-year extension, and assuming that the Agreement, as extended, has not been terminated for cause or by mutual agreement, either party shall have the option to extend the term a second time for an additional five-year term.

If the two five-year options for extension are exercised, in addition to the ten-year original term, a total of twenty years shall have been provided. This Agreement does not provide for extensions beyond that twenty-year period.

To be entitled to exercise the option, written notice must be given of the exercise of the option to extend while the Agreement, or any applicable extension, is still in effect. Any attempt to exercise an option beyond those periods shall be null and void.

## **2.3 Services**

### **2.3.1 Ownership of Solid Waste**

All Solid Waste, in addition to recyclables, collected by HAULER shall become the property of HAULER upon placement by the Customer for collection. HAULER shall have the exclusive right to market all recycled material reclaimed from Solid Waste generated by DISTRICT pursuant to this Agreement and shall be entitled to any and all income derived from said marketing over which DISTRICT shall have no claim. HAULER shall provide DISTRICT with an accounting of said revenue, as discussed below.

### **2.3.2 Solid Waste Disposal**

HAULER is to provide Material Recovery Services for the acceptance of Solid Waste from DISTRICT for the purpose of recovery and reclamation of recyclable materials and the transfer of unrecycled residue to Orange County landfill sites. HAULER shall transfer DISTRICT Green Waste and Organic Waste to HAULER's Anaerobic Digestive facility in the City of Perris (Riverside County) where said waste will be converted into renewable natural gas and compostable materials. It is a material consideration to DISTRICT that the Anaerobic Digestion facility operates as intended by this Agreement.

In the event HAULER no longer provides Material Recovery Services and/or Anaerobic Digestion Services as set out in this Agreement, DISTRICT reserves the right to direct the flow of Solid Waste produced and collected hereunder to any succeeding recycling firm with which DISTRICT has contracted, provided however, that in the event mileage to the succeeding recycling firm has increased ten percent (10%) over the mileage presently in effect between DISTRICT and CR Transfer, HAULER shall be entitled to additional compensation based upon acceptable proof submitted to DISTRICT of actual increased cost; and provided further, that if the mileage decreases in excess of the same percentage, DISTRICT shall be entitled to a reduction in compensation it is obligated to pay.

DISTRICT represents that it has in force a contract with the City of Costa Mesa, dated November 5, 1993, exempting DISTRICT from certain fees established by the City relating to the City's obligation under the Integrated Waste Management Act of 1989 (commonly referred to as AB 939). Certain provisions of that contract require that DISTRICT rely upon the cooperation and performance of HAULER and HAULER agrees that such cooperation and performance, which is attributable to HAULER, will be performed. Specifically, HAULER will participate in the education program required by AB 939 either in money or services at the option of DISTRICT with the level of participation to be set by DISTRICT and will provide such reports as required of the DISTRICT by the City.

DISTRICT will provide HAULER with copies of all agreements, and amendments thereto, which affect HAULER's performance hereunder including, but not limited to, contracts with any other Material Recovery Facility or Green Waste facility with which DISTRICT may contact; and any subsequent contract with City of Costa Mesa or any other entity relating to DISTRICT's obligations affecting Solid Waste pickup and disposal. HAULER agrees to provide DISTRICT with copies of its contracts with others related to the performance of this Agreement.

### **2.3.3 Residue/Flow Control**

All residual waste from the processed semi-mixed stream of recyclables/trash shall be disposed in compliance with the DISTRICT's flow control agreement with the County of Orange. The purpose of these provisions is to provide flow control for the County's landfill operations, which will be in the DISTRICT's best interests.



DISTRICT and HAULER agree that the County shall be an express third-party beneficiary of this paragraph and shall be entitled to independently enforce the obligations of this paragraph.

## ARTICLE 3 HAULER COMPENSATION

### **3.1 Hauler Compensation**

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

#### **3.1.1 Payment for Trash Collection Service**

As compensation for the performance by HAULER of the trash collection and related work as set out in this Agreement, DISTRICT shall pay to HAULER each calendar month during the term of this Agreement the rate specified in Exhibit A attached hereto multiplied by the Occupancy Rate. DISTRICT agrees to promptly process HAULER's invoices, which shall be supported by weight tickets, but in any event, payment will be made by DISTRICT to HAULER within 30 days of receipt of an invoice.

#### **3.1.2 Occupancy Rate / HAULER Fee**

On the effective date of this Agreement, the monthly occupancy rate as noted in Exhibit A will be of \$9.7954 per household.

##### **3.1.2.1 Occupancy Count**

DISTRICT shall prepare and utilize an assessor's parcel based list for HAULER to conduct its occupancy counts. HAULER agrees to continually update the monthly occupancy count. HAULER payment shall be based upon occupancy count as approved by the Board of Directors each month.

A. Occupancy is determined to be as follows:

1. A single living unit per Assessor's parcel – one occupancy.
2. Multiple living units per Assessor's parcel – first living unit – one occupancy; each additional living unit – one occupancy.

3. Mobile home lots per Assessor's parcel – one occupancy per trailer lot.
- B. Initial Occupancy Calculation. The occupancy for which HAULER will be compensated shall be determined from the special assessment roll for each fiscal year of July 1 through June 30 as the same is maintained on file in the DISTRICT office as the basic occupancy, and will be readjusted annually based upon the special assessment roll for each succeeding year.
- C. Occupancy Exemptions. The following properties may be exempt from charges:
1. Certain property inside the DISTRICT and also within the city limits of the City of Newport Beach receiving Solid Waste and recycling services from the City of Newport Beach or through the City's authorized franchisee.
  2. With respect to Solid Waste charges, multiple residential properties including mobile home parks contracting for or using private services and having qualified for DISTRICT exemption.
  3. Undeveloped parcels until one or more living units are constructed thereon.
  4. Parcels incapable of generating Solid Waste as defined herein.
  5. Parcels with improvements requiring a type of service unavailable from HAULER.
  6. Those parcels, which have applied for and been granted an exemption by DISTRICT, in accordance with DISTRICT rules and regulations.
  7. Those parcels, irrespective of zoning, which are subject to commercial and industrial use.

The occupancy count shall be increased or decreased monthly and it is understood and agreed by and between the parties hereto that said increase or decrease will be determined by HAULER on a continual basis based on field surveys of the residences that are provided service. HAULER shall provide DISTRICT a written count of the monthly additions and deletions to the occupancy count. The occupancy count may be affected by occupancy permits and demolition permits issued by the building department of the City of Costa Mesa or other entity having such jurisdiction within the DISTRICT. The occupancy count may also be increased whenever HAULER is able to determine to the satisfaction of DISTRICT that any parcel coming within the exemptions as hereinafter set forth is no longer exempt and that HAULER is in fact actively engaged in the weekly collection of trash from said occupancy.

### **3.1.3 Recycling/Disposal Rate**

On the effective date of this Agreement, the recycling/disposal rate as noted in Exhibit A will be of fifty-one dollars and ninety-seven cents (\$51.97) per ton.

### **3.1.4 Conversion Technology Rate**

On the effective date of this Agreement, the rate for DISTRICT Organic Waste delivered to HAULER's Anaerobic Digestive (AD) facility will be seventy-one dollars and fifty cents (\$71.50) per ton.

### **3.2 Justification of Rates**

HAULER shall submit an annual review of thirty-three (33) Orange County agencies comparable Net to Hauler rates and a justification of HAULER's rates as being within ten percent (10%) of the average Net to Hauler rate (total amount HAULER is paid by DISTRICT divided by the total number of units serviced) of the thirty-three (33) Orange County agencies. For the purpose of this review the City of Laguna Woods is excluded. For purposes of this study, added costs for HAULER's AD facility shall not be included in the Net to Hauler rate for this study. However, if one (1) or more Orange County agencies are utilizing HAULER's AD facility then a second survey of those Orange County agencies will be conducted that includes the added costs for said facility in the survey. Said studies shall be made a part of the HAULER's annual performance review and a basis for compensation adjustment.

### **3.3 Most Favorable Rate**

The DISTRICT's goal is to maintain Net to Hauler rates that do not exceed ten percent (10%) of the County average, for comparable services, waste composition and volumes (less the AD project costing or other special charges making the rate comparison inequitable) during the term of this Agreement. DISTRICT net to hauler rates shall be calculated each calendar year by taking the total compensation paid to HAULER and dividing it by the total number of units serviced (excluding Organics Recycling Program charges). Government entity administrative fees and franchise fees shall be excluded to attain the Net to Hauler calculation as set forth in Exhibit A (the "Calculation"). On or before April 30 of each year after the first full calendar year of this agreement, the parties shall complete the Calculation for the prior calendar year. If HAULER net-to-hauler rate revenue exceeds ten percent (10%) of the County average, HAULER shall rebate the DISTRICT the amount necessary to achieve the ten percent (10%) threshold on or before August 1<sup>st</sup> following the completion of the Calculation.

For being the first agency in Orange County to commit to the AD facility, HAULER agrees the DISTRICT will have the lowest conversion technology rate in the County. If HAULER negotiates a lower rate with any Orange County agency, then that rate shall become the rate of the DISTRICT.

### **3.4 Consumer Price Index Adjustments**

Commencing on July 1, 2019, the maximum rates as set forth in Exhibit A and further described in Sections 3.1.2, 3.1.3, 3.1.4 herein shall be considered for an adjustment, and such rates be considered for an adjustment every two (2) years on July 1<sup>st</sup> during the term of this Agreement. HAULER may request a two (2) year Consumer Price Index (CPI) adjustment using prior years' data. CPI increases will not be automatic; HAULER will need to present their request to the Board of Directors for consideration.

The maximum rates as set forth in Exhibit A shall be considered for an adjustment by multiplying each rate by a percentage change in the average CPI for All Urban

Consumers in the Los Angeles Area, not seasonally adjusted (CPI-U) – Los Angeles – Long Beach- Anaheim for the twenty-four (24) month period ending the February immediately prior to the applicable adjustment date versus the index average for the previous twenty-four (24) months.

For example, per Table A below, the maximum increase the HAULER could request for the fiscal year beginning July 1, 2019 is 3.6%.

Table A. Los Angeles-Long Beach-Anaheim CPI-U monthly and annual percent changes (not seasonally adjusted)

Month	2013		2014		2015		2016		2017		2018	
	Monthly	Annual	Monthly	Annual	Monthly	Annual	Monthly	Annual	Monthly	Annual	Monthly	Annual
January	0.8	2.0	0.5	0.8	-0.3	-0.1	0.7	3.1	0.9	2.1	0.8	3.5
February	0.7	2.2	0.5	0.5	0.7	0.1	0.0	2.4	0.6	2.7	0.7	3.6
March	0.1	1.3	0.6	1.0	1.0	0.5	0.3	1.7	0.3	2.7		
April	-0.4	0.9	0.0	1.4	-0.1	0.5	0.2	2.0	0.2	2.7		
May	0.1	1.0	0.4	1.7	1.0	1.1	0.5	1.4	0.3	2.5		
June	-0.1	1.4	0.1	1.8	-0.3	0.8	0.1	1.8	-0.2	2.2		
July	-0.1	1.3	0.1	2.0	0.7	1.4	0.0	1.1	0.3	2.5		
August	0.1	0.8	-0.1	1.8	-0.3	1.1	0.0	1.4	0.3	2.8		
September	0.2	0.6	0.0	1.7	-0.4	0.7	0.2	1.9	0.4	3.1		
October	0.1	-0.1	-0.1	1.4	0.2	1.0	0.4	2.2	0.4	3.1		
November	-0.5	0.4	-0.7	1.3	0.0	1.6	-0.4	1.8	0.1	3.6		
December	0.0	1.1	-0.5	0.7	-0.1	2.0	0.0	2.0	0.0	3.6		

By April 1, 2019, and every second April 1<sup>st</sup> thereafter, HAULER shall submit to the District's Finance Department all necessary information to justify the requested CPI adjustment. DISTRICT will make an effort to verify information provided by HAULER, but ultimately HAULER bears the burden of ensuring the submitted information is correct and supported by all necessary documentation. HAULER agrees and acknowledges that DISTRICT is entitled to rely, in good faith, on information submitted by HAULER, including mathematical calculations, CPI data, and other documentation, to justify HAULER's requested rate increase.

### 3.4.1 DISTRICT's right to audit HAULER's revenue

HAULER shall make available to DISTRICT documentation stating HAULER's profit margin with respect to the services provided in this Agreement in approving any rate adjustment before HAULER can request adjustment with the DISTRICT's Board of Directors. The audit report shall not become a public record by such disclosure. Nevertheless, the parties agree that DISTRICT and its officers, agents, or employees shall have access to the audit and financial statements at HAULER's facility in a reasonably comfortable area with table and work area.

### 3.5 Landfill Charges

In the event the County of Orange imposes a new charge by the day, or by the ton, or upon each truck, or upon each company for the privilege of disposing of Solid Waste in the County facilities, or in the event of any additional charges levied by any governmental agency, HAULER shall have the right to request a meeting with the Board of DISTRICT for the purpose of negotiating with said Board to determine what share, if

any, of said charge shall be paid by DISTRICT. The agreement to negotiate by DISTRICT is not to be regarded by HAULER as a commitment on the part of DISTRICT to pay any portion of said landfill charge imposed by County of Orange, and DISTRICT will be obligated to pay only that portion, if any, of said landfill charges that are determined as the result of the negotiations as provided herein.

## ARTICLE 4 RECORDS, REPORTS, REVIEWS AND AUDITS

### **4.1 Monthly Reports**

Within seven (7) days of the end of each calendar month, HAULER shall submit to DISTRICT for the preceding month reports setting forth, at a minimum, the following information for services provided and tonnage collected under this Agreement:

- HAULER shall record and provide a log of complaints received by DISTRICT or HAULER on a monthly basis. HAULER shall also provide DISTRICT with a copy of any report, complaint, pleading, or any other communication related to HAULER's performance of the agreement.
- Occupancy Count. HAULER shall provide a monthly accounting of new accounts created and discontinued units serviced.

### **4.2 Waste Diversion**

HAULER and DISTRICT acknowledge that pursuant to the California Integrated Waste Management Act of 1989, the District is currently required to divert fifty percent (50%) of all Solid Waste from landfill disposal or transformation but that pursuant to AB 341 it is the policy goal of the State of California that not less than 75% of Solid Waste generated be source reduced, recycled, or composted by the year 2020. HAULER agrees that in addition to meeting the fifty percent (50%) reduction level currently mandated, it will use its commercially reasonable efforts in conjunction with the District's efforts to achieve the DISTRICT goal of diverting at least seventy-five percent (75%) of the DISTRICT's waste stream. For the purposes of this paragraph, only the amounts of waste collected under this Agreement shall be considered. Specifically, commercial and industrial waste collected under separate agreements and/or permits shall not be considered. HAULER shall prepare and maintain all appropriate documentation showing how diversion requirements were met.

### **4.3 Audit of HAULER**

HAULER shall make available to DISTRICT an annual financial report for the services performed under this Agreement. The HAULER shall have its consolidated financial statements audited by an independent Certified Public Accountant who shall render an opinion that the statements fairly represent the financial condition of the company. Said opinion will be provided in accordance with Generally Accepted Accounting Standards.



Working papers for the annual financial statement provided to the DISTRICT for the services provided under this Agreement shall accompany the financial report and shall show all revenue derived from recycling, composting, or the generation of gas or fuel from DISTRICT. DISTRICT shall be notified within (10) days of the financial report being available. The financial report shall not become a public record by such disclosure, and DISTRICT agrees that it will not be entitled to be provided with a copy. Nevertheless, the parties agree that DISTRICT and its officers, agents, or employees shall have access to the financial report at HAULER's facility in a reasonably comfortable area with table and work area.

#### **4.4 Master Manifests**

HAULER shall maintain a master manifest in which the transportation and disposal of all waste from DISTRICT shall be logged. Such manifest shall show disposal volumes, nature of waste, transporter and disposal sites. Copies of all such records shall be provided to DISTRICT upon request. HAULER shall also document all tonnages by truck identification number, route and date and provide this compiled data electronically to the DISTRICT within ten (10) business days of each month for the previous month. All such records shall be kept for a period of 5 years following the termination of this Agreement.

#### **4.5 Access to Site**

HAULER shall allow regular inspections by DISTRICT's personnel or agents to monitor the recycling of DISTRICT's Solid Waste. Said inspection shall include the right to test scales and review books and documentation.

#### **4.6 Annual Performance Review**

DISTRICT shall complete a performance review of the trash collection and recycling program on an annual basis and HAULER and DISTRICT shall meet to discuss or resolve problems that may be occurring in the programs. DISTRICT shall prepare a performance review form that allows for evaluation of services provided at the residences as well as administrative services including report preparation, accuracy, timeliness of transmittal, responsiveness to inquiries, database management, service levels and helpfulness.

#### **4.7 Audit Rights**

In addition to any other audit and access rights that DISTRICT shall have under this Agreement, DISTRICT shall have the right at reasonable times, to audit any facet of HAULER's performance under this Agreement. Said rights shall include a right of access to the site and equipment used to perform this Agreement, a right of access to books and records relating to the business operations as it pertains to this Agreement, and right to an annual audit of the performance of the Agreement and, if deemed



warranted by DISTRICT, the right to demand an independent certified audit performed by a CPA at HAULER's cost.

HAULER agrees to cooperate with DISTRICT in all of the above. Such right to audit will include HAULER and its owned subsidiaries performing work under this Agreement. Such rights shall include a right of access to internal trail reports.

#### **4.8 Corporate Structure**

HAULER shall provide DISTRICT with the Articles of Incorporation, Bylaws and Stock Register, or equivalent, showing ownership for all entities involved in providing services under this Agreement, and shall promptly provide DISTRICT with any amendments thereto. On the anniversary date of this Agreement, DISTRICT shall be provided with the latest Annual Statements of Domestic Stock Corporation as filed with the state. HAULER shall provide DISTRICT with an organization chart showing all related corporate entities providing services or having any interest in this Agreement, showing the Board of Directors, Officers, Key Employees and ownership of assets.

### **ARTICLE 5 OPERATIONS**

#### **5.1 Containers**

HAULER shall provide and maintain the containers for all of DISTRICT's residential customers. Basic service shall be defined as two (2) mixed waste recycling containers and one (1) organic container with the option to add a second organic cart at no additional charge. Customers that presently have any 90-gallon containers shall be "grandfathered" for the life of those containers. Service over and above the basic service shall pay an additional container charge as described below. Upon request, HAULER shall provide to DISTRICT account and container data for all DISTRICT customers.

##### **5.1.1 Container Maintenance**

HAULER shall maintain all the containers including, but not limited to removing graffiti, replacing the wheels and lid. All repairs must restore the cart to its full functionality. Unsightly/worn-out carts shall be replaced by HAULER upon Customer request.

#### **5.2 Additional Container Charges**

New service shall be entitled two (2) sixty-four (64) gallon organic carts and up to two (2) sixty-four (64) gallon mixed waste processing recycling carts. Service over and above the basic service shall pay an additional container charge as described herein.

An Additional Container Charge shall be implemented for Additional Containers (more than two of either type) at a rate of \$9 per container per month, or as the parties may later agree, said charge includes the cost, collection, and delivery of the containers. HAULER will not charge a delivery fee for Additional Containers nor will the HAULER charge a delivery fee to existing and/or new customers that are requesting new and/or replacement containers, except as provided in 2.g below. Charges for replacement containers shall be as follows:

1. New Customer (Development)
  - a. New Owners/residents: No charge
2. Existing Customer
  - a. Missing container(s): No charge
  - b. Damaged container(s): No charge
  - c. Exchange of container(s): No charge
  - d. Disability hardship/economic factor: No charge
  - e. Only one (1) mixed waste container and requesting a second mixed waste container: No charge
  - f. Only one (1) organic container and requesting a second organic container: No charge
  - g. Stolen container(s): No charge when resident provides police report number; otherwise, HAULER shall charge for the cost of the replacement cart and delivery.

#### **5.2.1 Increase in Additional Container Charge**

The rate for the Additional Containers will automatically increase to \$10 per container per month after the conclusion of year five (5) of the Agreement. The \$10 charge will remain in effect for the remaining length of the Agreement, or as the parties may later agree.

#### **5.2.2 Additional Container Charge Billing**

Billing for Additional Containers shall be made by HAULER or an independent bonded billing service. Hauler is entitled to twenty percent (20%) of the money collected for the additional container charge. The DISTRICT will retain the remaining eighty percent (80%) of the revenues generated from the additional container charge. The HAULER shall remit to the DISTRICT on quarterly basis net proceeds due to the DISTRICT accompanied by all applicable supporting documentation and calculations.

Prior to the end of each fiscal year throughout the term of this Agreement, DISTRICT and HAULER shall review in good faith the status of the Additional Container Charge Program. This review shall include, but is not limited to the following:

- Audit list of customers with "additional" containers
- Total revenues generated and distributed between parties relative to establishing rate stabilization and the stated goal of charging an average rate for customers of that charged within the County

- HAULER costs of administering and operating the program, as well as a review of customer overall satisfaction.

### **5.3 Hauler's Equipment**

HAULER shall provide adequate equipment for the collection of Solid Waste. Both sides of each vehicle used for the collection of Solid Waste shall have a sign that says "Costa Mesa Sanitary District Recycles for You". The appearance of the sign will be approved by the DISTRICT. All vehicles used for collection shall also prominently display an identification number on both sides of the vehicle. HAULER's trucks shall have a display meeting the approval of the DISTRICT. HAULER's trucks shall have a clean appearance and shall be driven in compliance with the Vehicle Code.

A second interchangeable sign will be displayed on both sides of the vehicle to promote the appropriate recycling programs (Large Item Collections, Christmas Tree Recycling, special events with dates). The interchangeable signage will rotate at least once per quarter. A total of four (4) signs per year will be allowed, and new signage shall be purchased by HAULER every two (2) years if requested by DISTRICT.

HAULER's trucks servicing the DISTRICT shall be powered by Compressed Natural Gas (CNG) or Renewable Natural Gas (RNG) or by an alternative fuel that is approved by the South Coast Air Quality Management District.

All equipment used for collection of Solid Waste shall be enclosed to ensure that Solid Waste is not spilled on streets and privacy property. HAULER shall comply with all requirements of the Vehicle Code, Health Department and the District Operations Code and all equipment used for collection of Solid Waste shall be watertight and shall be covered with suitable waterproof tarpaulins, metal covers or other satisfactory covers. No Solid Waste shall be permitted to leak, fall or be spilled upon streets or alleys or onto private property. Any such leakage or spillage shall be immediately corrected and the area cleaned by HAULER.

HAULER shall provide DISTRICT with a list of all trucks and other vehicles including identification numbers to perform this Agreement. All equipment used by HAULER for the collection of Solid Waste, pursuant to this Agreement, shall be subject to inspection by the Manager of DISTRICT or designee and any defects in such equipment found to exist shall be immediately corrected by HAULER.

### **5.4 Limitations on Solid Waste Collection**

HAULER shall not be obligated to collect Solid Waste in the following cases:

- A. Where the Solid Waste is not placed in an adequate container. "Adequate container" shall be any container approved by the DISTRICT from time to time as set forth in the DISTRICT's Operations Code.

B. In addition to the foregoing, reference is hereby made to the rules and regulations adopted by DISTRICT, for the collection of Solid Waste and regulations as set forth in the DISTRICT's Operations Code, as the same way be amended and are incorporated herein as a part of this Agreement.

### **5.5 Trash Accumulation**

HAULER shall report any accumulation of trash observed but not put out for collection.

### **5.6 Operations Manager**

HAULER shall strive to make customer satisfaction its number one priority. HAULER shall employ an Operations Manager, to be approved by the DISTRICT, to be assigned to the DISTRICT operation, to oversee the work and to handle complaints arising from the operation pursuant to this Agreement.

### **5.7 Contract Liaison**

The parties shall jointly appoint a designated contact from HAULER that a DISTRICT Director, staff member, or other officer or agent can readily contact who is familiar with the DISTRICT's program and who can readily assist the caller in a professional and knowledgeable manner. Calls shall be returned promptly and in no event later than twenty-four (24) hours, excluding weekends, after the call or other contact.

### **5.8 Customer Service Designee**

HAULER will appoint a designated contact that the DISTRICT Director, staff member, or other officer or agent can readily contact who is familiar with DISTRICT programs that will assist DISTRICT staff within 2 hours regarding a missed pickup. This designee will assist DISTRICT staff in scheduling missed pickups or any other customer service requests within the same day in lieu of DISTRICT having access to HAULER's GPS data.

### **5.9 Office Hours**

Office hours shall be at least 8:00 a.m. to 5:00 p.m., Monday – Friday, excluding holidays. A responsible and qualified person shall be available by phone, toll-free, during all regular hours. Services shall be adequate to handle all calls on the busiest days. A recorder with voice mail message with next business day follow up shall be available for afterhours calls, with the ability for DISTRICT personnel to contact HAULER's Operations Manager after hours by cell phone or other device that will achieve contact after hours.

### **5.10 Information Cards**

HAULER shall review the existing "Green Card" (the card left at a residence to explain violations of the program) and suggest revisions thereto. The revisions shall include

producing a two part form that allows HAULER to track violations and keep records thereof on an individual parcel basis as is currently done for other agencies serviced by HAULER. HAULER shall produce said Green Cards at no cost to DISTRICT.

### **5.11 Driver Conduct/Uniforms**

HAULER agrees that drivers will be properly outfitted with uniforms and name identification thereon, will be courteous and accommodating to residents of the DISTRICT, will not scavenge through trash left at the curb, and will not solicit or accept gratuities for performing services. HAULER will provide its employee handbook to DISTRICT staff to demonstrate that these points are covered with the drivers.

### **5.12 Employment / Non-Discrimination**

No regular employee of DISTRICT will be employed by HAULER while this Agreement is in effect. In performing this Agreement, HAULER will not engage in, nor permit its agent to engage in, discrimination in employment of persons because of their race, religion, color, national origin, ancestry, physical handicap, medical condition, marital status, sex, or sexual orientation, except as permitted pursuant to Section 12940 of the Government Code. Violation of this provision may result in the imposition of penalties referred to in Labor Code Section 1735.

HAULER shall perform the services herein contemplated in compliance with the Federal and California laws concerning minimum hours and wages (Davis-Bacon Act, 40 U.S.C. 276a, et seq., and California Labor Code, Section 1171, et seq.) Occupational Health and Safety (29 U.S.C. 651, et seq., and California Labor Code, Sections 6300, et seq.), Fair Employment Practices (29 U.S.C. 201, et seq., and California Government Code, Section 12900, et seq.), Workers' Compensation Insurance and Safety in Employment (Division 4 and 5 of the California Labor Code) and all amendments thereto, and all similar State or Federal laws to the extent they are applicable; and HAULER shall indemnify and hold harmless DISTRICT from and against all claims, demands, payments, suits, actions, proceedings, and judgments of every nature and description, including attorney fees and costs, presented, brought or recovered against DISTRICT for or on account of any liability under any of the above-mentioned laws which may be incurred by reason of any work performed by HAULER under this Agreement.

HAULER is and shall be acting at all times as an independent contractor and not as an employee of the DISTRICT. HAULER shall secure, at his expense, and be responsible for any and all payment of income tax, social security, State disability insurance, unemployment compensation and other payroll deductions for HAULER and its officers, agents and employees, and all business licenses, if any, that are required in connection with the services to be performed hereunder.

### **5.13 Drug-Free Workplace**

HAULER shall establish a Drug-Free Awareness Program to inform employees of the dangers of drug abuse in the workplace, the penalties that may be imposed upon

employees for drug abuse violations occurring in the workplace, and the employee assistance programs available to employees. Each employee engaged in the performance of a DISTRICT contract must be notified of this Drug Free Awareness Program and must abide by its terms. Failure to establish a program, notify employees or inform the DISTRICT of a drug-related workplace conviction will constitute a material breach of contract and cause for immediate termination of this Agreement by DISTRICT.

#### **5.14 Liaison**

DISTRICT and HAULER shall each designate an individual to act as liaison between DISTRICT and HAULER as the respective agents of each which are named as follows:

DISTRICT

Scott Carroll, General Manager  
290 Paularino Ave  
Costa Mesa, CA 92626  
949-645-8400

HAULER

Dean Ruffridge, Senior Vice President  
11292 Western Avenue  
Stanton, CA 90680  
714-826-9049

Said designated agents may designate alternates by notifying the other in writing of such designation.

## ARTICLE 6 INSURANCE, BONDS AND INDEMNIFICATIONS

### **6.1 Indemnification of District**

HAULER agrees to indemnify, defend and hold DISTRICT, and its offices, agents and employees, harmless from any and all liability arising out of HAULER'S performance of this Agreement or the award thereof to HAULER, or the exclusive nature thereof or the rates charged, save and except any liability caused by the sole active negligence of DISTRICT. Upon service of request for preparation of the administrative record or service of a petition or other pleading to challenge an environmental determination, HAULER shall defend DISTRICT and its officers, agents, and employees with counsel reasonably acceptable to DISTRICT, and pay all costs of defense. Said indemnification shall extend to payment for any penalties for failure to meet state mandated diversion rates as a result of HAULER'S performance under this Agreement. DISTRICT recognizes that its indemnifications rights are circumscribed by Public Resources Code Section 40059.1.

### **6.2 CERCLA**

HAULER agrees that its obligations to indemnify defend and hold DISTRICT and its officers, agents and employees harmless shall extend to all liability arising from the Comprehensive Environmental Response, Compensation and Liability Act (CERLA), the



Resource Conversation and Recovery Act (RCRA), and the Hazardous Waste Control Act arising out of HAULER'S performance of this Agreement.

### **6.3 Bond**

HAULER shall furnish a Faithful Performance Bond guaranteeing HAULER's performance of this Agreement in the sum of Fifty Thousand Dollars (\$50,000.00) written by a surety company licensed to do business in the State of California and in a form approved by the Attorney for DISTRICT.

### **6.4 Public Liability and Property Damage Insurance**

HAULER shall be required to maintain in full force and effect during the term of this Agreement a public liability policy with a combined single limit of Five Million Dollars (\$5,000,000.00) for the benefit of third persons who may be injured or damaged as a result of any negligent operation of HAULER in the performance of work under this Agreement, which said policy shall name DISTRICT as an additional insured thereunder. DISTRICT shall be provided with a current endorsement of such policy evidencing said coverage in a form approved by DISTRICT.

HAULER further agrees to keep on file with DISTRICT a certificate or certificates of insurance, duly executed by HAULER's insurance carrier or carriers, which shall serve as evidence of the continued existence of said insurance policies.

DISTRICT shall not, nor shall any officer or employee thereof, be liable or responsible for any accident, loss or damage happening or occurring in the HAULER's performance of work under this Agreement, and HAULER shall indemnify and hold harmless the DISTRICT and its Board, officers and employees from any and all liability arising therefrom, including any attorney fees incurred in the defense of any such action.

DISTRICT and HAULER agree that the execution of this Agreement for good and valuable consideration is not a DISTRICT project as defined by Section 20801, Public Contracts Code. In the event, however, that any action is instituted raising the question of said requirements, the indemnity and hold harmless provisions herein include any attorney fees incurred in the defense of any such action.

### **6.5 Worker's Compensation Insurance**

HAULER shall also maintain in full force and effect during the term of this Agreement a workers' compensation policy and such other forms of insurance as shall be required by law, and shall provide a certificate or certificates of insurance. HAULER agrees to indemnify DISTRICT for any damage resulting to DISTRICT from failure of HAULER or subcontractor to take out or maintain such insurance.

## ARTICLE 7 DEFAULT AND DAMAGES

### **7.1 Default**

Failure on the part of HAULER to comply with the terms and provisions of this Agreement shall be grounds for the DISTRICT to terminate the Agreement. In the event of a breach of contract, or default on the part of HAULER, DISTRICT shall notify HAULER of its intention to terminate this Agreement. Said notice shall be by certified or registered mail. Said notice shall be given in writing and mailed to the address of HAULER on file with the DISTRICT or DISTRICT Manager. Said Agreement shall thereupon be deemed terminated thirty (30) days thereafter if HAULER has not cured the breach within said thirty (30) days. In the event of such cancellation, HAULER shall remain liable for any damage and loss sustained by DISTRICT in the collection of Solid Waste, including all costs incurred by DISTRICT in the negotiation of a new contract.

In the event of a default as herein described, DISTRICT shall have the authority to take whatever steps are necessary to ensure the collection of residential Solid Waste including, but not necessarily limited to, the employment of another contractor or contractors, employment of its own work force with rental equipment, or by such means as the DISTRICT, in its sole discretion, may employ for this purpose. In the event of a default as heretofore set forth, because of work stoppage or for any other reason, DISTRICT reserves the right to be reimbursed for its expenses incurred in the maintaining residential Solid Waste services as provided for in this Agreement, and in the event after demand HAULER fails to reimburse DISTRICT, DISTRICT reserves the right to call upon HAULER's performance bond for said reimbursement. DISTRICT agrees to first make demands upon HAULER for said reimbursement prior to applying to HAULER's surety for this purpose.

Additionally, in the event of a strike or non-performance of this Agreement, DISTRICT shall have the right to use HAULER's equipment at no cost to the DISTRICT.

The waiver of any breach of the terms of this Agreement shall not be deemed a waiver of any recurrence of the same or any other subsequent breach of said Agreement.

### **7.2 Franchise Alternative**

It is further understood and agreed by and between the parties hereto that certain legislative and Constitutional tax limitations may render DISTRICT unable to meet its financial obligation with HAULER. In such event and upon notice duly given by DISTRICT to HAULER in writing, this Agreement shall be deemed null, void and of no further force or effect. In such event DISTRICT shall be obligated to pay HAULER through and including the last week of Solid Waste collection immediately preceding such termination date and DISTRICT shall not be obligated to make any payment to HAULER beyond said termination date.

In the event of such termination, HAULER may apply to DISTRICT for a franchise for the collection of residential refuse within the DISTRICT and may be granted a franchise under terms and conditions as determined by the Board of Directors of DISTRICT at the time said franchise is granted. Any franchise granted shall comply with the California Integrated Waste Management Act of 1989 as amended (heretofore cited) and shall meet all lawful franchising requirements of the City of Costa Mesa.

Said franchise shall, among other things, provide that HAULER shall be fully responsible for collection of fees from individual residences serviced and shall establish a system of invoicing and charges for said services. Said franchise shall also include, among other things, the right of DISTRICT to determine whether or not HAULER's charges are excessive and to require adjustments in said charges to ensure reasonable profit to HAULER and to ensure a fair and equitable charge to residences being served.

## ARTICLE 8 COLLECTION SCHEDULE

### **8.1 Frequency of Collection**

HAULER shall collect all Solid Waste from its respective residential areas once a week. Residential Area is defined generally as any area located within the DISTRICT zoned for residential or agricultural use by the government body having jurisdiction over such area and used for residential purposes.

### **8.2 Schedule of Collections**

#### **8.2.1 Initial Schedules**

Beginning with the date hereof, the existing routes, schedules and time for the collection of Solid Waste shall be maintained and continued by HAULER.

#### **8.2.2 Change of Schedules**

From time to time during the period of this Agreement, the Manager of DISTRICT may change the existing routes and schedules and time of collection and HAULER shall thereupon maintain such new schedule. The Manager of DISTRICT shall have the right at all times during the term of this Agreement to require HAULER to maintain routes, schedules and times for collection of Solid Waste as required by said Manager.

All notices required to be given pursuant to this Agreement shall be given by HAULER at its own expense.

### **8.3 Days/Hours of Collection**

The DISTRICT Manager shall have the right to direct HAULER to collect Solid Waste at scheduled hours that said Manager finds would not constitute a nuisance to the neighborhood. Collection of Solid Waste shall not be made on Sunday. Collection of Solid Waste shall not be required on the following legal holidays: New Year's Day, Memorial Day, Fourth of July, Labor Day, Thanksgiving Day and Christmas, except in cases of emergency or as otherwise required by DISTRICT. Whenever a regular collection falls on such holiday, the collection shall be made on the following working day, and collections throughout the DISTRICT shall become current within one week thereafter.

## **8.4 Disruption of Schedule**

### **8.4.1 Holiday Collection**

Collection on holidays not set forth in Section 8.4 must be collected on the regularly scheduled day unless DISTRICT Manager authorizes otherwise.

### **8.4.2 Disruption**

In the event of a disruption of service in any area due to weather, and act of God, failure of equipment or otherwise, HAULER shall make such collection within forty-eight (48) hours. Labor disputes shall not be considered as excuses for nonperformance hereunder as defined in Section 1511, California Civil Code and HAULER shall provide for Solid Waste collection service within one week of any disruption due to strike, lock-out, walk-out, boycott or other labor dispute.

### **8.4.3 Continuation of Service after Disruption**

In no event shall HAULER disturb the remaining schedule for Solid Waste collection or pickup. On the holiday mentioned, and in the event of a disruption of service by reason of an act of God, or otherwise, the regular schedule shall be maintained within one week and the missed pickup shall be made without disturbing in any way the rest of the regular schedule.

### **8.4.4 Notice of Labor Disputes**

HAULER shall forthwith advise DISTRICT in writing at the time any formal Labor Negotiations are undertaken between HAULER and its employees relating to wages and benefits and HAULER shall be obligated to report the status of said Labor Negotiations from time to time in a frequency established by DISTRICT, which said frequency shall not be burdensome upon HAULER but shall be sufficient to advise DISTRICT of the status of said Labor Negotiations including any pending strike, lock-out, walk-out, boycott or other labor dispute. HAULER may also be required, at the option of DISTRICT, to provide DISTRICT in writing with HAULER's plan of procedure to serve DISTRICT in the event of a disruption of service by labor dispute.

## ARTICLE 9 SPECIAL PROGRAMS

### 9.1 Special Programs

District shall have the flexibility to add or substitute programs (i.e. telephone books and alkaline battery collections).

#### 9.1.1 Christmas Tree Collection

DISTRICT conducts an annual Christmas tree recycling program for occupants within DISTRICT. HAULER agrees that it will, for a period of approximately twelve (12) days, collecting trees past January 6 of every year, without cost to DISTRICT, so long as the program is in effect, make a daily pickup of trees placed at curbside and will transport the trees to the AD Facility for recycling.

#### 9.1.2 Excess Boxes & Household Furnishings

HAULER shall provide up to twelve (12) pick-ups per year of excess boxes or household furnishings left at a location vacated by a resident. The service shall be provided at no charge if requested by General Manager of the DISTRICT.

#### 9.1.3 Large Item Pickup

In addition to containerized Solid Waste, at no additional costs, HAULER shall provide Large Item pickup service to all DISTRICT residential customers subscribing to service. Each residential customer shall be entitled to three (3) Large Item pickups per calendar year at no additional charge. Customers may put out up to ten (10) Large Items at each pickup. HAULER may instruct customers to provide HAULER with a minimum of one business days' notice for the items which shall be collected on the customer's regular collection day. The following provisions shall apply to this program:

- No single item that cannot be handled by two workers will be accepted.
- The following items will not be picked up: tires, asphalt, car bodies, chemicals, hazardous waste, concrete, oil drums, paint cans, building materials or soil.

Large Items means Solid Waste that cannot and/or would not typically be accommodated within a trash container including specifically: furniture(including chairs, sofas, mattresses, and rugs); appliances (including refrigerators, ranges, washers, dryers, water heaters, dishwashers, plumbing, small household appliances and other similar items, commonly known as white goods); yard debris, Green Waste and small pieces of wood limited to one cubic yard of contained material; scrap metal including but not limited to aluminum, iron, stainless steel and copper; and clothing. Large Items do not include car bodies, tires, construction and demolition debris or items requiring more than two persons to remove. Other items not specifically included or excluded above will be collected provided that they are not more than eight feet in length, four feet in width, or more than 150 pounds. In the event a question ever arises as to whether a specific item or category of items meets the definition of Large Items, the DISTRICT shall be

responsible to determine when said definition shall apply, which determination shall be final and binding on the Parties.

#### **9.1.4 Alkaline Battery Recycling Program**

DISTRICT for approximately eight (8) months each year engages in an alkaline battery recycling program with a variety of elementary schools within DISTRICT boundaries. HAULER agrees that it will, for so long as the yearly program exists, provide bins at school locations selected by DISTRICT for the collection of said batteries. HAULER further agrees to service said bins they fill and to count and report contents to DISTRICT. The current battery disposal rate is seventy-six cents per pound (\$0.76) and will remain the same during the length of this Agreement unless HAULER's costs increase by more than 10% and a proportional increase is then approved by the BOARD. Specifics about program (i.e. schools participating, length of program) are at DISTRICT's discretion.

#### **9.1.5 District Wide Household Hazardous Waste Program**

HAULER will collect household hazardous waste ("HHW") materials from District residents on a call in basis. HAULER will schedule a collection appointment with resident for pickup on the resident's next regularly scheduled refuse collection day. HAULER will collect resident's HHW from an agreed-upon collection location, away from curbside. Each residential customer shall be entitled to three (3) HHW pickups per calendar year at no additional charge. Customers may put out up to twenty-five (25) gallons or one hundred twenty-five (125) pounds of HHW at each pickup or as County permit allows.

Materials to be collected under this program include:

- Electronic Waste, including but not limited to televisions, computer-related items, printers, copiers, cell phones, stereos, speakers, scanners, cables and other small appliances.
- Universal Waste, including but not limited to household batteries, Fluorescent tubes and bulbs and other mercury -containing lamps, and neon, high intensity discharge, metal halide and sodium bulbs, mercury thermostats, electrical switches, pilot light sensors, mercury gauges, mercury -added novelties, and emptied aerosol cans.
- Household Hazardous Wastes, including but not limited to:
  - Cleaning products including aerosols, bathroom cleaners, chlorine bleach, solvents, spot removers, oven cleaners, rug and floor cleaners, furniture polish, drain cleaners, and solvents.
  - Automobile maintenance products, including car waxes, starting fluids, solvent cleaners, antifreeze, repair products, batteries, brake fluid, motor oil, and gasoline.
  - Home improvement products, including oil based stains and paints, liquid latex paint, caulking, varnish, paint thinners, chemical strippers, blue,



- contact cement, fire extinguishers, flea collars and sprays, insect repellents, insecticides, kerosene, lighter fluid, and pool chemicals.
- Personal care items including nail polish and remover, and hair color.
- Lawn and garden care, including weed and pest killers, herbicides, fungicides, and other lawn chemicals.
- Sharps, such as needles and syringes.

HAULER will provide special collection assistance when collecting materials from seniors and disabled persons. HAULER will use commercially reasonable efforts to assist the District and the designated Household Hazardous Waste operator in obtaining its goal of recycling over 80% of the material collected under this Section 9.1.5 and provide monthly reports to the DISTRICT of activities including quantities collected and participant counts. HAULER will provide documentation of each collection, including proof of final disposition. HAULER will provide bi-annual comprehensive reports and analysis of the program.

#### **9.1.6 Annual Compost Event**

For no additional compensation, HAULER will conduct a local annual compost give-away event staffed by HAULER employees, whereby HAULER provides free compost to District residents. Residents will be allowed to receive two (2) approximately thirty (30) pound bags of mulch per person. Event dates shall be mutually agreed to by DISTRICT and HAULER.

#### **9.1.7 Roll-out Service for Seniors/ADA Residents**

For no additional compensation, HAULER shall provide disabled residents with container roll-out service to those who request it. Hauler will remove Solid Waste containers from resident's storage area for collection and return emptied containers to resident's storage area after collection, ensuring all doors or gates are closed securely. In order to qualify as disabled under this section, residents must provide HAULER with written documentation from a medical doctor. If there is a dispute as to whether a resident is entitled to this service, the General Manager of the DISTRICT shall make the final determination.

#### **9.1.8 Valet Service**

For residents who do not qualify for the District's free ADA roll-out service and cannot provide a physician's note, who wish to have their carts rolled-out and serviced may request valet service directly with HAULER. Hauler will remove Solid Waste containers from resident's storage area for collection and return emptied containers to resident's storage area after collection, ensuring all doors or gates are closed securely. The fee will be of forty dollars (\$40) a month to service up to three carts on their trash days. Billing for valet service shall be by HAULER or independent bonded billing service, with all proceeds thereof shall be the property of HAULER.

## 9.2 Education Programs

HAULER shall participate in AB 939 programs by taking the following actions:

- A. Providing tours of HAULER's facilities each year
- B. Conducting one seminar per year
- C. Preparing and mailing one brochure to each resident every two years if requested by DISTRICT and if DISTRICT provides mailing addresses. HAULER to provide postage. Said brochure shall be prepared and mailed within six months of request by DISTRICT. Brochure will be in a bilingual format.
- D. HAULER shall provide an education program at its cost with components designed to inform current and future residents of the details of the semi-mixed automated program including the procedure for using automated containers and a list of the special recycling programs currently available to residents. HAULER shall distribute the flyer to every residence served at least once every two (2) years.
- E. HAULER will pay DISTRICT Thirty Thousand Dollars (\$30,000.00) the first year of this Agreement and Thirty-Five Thousand Dollars (\$35,000.00) every year thereafter, to be increased or decreased yearly on July 1 according to the percentage change in the CPI for All Urban Consumers in the Los Angeles Area, not seasonally adjusted (CPI-U) – Los Angeles – Long Beach- Anaheim for the twelve (12) month period ending the February immediately prior to the applicable adjustment date, for various programs including public education, anti-scavenging, hiring a consultant to evaluate CR&R's performance, and a donation for the Alkaline Battery Recycling Program.
- F. Hauler shall provide static displays of baled recyclables (plastic, aluminum, paper, cardboard) at one community event a year.
- G. All said money shall be paid or expended by HAULER by July 31 of each fiscal year.

## 9.3 Community Outreach Programs

HAULER acknowledges that education and public awareness are critical and essential elements of any efforts to achieve diversion goals and foster a more environmentally sustainable community. HAULER agrees to the following programs:

- A. HAULER's Sustainability Coordinator will dedicate approximately 20 hours a week promoting Solid Waste diversion programs in CMSD.
- B. HAULER will be involved in DISTRICT-requested community events to promote and explain recycling and other diversion techniques (i.e. Costa Mesa Run, Eco Night at Davis Magnet, Truck Adventures for Kids).
- C. HAULER will be available to participate in school assemblies and demonstrations to promote sustainability. Presentation topics can range from trash/recycle lifecycle to environmental sustainability in general.
- D. Articles will be written for use in the DISTRICT's newsletters on topics which promote and explain DISTRICT programs, teach proper HHW disposal, and otherwise encourage sustainable activities.

- E. HAULER will provide trash receptacles for various community events at DISTRICT's request.
- F. Cart-to-Cart Outreach Program
  - a. Program will consist of canvassing neighborhoods, checking organics cart contents, and leaving a DISTRICT-approved hangtag on the cart. Those same neighborhoods and carts will then be revisited at a later time to observe any changes in behavior.
  - b. The DISTRICT might also pursue highlighting "star" residents who are doing an excellent job of source separating in the quarterly newsletter to encourage neighborhood participation

#### **9.4 Tours of the site**

HAULER will arrange tours of the recycling plant whenever requested by Board members or staff of the DISTRICT.

## **ARTICLE 10 MISCELLANEOUS**

### **10.1 Non-Assignability**

This Agreement may not be assigned without the prior consent of DISTRICT. For purposes of this paragraph a transfer of 40% of the stock of the HAULER Corporation to a third party will be considered an assignment.

### **10.2 Venue**

This Agreement shall be interpreted and enforced in accordance with the laws of the State of California. Any suit to enforce its provisions shall be filed and prosecuted in the Orange County Superior Court or if a federal action, in the Central District of California.

### **10.3 Compliance with all Laws**

HAULER shall abide by all the rules, laws and regulations of DISTRICT, the City of Costa Mesa, County of Orange, State of California and all other governmental agencies having jurisdiction.

### **10.4 License and Permits**

HAULER agrees to maintain during the life of this Agreement all licenses and permits required by any governmental agency. HAULER further agrees to comply with such rules and regulations of the City of Costa Mesa adopted by ordinance or resolution relating to City's requirements under the California Integrated Waste Management Act of 1989 (Public Resources Code Sections 4000 et seq.) and to promptly rectify any default, which may occur.

**10.5 Severability**

If any portion of this Agreement shall continue to be ground by a court of competent jurisdiction, the balance of said Agreement shall continue to be binding on the parties hereto.


**10.6 Integration**

This Agreement constitutes the sole and exclusive Agreement between the parties and the intent is to supersede all previous agreements unless a contrary intention is specified or the agreement is peripheral to and not directly related to the subject matter of this agreement. This agreement cannot be amended, changed or otherwise modified except in writing signed by both HAULER and DISTRICT.

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

**COSTA MESA SANITARY DISTRICT**

**CR&R INCORPORATED**

  
\_\_\_\_\_  
Michael Scheafer, President

  
\_\_\_\_\_  
Dean Ruffridge, Senior Vice President

  
\_\_\_\_\_  
Arlene Schafer, Secretary

ATTEST:

  
\_\_\_\_\_  
District Clerk

APPROVED AS TO FORM:

  
\_\_\_\_\_  
District Counsel

## EXHIBIT A

### COSTS FOR SERVICES FROM HAULER TO DISTRICT

On a monthly basis, the CONTRACTOR shall bill the DISTRICT for the following three (3) items:

1. Hauler Fee. Per Section 3.1.2, this fee includes all costs that the CONTRACTOR has for collection for mixed waste/organics and all equipment used including vehicles and carts for all customers. As of the effective date, this rate is \$9.7954 per month per customer based upon monthly occupancy counts.
2. Processing Fee. CRT Recycling/Disposal. As of the effective date of this Agreement, the cost per ton to process mixed solid waste is \$51.97 per ton. This is a net rate to the District and includes any recyclable revenues retained by CRT.
3. Conversion Technology Fee. Per Section 3.1.4, this rate of \$71.50 per ton is what the CONTRACTOR charges for Organics tonnage delivered to the Anaerobic Digestion (AD) facility in Perris, Ca. This is measured on gross tonnage delivered.

“NET TO HAULER” calculation: This is the total compensation paid to the CONTRACTOR on a monthly basis divided by the total units serviced.

The net to hauler calculation in comparing other jurisdictions does not include the AD rate per ton. Should the net to hauler exceeds 10% of the Orange County average, CONTRACTOR shall rebate to the DISTRICT the amount necessary to achieve the ten percent (10%) threshold.