

---

---

WASTE INFRASTRUCTURE SYSTEM ENTERPRISE AGREEMENT  
("WISE AGREEMENT")

Between

THE COUNTY OF ORANGE, CALIFORNIA

and  
the

CITY OF YORBA LINDA

Dated April 21, 2026

---

---

County Authorization Date:

County Notice Address:

Director  
OC Waste & Recycling  
601 N. Ross Street 5<sup>th</sup> Floor  
Santa Ana, CA 92701

City Authorization Date:

April 21, 2026

City Notice Address:

Pete Grant, City Manager  
City of Yorba Linda  
4845 Casa Loma Avenue  
Yorba Linda, CA 92886

**TABLE OF CONTENTS**

Page

**ARTICLE I  
DEFINITIONS AND INTERPRETATION**

Section 1.1 DEFINITIONS ..... 2  
Section 1.2 INTERPRETATION ..... 7

**ARTICLE II  
REPRESENTATIONS AND WARRANTIES**

Section 2.1 REPRESENTATIONS AND WARRANTIES OF THE CITY ..... 8  
Section 2.2 REPRESENTATIONS AND WARRANTIES OF THE COUNTY ..... 9

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

Section 3.1 DELIVERY OF WASTE ..... 9  
Section 3.2 PROVISION OF DISPOSAL SERVICES BY THE COUNTY ..... 11  
Section 3.3 COUNTY RIGHT TO REFUSE WASTE ..... 12  
Section 3.4 UNINCORPORATED AREA ACCEPTABLE WASTE ..... 13  
Section 3.5 MISCELLANEOUS OPERATIONAL MATTERS ..... 14  
Section 3.6 OTHER USERS OF THE DISPOSAL SYSTEM ..... 14  
Section 3.7 COUNTY PROVISION OF WASTE DIVERSION SERVICES ..... 15

**ARTICLE IV  
CONTRACT RATE**

Section 4.1 CHARGING AND SECURING PAYMENT OF CONTRACT RATE ..... 15  
Section 4.2 CONTRACT RATE ..... 15  
Section 4.3 RESPONSIBILITY FOR PAYMENT OF THE CONTRACT RATE ..... 21  
Section 4.4 BILLING OF THE CONTRACT RATE ..... 21  
Section 4.5 RESTRICTED RESERVES ..... 21  
Section 4.6 AUDITED FINANCIAL STATEMENTS ..... 22  
Section 4.7 ANNUAL UPDATE OF TEN-YEAR FINANCIAL PROJECTION ..... 22

**ARTICLE V  
BREACH, ENFORCEMENT AND TERMINATION**

Section 5.1 BREACH ..... 23  
Section 5.2 CITY CONVENIENCE TERMINATION ..... 23  
Section 5.3 TERMINATION ..... 23  
Section 5.4 NO WAIVERS ..... 24  
Section 5.5 FORUM FOR DISPUTE RESOLUTION ..... 24

**ARTICLE VI  
TERM**

Section 6.1 EFFECTIVE DATE AND TERM ..... 24  
Section 6.2 COMMENCEMENT DATE ..... 25

ARTICLE VII  
GENERAL PROVISIONS

Section 7.1	OPERATION AND MAINTENANCE OF THE DISPOSAL SYSTEM.....	26
Section 7.2	UNCONTROLLABLE CIRCUMSTANCES GENERALLY.....	26
Section 7.3	INDEMNIFICATION.....	27
Section 7.4	RELATIONSHIP OF THE PARTIES.....	27
Section 7.5	LIMITED RECOURSE.....	27
Section 7.6	PRE-EXISTING RIGHTS AND LIABILITIES.....	27
Section 7.7	NO VESTED RIGHTS.....	28
Section 7.8	LIABILITY FOR COLLECTION, TRANSPORTATION AND PROCESSING.....	28
Section 7.9	NO CONSEQUENTIAL OR PUNITIVE DAMAGES.....	28
Section 7.10	AMENDMENTS.....	28
Section 7.11	NOTICE OF LITIGATION.....	28
Section 7.12	FURTHER ASSURANCES.....	28
Section 7.13	ASSIGNMENT OF AGREEMENT.....	28
Section 7.14	INTEREST ON OVERDUE OBLIGATIONS.....	28
Section 7.15	BINDING EFFECT.....	28
Section 7.16	NOTICES.....	28

APPENDIX 1

ESTIMATED ANNUAL TONNAGE

APPENDIX 2

CUMULATIVE TONNAGE

APPENDIX 3

CUMULATIVE CAPITAL COSTS

APPENDIX 4

FRANCHISE HAULER ACKNOWLEDGEMENT

## WASTE INFRASTRUCTURE SYSTEM ENTERPRISE AGREEMENT

THIS WASTE INFRASTRUCTURE SYSTEM ENTERPRISE AGREEMENT (“WISE Agreement” or “Agreement” are used interchangeably) is made and dated as of the date indicated on the cover page hereof between the County of Orange, a political subdivision of the State of California (the “County”), and the city, special district, or sanitary district designated on the cover page of this Agreement (the “City”). County and City may hereinafter be referred to singularly as “Party” or collectively as “Parties.”

### RECITALS

The County owns, manages and operates a Waste Infrastructure System to manage municipal and solid waste generated within the County of Orange or imported from outside the County pursuant to contractual agreements. The Waste Infrastructure System collectively includes active Class III sanitary landfills (“County Landfills”), resource recovery, recycling and organics programs, infrastructure and operations, closed landfills, and regional household hazardous waste collection centers and other waste management related systems as may be deemed necessary by the County.

The County is also responsible for the long-term management of twenty (20) closed landfills as required under Applicable Law.

County Landfills are used for the management of municipal solid waste pursuant to legislation including but not limited to the California Integrated Waste Management Act of 1989 (Division 30 of the California Public Resources Code) (the “Act”) and the Short-lived Climate Pollutants Reduction Act (“SB 1383”). County Landfills are also subject to other State and federal regulations designed to ensure that landfill operations minimize the impacts to public health and safety and the environment.

Pursuant to Resolution, the County established the Waste Management Enterprise Fund pursuant to Government Code §25261 to ensure that all costs associated with the operation and management of the Waste Infrastructure System are financed by charges imposed for services provided by the Department and are not funded by tax revenue or the County General Fund.

The City, in the exercise of its police power, its powers under the Act, and other Applicable Law, has entered into a franchise or other agreement with or issued permits or licenses to one or more private haulers for the collection, recycling, diversion and disposal of municipal solid waste generated within the City.

A significant portion of municipal solid waste generated within the City historically has been and currently is delivered by such hauler or haulers to the County for disposal in the Disposal System.

Since 1997, the City and the County have provided for the management of municipal solid waste through Waste Disposal Agreements (“WDAs”), wherein the County agreed to provide disposal capacity for waste generated in the City, and the City agreed to deliver or cause the delivery of waste generated in the City to the Disposal System, as more specifically set forth in, and subject to the terms and conditions of the WDAs.

Starting in approximately 2014, the Legislature of the State of California passed several pieces of legislation (“Organics Legislation”) that require significant reductions in the disposal of Organic Waste. The purpose of the Organics Legislation is to mandate organics recycling and curtail the impacts of climate change by reducing greenhouse gas emissions such as methane. In this regard, the decomposition of organic material in the State’s landfills was identified as a significant source of methane that could be reduced.

On April 23, 2019, the Orange County Board of Supervisors passed Resolution 19-031 to respond to the State’s increasing landfill diversion requirements and identified the need for additional organic processing infrastructure in the County and directed the Department to develop additional organics recycling infrastructure to support the region in meeting State organic recycling mandates.

The County has developed an Organics Infrastructure that is comprised of organic processing facilities to receive and process Organic Waste to support the State’s Organic Legislation goals, promote local recycling, assist local jurisdictions in meeting their organic diversion requirements and correspondingly conserve capacity in the

Disposal System and is offering interested Cities the option of participating in the County provided Organic Processing Services pursuant to a separate Organic Services Agreement (“OSA”) as provided in Appendix 5.

In their effort to continue the concepts and purposes outlined in the WDAs and respond to Organics Legislation, the City and the County desire to enter into this Waste Infrastructure System Enterprise Agreement (“WISE Agreement” or “Agreement”), on the terms and conditions set forth herein. The County and City acknowledge that the currently operative WDA shall remain in full force and effect until its expiration or the WISE Agreement Commencement Date, whichever comes first.

The City has determined that the execution of this Agreement by the City will serve the public health, safety and welfare of the City by providing disposal rate stability, predictable and reliable long-term disposal service, and the continuation of sound environmental management.

The County has determined that the execution by the County of this Agreement will serve the public health, safety and welfare by providing a stable, predictable and reliable supply of municipal solid waste and the resulting service payment revenue to the Waste Infrastructure System, thereby enabling the County to plan, manage, operate and finance improvements to the Waste Infrastructure System on a prudent and sound long term, businesslike basis consistent with its legal and regulatory obligations to the State and Federal government.

Official action approving this Agreement and determining it to be in the public interest and authorizing its execution and delivery was duly taken by the County on the County authorization date indicated on the cover page hereof.

Official action approving this Agreement and determining it to be in the public interest and authorizing its execution and delivery was duly taken by the City on the City authorization date indicated on the cover page hereof.

It is, therefore, agreed as follows:

## ARTICLE I DEFINITIONS AND INTERPRETATION

SECTION 1.1 DEFINITIONS. As used in this Agreement, the following terms shall have the meanings set forth below.

“Acceptable Waste” means all garbage, refuse, rubbish, Organic Waste and other materials and substances discarded or rejected as being spent, useless, worthless or in excess to the owners at the time of such discard or rejection and which are normally disposed of by or collected from residential (single family and multi-family), commercial, industrial, governmental and institutional establishments and which are acceptable at Class III landfills under Applicable Law.

“Act” means AB 939 the California Integrated Waste Management Act of 1989 (Division 30 of the California Public Resources Code), as amended, supplemented, superseded and replaced from time to time.

“Agreement” means this Waste Infrastructure System Enterprise Agreement (“WISE Agreement”) between the County and the City as the same may be amended or modified from time to time in accordance herewith.

“Appendix” means an appendix to this Agreement, as the same may be amended or modified from time to time in accordance with the terms hereof

“Applicable Law” means the Act, Organics Legislation, the Orange County Code of Ordinances, CERCLA, RCRA, CEQA, any Legal Entitlement and any federal or State rule, regulation, requirement, guideline, permit, action, determination or order of any Governmental Body having jurisdiction, applicable from time to time to the siting, design, permitting, acquisition, construction, equipping, financing, ownership, possession, operation or maintenance of the Waste Infrastructure System, and the transfer, handling, transportation and disposal of Acceptable Waste, Unacceptable Waste, or any other transaction or matter contemplated hereby (including any of the foregoing which concern health, safety, fire, environmental protection, mitigation monitoring plans and building codes).

“CalRecycle” means the California Department of Resources Recycling and Recovery, which is a branch of the California Environmental Protection Agency, and any agency, department or other Governmental Body which succeeds to the duties and powers thereof. CalRecycle oversees the State’s waste management and waste reduction programs. CalRecycle was established in 2010 to replace the California Integrated Waste Management Board and is responsible for the enforcement of legislation and regulations and diversion requirements applicable to the Waste Infrastructure System.

“Capital Costs” means all costs of the Waste Infrastructure System that are classified as capital costs for purposes of the budget of the Department in accordance with procedures established by the County of Orange Auditor-Controller in compliance with the California State Controller’s Manual, including but not limited to all of the categories of costs of the Waste Infrastructure System including but not limited to “Buildings and Improvements, and Infrastructure” (Object Code 4200), “Equipment” (Object Code 4000-4040) and “Intangible” (Object Code 4250-4299) in the County of Orange – Chart of Accounts, or any successor accounting or reporting system utilized by the County.

“CEQA” means the California Environmental Quality Act, codified in California Public Resources. Code Section 21000 *et seq.* as amended or superseded, and the regulations promulgated thereunder.

“CERCLA” means the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. Section 9601 *et seq.*, as amended or superseded, and the regulations promulgated thereunder.

“Change in Law” means any of the following events or conditions which has a material and adverse effect on the performance by the parties of their respective obligations under this Agreement (except for payment obligations), or on the siting, design, permitting, acquisition, construction, equipping, financing, ownership, possession, operation or maintenance of the Waste Infrastructure System or other matters to which Applicable Law applies:

- (1) the enactment, adoption, promulgation, issuance, material modification or written change in administrative or judicial interpretation on or after the Commencement Date of any Applicable Law (other than Applicable Law enacted by the County); or
- (2) the order or judgment of any Governmental Body (other than the County), on or after the Commencement Date, to the extent such order or judgment is not the result of willful or negligent action, error or omission or lack of reasonable diligence of the County or of the City, whichever is asserting the occurrence of a Change in Law; provided, however, that the contesting in good faith or the failure in good faith to contest any such order or judgment shall not constitute or be construed as such a willful or negligent action, error or omission or lack of reasonable diligence; or
- (3) the denial of an application for, delay in the review, issuance or renewal of, or suspension, termination, interruption, imposition of a new or more stringent condition in connection with the issuance, renewal or failure of issuance or renewal on or after the Commencement Date of any Legal Entitlement to the extent that such denial, delay, suspension, termination, interruption, imposition or failure materially and adversely interferes with the performance of this Agreement, if and to the extent that such denial, delay, suspension, termination, interruption, imposition or failure is not the result of willful or negligent action, error or omission or a lack of reasonable diligence of the County or of the City, whichever is asserting the occurrence of a Change in Law; provided, however that the contesting in good faith or the failure in good faith to contest any such denial, delay, suspension, termination, interruption, imposition or failure shall not be construed as such a willful or negligent action, error or omission or lack of reasonable diligence; or
- (4) any new or revised requirements or fees relating to the funding or provision of Waste Infrastructure Services, including but not limited to, Integrated Waste Management Act Fees, Host Fees, regulations for disposal operations, organics processing and diversion, recycling initiatives or activities associated with the remediation, closure, funding or monitoring of closed landfills with respect to facilities comprising the Waste Infrastructure System, or facilities which the County previously utilized to provide waste disposal, transfer, recycling, processing or other waste related activities.

“City” means, as applicable, the City (general law, charter or other), Special District or Sanitary District designated on the cover page of this Agreement and party to this Agreement.

“City Acceptable Waste” means all Acceptable Waste which was originally discarded by the first generator thereof within the geographical limits of the City, and Residue from the foregoing wherever produced, whether within or outside the City (or Tonnage equivalencies of such Residues, as and to the extent provided in subsection 3.1(D) hereof).

“Consumer Price Index” or “CPI” means a blend of the following two indexes based on the following percentage of each: 60% of the CPI shall be comprised of the Consumer Price Index published by the Bureau of Labor Statistics for All Urban Consumers: Water and Sewer and Trash Collection Services in U.S. City Average (CUSR0000EHG); and, 40% of the CPI shall be comprised of the Consumer Price Index for All Urban Consumers, not seasonally adjusted, all items index (CPI-U) – All items in Los Angeles-Long Beach-Anaheim (CUURS49ASA0). In the event either of the forgoing indexes is no longer published during the term of this Agreement, such other index identified by the Bureau of Labor Statistics as a replacement or otherwise generally accepted as a replacement shall be used for purposes of this Agreement; and, in the absence thereof, the Orange County Board of Supervisors shall select an index that it determines most closely reflects the forgoing and best implements the intent of this Agreement.

“Commencement Date” means the date on which the obligations of the parties hereto commence, established as provided in Section 6.2(B) hereof.

“Contract Date” means the first date on which this Agreement has been executed by both parties hereto.

“Contract Rate” has the meaning specified in Section 4.2 hereof

“Contract Year” means the fiscal year commencing on July 1 in any year and ending on June 30 of the following year.

“Controllable Waste” means all City Acceptable Waste with respect to which the City has the legal or contractual ability to determine the disposal location therefor and which is:

- (1) Non-Recycled City Acceptable Waste;
- (2) not generated from the operations of the Governmental Bodies which, under Applicable Law, have the independent power to arrange for the disposal of the waste they generate; and
- (3) collected and hauled by Franchise Haulers.

“County” means the County of Orange, a political subdivision of the State of California and party to this Agreement.

“County Landfills” means all active Class III sanitary landfills located within the County of Orange and operated by the Department. At the time of execution, County Landfills consist of the Olinda Alpha Landfill located in Brea, California, the Frank R. Bowerman Landfill located in Irvine, California, and the Prima Deshecha Landfill located in San Juan Capistrano, California. (Note: The current estimated closure date for the Olinda Alpha Landfill is 2036 as specified in its Solid Waste Facility Permit. Throughout the term of this Agreement, County reserves the right to reduce, continue, expand, or cease all operation at the Olinda Alpha Landfill at its sole discretion.)

“County Plan” means the integrated waste management plan of the County approved by CalRecycle pursuant to the Act as in effect from time to time.

“County Acceptable Waste” means Acceptable Waste generated in the County.

“County-wide Recycling Services” has the meaning set forth in subsection 3.7(A) hereof.

“Cumulative Tonnage Target” for any given Contract Year means the amount specified in Appendix 2 hereto with respect to such Contract Year.

“Department” means OC Waste & Recycling, and any agency, department or other Governmental Body

which succeeds to the duties and powers thereof.

“Designated Facility” means the landfill or other County facility that the Department directs or assigns City Franchise Haulers to deliver City Acceptable Waste.

“Director” means the Director of OC Waste & Recycling.

“Disposal Services” means the solid waste disposal and other services to be provided by the County pursuant to the Service Covenant and as otherwise provided in this Agreement.

“Disposal System” means the Waste Infrastructure System which includes solid waste disposal operations at active landfills; Organics Infrastructure; regional Household Hazardous Waste Collection Centers; and other waste management related systems deemed necessary by the County, as well as services, such as post-closure maintenance and other activities, at closed landfills formerly operated by the County, as appropriate under Applicable Law.

“Environmental Fund” means the fund or funds held by the County to pay unanticipated costs of environmental mitigation, remediation or liability.

“Franchise Hauler” means any hauler or collector who provides Acceptable Waste collection services within the City pursuant to, or under authority granted by, a permit, contract, franchise or other agreement with the City. The term Franchise Hauler includes the City itself if Acceptable Waste collection and transportation services are provided directly by City operated municipal collection service.

“Full Cost Recovery” means all facets of Department costs and responsibilities including, but not limited to; operation, maintenance and management of the Waste Infrastructure System, labor and equipment, capital projects, environmental monitoring and mitigation, site closure, legal and regulatory compliance, long-term post-closure maintenance, remediation costs, planning for contingencies associated with the County’s long-term liability and maintaining adequate financial reserves.

“Governmental Body” means any federal, State, county, city or regional legislative, executive, judicial or other governmental board, agency, authority, commission, administration, court or other body, or any officer thereof acting within the scope of his or her authority.

“Hazardous Material” or “Hazardous Substance” has the meaning given such term in CERCLA, the Carpenter-Presley-Tanner Hazardous Substance Account Act (California Health and Safety Code Section §78000 *et seq.*), and Titles 26 and 27 of the California Code of Regulations and other regulations promulgated thereunder.

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

“Host Fee” means the amount paid pursuant to Cooperative Agreements, referred to in Section 1.2 (I) of this Agreement, to compensate the cities identified in Section 1.2(I) (“Host Cities”) for costs or impacts incurred by Host Cities which might be associated with County Landfills due to their location within Host City boundaries, and not already substantially avoided or mitigated through the identification and adoption of Project Design Feature and Mitigation Measures.

“Imported Acceptable Waste” means Acceptable Waste that is generated outside of the geographical boundaries

of the County and delivered to the Waste Infrastructure System.

“Importation Agreement” means an agreement between the County and any public or private entity for the delivery and acceptance of Imported Acceptable Waste pursuant to contract.

“Independent Haulers” means those waste collection/hauler companies primarily engaged as a principal business in the collection and transportation of municipal solid waste generated in the County of Orange which are not obligated to deliver County Acceptable Waste to the Waste Infrastructure System pursuant to a franchise, contract, permit or other authorization with a City in the County.

“Initial Term” has the meaning specified in Section 6.1(A) hereof.

“Legal Entitlement” means all permits, licenses, approvals, authorizations, consents and entitlements of whatever kind and however described which are required under Applicable Law to be obtained or maintained by any person with respect to the Waste Infrastructure System or the performance of any obligation under this Agreement or the matters covered hereby.

“Legal Proceeding” means every action, suit, litigation, arbitration, administrative or regulatory proceeding, and other legal or equitable proceeding having a bearing upon this Agreement.

“Loss-and-Expense” means any and all loss, liability, obligation, damage, delay, penalty, judgment, deposit, cost, expense, claim, demand, charge, tax, or expense, including all fees and costs.

“MRF Fines” mean undersized or pulverized material consisting of small fractions of waste that are created during the recycling process as Material Recovery Facilities.

“Net Import Revenues” has the meaning ascribed thereto in Section 3.6(F).

“Non-Recycled City Acceptable Waste” means all City Acceptable Waste other than Recycled City Acceptable Waste.

“OC Waste & Recycling Enterprise Fund” means the waste management enterprise fund established and managed by the County pursuant to Section 25261 of the Government Code separate from its other funds and accounts for receipts and disbursements in connection with the Waste Infrastructure System.

“Organics Infrastructure” means organic processing facilities designed to receive and process Organic Waste to support the State’s Organic Legislation goals, promote local recycling, and/or assist local jurisdictions in meeting their organic diversion requirements which are utilized by interested Cities in connection with their participating in County-provided Organic Processing Services pursuant to a separate Organic Services Agreement.

“Organics Legislation” means organics recycling legislation including AB 1594, AB 1826, SB 1383 and any future legislation pertaining to the management and diversion of Organic Waste.

“Organics Processing Services” means the services provided by County to Cities that choose to enter into the Organic Services Agreement provided in Appendix 5.

“Organics Services Agreement” (“OSA”) means that separate agreement (as provided in Appendix 5) between County and interested Cities, whereby the County agrees to provide Organic Processing Services to interested Cities pursuant to the terms of the OSA.

“Organic Waste” means solid wastes containing material originated from living organisms and their metabolic waste products including, but not limited to, food, green material, landscape and pruning waste, organic textiles and carpets, lumber, wood, paper products, printing and writing paper, manure, biosolids, digestate, and sludges as defined in Title 14 of the California Code of Regulations, Section 18982(a)(46).

“Overdue Rate” means the maximum rate of interest permitted by the laws of the State, if applicable, or the prime rate established from time to time by the Bank of America, N.A. or its successors and assigns, plus 2%, whichever is lower.

“Participating City” means any City executing a WISE Agreement in accordance with Section 3.6(A) hereof and meeting all requisite conditions to the Commencement Date thereof.

“Participation Threshold” means the point at which the percentage of the County’s Acceptable Waste attributable to Participating Cities which have executed and delivered Agreements shall exceed 50% percent (using the percentage rates attributed to such Participating Cities in Appendix 1).

“Posted Disposal Rate” means the per ton tipping fee charged by the County for the disposal of solid waste at the Disposal System by parties which are not entitled to disposal service at the Contract Rate pursuant to this Agreement or other contractual arrangement.

“Prohibited Medical Waste” means any medical or infectious waste prohibited or restricted under Applicable Law from being received by or disposed at the Disposal System.

“Qualified Household Hazardous Waste” means waste materials determined by local, State, and federal regulation to be:

- (1) Of a nature that they must be listed as hazardous in State statutes and regulations;
- (2) Toxic/ignitable/corrosive/reactive; and
- (3) Carcinogenic/mutagenic/teratogenic;

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

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

“Renewal Term” has the meaning specified in Subsection 6.1(C) hereof.

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

“Resource Conservation and Recovery Act” or “RCRA” means the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 *et seq.*, as amended and superseded.

“Restricted Reserves” has the meaning specified in Section 4.5.

“Sanitary Districts” means the sanitary districts in the County formed pursuant to the Sanitary District Act of 1923, codified in California Health & Safety Code Section 6400 *et seq.*, as amended, supplemented, superseded and replaced from time to time.

“Self-Hauled Waste” means City Acceptable Waste and City Acceptable Organic Waste collected and hauled by Self-Haulers.

“Self-Hauler” means any person not engaged commercially in waste haulage who collects and hauls Acceptable Waste generated from residential or business activities conducted by such person.

“Service Coordinator” means the service coordinator for either party designated pursuant to subsection 3.5(C) hereof.

“Service Covenant” means the covenants and agreements of the County set forth in Sections 3.2 and 3.3 hereof.

“Special District” means public agencies created by a Governmental Body to provide one or more specific services to a community, such as but not limited to water, sewer, refuse, parks and recreation, fire protection, pest abatement, etc.

“Source-Separated Household Hazardous Waste” means Qualified Household Hazardous Waste which has been segregated from Acceptable Waste originating or generated within the geographical jurisdiction of the City at the source or location of generation.

“Source-Separated Household Hazardous Waste Disposal System” means the collection centers, facilities, contracts and other arrangements owned or administered by the County for the receipt, handling and disposal of Source-Separated Household Hazardous Waste.

“State” means the State of California.

“Term” shall mean the term of this Agreement.

“Ton” means a “short ton” of two thousand (2,000) pounds.

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

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

“Uncontrollable Circumstance” means any act, event or condition affecting the Waste Infrastructure System, the County, the City, or any of their Franchise Haulers, contractors or suppliers to the extent that it materially and adversely affects the ability of either party to perform any obligation under the Agreement (except for payment obligations), if such act, event or condition is beyond the reasonable control of and is not also the result of the willful or negligent act, error or omission or failure to exercise reasonable diligence on the part of the party relying thereon as justification for not performing an obligation or complying with any condition required of such party under the Agreement; provided, however, that the contesting in good faith or the failure in good faith to contest such action or inaction shall not be construed as willful or negligent action or a lack of reasonable diligence of either party. Examples of Uncontrollable Circumstances are:

- (1) an act of God, landslide, lightning, earthquake, fire, explosion, flood, sabotage or similar occurrence, acts of a public enemy, extortion, war, blockade or insurrection, riot or civil disturbance, epidemic; and
- (2) a Change in Law.

“Unincorporated Area” means those portions of the County which are not contained within the jurisdictional boundaries of incorporated cities.

“Unincorporated Area Acceptable Waste” means Acceptable Waste originating from or generated within the Unincorporated Area.

“Unrestricted Reserves” means cash and other reserves of the Waste Infrastructure System which are not Restricted Reserves.

“Waste Disposal Covenant” means the covenants and agreements of the City set forth in Section 3.1 hereof.

“Waste Infrastructure System” or “Disposal System” means County owned or operated waste management

related facilities, including active Class III sanitary landfills (“County Landfills”), closed landfills managed by the County, resource recovery operations, Organics Infrastructure, recycling and organics programs, infrastructure and operations, and regional household hazardous waste collection centers and other waste management related systems as may be deemed necessary by the County.

“WISE” means Waste Infrastructure System Enterprise.

“WISE Agreements” means each of the WISE agreements entered into between the County and any City within the County, Special District, Sanitary District, Jurisdiction, or operator of any Franchise Hauler located in the County in accordance with the terms herewith.

SECTION 1.2 INTERPRETATION. In this Agreement, unless the context otherwise requires:

(A) References Hereto. The terms “hereby”, “hereof”, “herein”, “hereunder”, “herewith”, and any similar terms refer to this Agreement, and the term “hereafter” means after, and the term “heretofore” means before, the Contract Date.

(B) Gender and Plurality. Words of the masculine gender mean and include correlative words of the feminine and neuter genders and words importing the singular number mean and include the plural number and vice versa.

(C) Persons. Words importing persons include firms, companies, associations, general partnerships, limited partnerships, trusts, business trusts, corporations and other legal entities, including public bodies, as well as individuals.

(D) Headings. The table of contents and any headings preceding the text of the Articles, Sections and subsections of this Agreement shall be solely for convenience of reference and shall not constitute a part of this Agreement, nor shall they affect its meaning, construction or effect.

(E) No Third Party Beneficiaries. Nothing in this Agreement is intended to confer on haulers or any other person other than the parties hereto and their respective permitted successors and assigns hereunder any rights or remedies under or by reason of this Agreement.

(F) Counterparts. This Agreement may be executed in any number of original counterparts. All such counterparts shall constitute but one and the same Agreement.

(G) Applicable Law and Venue. This Agreement has been negotiated and executed in the State of California and shall be governed by and construed under the laws of the State of California. In the event of any legal action to enforce or interpret this Agreement, the sole and exclusive venue shall be a court of competent jurisdiction located in Orange County, California, and the parties hereto agree to and do hereby submit to the jurisdiction of such court, notwithstanding Code of Civil Procedure Section 394. Furthermore, the parties specifically agree to waive any and all rights to request that an action be transferred for adjudication to another county.

(H) Severability. If any clause, provision, subsection, Section or Article of this Agreement shall be ruled invalid by any court of jurisdiction, then the parties shall: (1) promptly meet and negotiate a substitute for such clause, provision, subsection, Section or Article which shall, to the greatest extent legally permissible, effect the intent of the parties therein; (2) if necessary or desirable to accomplish item (1) above, apply to the court having declared such invalidity for a judicial construction of the invalidated portion of this Agreement; and (3) negotiate such changes in, substitutions for or additions to the remaining provisions of this Agreement as may be necessary in addition to and in conjunction with items (1) and (2) above to effect the intent of the parties in the invalid provision. The invalidity of such clause, provision, subsection, Section or Article shall not affect any of the remaining provisions hereof, and this Agreement shall be construed and enforced as if such invalid portion did not exist, unless such invalidity frustrates the underlying primary purpose of the Agreement.

(I) Integration; Preservation of Certain Agreements. This Agreement contains the entire agreement between the parties with respect to the transactions contemplated hereby. This Agreement shall completely and fully supersede all prior understandings and agreements between the Parties with respect to such transactions; provided; however, that this Agreement shall not supersede the following Cooperative Agreements as they currently

exist or as they may be amended in the future:

- 1) Cooperative Agreement between the City of Brea and the County of Orange regarding the Olinda Alpha Landfill.
- 2) Cooperative Agreement between the City of Irvine and the County of Orange regarding the Frank R. Bowerman Landfill.
- 3) Cooperative Agreement between the City of San Juan Capistrano and the County of Orange regarding the Prima Deshecha Landfill.

## ARTICLE II REPRESENTATIONS AND WARRANTIES

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

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

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

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

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

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

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

SECTION 3.1 DELIVERY OF WASTE.

(A) Waste Management and Disposal Covenant. Subject to the occurrence of the Commencement Date and throughout the Term of this Agreement, and subject to available Waste Infrastructure System capacity, the City shall exercise all legal and contractual power and authority which it may possess from time to time to deliver or cause the delivery of all Controllable Waste to the Waste Infrastructure System in accordance herewith.

(B) Recycled City Acceptable Waste. The parties hereto acknowledge the responsibility of the City to meet its own recycling and landfill diversion goals contained in the Act and Organics Legislation. Nothing in this Agreement is intended or shall be interpreted to prohibit or impair the ability of the City to meet such responsibilities, or to restrict the right of the residents, businesses or organizations in the City to practice source separation, recycling, composting or other materials recovery activities, or to restrict the right of the City to conduct, sponsor, encourage or require such activities in any form. No reduction in the amount of Controllable Waste generated in the City and delivered to the Waste Infrastructure System by or on behalf of the City which may result from any such source separation or recycling program shall cause the City any liability hereunder (other than potential adjustment to the Contract Rate to the extent provided in Article IV hereof) and shall not constitute a breach of this Agreement.

(C) Waste Delivered to Transfer Station. All Residue from any processing of Controllable Waste by materials recovery, composting, recycling or other means, wherever performed, shall constitute Controllable Waste and be subject to the Waste Disposal Covenant. Where City Acceptable Waste is processed at a facility which concurrently processes other Acceptable Waste in a manner which produces commingled residue which cannot be traced to a geographic source, generic residues from such facility in Tonnage equal to the residues that would have

been produced had City Acceptable Waste only been processed at the facility shall constitute Controllable Waste and be subject to the Waste Disposal Covenant. Any City Acceptable Waste or material derived or segregated therefrom which is held in storage and asserted by the possessor thereof to constitute Recycled City Acceptable Waste awaiting sale or distribution to the secondary materials markets shall constitute Controllable Waste if, when and to the extent that the storage or diversion thereof can be reasonably deemed to constitute an evasion of the Waste Disposal Covenant rather than generally recognized, accepted and prevailing practice in the Southern California materials recovery and recycling industry conducted in accordance with Applicable Law. In order for the owner and/or operator of a transfer station to be entitled to deliver Acceptable Waste from a Participating City to the Waste Infrastructure System for the Contract Rate as provided in Article IV, such owner and/or operator must execute a direct agreement with the County, acknowledging and agreeing to comply with the obligation of the Participating City to cause the delivery of all Controllable Waste to the Waste Infrastructure System pursuant to this Agreement. In addition, the County shall be authorized to implement procedures to determine if Acceptable Waste delivered by the owners or operators of Transfer Stations is entitled to utilize the Waste Infrastructure System for the Contract Rate. Such procedures may include requiring Transfer Stations to certify, under penalty of perjury, the source of any such Acceptable Waste. If necessary, the County may require that, in order to qualify for use of the Waste Infrastructure System for the Contract Rate, Transfer Stations must deliver Controllable Waste in loads containing only Controllable Waste, and not commingled with Acceptable Waste from entities which are not Participating Cities or Participating Independent Haulers.

(D) Power to Obligate Waste Disposal and Comply with this Agreement. On or before the Commencement Date, (i) any City franchise, contract, lease, or other agreement which is lawfully in effect relating to or affecting Controllable Waste shall provide, or shall have been amended to provide, that the City shall have the right without material restriction on and after the Commencement Date to direct the delivery of all Controllable Waste to the County Waste Infrastructure System (whether or not such Controllable Waste is delivered to a transfer station as an intermediate step prior to landfill disposal) and otherwise to comply with its obligations under this Agreement with respect to Controllable Waste and Franchise Haulers, and (ii) the City shall designate the Waste Infrastructure System as the disposal location pursuant to such franchise, contract, lease or other agreement. On and after the Commencement Date and throughout the Term of this Agreement the City (a) shall not enter into any franchise, contract, lease, agreement or obligation, issue any permit, license or approval, or adopt any ordinance, resolution or law which is materially inconsistent with the requirements of the Waste Disposal Covenant, and (b) shall maintain non-exclusive or exclusive franchises or other contractual arrangements over any City Acceptable Waste which, as of the Contract Date, is subject to non-exclusive or exclusive franchise or other contractual arrangements. The City agrees that the County shall be a third party beneficiary of the obligation of Franchise Haulers to deliver Controllable Waste to the Waste Infrastructure System, and may directly enforce such obligation through any legal means available. The City shall notify in writing each Franchise Hauler of the County's third party beneficiary rights.

(E) Controllable Waste Flow Enforcement.

(1) The City, in cooperation with the Department, shall establish, implement, carry out and enforce a waste flow enforcement program which is sufficient to assure the delivery of all Controllable Waste to the Waste Infrastructure System pursuant to and in accordance with the Waste Disposal Covenant for Controllable Waste disposal at the times and in the manner provided herein. The waste flow enforcement program shall consist of amending City franchises, permits or authorizations with all Franchise Haulers, to the extent required by this Section and to the extent allowed by law, and shall include in addition, to the extent necessary and appropriate in the circumstances to assure compliance with the Waste Disposal Covenant, but shall not be limited to:

- (i) licensing or permitting Franchise Haulers, upon the condition of compliance with the Waste Disposal Covenant,
- (ii) providing for and taking appropriate enforcement action under any such franchise, license, or permit, such as but not limited to the suspension, revocation and termination of collection rights and privileges, the imposition of fines or collection of damages, and the exercise of injunctive relief against non-complying Franchise Haulers and
- (iii) causing any Transfer Station to which Controllable Waste is delivered for processing to deliver certification, under the penalty of perjury, of the amounts of Controllable Waste received and Residue remaining from processing at such Transfer Station.

(2) The City acknowledges and agrees that in the event of a breach of the Waste Disposal Covenant by the City, the City shall pay the County an amount equal to the amount that the City would have been required to pay to the County had the Waste Disposal Covenant not been breached, which shall be calculated by: (1) subtracting the

number of tons actually delivered during the month(s) of the breach from the number of tons that were delivered during the same month(s) closest in time when there was no such breach, even if such month(s) closest in time was prior to the Term, and (2) multiplying such amount by the Contract Rate in effect at the time of such breach (or any higher rate with respect to which the County has provided notice pursuant to Section 4.2). In the event that the County terminates the Agreement as a result of such breach, the damages due as a result of such termination shall be equal to the average monthly deliveries by the City for the twelve (12) months prior to the commencement of the breach multiplied by the Contract Rate in effect at the time of such breach (or any higher rate with respect to which the County has provided notice pursuant to Section 4.2), multiplied by the number of months that would have remained in the Term of the Agreement had the termination not occurred. The parties recognize that if the City fails to meet its obligations hereunder, the County will suffer damages and that it is and will be impracticable and extremely difficult to ascertain and determine the exact amount of such damages. Therefore, the parties agree that the damages specified above represent a reasonable estimate of the amount of such damages, considering all of the circumstances existing on the date hereto, including the relationship of the sums to the range of harm to the County that reasonably could be anticipated and anticipation that proof of actual damages would be costly or inconvenient. In signing this Agreement, each party specifically confirms the accuracy of the statements made above and the fact that each party had ample opportunity to consult with legal counsel and obtain an explanation of this liquidated damage provision at the time that this Agreement was made.

(F) Legal Challenges to Franchise System. The City shall use its best efforts to preserve, protect and defend its right to exercise and comply with the Waste Disposal Covenant against any challenge thereto, legal or otherwise (including any lawsuits against the City or the County, whether as plaintiff or defendant), by a Franchise Hauler or any other person, based upon breach of contract, violation of law or any other legal theory. The City shall bear the cost and expense of any such Legal Proceeding or other challenge. In the event any such Legal Proceeding relating to the Waste Disposal Covenant or the City's exercise thereof establishes in a final determination that such covenant or exercise thereof is void, unlawful or unenforceable, or if any Franchise Hauler fails to deliver Controllable Waste to the Waste Infrastructure System in breach of its franchise with the City on the grounds that a judicial determination made by any court or other Applicable Law has rendered its obligation to deliver Controllable Waste to the Disposal System void, unlawful or unenforceable on any legal grounds, with the result that actual waste deliveries to the Disposal System fall below the Cumulative Tonnage Targets, the County shall be entitled to avail itself of the remedies described in Section 4.2(B) hereof.

(G) Franchise Haulers. The City shall compile and provide the Department with the following information concerning all Franchise Haulers: name, address and phone number; identification number; area of collection and transportation; and franchise and permit terms.

(H) Waste Information System. The City shall cooperate with the Department in collecting information and otherwise monitoring Franchise Haulers in order to assure compliance with this Agreement, the Act, Organics Legislation, or other Applicable Law. Such information may include information such as, data pertaining to Controllable Waste collected, transported, stored, processed and disposed of, Recycled City Acceptable Waste collected, transported, stored, processed and marketed or disposed of, Controllable Organic Waste collected, stored, processed and marketed or disposed of, Franchise Haulers' franchise, permit or license terms, collection areas, transportation routes and compliance with Applicable Law; and all other information which may reasonably be required by the Department in connection with this Agreement. The City agrees to include in any revised franchise, contract, license or permit or other authorization granted to Franchise Haulers an obligation of the Franchise Hauler to provide to the County information relating to the Controllable Waste collected by such Franchise Hauler, including origins from which such Controllable Waste was collected (identifying Controllable Organic Waste, Recycled City Acceptable Waste, or as otherwise may be required under this Agreement or under Applicable Law), tonnage by type of load (residential, commercial, roll-off box), customer service levels, tonnage delivered by transfer station or material recovery facility utilized, and other related information.

(I) City Actions Affecting County. The City agrees to carry out and fulfill its responsibilities under this Agreement and Applicable Law so as to permit full and timely compliance by the County with its covenants and agreements with the State. In particular, the City agrees not to conduct, authorize or permit any disposal services for Controllable Waste to be provided in competition with the Disposal Services provided by the County hereunder, and not to take or omit to take any action with respect to Controllable Waste, its collection, transportation, transfer, storage, treatment, processing, or disposal that may materially and adversely affect the County's ability to achieve such timely compliance. Notwithstanding the foregoing, the City shall not be required to deny any permit or license or refuse to grant any approval while exercising its police powers.

(J) No Right of Waste Substitution. Nothing in this Agreement shall authorize or entitle the City to deliver or cause the delivery to the Waste Infrastructure System of Acceptable Waste or Acceptable Organic Waste originating from or generated outside the jurisdiction of the City, nor obligate the County to receive or dispose of any such Acceptable Waste or Acceptable Organic Waste. The City shall not assign in whole or in part its right to deliver or cause to be delivered Controllable Waste or Controllable Organic Waste to the County hereunder, and shall not permit any Acceptable Waste or Acceptable Organic Waste originating from or generated outside the jurisdiction of the City to be substituted for Controllable Waste or Controllable Organic Waste for any purpose hereunder.

(K) Annexations and Restructuring. It is the intention of the parties that this Agreement and the obligations and rights of the City hereunder, including particularly the Waste Disposal Covenant and the Contract Rate, shall, to the extent permitted by Applicable Law, extend to any territory annexed by the City (or any territory with respect to which the City assumes solid waste management responsibility from a Sanitary District or other public entity) and shall bind any successor or restructured Governmental Body which shall assume or succeed to the rights of the City under Applicable Law.

### SECTION 3.2 PROVISION OF WASTE INFRASTRUCTURE SERVICES BY THE COUNTY.

(A) Service Covenant. Commencing on the Commencement Date, and subject to available Waste Infrastructure System capacity, the County shall provide or cause the provision of the service of receiving and disposing of all Controllable Waste at the Waste Infrastructure System, and, in accordance with subsection 3.3(C) hereof, disposing of Unacceptable Waste inadvertently accepted at the Disposal System. The County, to the maximum extent permitted under Applicable Law, shall use its best efforts to increase source reduction, materials recovery, recycling, organic processing or other waste diversion in the region as may be required by law or which result in the long-term preservation of landfill disposal capacity and to keep the Waste Infrastructure System open for the receipt of Acceptable Waste for disposal or transfer of Controllable Waste pursuant to this Agreement. The County shall do and perform all acts and things which may be reasonably necessary or desirable in connection with its covenants in this subsection, including without limitation all planning, development, administration, implementation, construction, operation, maintenance, management, financing and contract work related thereto or undertaken in connection therewith. The County shall exercise all reasonable efforts to minimize the costs incurred in complying with the Service Covenant consistent with its responsibilities hereunder and under this Agreement, Applicable Law and prudent solid waste management practice and environmental considerations.

(B) Source-Separated Household Hazardous Waste. The County shall maintain, as part of the Waste Infrastructure System, a Source-Separated Household Hazardous Waste Disposal System for the disposal of Source-Separated Household Hazardous Waste. The disposal service provided by such system shall constitute part of the Disposal Services, and shall be available to Participating Cities as part of the Contract Rate. The County may impose additional fees and charges for new services relating to Source-Separated Household Hazardous Waste or with respect to cities which are not parties to an Agreement. The County may provide for the expansion, contraction or modification of the Source-Separated Household Hazardous Waste Disposal System and its services to the extent necessary to ensure the Waste Infrastructure System's viability.

(C) Designated Facilities. County and City will coordinate in determining the primary landfill used for disposal and processing of Controllable Waste. The Department shall immediately advise the City by telephone of any situation, event or circumstance which results in the partial or complete inability of the County to receive Controllable Waste at any particular landfill within the Waste Infrastructure System, its effect on the County's ability to perform its obligations hereunder, and the County's best estimate of the probable duration. The Department shall confirm such advice in writing within twenty four (24) hours of the occurrence of any such inability. The County shall use its best efforts to resume normal operation of the landfill used by the City as soon as possible. In the event a situation, event or circumstance results in the partial or complete inability of the County to receive Controllable Waste at any particular landfill within the Waste Infrastructure System the County shall have the right to redirect Controllable Waste to another landfill within the Waste Infrastructure System for the duration of the situation, event or circumstance; provided, however, that in such circumstances the County shall utilize reasonable efforts to first redirect waste which is not Controllable Waste. In no event shall the County be required to accept Controllable Waste if it does not have sufficient permitted disposal capacity within the Waste Infrastructure System.

(D) Compliance with Service Covenant Not Excused for any Reason. Commencing on the

Commencement Date, and subject to the terms of this Agreement, the obligations of the County to duly observe and comply with the Service Covenant, in accordance with Applicable Law, shall apply continuously and without interruption for the Term of this Agreement. In the event that any Change in Law, situation, event or other Uncontrollable Circumstance impairs or precludes compliance with the Service Covenant by the means or methods then being employed by the County, the County shall use best efforts to implement alternative or substitute means and methods to enable it to satisfy the terms and conditions of the Service Covenant. In the event that a Change in Law precludes the County from complying with such covenants with the means or methods then being employed and from utilizing any alternate or substitute means or methods of compliance, the County shall continuously use all reasonable efforts to effectuate executive, legislative or judicial change in or relief from the applicability of such law so as to enable the County lawfully to resume compliance with such covenants as soon as possible following the Change in Law.

County failure to duly observe and comply with the Service Covenant due to its efforts to comply with Applicable Law, shall not constitute a breach under this Agreement, and shall excuse County performance to the extent necessary to comply with Applicable Law.

If the alternative or substitute means and methods proposed for the County to observe and comply with the Service Covenant are more costly than the previously used means and methods, County shall be entitled to a corresponding Contract Rate increase to cover any associated additional costs pursuant to the provisions of Section 4.2 of this Agreement.

### SECTION 3.3 COUNTY RIGHT TO REFUSE WASTE.

(A) Right of Refusal. Notwithstanding any other provision hereof, the County may refuse delivery of:

- (1) Hazardous Waste;
- (2) Controllable Waste delivered at hours other than those provided in Section 3.5 hereof;
- (3) Waste that does not constitute Acceptable Waste;
- (4) Acceptable Waste delivered by City but originating from or generated outside the jurisdiction of the City;
- (5) Controllable Waste consisting primarily of construction and demolition debris or inert material which may cause a particular facility's daily tonnage limit to be exceeded;
- (6) Acceptable Waste in excess of permitted limits; and
- (7) Acceptable Waste that would result in County violating Applicable Law.

(B) Identification of Unacceptable Waste. The Department shall have the right (but not the duty or the obligation) to inspect the vehicles of all Franchise Haulers delivering material to the Waste Infrastructure System, and may require that the Franchise Hauler remove any Unacceptable Waste from such vehicle before it is unloaded. If the Department determines that it is impractical to separate Controllable Waste from Unacceptable Waste in any vehicle, or if the Franchise Hauler delivering such waste is unwilling to make such separation, or if any vehicle is carrying waste which may spill or leak, then the Department may reject the entire vehicle, and the City shall forthwith remove or cause the removal of the entire delivery from the Waste Infrastructure System. The Department may take all reasonable measures to prevent waste from being blown or scattered before and during unloading. The City shall cause the Franchise Haulers to observe and comply with Applicable Law, the operating rules and regulations of the Department, and the provisions of this Agreement prohibiting the delivery of Unacceptable Waste to the Waste Infrastructure System.

(C) Hazardous Waste and Hazardous Substances. The parties acknowledge that the Waste Infrastructure System has not been designed or permitted to accept Hazardous Waste or Hazardous Substances, and is

not intended to be used in any manner or to any extent, for the handling, transportation, storage or disposal of Hazardous Waste, Hazardous Material or Hazardous Substances. Neither the County nor the City shall countenance or knowingly permit the delivery of Hazardous Waste or Hazardous Substances to the Waste Infrastructure System. City shall be responsible for the costs of removal, and any regulatory fines, associated with the knowing delivery of any Hazardous Substances to the Waste Infrastructure System by the City or its Franchise Hauler.

(D) Disposal of Unacceptable Waste and Hazardous Waste. If Unacceptable Waste or Hazardous Waste is discovered in a vehicle at any facility within the Waste Infrastructure System, the driver of the vehicle will not be permitted to discharge the load. If a vehicle is observed unloading Unacceptable Waste or Hazardous Waste in the tipping area of a facility within the Waste Infrastructure System Department personnel will use reasonable efforts to assure that such material has been characterized, properly secured and its disposition resolved. The return or reloading onto the delivery vehicle of any Hazardous Waste, Prohibited Medical Waste or other waste requiring handling or transportation shall be conducted in accordance with Applicable Law. Whenever Hazardous Waste is detected at any facility within the Waste Infrastructure System, the Department shall take immediate action in accordance with Applicable Law.

#### SECTION 3.4 UNINCORPORATED AREA ACCEPTABLE WASTE.

Commencing on the Commencement Date, the County in accordance with Applicable Law shall provide or cause to be provided the service of disposing of non-recycled Acceptable Waste originating or generated within the Unincorporated Area and, with respect to such material, shall comply with the Waste Disposal Covenant as if the County constituted a City subject to the Waste Disposal Covenant hereunder. Rates charged by the County for the disposal of each class of non-recycled Acceptable Waste generated in the Unincorporated Area shall be the same as the Contract Fee charged for the disposal of each class of Controllable Waste. The County shall use its best efforts to preserve, protect and defend its right to exercise and comply with the Waste Disposal Covenant (with respect to non-recycled Acceptable Waste generated in the Unincorporated Area) against any challenge thereto, legal or otherwise, by a Franchise Hauler or any other person, based upon breach of contract, violation of law or any other legal theory. The County shall bear the cost and expense of any such Legal Proceeding or other challenge (with respect to non-recycled Acceptable Waste generated in the Unincorporated Area).

#### SECTION 3.5 MISCELLANEOUS OPERATIONAL MATTERS.

(A) Operating Hours. The County shall keep the Waste Infrastructure System open for the receiving of Acceptable Waste during such regular operating hours as may be established by the Department in the operating rules and regulations applicable to the Waste Infrastructure System. The County reserves the right to modify the operating days and hours to comply with Applicable law or as otherwise may be deemed necessary by the County.

(B) Scales and Weighing. The Department shall operate and maintain permanent scales at the Waste Infrastructure System as required by Applicable Law. The Department shall weigh all vehicles delivering waste by or on behalf of the City (whether or not the County accepts such waste) and prepare a daily weight record with regard to such delivery.

(C) Service Coordinator. The County and the City each shall designate in writing thirty (30) days prior to the expected Commencement Date a person to transmit instructions, receive information and otherwise coordinate service matters arising pursuant to this Agreement (each a "Service Coordinator"). Either Party may designate a successor or substitute Service Coordinator at any time by notice to the other Party.

(D) Review of Records. Each Party may review the other Party's books and records with respect to matters relevant to the performance by either Party under this Agreement or otherwise related to the operation of the Waste Infrastructure System to the extent allowed under the California Public Records Act (interpreted as if the Parties to this Agreement were natural persons for purposes of the Public Records Act).

#### SECTION 3.6 OTHER USERS OF THE DISPOSAL SYSTEM.

(A) On or Before April 30, 2026, the County shall have the right to enter into WISE Agreements with Orange County entities with respect to Acceptable Waste which was originally discarded by the first generator thereof within the geographical limits of the County, including other cities in the County, Special Districts, Sanitary Districts, Franchise Haulers and Independent Haulers. Agreements entered into during this period shall have terms

and provisions substantially identical to the terms and provisions of this Agreement; provided, however, that in no event shall such agreements have terms and provisions more favorable than the terms and provisions of this Agreement (including but not limited to the Contract Rate and availability of disposal capacity).

(B) After April 30, 2026, the County shall have the right to enter into WISE Agreements with Orange County entities, including any city, Special Districts, Sanitary Districts, Franchise Haulers and Independent Haulers, or otherwise accept Acceptable Waste from such parties, but only within the limitations contained in this Section. Any such agreement or waste acceptance agreement must provide that the party delivering waste shall pay a Disposal Rate at least 10% higher than the Contract Rate unless the County determines it is in the best interest of the Waste Infrastructure System to establish a Disposal Rate less than 10% higher than the Contract Rate. In no event shall the Disposal Rate be less than the Contract Rate. In addition, the County shall reserve the right in any such agreement to at any time, to the extent permitted by Applicable Law, refuse to receive and dispose of Acceptable Waste from any city, Special District, Sanitary District, Franchise Hauler and Independent Hauler if and to the extent that such receipt and disposal might materially and adversely affect the ability of the County to comply with its obligations to the Participating Cities under the WISE Agreements to which each is a party.

(C) Posted Disposal Rate. The Posted Disposal Rate shall at all times be at least 10% higher than the Contract Rate.

(D) Self-Haulers. The City and the County acknowledge that Self-Haulers shall be entitled to deliver Self-Hauled Waste to the Waste Infrastructure System, on a non-contract basis, at the Posted Disposal Rate. Such Self-Haulers shall not be entitled to dispose of Acceptable Waste for the Contract Rate.

(E) Receipt of Imported Acceptable Waste on a Contract Basis. The County shall have the right to enter into Importation Agreement(s) with any public or private entity for the delivery of Imported Acceptable Waste on terms and conditions that the County determines to be necessary to ensure and enhance the viability of the Waste Infrastructure System and to generate Net Import Revenues. In no event shall such Importation Agreements, entered into after the Commencement Date, include a per ton tipping fee or Disposal Rate for Imported Acceptable Waste that is less than the Contract Rate. The County certifies that in its good faith judgment the contract or other agreement for the delivery of such waste will not materially and adversely affect the ability of the County to receive and dispose of Acceptable Waste from the Participating Cities in accordance with the applicable WISE Agreements throughout the Term thereof; and, should the delivery of waste subject to Importation Agreements adversely affect the County's ability to receive and dispose of Controllable Waste from Participating Cities the County will prioritize receipt and disposal of Controllable Waste delivered pursuant to applicable WISE Agreements.

(F) Application and Use of Revenues From Other Users.

(1) County Acceptable Waste: Throughout the Term hereof, all revenues received by the County from the disposal or processing of County Acceptable Waste into the Waste Infrastructure System (including Surcharges, and any and all fine, penalty, liquidated damages or other damages, grants, awards or revenue received by the County in connection with the Waste Infrastructure System), shall be deposited by the County in the County OC Waste & Recycling Enterprise Fund and shall constitute revenues of the Waste Infrastructure System.

(2) Imported Acceptable Waste: Throughout the Term hereof, all revenues received by the County, pursuant to an Importation Agreement, for the disposal or processing of Imported Acceptable Waste into the Waste Infrastructure System (including Surcharges, and any and all fine, penalty, liquidated damages or other damages or revenue received by the County in connection with the Waste Infrastructure System), shall first be applied toward all of the costs attributable to the acceptance and management of such Imported Acceptable Waste into the Waste Infrastructure System. Costs attributable to the disposal of Imported Acceptable Waste include, but are not limited to, deposits to the Environmental Fund, deposits to closure and post-closure reserves, Host Fees (if applicable), incremental operating costs (such as manpower expenditures, equipment, services and supplies expenditures), State surcharges, regulatory fees, charges or penalties, and a pro rata share of capital project costs. Revenue remaining after costs attributable to the disposal and management of Imported Acceptable Waste shall be considered "Net Import Revenues" and shall be calculated and distributed as follows:

(i) Calculation: Net Import Revenues are estimated to be 30% of the revenues received

by the County from the disposal of Imported Acceptable Waste (excluding any newly established per-ton fees or increases to existing per-ton fees with respect to Imported Acceptable Waste payable to the State, other regulatory agencies or cities in which facilities in the Waste Infrastructure System are located.)

- (ii) Distribution: Net Import Revenues shall be distributed as follows;
  - a. 50% of any Net Import Revenues shall be paid to the County General Fund.
  - b. 50% of such Net Import Revenues shall be paid to the Participating Cities (and to the County, with respect to the unincorporated area) listed in Appendix 1 for use for any purpose by the Participating City, including but not limited to State mandated solid waste programs. Payments of such amount to the County General Fund and the Participating Cities shall be made by the County within ninety (90) days after the end of each fiscal year. The portion of Net Import Revenues specified above payable to the Participating Cities shall be apportioned in the percentages set forth in Appendix 1.
  - c. The percentages set forth in Appendix 1 with respect to each Participating City shall be annually reviewed and adjusted every five (5) years by the County to reflect the percentage of deliveries of Acceptable Waste from each Participating City averaged over the last five (5) years. The County shall notify Participating Cities of the revised percentages in Appendix 1 within one hundred and twenty (120) days of the end of each fiscal year.

### SECTION 3.7 COUNTY PROVISION OF WASTE DIVERSION SERVICES.

(A) County-Wide Recycling and Diversion Services. Unless otherwise specifically provided in this Agreement, County is not required to provide for any source reduction, materials recovery, recycling, organic processing or other waste diversion services under this Agreement. However, County may choose to provide County-Wide Recycling Services funded through the County OC Waste & Recycling Enterprise Fund at its sole discretion on the condition that provision of said services shall be funded in a manner that does not impact the Contract Rate without first going through the process outlined in Section 4.2 and expressly agreed to by 50% of Participating Cities.

(B) Organic Processing and Diversion Services. The County has developed Organics Infrastructure and programs available to interested Cities intended to assist Cities in meeting their diversion and Organic Legislative Recycled Organic Waste Procurement goals and to promote the processing and diversion of Organic Waste into compost or other material that qualifies as diversion under Applicable Law. Cities interested in receiving County provided Organic Processing Services may enter into the separate Organic Services Agreement (“OSA”) provided in Appendix 5 of this Agreement.

(C) Food Waste Processing and Diversion. County is in the process of evaluating the options and feasibility of development of a Commercial Food Waste Processing Infrastructure. If developed, Cities will be provided an opportunity to participate in this service on terms which shall be separately agreed upon by the Parties.

(D) Edible Food Recovery Programs. County is in the process of evaluating the options and feasibility of development of regional County-wide edible food recovery programs to assist Cities in meeting State mandated goals. The intent of Edible Food Recovery to address the food hierarchy and wasted food scale on a regional level through collaboration of all jurisdictions, key local, State and federal stakeholders, the non-profit sector and business sector. City agrees to reasonably cooperate with County efforts and collaborate on data analysis and reporting to provide jurisdictions reports for compliance under SB 1383. If developed, Cities will be provided an opportunity to participate in this service on terms which shall be separately agreed upon by the Parties.

(E) Recycling Market Development Zone (“RMDZ”) Program. The RMDZ program, administered by the California Department of Resource Recycling and Recovery (CalRecycle), combines recycling with economic development to support business that use materials from the waste stream to manufacture their products. The program offers loans, technical assistance and product marketing to eligible businesses located within designated zones. City agrees to reasonably cooperate and collaborate with County in support of the RMDZ program.

(F) Separate City-County Diversion Service Agreements. Nothing in this Agreement is intended to limit the right of the County to enter into a separate agreement with the City or any other person to provide source reduction, materials recovery, recycling, composting or other waste diversion services. Any such program conducted by the County, whether in participation with the City, any other of the Participating Cities, other Cities, Special Districts, Sanitary Districts, Franchise Haulers, Independent Haulers, Unincorporated Area or non-County entity, shall be operated, managed and accounted for as a program separate and distinct from the Disposal Services program contemplated by the WISE Agreements and shall not be funded through the general revenues of the Disposal System.

ARTICLE IV  
CONTRACT RATE

SECTION 4.1 CHARGING AND SECURING PAYMENT OF CONTRACT RATE. The City acknowledges that the County shall have the right to charge and collect a Contract Rate for the acceptance, disposal, and processing of Controllable Waste delivered to the Waste Infrastructure System by City or its Franchise Hauler. The Contract Rate shall be calculated and established, and may be modified, as provided in Section 4.2 hereof. In addition, the City acknowledges that the County shall have the right to establish as part of the operating rules and regulations reasonable measures to secure the payment of all Contract Rates.

SECTION 4.2 CONTRACT RATE.

(A) Establishment of Contract Rate. The Contract Rate payable by each City or Franchise Hauler shall be a three (3) year progressive Contract Rate of **\$67/ton** (July 1 2026 through June 30, 2027), **\$74/ton** (July 1, 2027 through June 30, 2028), and **\$81/ton** (July 1, 2028 through June 30, 2029) and contingent on the delivery to the Waste Infrastructure System of an amount of City Acceptable Waste at least equal to the Cumulative Tonnage Targets identified in Appendix 2, and subject to adjustment necessary to reflect the circumstances set forth in this Section 4.2 including but not limited to:

(i) increased costs incurred by the County (in excess of available insurance proceeds) due to the occurrence of one or more Uncontrollable Circumstances, other than Changes in Law;

(ii) costs incurred by the County (in excess of available insurance proceeds and amounts available in the Environmental Fund for such purposes) remediating environmental conditions at the Disposal System or inactive or closed disposal sites in the County, which, if uncorrected, could give rise to potential claims under CERCLA or related federal or State statutes, including costs incurred providing indemnification to any Participating City pursuant to subsection 7.3;

(iii) tonnage shortfalls to the extent permitted by Sections 4.2(B);

(iv) County determination that the Department revenue is insufficient to meet Full Cost Recovery requirements.

(v) increased costs incurred by the County due to the occurrence of one or more Changes in Law;

(vi) Capital Costs in excess of the Capital Costs at any point in time during the term hereof exceeding the Cumulative Capital Costs set forth in Appendix 3;

(vii) Provision of new or expanded services, provided on terms as agreed to by the Parties.

Prior to adjusting the Contract Rate as a result of any of the circumstances described in clauses (i), (ii), (iii) (iv) or (vi) above, the County shall utilize the following remedies in the following order of priority:

(1) reduce the costs of operating the Disposal System to the extent practicable; and

(2) at the sole discretion of the County, utilize Unrestricted Reserves to pay costs of the Waste Infrastructure System.

The County will not be required to utilize such remedies prior to adjusting the Contract Rate as a result of any of the circumstances described in clauses (v) or (vii) above.

Any adjustments to the Contract Rate permitted by this Section shall be calculated by the County to reflect the actual costs or expenses of addressing the circumstance or circumstances pursuant to which the adjustment is authorized. The County agrees that, where appropriate, it will evaluate the feasibility of long-term financing for significant capital costs. Notwithstanding the forgoing, no adjustment to the Contract Rate shall occur as a result of costs associated with the programs identified in Section 3.7, without first going through the process outlined in Section 4.2 and expressly agreed to by 50% of Participating Cities.

(B) County Acceptable Waste Shortfall. In the event that the actual amount of County Acceptable Waste delivered to the Disposal System at the end of any Contract Year is less than the Cumulative Tonnage Target for such Contract Year for County Acceptable Waste, as specified in Appendix 2, the County shall utilize the following options, in the following order of priority, in order to remedy any adverse effects of such tonnage shortfall:

- (i) reduce the costs of operating the Waste Infrastructure System to the extent practicable;
- (ii) at the sole discretion of County, utilize Restricted Reserves described in clause (iii) of Section 4.5 to pay costs of the Waste Infrastructure System;
- (iii) at the sole discretion of County, utilize Unrestricted Reserves to pay costs of the Waste Infrastructure System; and
- (iv) adjust the Contract Rate.

In the event that implementation of the steps described above does not result in sufficient revenues to satisfactorily address the shortfall in tonnage, the County shall have the right to terminate the Agreement on one-hundred eighty (180) days written notice to the City. In addition, in the event that Waste Infrastructure expenses are lower than estimated or actual deliveries to the Disposal System exceed the Cumulative Tonnage Target as of the end of any Contract Year, the City acknowledges the County shall have the right to establish reserves intended to reflect the potential for lower than expected annual waste deliveries in subsequent years, and that any such reserves shall constitute "Restricted Reserves".

(C) [RESERVED]

(D) Interim Use of Remedies. In the event that, during any Contract Year, waste deliveries to the Disposal System are 25% or more below delivery projections for such Contract Year with the result that the County determines it is unlikely that the Cumulative Tonnage Target will be achieved as of the end of such Contract Year, the County may utilize the remedies described in Section 4.2(B) prior to the end of such Contract Year; provided, however, that if at the end of such Contract Year, the Cumulative Tonnage Target is actually met, the County shall reimburse any adjustments to the Contract Rate made pursuant to this Section to Participating Cities. Such reimbursement shall occur in a manner as agreed between the parties, and may be given as a credit or adjustment to the Contract Rate for future deliveries, rather than a lump sum payment.

(E) Special Charges. Notwithstanding Section 4.2(A), the County shall have the right to establish special charges for the provision of new or expanded services or the receipt of hard to handle materials, such as bulky materials, construction and demolition debris, tree stumps and sludge. Should the County wish to provide new or expanded services to Cities, it may charge for such services upon agreement of City. Special charges shall be calculated to reflect the reasonable incremental costs to the County of providing the new or expanded services or accepting such hard to handle materials.

Adjustments pursuant to this Section 4.2(E) shall not require compliance with the provisions of Section 4.2(I)

(F) Annual CPI Escalation. Subject to the application of the Contract Rate True-up (provided

below), the Contract Rate shall be adjusted each July 1, beginning 2029, in an amount equal to the percentage change in the CPI (as defined above) as measured from the October twenty one (21) months prior to the rate adjustment to the October immediately preceding the rate adjustment (the “Annual CPI Adjustment”). For example: The July 1, 2029 Annual CPI Adjustment to the Contract Rate shall be based upon the change in CPI from October 2027, to October 2028, referred to as year 1 and year 2 respectively in the following example.

Formula to calculate percentage change in the Contract Rate based on Annual CPI Adjustment :

Step 1:

$$\left[ \frac{\text{October Year 2 CPI}}{\text{October Year 1 CPI}} - 1 \right] = \% \text{ increase in Contract Rate}$$

Step 2: Current Contract Rate x (1+ % increase in Contract Rate) = Contract Rate as of July 1 Year 2

On each April 1, commencing April 1, 2029, the County shall provide the City with notice of the Annual CPI Adjustment to the Contract Rate to be effective the following July 1. Such notice shall contain the calculation of the adjustment set forth above. The County shall calculate the new Contract Rate each year.

In the event that the change in CPI as described above is negative rather than positive, no rate adjustment will be made for that year. No adjustment under this Section 4.2(F) will take place until the October CPI index surpasses the index level as of the October immediately preceding the last annual rate adjustment pursuant to this Section 4.1(F), which will be considered “year 1” in calculating the change in the Contract Rate.

For example, if the change in CPI is measured as follows: October 2027 = 205, October 2028 = 204, October 2029 = 201, October 2030 = 208, then there would be no adjustment in July 2029, or July 2030, and an adjustment equal to the change from 205 to 208 would be implemented on July 1, 2031.

Contract Rate True-up: On an annual basis, no later than each April 30, beginning April 30, 2030, the County shall conduct an annual review of factors pertaining to the most recently completed fiscal year(s) including but not limited to, tonnage received throughout the Waste Infrastructure System, Cumulative Tonnage Targets identified in Appendix 2, revenue received from all sources, Department expenditures, and other factors that make up Department’s total costs. County shall notify City prior to April 30, 2030 (and every April 30 thereafter) and advise whether the Annual CPI Adjustment to the Contract Rate should be frozen for a period of time (in circumstances where Department revenues exceed Department Full Cost Recovery needs) or to determine whether the Contract Rate should be increased beyond the Annual CPI Adjustment as defined above (in circumstances where Department costs exceed CPI) to ensure that Department revenues meet Full Cost Recovery.

Within thirty (30) days of finalizing each annual review, the County shall transmit its findings and the bases thereof to Participating Cities at the next regularly scheduled OCCMA meeting or other forum mutually agreed to by the County and OCCMA. If requested by the City or OCCMA, the County shall reasonably respond to requests from the City and/or OCCMA for additional information including, but not limited to, requests to meet and discuss reviews, findings, and bases of findings. At the request of 50% of Participating Cities, County agrees to meet and confer in good faith with OCCMA, within sixty (60) days to discuss retention of a consultant acceptable to both the County and OCCMA to conduct an independent review of the County’s annual review findings.

Nothing in this section shall be interpreted as limiting the County’s rights under Section 4.2(A).

(G) Adjustment Resulting from Increased Fees. In addition to the other adjustments specified herein, the Contract Rate shall be adjusted to reflect the imposition of new fees or increase in existing fees relating to the disposal of Controllable Waste imposed by State, federal or other agencies (e.g., the State’s Integrated Waste Management fee, which is currently \$1.40 per ton, but is expected in increase during the term of this Agreement). The adjustment shall be equal to the amount of any new or increased fee, and the adjustment shall take effect so as to coincide with the imposition of the new or increased fee. The County shall provide notice of any increase pursuant to this Section 4.2(G) as soon as practicable after becoming aware of the imposition of any fees described above.

Adjustments pursuant to this Section 4.2(G) shall not require compliance with the provisions of Section 4.2(I).

(H) [RESERVED]

(I) Procedure for Rate Adjustments. In the event the County determines that it is entitled to an adjustment of the Contract Rate pursuant to Section 4.2(A) (other than 4.2(A)(iv)) or Section 4.2(B), it shall utilize the procedures described in this Section 4.2(I). The County shall be required to provide the City with at least ninety (90) days prior written notice of the adjustment, which notice shall identify the specific event(s) or circumstances which require the adjustment. The notice shall also specify the earliest date on which the County Board of Supervisors shall consider the proposed adjustment. At least forty five (45) days prior to such meeting of the Board of Supervisors, the County shall provide the City with a report which shall contain the following information: a description of the specific event(s) or circumstances which require the adjustment; a description (including cost estimates) of any activities (which may include, but not be limited to capital improvements to the Waste Infrastructure System) required in order to remedy such event or circumstance; certification by the County that it has implemented the remedies described in Section 4.2(A) or (B) prior to requiring the rate adjustment; and a description of the methodology used by the County to calculate the adjustment to the Contract Rate (hereinafter the "County Report"). In the event the City disputes the adjustment, it shall provide the County with a written description of the reason for the dispute at least ten (10) days prior to the meeting of the Board of Supervisors identified in the initial notice of the County (hereinafter the "City Report"). The City Report shall be provided to the Board of Supervisors for consideration at such meeting in connection with the proposed rate adjustment. At any time from and after the date that the County provides the City with the County Report, upon the request of either party, the City and County shall meet and confer in good faith to resolve any dispute that may arise regarding the proposed adjustment to the Contract Rate. In any such meeting, the County shall be represented by the Director of the Department or his or her designee. In the event the Board of Supervisors approves all or a portion of the proposed rate adjustment, such rate adjustment shall become effective on the date identified in the initial notice sent by the County regardless of whether or not the procedures in Section 4.2(J) are utilized, but subject to potential reimbursement pursuant to clause (11) of Section 4.2(J).

(J) Procedure for Expedited Judicial Review of Contested Rate Adjustment. In the event that, within thirty (30) days after the effective date of any Contract Rate adjustment made pursuant to Section 4.2(I), Participating Cities which, in the aggregate, accounted for more than 50% of the County Acceptable Waste delivered to the County System in the twelve (12) months preceding the Contract Rate adjustment, provide notice to the County of their election to utilize the procedures described in this Section 4.2(J), then the provisions of this Section 4.2(J) shall be utilized by such Participating Cities and the County to resolve the dispute over the Contract Rate Adjustment. In the event that Participating Cities which have delivered the amount of waste contemplated in the preceding sentence do not provide notice to the County of such election, the County shall have no obligation to participate in or cooperate in the implementation of the procedures described below in this Section 4.2(J).

(1) In order to pursue the expedited judicial determination described in this Section (the "Expedited Rate Determination"), the Participating Cities which have made the election described in the paragraph above (the "Challenging Cities") must commence a civil action for breach of contract (the "Action") in the Orange County Superior Court within forty five (45) days of the date on which the Board of Supervisors approves the challenged adjustment to the Contract Rate.

(2) Within two (2) Court days of filing the Action, the Challenging Cities shall personally serve on the County Counsel, with copy provided to the Clerk of the Board both the summons and complaint, and a stipulation and request for the entering of an order incorporating all of the procedural provisions relating to the Expedited Rate Determination as set forth in this Section 4.2(J) (such stipulation and request for order is hereinafter referred to as the "Expedited Rate Determination Stipulation"). The Expedited Rate Determination Stipulation shall be signed by each of the Challenging Cities, or on behalf of them by their legal counsel.

(3) Within fifteen (15) days of the date of service upon the County of the summons and complaint, and Expedited Rate Determination Stipulation, County Counsel shall execute the Expedited Rate Determination Stipulation and deliver it as well as the County's answer to the complaint in the Action, by electronic means, to the Challenging Cities through their counsel of record. The Stipulation shall also include a waiver by each of the parties of their right to a jury trial of the issues raised in the Action. The Parties agree that the duty to execute the Expedited Rate Determination Stipulation and comply with the procedures set forth for Expedited Rate Determination in this Section 4.2(J) shall be, and are hereby deemed to be, ministerial duties which the law specifically enjoins upon each of them, and shall be subject to enforcement by the parties herein pursuant to Code of Civil Procedure Section 1085, *et seq.*, or by means of a complaint for specific performance.

(4) Within three (3) days of the date of service by the County upon the Challenging Cities of the fully signed Expedited Rate Determination Stipulation, the County and the Challenging Cities shall jointly

make *ex parte* application to the Orange County Superior Court in the Action for the issuance of an order reflecting the procedural requirements and timelines contained in the Expedited Rate Determination Stipulation, provided however, the timelines may be adjusted by the Court as it deems may be needed for its convenience. As part of such *ex parte* application, the County and the Challenging Cities shall expressly seek to confirm with the Orange County Superior Court the briefing schedule, and request a hearing date (effectively a trial date) in accordance with the procedures set forth in this Section 4.2(J).

(5) Within ten (10) days of the date of service by the County upon the Challenging Cities of the answer in the Expedited Rate Determination, the Challenging Cities shall file with the Court and electronically serve upon County Counsel the Challenging Cities' opening brief and the Record in the Expedited Rate Determination. The opening brief shall not exceed 15 pages in length. The Record shall consist of, and be limited to, the record of the proceedings before the Board of Supervisors with respect to the adjustment of the Contract Rate, including but not limited to the County Report and the City Report prepared by each or any of the Challenging Cities pursuant to Section 4.2(I), any materials filed or lodged with the Board of Supervisors and the Orange County Waste Management Commission in connection with its decision, the transcript of the proceedings of the Board of Supervisors meeting(s), and the Orange County Waste Management Commission, the minutes of the Board of Supervisors and the Orange County Waste Management Commission meeting, and the resolution and/or other documentation evidencing the action by the Board of Supervisors and the Orange County Waste Commission to adjust the Contract Rate pursuant to Section 4.2(A) or (B). The record shall also include the most recent reports prepared pursuant to Sections 4.6 and 4.7. The Expedited Rate Determination shall be decided solely on the evidence in the Record, and no extrinsic evidence shall be submitted to or considered by the Court.

(6) Within ten (10) days of service by the Challenging Cities of their opening brief and the Record, the County shall file and electronically serve upon the Challenging Cities' Counsel the County's opposition brief. The opposition brief shall not exceed 15 pages in length.

(7) Within five (5) days of service by the County upon the Challenging Cities of the opposition brief, the Challenging Cities may file and electronically serve upon County Counsel a reply rebuttal brief, which shall not exceed 10 pages in length.

(8) The trial of the Expedited Rate Determination shall be conducted as a law and motion hearing, similar to a hearing on a writ, which shall be conducted at the date set by the Court in connection with the *ex parte* application conducted pursuant to Section 4.2(J)(4), or such other date and time ordered by the Court. If the Court requests the parties to prepare supplemental briefs in response to any question or issue raised by the Court, the parties may do so.

(9) The standard of review for the Expedited Rate Determination shall be the preponderance of the evidence based upon the Record. The burden of proof shall be borne by the Challenging Cities, and the burden of proof shall be the same as with respect to a plaintiff in a damages action for breach of contract. Both parties have participated in the drafting of this Agreement. Accordingly, nothing set forth in this Agreement shall be interpreted or construed for or against either of the parties as a consequence of their participation in the drafting of this Agreement.

(10) The Court shall be advised that the Parties request that it issue a written statement of decision and enter judgment within thirty (30) days of the date of the hearing in the Expedited Rate Determination, although the Parties recognize that the Court has discretion to act as it deems appropriate in accord with applicable laws in connection with the timing thereof.

(11) If the Court determines that any portion of the County's adjusted Contract Rate which is the subject of the Expedited Rate Determination was improperly imposed, the County shall, within thirty (30) days of the date of the statement of decision, reimburse to the City the amount improperly imposed, together with interest calculated at the Overdue Rate. If agreed by the Parties, as an alternative such reimbursement may be made in the form of a reduction in the Contract Rate for a future period (not to exceed twelve (12) months), applied in a manner such that it provides full reimbursement of the amounts described above (including the Overdue Rate, to be applied consistent with provisions of Section 7.14 hereof.)

(12) In the event that the Court does not sign the order contained in the Expedited Rate Determination Stipulation and set the matter for disposition as contemplated herein, the County and the Challenging

Cities shall, within twenty (20) days following the issuance of the Court's order or decision not to do so and thereby honor the parties' stipulation, make application to the Orange County Superior Court for an expedited hearing or trial date. The Challenging Cities and the County shall be bound by all of the requirements and restrictions set forth in Section 4.2(J) that are not in conflict with this paragraph (12). In this regard, and without limiting the foregoing, the only evidence to be presented at the hearing or trial shall be the Record, no testimony shall be presented at the hearing or trial; and both the County and the Challenging Cities waive all rights to a jury trial, to any reconsideration of the decision of the Court, to a new trial after the Court renders a decision, and to any appeal or review of the decision of the Court.

SECTION 4.3 RESPONSIBILITY FOR PAYMENT OF THE CONTRACT RATE, AND OTHER AMOUNTS DUE.

(A) Payment by City. In the event and to the extent (1) the City uses municipal collection forces directly for the haulage of Controllable Waste to the Waste Infrastructure System or (2) the City uses non-municipal Franchise Haulers for collection but nonetheless elects to pay the Contract Rate and other amounts due from City revenues, the City, as its own Franchise Hauler, shall have direct responsibility for payment of the Contract Rate and other amounts due, and shall take all such budgetary, appropriation and other action as may be necessary to provide for the timely payment of the Contract Rate and other amounts due. Such action may include, depending upon the means authorized by the City to provide for such payment, the levy and collection of general or special taxes, the imposition of benefit assessments, or the collection of user fees, generator charges or other similar impositions for municipal solid waste disposal. The City shall use best efforts in accordance with Applicable Law to levy and impose all such taxes, assessments, fees or charges, and will take all steps, actions and proceedings for the enforcement, collection and payment of all such amounts which shall become delinquent, to the full extent permitted by Applicable Law.

(B) Payment by Franchise Haulers. With respect to Controllable Waste delivered by Franchise Haulers on behalf of City other than City municipal collection forces, the obligation to pay the Contract Rate and other amounts due shall rest with such Franchise Haulers. Franchise Hauler shall pay the Contract Rate or other amounts due or any portion thereof when due. In the event of any such failure by Hauler, the County and the City shall cooperate with each other and use their best efforts to obtain timely payment from Franchise Hauler. Such efforts by the County may include, as appropriate, requiring cash payments for disposal rights from such Franchise Hauler and bringing a legal proceeding for payment and damages. Such efforts by the City may include, as appropriate, legal proceedings to suspend, revoke or terminate the Franchise Hauler's franchise, permit or license rights.

(C) Disputes. If the City or the Franchise Hauler disputes any amount billed by the County in any Billing Statement, the City or the Franchise Hauler shall nonetheless pay the billed amount and shall provide the County with written objection within thirty (30) days of the receipt of such Billing Statement indicating the amount that is being disputed and providing all reasons then known to the City or the Franchise Hauler for any objection to or disagreement with such amount. If the City or the Franchise Hauler and the County are not able to resolve such dispute within thirty (30) days after the City's or the Franchise Hauler's objection, either party may pursue appropriate legal remedies.

SECTION 4.4 BILLING OF THE CONTRACT RATE OR OTHER AMOUNTS DUE. The County shall continue to bill Contract Rates and other amounts due after the Commencement Date, in the same manner as it has customarily billed tipping fees. Subject to the other provisions of this Agreement, the County shall have the right to modify or amend such manner of billing on reasonable notice to affected parties.

SECTION 4.5 RESTRICTED RESERVES. For purposes of this Agreement, "Restricted Reserves" means cash and other reserves of the Waste Infrastructure System which are restricted to specific uses or are otherwise being reserved by the County to meet its obligations hereunder throughout the term of the Agreement with respect to the Waste Infrastructure System pursuant to any Applicable Law, contract, adopted budget, budgetary policy of the County with respect to the Waste Infrastructure System, or other arrangement. Such cash and other reserves are not required to be deposited in separate accounts or funds in order to constitute "Restricted Reserves" hereunder, and may be commingled with Unrestricted Reserves or other funds of the County attributable to the Waste Infrastructure System. "Restricted Reserves" shall include, but not be limited to, the following:

(i) reserves for closure of components of the Waste Infrastructure System to the extent required by Applicable Law;

- (ii) amounts reserved by the County for funding of post closure maintenance and monitoring with respect to components of the Waste Infrastructure System;
- (iii) reserves established to protect the Waste Infrastructure System against the adverse financial impact of potential decreases in waste deliveries pursuant to Section 4.2(B);
- (iv) amounts reserved to pay the costs of capital improvements with respect to the Waste Infrastructure System;
- (v) amounts funded from revenues during the early years of the term of the Agreement reserved to enable the County to provide disposal services for the Contract Rate during the later years of the Agreement;
- (vi) amounts temporarily held by the County prior to payment to the State or other Governmental Bodies pursuant to Applicable Law (including any fees or charges payable to CalRecycle);
- (vii) reserves required to meet bond covenants pursuant to financing agreements for Waste Infrastructure System assets to the extent such amounts must be legally separate and distinct from other reserves identified in this Section;
- (viii) security deposits from landfill deferred payment program users;
- (ix) amounts held by the County in the Environmental Fund (provided, however, that such amounts in the Environmental Fund will be made available and used by the County if required to pay costs relating to environmental remediation or other related costs);
- (x) AB 939 surcharges;
- (xi) amounts held by the County in the Corrective Action Fund held pursuant to CCR Title 27 to demonstrate financial assurance to pay for potential groundwater contamination; and
- (xii) an amount equal to three (3) months of budgeted expenses for the Disposal System for the current fiscal year, representing working capital of the Disposal System.

SECTION 4.6 AUDITED FINANCIAL STATEMENTS. The County shall annually, on or before January 1 each year, prepare or cause to be prepared and have on file for inspection an annual report for the preceding Contract Year, accompanied by a certificate of an independent public accountant or of the County Auditor and Controller as to the examination of the financial statements therein (describing such statements as fairly presenting the information therein in conformity with generally accepted accounting principles) relating to the Waste Infrastructure System, services, and the fiscal activities of the OC Waste Disposal Enterprise Fund, and including statements in reasonable detail of the financial condition of the OC Waste Disposal Enterprise Fund as of the end of the Contract Year and revenue and expenses for the Contract Year.

SECTION 4.7 ANNUAL UPDATE OF TEN-YEAR FINANCIAL PROJECTION. The County shall annually, on or before May 1 of each year, prepare or cause to be prepared, an updated Ten-Year Financial Projection for the Waste Infrastructure System. Said Financial Projection shall include at least two full years of prior actual data and ten years of future projections including the following elements:

1. County Acceptable Waste, in tons;
2. Imported Acceptable Waste, in tons;
3. Revenues and expenditures;
4. Cash fund balances, including all monies in the County Solid Waste Enterprise Fund, with specific delineation of monies in the Environmental Fund, Restricted Reserves, Unrestricted Reserves, and all other funds of the System; and
5. Projected liabilities for closure and post closure as well as reasonable reserves for

other environmental costs.

The purpose of the Ten-Year Financial Projection is to keep the City fully informed about the future financial condition of the Waste Infrastructure System. The County shall cause a copy of the Ten-Year Financial Projection to be delivered to the City Manager/General Manager of the City no later than May 1 of each year. Upon request, the County shall make available to the Cities supporting information related to the ten-year financial projection

Within thirty (30) calendar days of finalizing each annual update of the Ten-Year Projection, County shall transmit the Ten-Year Projection via email to the City and OCCMA. If requested by the City or OCCMA, the County shall reasonably respond to requests from the City and/or OCCMA for additional information including, but not limited to, requests to meet and discuss the updated Ten-Year Projections at the next regularly scheduled OCCMA meeting or other forum mutually agreed to by the County and OCCMA.

## ARTICLE V BREACH, ENFORCEMENT AND TERMINATION

**SECTION 5.1 BREACH.** The Parties agree that in the event either Party breaches any obligation under this Agreement or any representation made by either Party hereunder is untrue in any material respect, the other Party shall have the right to take any action at law or in equity (including actions for injunctive relief, mandamus and specific performance) it may have to enforce the payment of any amounts due or the performance of any obligations to be performed hereunder. Neither Party shall have the right to terminate this Agreement except as provided in Section 5.2 and Section 5.3 hereof or as otherwise provided in this Agreement.

**SECTION 5.2 CITY CONVENIENCE TERMINATION.** The City shall have the right to terminate this Agreement in its sole discretion, for its convenience and without cause at any time during the Term hereof upon ninety (90) days' written notice to the County. If the City exercises its rights to terminate the Agreement pursuant to this Section, the City shall pay the County a termination fee equal to the Contract Rate in effect at the time of such termination (or any higher rate with respect to which the County has provided notice pursuant to Section 4.2) multiplied by the number of tons of City Acceptable Waste delivered to the Disposal System during the preceding twelve (12) months (or, if the City had been in breach of the Waste Disposal Covenant during such prior months, such amount as would have been delivered if the City had complied with the Waste Disposal Covenant), multiplied by the number of years remaining in the Term of the Agreement.

### **SECTION 5.3 TERMINATION.**

(A) **By City.** Except as expressly provided herein, the City shall have no right to terminate this Agreement for cause except in the event of the failure or refusal by the County substantially to perform any material obligation under this Agreement unless such failure or refusal is excused by an Uncontrollable Circumstance; except that no such failure or refusal shall give the City the right to terminate this Agreement for cause under this subsection unless:

(1) The City has given prior written notice to the County stating that a specified failure or refusal to perform exists which will, unless corrected, constitute a material breach of this Agreement on the part of the County and which will, in its opinion, give the City the right to terminate this Agreement for cause under this subsection unless such breach is corrected within a reasonable period of time, and

(2) The County has neither challenged in an appropriate forum (in accordance with Section 5.5) the City's conclusion that such failure or refusal to perform has occurred or constitutes a material breach of this Agreement nor corrected or diligently taken steps to correct such breach within a reasonable period of time not more than ninety (90) days from the date of the notice given pursuant to clause (1) of this subsection (but if the County shall have diligently taken steps to correct such breach within such reasonable period of time, the same shall not constitute a breach giving rise to the right of termination for as long as the County is continuing to take such steps to correct such breach).

(B) **By County.** Except as expressly provided herein, the County shall have no right to terminate this Agreement for cause except in the event of the failure or refusal by the City or its Franchise Hauler to substantially perform any material obligation under this Agreement unless such failure or refusal is excused by an Uncontrollable Circumstance; except that no such failure or refusal shall give the County the right to terminate this Agreement for

cause under this subsection unless:

(1) The County has given prior written notice to the City stating that a specified failure or refusal to perform exists which will, unless corrected, constitute a material breach of this Agreement on the part of the City and which will, in its opinion, give the County right to terminate this Agreement for cause under this subsection unless such breach is corrected within a reasonable period of time, and

(2) The City has neither challenged in an appropriate forum (in accordance with Section 5.5) the County's conclusion that such failure or refusal to perform has occurred or constitutes a material breach of this Agreement nor corrected or diligently taken steps to correct such breach within a reasonable period of time not more than ninety (90) days from the date of the notice given pursuant to clause (1) of this subsection (but if the City shall have diligently taken steps to correct such breach within such reasonable period of time, the same shall not constitute a breach giving rise to the right of termination for as long as the City is continuing to take such steps to correct such breach).

SECTION 5.4 NO WAIVERS. No action of the County or the City pursuant to this Agreement (including, but not limited to, any investigation or payment), and no failure to act, shall constitute a waiver by either Party of the other Party's compliance with any term or provision of this Agreement. No course of dealing or delay by the County or the City in exercising any right, power or remedy under this Agreement shall operate as a waiver thereof or otherwise prejudice such Party's rights, powers and remedies. No single or partial exercise of (or failure to exercise) any right, power or remedy of the County or the City under this Agreement shall preclude any other or further exercise thereof of the exercise of any other right, power or remedy.

## ARTICLE VI TERM

### SECTION 6.1 EFFECTIVE DATE AND TERM.

(A) Initial Term. This Agreement shall become effective, shall be in full force and effect and shall be legally binding upon the City and the County from the Contract Date and shall continue in full force and effect until June 30, 2036, unless earlier terminated in accordance with its terms, in which event the Term shall be deemed to have expired as of the date of such termination.

(B) Option to Renew. This Agreement shall be subject to renewal by mutual agreement of the Parties, on or before June 30, 2036 for an additional term of ten (10) years (the "Renewal Term") on the same terms and conditions as are applicable during the Initial Term hereof or on amended terms as may be mutually agreed to by the Parties. The City shall give the County written notice of its election to renew this Agreement on or before June 30, 2035. If the parties do not execute a renewal of this Agreement prior to June 30, 2036 it shall expire.

(C) Contract Rate During Renewal Term. In connection with the parties' right to renew this Agreement for an additional ten-year term pursuant to Section 6.1(C), the parties shall, on or before January 31, 2036 negotiate an applicable change in the Contract Rate for such renewal term. In determining any revisions to the Contract Rate to be applicable during any renewal period, in addition to the circumstances described in Section 4.2(A), the parties may take into consideration the following parameters, including but not limited to:

- (i) actual cost of operations;
- (ii) population growth;
- (iii) increase or decrease in available tonnage;
- (iv) economic and disposal market conditions in the Southern California region;
- (v) new regulatory requirements;
- (vi) Changes in Law;

- (vii) changes in transportation and technology;
- (viii) closure and expansion of nearby landfills;
- (ix) capacity of the Disposal System;
- (x) provision of new and/or expanded services; and
- (xi) available reserves which are in excess of the amount reasonably required as reserves.

(D) Survival; Accrued Rights. The rights and obligations of the parties hereto pursuant to Sections 3.1(E)(2), 5.1, 5.3, 7.2, 7.3, 7.6, 7.7, 7.8, and 7.9 hereof shall survive the termination or expiration of this Agreement, and no such termination or expiration shall limit or otherwise affect the respective rights and obligations of the parties hereto accrued prior to the date of such termination or expiration. At the end of the Term of this Agreement, all other obligations of the parties shall terminate.

## SECTION 6.2 COMMENCEMENT DATE.

(A) Obligations of the Parties Prior to the Commencement Date. The Parties acknowledge that the Agreements may be executed and delivered on different dates and that, except as provided in this subsection, neither the County nor the City shall be obligated to perform its obligations hereunder until the Participation Threshold provided herein has been met and the other conditions to the occurrence of the Commencement Date have occurred. Prior to the Commencement Date, each Party hereto shall at its own expense exercise good faith and due diligence and take all steps within its reasonable control in seeking to satisfy the conditions to the Commencement Date set forth herein as soon as reasonably practicable. The County and the City, each at its own expense, shall cooperate fully with each other and the other Participating Cities in connection with the foregoing undertaking. Until the Commencement Date occurs, the Original WDAs shall remain in full force and effect until they expire or are terminated.

(B) Condition to the Commencement Date. The Commencement Date for the Agreement shall be the date on which Participating Cities reach the Participation Threshold. Unincorporated County is assumed to be a Participating City for the purposes of determining the Commencement Date in accordance with this Section 6.2(b) and Appendix 1 of this Agreement.

(C) Satisfaction of Condition and Commencement Date. Upon the satisfaction or waiver of the condition to the Commencement Date, the County shall give written notice thereof to the Cities which have theretofore executed Agreements. The parties shall thereupon hold a formal closing acknowledging the satisfaction or waiver of the condition to the Commencement Date, certifying that the Commencement Date has occurred and designating the Participating Cities. Copies of all of the documents or instruments constituting or evidencing satisfaction of the Commencement Date conditions shall be furnished to each party prior to or on the Commencement Date.

(D) Newly Incorporated Cities. Any city within Orange County which becomes incorporated after the Commencement Date shall upon request be offered the opportunity by the County to become a Participating City on substantially the same terms and conditions as this Agreement.

(E) Failure of Condition. If by June 30, 2026, or such later date as the County may agree, the condition to the Commencement Date specified in this Section is not satisfied, either party hereto may, by notice in writing to the other party, terminate this Agreement. Neither party shall be liable to the other for the termination of this Agreement pursuant to this subsection, and each of the parties shall bear its respective costs and expenses incurred in seeking to satisfy the condition to the Commencement Date.

## ARTICLE VII GENERAL PROVISIONS

### SECTION 7.1 OPERATION AND MAINTENANCE OF THE WASTE INFRASTRUCTURE SYSTEM.

The County, at its cost and expense through the County Solid Waste Enterprise Fund, shall at all times operate, or caused to be operated, the Waste Infrastructure System in accordance with Applicable Law and the operating rules and regulations of the Department and other applicable regulatory agencies.

## SECTION 7.2 UNCONTROLLABLE CIRCUMSTANCES GENERALLY.

(A) Performance Excused. Except as otherwise specifically provided in this Agreement, neither the County nor the City shall be liable to the other for any failure or delay in the performance of any obligation under this Agreement (other than any payment at the time due and owing) to the extent such failure or delay is due to the occurrence of an Uncontrollable Circumstance.

(B) Notice, Mitigation. The Party experiencing an Uncontrollable Circumstance shall notify the other Party by telecommunication or telephone and in writing, on or promptly after the date the Party experiencing such Uncontrollable Circumstance first knew of the commencement thereof, followed within fifteen (15) days by a written description of (1) the Uncontrollable Circumstance and the cause thereof (to the extent known), (2) the date the Uncontrollable Circumstance began and the cause thereof, its estimated duration, the estimated time during which the performance of such Party's obligations hereunder will be delayed, (3) the estimated amount, if any, by which the Contract Rate may need to be adjusted as a result of such Uncontrollable Circumstance, (4) its estimated impact on the other obligations of such Party under this Agreement and (5) potential mitigating actions which might be taken by the County or City and any areas where costs might be reduced and the approximate amount of such cost reductions. Each Party shall provide prompt written notice of the cessation of such Uncontrollable Circumstance. Whenever such act, event or condition shall occur, the Party claiming to be adversely affected thereby shall, as promptly as reasonably possible, use its best efforts to eliminate the cause therefor, reduce costs and resume performance under this Agreement. In addition, with respect to Changes in Law, the County shall diligently contest any such changes the imposition of which would have a material adverse impact on the Waste Infrastructure System. While the delay continues, the County or City shall give notice to the other Party, before the first day of each succeeding month, updating the information previously submitted.

(C) Impact on Contract Rate. If and to the extent that Uncontrollable Circumstances interfere with, delay or increase the cost to the County of meeting its obligations hereunder and providing Waste Infrastructure Services to the Participating Cities in accordance herewith, the County shall be entitled to an increase in the Contract Rate as provided in Section 4.2 herein or an extension in the schedule for performance equal to the amount of the increased cost or the time lost as a result thereof. The proceeds of any insurance available to meet any such increased cost shall be applied to such purpose prior to any determination of cost increases payable under this subsection. Any cost reductions achieved through the mitigating measures undertaken by the County pursuant to subsection 7.2(B) hereof upon the occurrence of an Uncontrollable Circumstance shall be reflected in a reduction of the amount by which the Contract Rate would have otherwise been increased or shall serve to reduce the Contract Rate to reflect such mitigation measures, as applicable.

SECTION 7.3 INDEMNIFICATION. To the extent permitted by law, the County agrees that, it will protect, indemnify, defend (with counsel selected by County) and hold harmless the City from and against all Loss-and-Expense arising from the City's activity as an "arranger" (for purposes of and as such term is defined under CERCLA or comparable State statutes) of municipal solid waste disposal pursuant to this Agreement. In the event the City shall determine for any reason, other than a disabling conflict of interest, that it wishes to be defended by legal counsel other than the legal counsel provided by the County, the cost of providing such legal counsel shall be the City's sole responsibility. Any costs incurred by the County pursuant to this Section shall be considered an Uncontrollable Circumstance cost and the County shall be entitled to adjust the Contract Rate as provided in subsection 4.2(A) herein. The County shall not, however, be required to indemnify or defend the City from and against all Loss-and-Expense arising from any willful, knowing, illegal or negligent disposal of hazardous waste (other than incidental amounts of Household Hazardous Waste commonly found in municipal solid waste and permitted to be disposed in Class III landfills under RCRA) which violates the County's landfill permits or Applicable Law. The parties agree that this provision constitutes an indemnity under CERCLA (to the extent of the specific provisions of this Section). The parties acknowledge that this subsection is not intended to and does not create any obligation on the part of the County to provide any indemnification or defense to any Franchise Hauler, whether franchised or not, or any Independent Hauler or Transfer Station, under any circumstances. The City acknowledges the County's legitimate interest in actively participating in any defense, litigation or settlement, whether the County or the City provides legal counsel and shall, as a condition to County's provision of this indemnity, coordinate and cooperate fully with the County in the defense of any claims to which this Section applies.

SECTION 7.4 RELATIONSHIP OF THE PARTIES. Neither party to this Agreement shall have any responsibility whatsoever with respect to services provided or contractual obligations or liabilities assumed by the

other party hereto, whether accrued, absolute, contingent or otherwise, or whether due or to become due. The County is an independent contractor of the City and nothing in this Agreement shall be deemed to constitute either party a partner, agent or legal representative of the other party or to create any fiduciary relationship between the parties.

SECTION 7.5 LIMITED RECOURSE.

(A) To the City. No recourse shall be had to the general funds or general credit of the City for the payment of any amount due the County hereunder, or the performance of any obligation incurred hereunder, including any Loss-and-Expense of any nature arising from the performance or non-performance of the City's obligations hereunder. If the City maintains a City Solid Waste Enterprise Fund with at least one year's anticipated costs for disposal and processing of City Acceptable Waste the sole recourse of the County for all such amounts shall be to the funds held in any such City Solid Waste Enterprise Fund. All amounts held in any City Solid Waste Enterprise Fund shall be held for the uses permitted and required thereby, and no such amounts shall constitute property of the County. The City shall make adequate provision in the administration of any City Solid Waste Enterprise Fund for the payment of any amount or the performance of any obligation which may be due hereunder.

(B) To the County. No recourse shall be had to the general funds or general credit of the County for the payment of any amount due the City hereunder, or the performance of any obligation incurred hereunder, including any Loss-and-Expense of any nature arising from the performance or non-performance of the County's obligations hereunder. The sole recourse of the City for all such amounts shall be to the funds held in the County Solid Waste Enterprise Fund in accordance with the terms of this Agreement. All amounts held in the County Solid Waste Enterprise Fund shall be held for the uses permitted and required thereby, and no such amounts shall constitute property of the City. The County shall make adequate provision in the administration of the County Solid Waste Enterprise Fund for the payment of any amount or the performance of any obligation which may be due hereunder.

SECTION 7.6 PRE-EXISTING RIGHTS AND LIABILITIES. Nothing in this Agreement is intended to affect, release, waive or modify any rights, obligations or liabilities which any Party hereto may have to or against the other Party as of the Contract Date relating to the receipt of Acceptable Waste in the Waste Infrastructure System or any other related matter.

SECTION 7.7 NO VESTED RIGHTS. The City shall not acquire any vested property, license or other rights in the Waste Infrastructure System by reason of this Agreement.

SECTION 7.8 LIABILITY FOR COLLECTION, TRANSPORTATION AND PROCESSING. Any liability incurred by the City as a result of collecting, transporting or processing of Acceptable Waste, or as a result of causing, franchising, permitting, licensing, authorizing or arranging any of the foregoing, shall be the sole liability of City, except as expressly otherwise provided herein.

SECTION 7.9 NO CONSEQUENTIAL OR PUNITIVE DAMAGES. In no event shall either Party hereto be liable to the other or obligated in any manner to pay to the other any special, incidental, consequential, punitive or similar damages based upon claims arising out of or in connection with the performance or non-performance of its obligations or otherwise under this Agreement, or the material inaccuracy of any representation made in this Agreement, whether such claims are based upon contract, tort, negligence, warranty or other legal theory.

SECTION 7.10 AMENDMENTS. Neither this Agreement nor any provision hereof may be changed, modified, amended or waived except by written agreement duly authorized and executed by both Parties.

SECTION 7.11 NOTICE OF LITIGATION. Each Party shall deliver written notice to the other of any Legal Proceeding to which it is a party and which questions the validity or enforceability of this Agreement executed by the City or the County or any Legal Entitlement issued in connection herewith.

SECTION 7.12 FURTHER ASSURANCES. At any and all times the City and the County so far as may be authorized by law shall pass, make, do, execute, acknowledge and deliver any and every such further resolutions, acts, deeds, conveyances, instruments, assignments, transfers and assurances as may be necessary or reasonably requested by the other in order to give full effect to this Agreement.

SECTION 7.13 ASSIGNMENT OF AGREEMENT.

(A) Assignment. Neither this Agreement nor any of the rights or obligations hereunder may be assigned by either Party hereto without the prior written consent of the other Party, which may be withheld in the other Party's sole discretion. Notwithstanding the foregoing, either Party may assign this Agreement to another public entity, subject to the reasonable consent of the other party. In such circumstances the Party not requesting the assignment shall have the right to demand assurances of the financial, technical and legal ability of the proposed assignee to undertake the responsibilities and obligations of the assigning Party.

(B) Sale. The County shall not enter into any agreement for the sale of the Waste Infrastructure System which provides for an effective date for such sale prior to the termination of this Agreement.

SECTION 7.14 INTEREST ON OVERDUE OBLIGATIONS. Except as otherwise provided herein, all amounts due hereunder, whether as damages, credits, revenue or reimbursements, that are not paid when due shall bear interest at the Overdue Rate on the amount outstanding from time to time, on the basis of a 365-day year, counting the actual number of days elapsed, and all such interest accrued at any time shall, to the extent permitted by Applicable Law, be deemed added to the amount due, as accrued.

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

SECTION 7.16 NOTICES. Any notice or communication required or permitted hereunder shall be in writing and sufficiently given if delivered in person or sent by certified or registered mail, postage prepaid, to the notice address of the respective Parties set forth on the cover page of this Agreement. Changes in the respective addresses to which such notices may be directed may be made from time to time by any Party by notice to the other Party.

Section 7.17 ATTORNEYS FEES. In any action or proceeding to enforce or interpret any provision of this Agreement, each Party shall bear their own attorney's fees, costs and expenses.

*Signature Page to Follow*

IN WITNESS WHEREOF, COUNTY and CITY have caused this Agreement to be executed by their duly authorized officers or representatives as of the day and year first above written.

COUNTY OF ORANGE

Date \_\_\_\_\_

By \_\_\_\_\_  
Director, OC Waste & Recycling

APPROVED AS TO FORM:  
COUNTY COUNSEL  
ORANGE COUNTY, CALIFORNIA

By \_\_\_\_\_

Date \_\_\_\_\_

Date \_\_\_\_\_

By \_\_\_\_\_  
Carlos Rodriguez, Mayor  
City of Yorba Linda

Date \_\_\_\_\_

By \_\_\_\_\_  
Peter Grant, City Manager  
City of Yorba Linda

APPROVED AS TO FORM:

By \_\_\_\_\_  
City Attorney

Date \_\_\_\_\_

**APPENDIX 1**

**ESTIMATED ANNUAL TONNAGE**

**APPENDIX 1**

**PERCENTAGE OF COUNTY ACCEPTABLE WASTE ATTRIBUTABLE TO PARTICIPATING CITIES  
FOR PURPOSE OF SECTIONS 3.6(F) AND 6.2(b)**

<i>Jurisdiction</i>	<i>Percentage of County Acceptable Waste</i>
Aliso Viejo	0.82%
Anaheim	14.78%
Brea	2.62%
Buena Park	1.02%
Costa Mesa/Costa Mesa Sanitary District (2)	3.41%
Cypress	0.85%
Dana Point	1.33%
Fountain Valley	1.63%
Fullerton	4.08%
Garden Grove Sanitary District (Garden Grove)	4.74%
Huntington Beach	5.91%
Irvine	9.64%
La Habra	1.72%
La Palma	1.27%
Laguna Beach	1.18%
Laguna Hills	0.89%
Laguna Niguel	1.44%
Laguna Woods	0.28%
Lake Forest	2.14%
Los Alamitos	0.33%
Midway City Sanitary District (Westminster)	2.47%
Mission Viejo	2.33%
Newport Beach	3.58%
Orange	5.25%
Placentia	1.39%
Rancho Santa Margarita	1.03%
San Clemente	2.43%
San Juan Capistrano	2.93%
Santa Ana	9.45%
Seal Beach	0.52%
Stanton	1.47%
Tustin	2.04%
Unincorporated Orange County (1)	3.19%
Villa Park	0.16%
Yorba Linda	1.68%
<b>Total</b>	<b>100%</b>

(1) Unincorporated County Area is assumed to be a Participating City for the purposes of determining the Commencement Date in accordance with Section 6.2(b) of this Agreement. For the distribution of Net Import Revenues, the County of Orange shall receive 50% of any Net Import Revenues received in accordance with Section 3.6(F)(2)(i) of this Agreement. The County of Orange shall also receive the Unincorporated Area distribution set forth in this Appendix 1, as periodically modified in accordance with Section 3.6(F)(2)(ii) of this Agreement.

(2) The City of Costa Mesa and the Costa Mesa Sanitation District have separate WISE Agreements. Costa Mesa Sanitation District Acceptable Waste tonnage is based on City of Costa Mesa Acceptable Waste tonnage and Importation Revenue is calculated based on City of Costa Mesa Acceptable Waste tonnage delivered to the Waste Infrastructure System.

(3) NOTE: A participating City will only be included for purposes of determining the Commencement Date upon (i) execution of a WISE Agreement by that Participating City and (ii) execution of a Hauler Acknowledgement(s) by the Franchise Hauler(s) operating within such Participating City.

**APPENDIX 2**

**CUMULATIVE TONNAGE**

**APPENDIX 2**

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

<i>Fiscal Year (Ending June 30)</i>	<i>County Acceptable Waste Tonnage</i>	<i>Cumulative County Acceptable Waste Tonnage</i>
2026	3,343,282	3,343,282
2027	3,278,595	6,621,877
2028	3,029,924	9,651,801
2029	2,982,454	12,634,255
2030	2,411,983	15,046,238
2031	2,261,201	17,307,439
2032	2,225,152	19,532,591
2033	2,181,838	21,714,429
2034	2,187,041	23,901,470
2035	2,219,362	26,120,832
2036	2,224,792	28,345,624

**APPENDIX 3**

**CUMULATIVE CAPITAL COSTS**

**APPENDIX 3**

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

<i>Fiscal Year (Ending June 30)</i>	<i>Annual Capital Costs</i>	<i>Cumulative Capital Costs</i>
2026	\$72,599,664	\$72,599,664
2027	\$79,950,000	\$152,549,664
2028	\$155,135,000	\$307,684,664
2029	\$136,185,000	\$443,869,664
2030	\$41,171,500	\$485,041,164
2031	\$16,745,000	\$501,786,164
2032	\$18,165,000	\$519,951,164
2033	\$36,605,000	\$556,556,164
2034	\$30,100,000	\$586,656,164
2035	\$1,510,000	\$588,166,164
2036	\$25,000,000	\$613,166,164

**APPENDIX 4**

**FRANCHISE HAULER ACKNOWLEDGMENT**

## FRANCHISE HAULER ACKNOWLEDGMENT

THIS FRANCHISE HAULER ACKNOWLEDGMENT, dated as of \_\_\_\_\_ (the "Acknowledgment"), and between the \_\_\_\_\_ (the "City") and \_\_\_\_\_ (the "Franchise Hauler").

### WITNESSETH

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

WHEREAS, the City has issued to the Franchise Hauler a permit, license, approval or other authorization the "Authorization") which allows the Franchise Hauler to provide solid waste collection services within the City; and

WHEREAS, the Franchise [SUBSTITUTE "AUTHORIZATION" THROUGHOUT IF APPLICABLE]] provides for the collection and disposal of certain municipal solid waste as described therein ("Franchise Waste") generated within the City; and

WHEREAS, the County of Orange (the "County") owns, manages and operates a Waste Infrastructure System that is permitted to accept or process Acceptable Waste for disposal or diversion; and

WHEREAS, the City and the County have heretofore entered into a Waste Infrastructure System Enterprise Agreement (the "WISE Agreement"), dated as of \_\_\_\_\_; and

WHEREAS, the WISE Agreement details responsibilities for disposal of municipal solid waste and may include processing of identified Organic Waste for diversion, generated within the boundaries of the City, and determine that the execution of the WISE Agreement will serve the public health, safety and welfare of the residents of the City and County, by maintaining public ownership and stewardship over the Waste Infrastructure System and providing disposal rate stability, predictable and reliable long-term disposal service, enhanced organics processing to assist the City in meeting its organics diversion requirements, and the continuation of sound environmental management; and

WHEREAS, under the WISE Agreement, the County has agreed to provide long-term disposal of all municipal solid waste generated within the City and may also provide for Organic Waste processing under an OSA and the City has agreed to exercise all legal, and contractual power which it possesses from time to time to deliver or cause the delivery of such waste to the Waste Infrastructure System; and

WHEREAS, the provisions of the WISE Agreement guarantee capacity for the long term disposal and processing of waste at specified rates generated in the City provide significant benefits to the Franchise Hauler;

WHEREAS, notwithstanding any Franchise provisions to the contrary, the Franchise Hauler explicitly acknowledges the aforementioned benefits to the City, the County and the Franchise Hauler in providing for the disposal of all Franchise Waste to the Waste Infrastructure System; and

WHEREAS, the City and the Franchise Hauler desire to enter into this Acknowledgment to assure that the City and the Franchise Hauler will be entitled to the benefits of the WISE Agreement and to assure conformity with the waste delivery obligations which have been agreed to by the City under the WISE Agreement through the delivery of waste by the Franchise Hauler to the Waste Infrastructure System; and

WHEREAS, the Franchise Hauler's agreement to deliver Franchise Waste to the Disposal System under this Acknowledgment is given in consideration of the Franchise Hauler's right to receive the Contract Rate for such disposal and processing as provided in the WISE Agreement.

NOW, THEREFORE, in consideration of the premises and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto, intending to be legally bound hereby, agree as follows:

1. Capitalized terms used and not otherwise defined herein are used as defined in the WISE Agreement.
2. The Franchise Hauler hereby waives any right which it may possess under applicable law to contest

on any ground, constitutional, statutory, case law, administrative or otherwise, (a) the right, power or authority of the County or the City to enter into or perform their respective obligations under the WISE Agreement, (b) the enforceability against the County or the City of the WISE Agreement, or (c) the right, power or authority of the City to deliver or cause the delivery of all Controllable Waste to the Disposal System in accordance with this Acknowledgment.

3. The City and the Franchise Hauler each hereby represent that this Acknowledgment has been duly authorized by all necessary action of their respective governing bodies.

4. The Franchise Hauler shall deliver or cause to be delivered all Controllable Waste (including all Residue from the processing by any means, wherever conducted, of Controllable Waste), to the Designated Facility in the Waste Infrastructure System/Disposal System, and shall otherwise assist the City in complying with its obligations under the Waste Disposal Covenant in Section 3.1 of the WISE Agreement.

5. Unless expressly authorized by the Department, the Franchise Hauler shall only haul Controllable Waste to the Designated Facility.

6. The Franchise Hauler shall not haul Controllable Waste to any materials recovery facility, composting facility, intermediate processing facility, recycling center, transfer station or other waste handling or management facility unless the contract or other agreement or arrangement between the Franchise Hauler and the operator of such facility is sufficient in the opinion of the County to assure that the Residue from such facility constituting City Acceptable Waste (or Tonnage equivalencies) and the City Acceptable Waste transferred by such facility shall be delivered to the Disposal System in compliance with the Waste Disposal Covenant.

7. The Franchise Hauler shall pay the Contract Rate imposed by the County for the disposal of all Controllable Waste, which rate shall be subject to potential adjustment necessary to reflect the circumstances set forth in the Agreement.

8. Nothing in this Acknowledgment is intended to restrict any right or responsibility explicitly given the Franchise Hauler in any City Franchise Agreement to recycle City Acceptable Waste, except as provided in paragraph 5 above with respect to Residue from any such recycling operations.

9. The obligations of the Franchise Hauler under this Acknowledgment shall apply notwithstanding any provision of the Franchise which may conflict herewith.

10. This Acknowledgment may be enforced by the City by any available legal means. In any enforcement action by the City, the burden of proof shall be on the Franchise Hauler to demonstrate compliance herewith.

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

12. The City and Franchise Hauler agree that the County shall be an express third-party beneficiary of this Acknowledgment, and shall be entitled to independently enforce the obligations of the Franchise Hauler hereunder. There shall be no additional third party beneficiaries under this Acknowledgment.

13. The Franchise Hauler agrees to assist the County in verifying tonnage collected by the Franchise Hauler and providing information required by the County. The Franchise Hauler will provide upon request refuse tonnage collected within the County, and outside the County (if relevant to confirming tonnage origination), separated by jurisdiction, by load type (residential, commercial, roll-off box, etc.), and by facility to which it was delivered (specify which landfill or transfer station). Hauler will provide customer service levels and route lists. The Franchise Hauler will cooperate with County audits to verify reported origin of tonnage by making records and personnel available to the County and/or its auditors.

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

\_\_\_\_\_

Signature: \_\_\_\_\_

Printed Name: \_\_\_\_\_

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

APPROVED AS TO FORM:

By \_\_\_\_\_  
City Attorney

Date \_\_\_\_\_

\_\_\_\_\_  
(Franchise Hauler)

Signature: \_\_\_\_\_

Printed Name: \_\_\_\_\_

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