

# CITY of LAGUNA WOODS CITY COUNCIL AGENDA

Regular Meeting  
Wednesday, November 18, 2015  
2:00 p.m.

Laguna Woods City Hall  
24264 El Toro Road  
Laguna Woods, California 92637

Cynthia Connors  
Mayor

Noel Hatch  
Mayor Pro Tem

Bert Hack  
Councilmember



Shari L. Horne  
Councilmember

Carol Moore  
Councilmember

***Welcome to a meeting of the Laguna Woods City Council!***

***This meeting may be recorded, televised, and made publically available.***

**Public Comments:** Persons wishing to address the City Council are requested to complete and submit a speaker card to City staff. Speaker cards are available near the entrance to the meeting location. Persons wishing to address the City Council on an item appearing on this agenda will be called upon at the appropriate time during the item's consideration. Persons wishing to address the City Council on an item *not* appearing on the agenda will be called upon during the "Public Comments" item. Persons who do not wish to submit a Speaker Card, or who wish to remain anonymous, may indicate their desire to speak from the floor. Speakers are requested, but not required, to identify themselves.

**Americans with Disabilities Act (ADA):** It is the intention of the City to comply with the ADA. If you need assistance to participate in this meeting, please contact either the City Clerk's Office at (949) 639-0500/TTY (949) 639-0535 or the California Relay Service at (800) 735-2929/TTY (800) 735-2922. The City requests at least two business days' notice in order to effectively facilitate the provision of reasonable accommodations.

REGULAR MEETING SCHEDULE

The Laguna Woods City Council regularly meets on the third Wednesday of each month at 2 p.m.

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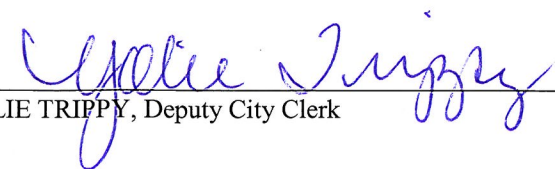
FOR ADDITIONAL INFORMATION

For additional information, please contact the City Clerk’s Office at (949) 639-0500/TTY (949) 639-0535, [cityhall@cityoflagunawoods.org](mailto:cityhall@cityoflagunawoods.org), or 24264 El Toro Road, Laguna Woods, California 92637.

AFFIDAVIT OF POSTING

STATE OF CALIFORNIA     )  
COUNTY OF ORANGE     ) ss.  
CITY OF LAGUNA WOODS    )

I, Yolie Trippy, Deputy City Clerk, City of Laguna Woods, hereby certify under penalty of perjury that this agenda was posted at Laguna Woods City Hall, 24264 El Toro Road, Laguna Woods, California 92637; on the City’s website ([www.cityoflagunawoods.org](http://www.cityoflagunawoods.org)); and, at other locations designated by Resolution No. 02-33, pursuant to California Government Code Section 54954.2 of the Ralph M. Brown Act.

  
\_\_\_\_\_  
YOLIE TRIPPY, Deputy City Clerk

11-13-15  
\_\_\_\_\_  
Date

- I. CALL TO ORDER**
- II. ROLL CALL**
- III. PLEDGE OF ALLEGIANCE**
- IV. PRESENTATIONS AND CEREMONIAL MATTERS**
- V. PUBLIC COMMENTS**

About Public Comments: This is the time and place for members of the public to address the City Council on items *not* appearing on this agenda. Pursuant to State law, the City Council is unable to take action on such items, but may engage in brief discussion, provide direction to City staff, or schedule items for consideration at future meetings.

- VI. CONSENT CALENDAR**

About the Consent Calendar: All items listed on the Consent Calendar are considered routine and will be enacted by one vote. There will be no separate discussion of these items unless a member of the City Council, City staff, or the public requests that specific items be removed from the Consent Calendar for separate discussion and consideration of action.

- 6.1 City Council Minutes

*Recommendation:* Approve the City Council meeting minutes for the regular meeting on September 16, 2015, the special meeting on October 13, 2015, and the adjourned regular meeting on October 28, 2015.

- 6.2 City Treasurer's Report

*Recommendation:* Receive and file the City Treasurer's Report for the month of October 2015.

- 6.3 Warrant Register

*Recommendation:* Approve the warrant register dated November 18, 2015 in the amount of \$596,956.05.

6.4 City Hall Janitorial Services Agreement

*Recommendation:* Approve an agreement with Team One Management for City Hall Janitorial Services and authorize the City Manager to execute the agreement, subject to approval as to form by the City Attorney.

6.5 Amendment to Building Services Agreement

*Recommendation:* Approve an amendment to the agreement with CivilSource, Inc. for building inspection and permit counter services and authorize the City Manager to execute the amendment, subject to approval as to form by the City Attorney.

**VII. PUBLIC HEARINGS**

7.1 Solid Waste Handling Services Franchise Agreement

*Recommendation:*

1. Receive staff report.

AND

2. Open public hearing.

AND

3. Receive public testimony.

AND

4. Close public hearing.

AND

5. Approve a franchise agreement with Waste Management Collection and Recycling, Inc. for solid waste handling services

and authorize the Mayor to execute the franchise agreement, subject to approval as to form by the City Attorney.

AND

6. Extend the term of the Ad Hoc Solid Waste Franchise Committee that consists of Mayor Connors and Councilmember Horne from December 31, 2015 through February 29, 2016 with direction to assist staff with the transition and implementation of the new solid waste handling services franchise agreement and make related recommendations to the City Council.

## **VIII. CITY COUNCIL BUSINESS**

### 8.1 City Investment Policy

*Recommendation:*

1. Approve a resolution entitled:

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LAGUNA WOODS, CALIFORNIA, REVIEWING AND ADOPTING AN ANNUAL STATEMENT OF THE INVESTMENT POLICY, ADOPTING A NEW AND MODIFIED INVESTMENT POLICY, AND RENEWING ITS DELEGATION OF INVESTMENT AUTHORITY PURSUANT TO GOVERNMENT CODE SECTION 53607 TO THE CITY TREASURER

AND

2. Dissolve the Ad Hoc Investment Policy Update Committee that consists of Mayor Pro Tem Hatch and Councilmember Horne.

## **IX. CITY COUNCIL REPORTS AND COMMENTS**

About City Council Comments and Reports: This is the time and place for members of the City Council to provide reports on meetings attended including, but not limited to, meetings of regional boards and entities to which they have been appointed to represent the City and meetings attended at the expense of the City pursuant to California Government Code Section 53232.3. Members of the City Council may also make other comments and announcements.

- 9.1 Coastal Greenbelt Authority  
Mayor Conners; Alternate: Councilmember Horne
- 9.2 Orange County Fire Authority  
Mayor Pro Tem Hatch
- 9.3 Orange County Library Advisory Board  
Councilmember Horne; Alternate: Councilmember Moore
- 9.4 Orange County Mosquito and Vector Control District  
Councilmember Horne
- 9.5 San Joaquin Hills Transportation Corridor Agency  
Councilmember Hack; Alternate: Mayor Conners
- 9.6 South Orange County Watershed Management Area  
Councilmember Moore; Alternate: Mayor Pro Tem Hatch
- 9.7 Other Comments and Reports

**X. CLOSED SESSION**

**XI. CLOSED SESSION REPORT**

**XII. ADJOURNMENT**

Next Regular Meeting:                      Wednesday, December 16, 2015 at 2 p.m.  
Laguna Woods City Hall  
24264 El Toro Road, Laguna Woods, California 92637

**6.1-6.5**  
**CONSENT CALENDAR SUMMARY**

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## City of Laguna Woods Agenda Report

**TO:** Honorable Mayor and City Councilmembers  
**FROM:** Christopher Macon, City Manager  
**FOR:** November 18, 2015 Regular Meeting  
**SUBJECT:** Consent Calendar Summary

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### **Recommendation**

Approve all proposed actions on the November 18, 2015 Consent Calendar by single motion and City Council action.

### **Background**

All items listed on the Consent Calendar are considered routine and will be enacted by one vote. There will be no separate discussion of these items unless a member of the City Council, staff, or the public requests that specific items be removed from the Consent Calendar for separate discussion and consideration of action.

### **Summary**

The November 18, 2015 Consent Calendar contains the following items:

- 6.1 Approval of the City Council meeting minutes for the regular meeting on September 16, 2015 (Attachment A), the special meeting on October 13, 2015 (Attachment B), and the adjourned regular meeting on October 28, 2015 (Attachment C).
- 6.2 Approval of a motion to receive and file the City Treasurer's Report for the month of October 2015.

- 6.3 Approval of the warrant register dated November 18, 2015 in the amount of \$596,956.05. A list of warrants is included in the agenda packet; detailed information about individual warrants is available at City Hall.
- 6.4 Approval of an agreement with Team One Management for City Hall Janitorial Services and authorization for the City Manager to execute the agreement, subject to approval as to form by the City Attorney. Bids were accepted for this work from October 8, 2015 through October 29, 2015. A total of three bids were received (Coast2Coast Preservation, Inc., Merchants Building Maintenance, and Team One Management) and the lowest cost bidder, Team One Management, was determined to be responsive. The term of the agreement would be from execution through June 30, 2018, with the potential for extension through June 30, 2020.
- 6.5 Approval of an amendment to the agreement with CivilSource, Inc. for building inspection and permit counter services and authorization for the City Manager to execute the amendment, subject to approval as to form by the City Attorney. The proposed amendment would modify the existing agreement with CivilSource, Inc. to add a new “Permit Assistant” title at a rate of \$30 per hour. The Permit Assistant would provide additional contract support at the permit counter, which has become necessary as a result of increased activity and demands. The addition of the Permit Assistant would also allow for an increase in the permit counter’s hours of operation from 7:30 a.m. to 2:30 p.m. (the permit counter is currently open from 7:30 a.m. to 12 p.m.). The rate would be retroactive to October 21, 2015 and is lower than any existing rate contained in the agreement.

**6.1**  
**CITY COUNCIL MINUTES**

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**CITY OF LAGUNA WOODS CALIFORNIA  
CITY COUNCIL MINUTES  
REGULAR MEETING  
September 16, 2015  
2:00 P.M.  
City Council Chambers  
24264 El Toro Road  
Laguna Woods, California 92637**

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**I. CALL TO ORDER**

Mayor Connors called the Regular Meeting of the City Council of the City of Laguna Woods to order at 2:00 p.m.

**II. ROLL CALL**

COUNCILMEMBER:           PRESENT:   Hack, Horne, Moore, Hatch, Connors  
                                  ABSENT:   -

STAFF PRESENT:           City Manager Macon, City Attorney Cosgrove, Assistant City  
                                  Manager Reilly, Administrative Services Director/City Treasurer  
                                  Cady, Deputy City Clerk Trippy

**III. PLEDGE OF ALLEGIANCE**

Mayor Pro Tem Hatch led the flag salute.

**IV. PRESENTATIONS AND CEREMONIAL MATTERS**

4.1    100<sup>th</sup> Birthday – Dorothy Webb

Mayor Connors noted that Dorothy Webb was unavailable to accept the commendation.

Moved by Councilmember Hack, seconded by Mayor Pro Tem Hatch, and carried unanimously on a 5-0 vote, to approve and present the commendation for Dorothy Webb's 100<sup>th</sup> Birthday.

4.2    National Adult Day Services Week – September 13 – 19, 2015

Cathy Allen, Age Well Senior Services, provided comments.

Moved by Councilmember Moore, seconded by Councilmember Horne, and carried unanimously on a 5-0 vote, to approve and present the proclamation for National Adult Day Services Week.

4.3 Constitution Week – September 17 – 23, 2015

Members of the Aliso Viejo Chapter of the Daughters of the American Revolution provided comments.

Moved by Mayor Pro Tem Hatch, seconded by Councilmember Hack, and carried unanimously on a 5-0 vote, to approve and present the proclamation for Constitution Week.

4.4 Amateur Radio Appreciation Month – October 2015

Jim Riedel, Laguna Woods Amateur Radio Club, provided comments.

Moved by Councilmember Moore, seconded by Councilmember Horne, and carried unanimously on a 5-0 vote, to approve and present the proclamation for Amateur Radio Appreciation Month.

Mayor Connors called for a brief recess.

The meeting was called back to order at 2:32 p.m.

**V. PUBLIC COMMENT**

Laura Fisher, South County Outreach, discussed the services they provide to the community.

Ms. Fisher responded to Councilmember's questions.

Dr. Steven Marsh, Pastor of Geneva Presbyterian Church, requested a signage variance to allow an electronic sign on their campus.

Councilmembers briefly discussed Dr. Marsh's comments and staff answered related questions.

Mayor Connors suggested adding a discussion of electronic signs and the potential establishment of an ad hoc committee related to the same for a future City Council meeting.

**VI. CONSENT CALENDAR**

Moved by Mayor Pro Tem Hatch, seconded by Councilmember Horne, and carried unanimously on a 5-0 vote, to approve Consent Calendar Items 6.1 – 6.7.

6.1 City Council Minutes

Approved the City Council meeting minutes for the adjourned regular meeting on August 19, 2015.

6.2 City Treasurer's Report

Received and filed the City Treasurer’s Report for the month of August 2015.

6.3 Warrant Register

Approved the warrant register dated September 16, 2015 in the amount of \$272,817.81.

6.4 Fiscal Year 2014-15 Budget Carryover to Fiscal Year 2015-16

Approved a Fiscal Year 2015-16 budget carryover from the Fiscal Year 2014-15 Fuel Tax budget in the amount of \$24,500 for remaining work on recycled water irrigation lines.

6.5 Fiscal Year 2015-16 Budget Adjustment

Approved a resolution entitled:

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LAGUNA WOODS, CALIFORNIA, INCREASING THE ADOPTED FISCAL YEAR 2015-16 BUDGET FOR THE GENERAL FUND

6.6 Energy Efficient Improvement Project: Installation and Replacement of Windows and Doors FY 2015-2016 through FY 2017-2018

Awarded a contract agreement to Saddleback Window Replacement for the Energy Efficient Improvement Project: Installation and Replacement of Windows and Doors FY 2015-2016 through FY 2017-2018, in an amount not to exceed \$118,000 per fiscal year (\$354,000 cumulatively), through Fiscal Year 2017-18, and authorized the City Manager to execute a contract agreement, subject to approval of the contract agreement as to form by the City Attorney.

6.7 Moulton Smart Street Project

1. Approved the Moulton Smart Street Project, Phase II “as built” plans and specifications as prepared by the County of Orange and recommended by the City Engineer.

AND

2. Approved a resolution entitled:

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LAGUNA WOODS, CALIFORNIA, ACCEPTING A PORTION OF MOULTON PARKWAY LYING WITHIN THE CITY LIMITS OF LAGUNA WOODS AS A CITY HIGHWAY AFTER THE PERIOD OF CONSTRUCTION OF THE MOULTON SMART STREET PROJECT

**VII. PUBLIC HEARINGS**

- 7.1 Amendment of Conditional Use Permit CUP-740 to extend the period of time allowing a temporary chain link fence with opaque sheeting along El Toro Road in front of the Laguna Woods Village Equestrian Center parking lot located at 24312 El Toro Road, Laguna Woods, California 92637

City Manager Macon summarized the agenda report and made a presentation.

Councilmembers discussed the item and staff answered related questions.

Mayor Conners opened the public hearing.

With there being no requests to speak, the public hearing was closed.

Councilmembers discussed the item and staff answered related questions.

Councilmembers asked that further discussion of temporary chain link fencing regulations be included on a future City Council meeting agenda.

Moved by Councilmember Moore, seconded by Mayor Pro Tem Hatch, and carried unanimously on a 5-0 vote, to approve a resolution entitled:

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LAGUNA WOODS, CALIFORNIA, AMENDING CONDITIONAL USE PERMIT CUP-740 ALLOWING A TEMPORARY CHAIN LINK FENCE WITH OPAQUE SHEETING ALONG EL TORO ROAD AND IN FRONT OF THE LAGUNA WOODS VILLAGE EQUESTRIAN CENTER PARKING LOT LOCATED AT 24312 EL TORO ROAD, LAGUAN WOODS, CALIFORNIA 92637

**VIII. CITY COUNCIL BUSINESS**

- 8.1 Small Residential Rooftop Solar Systems Permitting Process

City Manager Macon summarized the agenda report and made a presentation.

Councilmembers discussed the item and staff answered related questions.

Moved by Councilmember Horne, seconded by Councilmember Moore, and carried unanimously on a 5-0 vote, to approve second reading and adopt an ordinance – read by title with further reading waived – entitled:

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LAGUNA WOODS, CALIFORNIA, ADOPTING A CODE AMENDMENT TO ADD A NEW CHAPTER 10.26 TO THE LAGUNA

WOODS MUNICIPAL CODE RELATING TO EXPEDITED  
PERMITTING PROCEDURES FOR SMALL RESIDENTIAL  
ROOFTOP SOLAR ENERGY SYSTEMS

8.2 Moulton Parkway Water Efficient Median Project

City Manager Macon summarized the agenda report and made a presentation.

Councilmembers discussed the item and staff answered related questions.

Moved by Councilmember Hack, seconded by Councilmember Moore, and carried unanimously on a 5-0 vote, to direct staff to prepare construction drawings and technical specifications for the Moulton Parkway Water Efficient Median Project with 25% planted area and 75% non-irrigated area.

Councilmembers discussed the item and staff answered related questions.

Moved by Councilmember Hack, seconded by Mayor Pro Tem Hatch, and carried unanimously on a 5-0 vote, to direct staff to prepare construction drawings and technical specifications for the Moulton Parkway Water Efficient Median Project using the plant palate, as presented, with the exception of olive trees.

Councilmembers discussed the item and staff answered related questions.

Mayor Pro Tem Hatch requested that Item 9.2 be moved to the next item on the agenda. There were no objections.

9.2 Orange County Fire Authority

Mayor Pro Tem Hatch provided a report.

Battalion Chief Jeff Hoey provided an update on recent fires in northern California.

Battalion Chief Hoey responded to Councilmember's questions.

8.3 League of California Cities 2015 Annual Conference Resolutions

City Manager Macon summarized the agenda report.

Councilmembers discussed Resolution No. 1 and staff answered related questions.

Moved by Councilmember Hack, seconded by Councilmember Horne, and carried unanimously on a 5-0 vote, to direct the City's voting delegate to vote in support of Resolution No. 1 concerning League bylaws at the League of California Cities 2015 Annual Conference unless he receives information that induces him to vote in another way.

Councilmembers discussed Resolution No. 2 and staff answered related questions.

Moved by Councilmember Moore, seconded by Councilmember Hack, and carried unanimously on a 5-0 vote, to direct the City's voting delegate to vote in support of Resolution No. 2 concerning recovery and treatment facilities at the League of California Cities 2015 Annual Conference unless he receives information that induces him to vote in another way.

Councilmembers discussed Resolution No. 3 and staff answered related questions.

Kathryn Freshley, resident, discussed Resolution No. 3 and recommended that the City Council support it.

Moved by Councilmember Hack, seconded by Councilmember Horne, and carried unanimously on a 5-0 vote, to direct the City's voting delegate to vote in support of Resolution No. 3 concerning temporary rentals at the League of California Cities 2015 Annual Conference unless he receives information that induces him to vote in another way.

Councilmembers discussed Resolution No. 4 and staff answered related questions.

Kathryn Freshley, resident, discussed Resolution No. 4 and recommended that the City Council oppose it.

Moved by Councilmember Moore, seconded by Councilmember Hack, and carried unanimously on a 5-0 vote, to direct the City's voting delegate to vote in opposition to Resolution No. 4 concerning Edison outages at the League of California Cities 2015 Annual Conference unless he receives information that induces him to vote in another way.

8.4 Public Education Opportunities for Fraud, Computer Protection, and Financial Crimes (agendized by Councilmember Moore)

Councilmember Moore summarized the agenda report.

Councilmembers discussed the item and staff answered related questions.

By consensus, the City Council supported staff organizing public education classes on fraud, computer protection, and financial crimes at City Hall.

8.5 Request for Recognition of Serena and Venus Williams by California Governments (agendized by Councilmember Moore)

Councilmember Moore summarized the agenda report.

Councilmembers discussed the item and staff answered related questions.

The City Council expressed an interest in reviewing the City’s current policy pertaining to personal opinion letters by Councilmembers at a future City Council meeting.

**IX. CITY COUNCIL REPORTS AND COMMENTS**

9.1 Coastal Greenbelt Authority

Mayor Connors stated that there had been no meeting since their last meeting.

9.3 Orange County Library Advisory Board

Councilmember Horne stated that there had been no meeting since their last meeting.

9.4 Orange County Mosquito and Vector Control District

Councilmember Horne provided a report.

9.5 San Joaquin Hills Transportation Corridor Agency

Councilmember Hack provided a report.

9.6 South Orange County Watershed Management Area

Councilmember Moore provided a report.

9.7 Other Comments and Reports

Councilmember Horne reported on a Senior Citizens Advisory Committee meeting.

Mayor Connors announced an upcoming Business Roundtable at City Hall.

**X. CLOSED SESSION – None**

**XI. CLOSED SESSION REPORT – None**

**XII. ADJOURNMENT**

The meeting was adjourned at 4:55 p.m. The next adjourned regular meeting will be at 2:00 p.m. on Wednesday, October 28, 2015 at Laguna Woods City Hall, 24264 El Toro Road, Laguna Woods, CA 92637.

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YOLIE TRIPPY, Deputy City Clerk

Adopted: November 18, 2015

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CYNTHIA S. CONNERS, Mayor

**CITY OF LAGUNA WOODS CALIFORNIA  
CITY COUNCIL MINUTES  
SPECIAL MEETING  
Tuesday, October 13, 2015  
2:00 P.M.  
City Council Chambers  
24264 El Toro Road  
Laguna Woods, California 92637**

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**I. CALL TO ORDER**

Mayor Conners called the Special Meeting of the City Council of the City of Laguna Woods to order at 2:00 p.m.

**II. ROLL CALL**

COUNCILMEMBER:           PRESENT:   Hack, Horne, Moore, Hatch, Conners  
                                  ABSENT:   -

STAFF PRESENT:           City Manager Macon, City Attorney Cosgrove, Assistant City  
                                  Manager Reilly, Deputy City Clerk Trippy

**III. PLEDGE OF ALLEGIANCE**

Councilmember Horne led the flag salute.

**IV. PRESENTATIONS AND CEREMONIAL MATTERS – None**

**V. PUBLIC COMMENT – None**

**VI. CONSENT CALENDAR – None**

**VII. PUBLIC HEARINGS**

**7.1 Medical Marijuana Dispensaries Ordinance**

City Manager Macon noted that the following individuals submitted comments prior to the City Council meeting, which will be made a part of the record of proceedings:

1. Diane M. Goldstein, Law Enforcement Against Prohibition
2. Leslie Palm, dated October 13, 2015
3. Eric S. Chan, dated October 13, 2015

City Attorney Cosgrove summarized the agenda report and made a presentation.

Councilmembers discussed the item and staff answered related questions.

Mayor Connors opened the public hearing.

The following individuals expressed their support for medical marijuana dispensaries:

1. Lonnie Painter, Village Cannabis Club
2. Ginny Rettig, member of the public
3. Richard Thomas, resident
4. Jeff Akers, resident
5. Erik S. Chan, member of the public
6. Aaron Herzberg, OC3 Dispensary
7. Barbara Ayala, Orange County NORML
8. Jeri Painter, resident
9. Kevin Prior, resident

Jim Ferguson, GdB Ferguson, expressed his support for the passing of a moratorium and encouraged the City to take their time before making any long-term decisions.

Jerry Painter, resident, discussed the importance of mandatory testing of medical marijuana.

Charles Green, GdB Ferguson, discussed potential operational issues related to medical marijuana dispensaries and regulatory issues related to medical marijuana cultivation.

With there being no more requests to speak, the public hearing was closed.

Councilmembers discussed the item and staff answered related questions.

City Manager Macon recommended the following amendments to the ordinance titled:

AN URGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY  
OF LAGUNA WOODS, CALIFORNIA PURSUANT TO CALIFORNIA  
GOVERNMENT CODE SECTIONS 36934, 36937, AND 65858,  
EXTENDING A MORATORIUM ON ESTABLISHING, LOCATING,  
OR OPERATING MEDICAL MARIJUANA DISPENSARIES FOR THE  
PURPOSE OF FURTHER STUDY AND ANALYSIS

1. The “fourth whereas” on page 2, is amended to state, “Whereas, the Governor of California recently signed three bills into law (collectively titled the “Medical Marijuana Regulation and Safety Act”) that will substantially rework existing State Laws relating to medical marijuana (i.e. The Compassionate Use Act [Health and Safety Code Section 11362.5] and the Medical Marijuana Program, [Health and Safety Code Section 11362.7]); and”
2. “Section J” is amended to state, “The fact the Governor has signed the Medical

Marijuana Regulation and Safety Act into law, will substantially rework existing State laws relating to medical marijuana (i.e., The Compassionate Use Act [Health and Safety Code Section 11362.5] and the Medical Marijuana Program, [Health and Safety Code Section 11362.7]).”

Mayor Pro Tem Hatch suggested that the following language be added to the “seventh whereas” on page 3, “and considering and weighing the propriety and impact of prohibiting the operation of medical marijuana dispensaries within the city of Laguna Woods.”

Moved by Mayor Pro Tem Hatch, seconded by Councilmember Horne, and carried unanimously on a 5-0 vote, to adopt an ordinance – read by title with further reading waived, as amended – entitled:

AN URGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LAGUNA WOODS, CALIFORNIA, PURSUANT TO CALIFORNIA GOVERNMENT CODE SECTIONS 36934, 36937, AND 65858, EXTENDING A MORATORIUM ON ESTABLISHING, LOCATING, OR OPERATING MEDICAL MARIJUANA DISPENSARIES FOR THE PURPOSE OF FURTHER STUDY AND ANALYSIS

Mayor Connors called for a brief recess.

The meeting was called back to order at 4:17 p.m.

## **VIII. CITY COUNCIL BUSINESS**

### **8.1 North Orange County Groundwater Basin Contamination**

Councilmember Moore summarized the agenda report.

Councilmembers discussed the item and staff answered related questions.

By consensus, the City Council authorized Councilmember Moore to prepare and submit a letter to the Orange County Water District and the United States Environmental Protection Agency (EPA) supporting the EPA’s role as the lead agency responsible for investing North Orange County Groundwater Basin regional groundwater contamination under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA or, Superfund).

### **8.2 General Plan Comprehensive Update Project**

City Manager Macon requested that this item be considered at a future City Council meeting. There were no objections.

## **IX. CITY COUNCIL REPORTS AND COMMENTS**

9.1 Comments and Reports

Mayor Conners and Mayor Pro Tem Hatch reported on the California Joint Powers Authority’s Annual Risk Management Educational Forum.

Councilmember Horne reported on a Senior Citizens Advisory Committee meeting.

**X. CLOSED SESSION** – None

**XI. CLOSED SESSION REPORT** – None

**XII. ADJOURNMENT**

The meeting was adjourned at 4:32 p.m. The next adjourned regular meeting will be at 2:00 p.m. on Wednesday, October 28, 2015 at Laguna Woods City Hall, 24264 El Toro Road, Laguna Woods, CA 92637.

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YOLIE TRIPPY, Deputy City Clerk

Adopted: November 18, 2015

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CYNTHIA S. CONNERS, Mayor

**CITY OF LAGUNA WOODS CALIFORNIA  
CITY COUNCIL MINUTES  
ADJOURNED REGULAR MEETING  
October 28, 2015  
2:00 P.M.  
City Council Chambers  
24264 El Toro Road  
Laguna Woods, California 92637**

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**I. CALL TO ORDER**

Mayor Connors called the Adjourned Regular Meeting of the City Council of the City of Laguna Woods to order at 2:00 p.m.

**II. ROLL CALL**

COUNCILMEMBER:           PRESENT:   Hack, Horne, Moore, Hatch, Connors  
                                  ABSENT:   -

STAFF PRESENT:           City Manager Macon, City Attorney Cosgrove, Deputy City Clerk  
                                  Trippy

**III. PLEDGE OF ALLEGIANCE**

Mayor Pro Tem Hatch led the flag salute.

**IV. PRESENTATIONS AND CEREMONIAL MATTERS**

4.1    100<sup>th</sup> Birthday – Mina Landy

Mina Landy provided comments.

Kate Randle, Congresswoman Mimi Walters’ Office, presented a Certificate of Congressional Recognition to Ms. Landy.

Moved by Councilmember Hatch, seconded by Councilmember Horne, and carried unanimously on a 5-0 vote, to approve and present the 100<sup>th</sup> Birthday commendation.

4.2    National Adopt-a-Dog Month – October 2015

Mayor Connors noted that there was no representative to accept the proclamation.

Moved by Councilmember Horne, seconded by Mayor Pro Tem Hatch, and carried unanimously on a 5-0 vote, to approve and present the proclamation for National Adopt-a-Dog Month.

4.3 Pancreatic Cancer Awareness Month – November 2015

Allyn Mattox, from the Pancreatic Cancer Action Network/Orange County Division, provided comments.

Moved by Councilmember Hatch, seconded by Councilmember Horne, and carried unanimously on a 5-0 vote, to approve and present the proclamation for Pancreatic Cancer Awareness Month.

4.4 Mosquitos, West Nile Virus, and other Vector Issues Presentation – Orange County Mosquito and Vector Control District

Jared Dever, Communications Director of the Orange County Mosquito and Vector Control District, made a presentation.

Councilmembers discussed the presentation and Mr. Dever answered related questions.

4.5 Laguna Coast Wilderness Park Presentation – OC Parks

Barbara Norton and Zach Salazar, OC Parks, made a presentation.

Councilmembers discussed the presentation and Ms. Norton & Mr. Salazar answered related questions.

**V. PUBLIC COMMENT – None**

**VI. CONSENT CALENDAR**

Moved by Councilmember Hack, seconded by Mayor Pro Tem Hatch, and carried unanimously on a 5-0 vote, to approve Consent Calendar Items 6.1 – 6.6.

6.1 City Council Minutes

Approved the City Council meeting minutes for the special meeting on September 10, 2015.

6.2 City Treasurer’s Report

Received and filed the City Treasurer’s report for the first quarter of Fiscal Year 2015-16 (July through September 2015), inclusive of the month of September 2015.

6.3 Warrant Register

Approved the warrant register dated October 28, 2015 in the amount of \$738,610.36.

6.4 Fiscal Year 2015-16 Budget Adjustment

Approved a resolution entitled:

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF  
LAGUNA WOODS, CALIFORNIA, INCREASING THE ADOPTED  
FISCAL YEAR 2015-16 BUDGET FOR THE GENERAL FUND

6.5 City Manager Employment Agreement

1. Approved a City Manager Employment Agreement with Christopher Macon and authorized the Mayor to execute the agreement, subject to approval as to form by the City Attorney.

AND

2. Dissolved the ad hoc committee comprised of Mayor Pro Tem Hatch and Councilmember Moore, previously appointed to negotiate with the City Manager regarding a potential contract extension, in coordination with the City Attorney.

6.6 Extension of Landscape Maintenance Inspection Services Agreement

Approved an extension of the agreement with AndersonPenna Partners, Inc. for landscape maintenance inspection services and authorized the City Manager to execute the agreement, subject to approval as to form by the City Attorney.

**VII. PUBLIC HEARINGS – None**

**VIII. CITY COUNCIL BUSINESS**

8.1 General Plan Comprehensive Update Project

City Manager Macon introduced the item.

Shane Burkhardt, Pacific Management Consultants/Michael Baker International, made a presentation on the state of the City's retail trade area and consumers.

Councilmembers discussed the item and staff answered related questions.

City Manager Macon stated that economic vitality and other issues related to the General Plan Comprehensive Update Project will be brought before the City Council at future meetings.

8.2 Chain Link Fencing Regulations

Mayor Conners introduced the item.

City Manager Macon summarized the staff report and made a presentation.

Councilmembers discussed the item and staff answered related questions.

By consensus, the City Council referred the matter to staff.

**IX. CITY COUNCIL REPORTS AND COMMENTS**

9.1 Coastal Greenbelt Authority

Mayor Connors stated that her report was given during the Laguna Coast Wilderness Park Presentation.

9.2 Orange County Fire Authority

Mayor Pro Tem Hatch provided a report.

Councilmembers discussed the report.

9.3 Orange County Library Advisory Board

Councilmember Horne stated that there had been no meeting since their last meeting.

9.4 Orange County Mosquito and Vector Control District

Councilmember Horne provided a report.

9.5 San Joaquin Hills Transportation Corridor Agency

Councilmember Hack stated that there had been no meeting since their last meeting.

9.6 South Orange County Watershed Management Area

Councilmember Moore provided a report.

9.7 Other Comments and Reports

Councilmember Horne reported on a Special Needs Advisory Committee meeting.

**X. CLOSED SESSION – None**

**XI. CLOSED SESSION REPORT – None**

**XII. ADJOURNMENT**

The meeting was adjourned at 4:33 p.m. The next regular meeting will be at 2:00 p.m. on Wednesday, November 18, 2015 at Laguna Woods City Hall, 24264 El Toro Road, Laguna Woods, CA 92637.

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YOLIE TRIPPY, Deputy City Clerk

Adopted: November 18, 2015

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CYNTHIA S. CONNERS, Mayor

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**6.2**  
**CITY TREASURER'S REPORT**

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Item 6.2

CITY of LAGUNA WOODS

Cynthia Conners  
Mayor

November 18, 2015

Noel Hatch  
Mayor Pro Tem

Bert Hack  
Councilmember

Shari L. Horne  
Councilmember

Carol Moore  
Councilmember

Christopher Macon  
City Manager

**TO:** Honorable Mayor and Councilmembers

**FROM:** Margaret A. Cady, City Treasurer

**SUBJECT:** Monthly Treasurer's Report: August 2015

Attached is the Treasurer's Report for the month of October 2015. The information provided includes:

- ◆ Report reflecting \$9,977,292 Cash on Hand at October 31, 2015, including \$9,943,268 in the City's interest-bearing Local Agency Investment Fund (LAIF) account, \$32,674 in the City's checking account, and \$1,350 in petty cash funds.
- ◆ Copy of the latest LAIF Remittance Advice showing principal balance at October 31, 2015. Interest is accrued and reported quarterly. \$8,343 in investment earnings for the period July 2015 through September 2015 were deposited to the account this month.

As City Treasurer, I certify that:

- ◆ All investment actions executed since the last report have been made in full compliance with the City of Laguna Woods Investment Policy; and
- ◆ The City of Laguna Woods will meet all expenditure obligations that might reasonably be anticipated for the next six months.

  
Margaret A. Cady  
Director of Administrative Service & City Treasurer

**City of Laguna Woods**  
**Monthly Treasurer's Report**  
**Balances As of October 31, 2015**

**CASH ON HAND**

**Investments - Local Agency Investment Fund (LAIF) (Note 1)**

1. Investments/General Fund	\$	9,502,860
2. Investments/Special Funds		440,407
3. Interest Earned and Receivable (Note 2)		<u>-</u>
Subtotal Investments	\$	<u>9,943,268</u>

**Other Funds - Interest & Non-Interest Bearing/General & Special**

4. Petty Cash Funds		1,350
5. Analyzed Checking Account		<u>32,674</u>
Subtotal Other Funds	\$	<u>34,024</u>
<hr/>		
<b>TOTAL ALL FUNDS</b>	<b>\$</b>	<b><u>9,977,292</u></b>

**Notes:**

Note 1 - During this period there was one transfer from the LAIF account to the Bank of America checking account in the amount of \$200,000 to cover cash flow needs due to timing of revenue receipts.

Note 2 - LAIF reports interest earnings quarterly. Interest earnings of \$8,343 earned and receivable for the quarter ended September 30, 2015 were credited on October 15, 2015 and reflected in the totals above. There are no accrued interest earnings to report this period.

Local Agency Investment Fund  
 P.O. Box 942809  
 Sacramento, CA 94209-0001  
 (916) 653-3001

[www.treasurer.ca.gov/pmia-laif/laif.asp](http://www.treasurer.ca.gov/pmia-laif/laif.asp)  
 November 12, 2015

CITY OF LAGUNA WOODS

PMIA Average Monthly Yields

CITY TREASURER  
 24264 EL TORO ROAD  
 LAGUNA WOODS, CA 92653

Account Number:  
 98-30-413

Tran Type Definitions

October 2015 Statement

Effective Date	Transaction Date	Tran Type	Confirm Number	Authorized Caller	Amount
10/8/2015	10/7/2015	RW	1480316	MARGARET A. CADY	-200,000.00
10/15/2015	10/14/2015	QRD	1480797	SYSTEM	8,343.23

Account Summary

Total Deposit:	8,343.23	Beginning Balance:	10,134,924.48
Total Withdrawal:	-200,000.00	Ending Balance:	9,943,267.71

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## **6.3 WARRANT REGISTER**

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**CITY OF LAGUNA WOODS  
WARRANT REGISTER  
11/18/2015**

ITEM 6.3

Number	Date	Vendor Name	Description	Amount
<b>Automatic Bank Debits</b>				
Debit	10/21/2015	ADP PAYROLL SERVICES	Payroll / Pay Period Ended 10/16/2015	\$31,404.31
Debit	10/21/2015	CALPERS - RETIREMENT	Retirement Contributions / Pay Period Ended 10/16/2015	2,678.79
Debit	10/30/2015	ADP PAYROLL SERVICES	Payroll Processing Fees / Pay Period Ended 10/16/2015	149.68
Debit	11/3/2015	CALPERS - HEALTH	Employee Benefit Program / November 2015	3,282.45
Debit	11/4/2015	ADP PAYROLL SERVICES	Payroll / Pay Period Ended 10/30/2015	31,949.52
Debit	11/4/2015	CALPERS - RETIREMENT	Retirement Contributions / Pay Period Ended 10/30/2015	2,678.79
Debit	11/13/2015	ADP PAYROLL SERVICES	Payroll Processing Fees / Pay Period Ended 10/30/2015	149.68
Debit	11/6/2015	VANTAGEPOINT TRANSFER AGT- 457	Employee Benefit Program / October 2015	17,406.33
Debit	11/9/2015	COUNTY OF ORANGE	Law Enforcement Services / November 2015	203,809.20
<b>Warrants:</b>				
117207	10/14/2015	HARVEY ABRAHAM	Taxi Voucher Refund	50.00
117208	10/14/2015	AGE WELL SENIOR SERVICES	Community Services Grant / 2nd Payment, Calendar Year 2015	25,000.00
117209	10/14/2015	ANDERSONPENNA PARTNERS, INC.	Code Enforcement Services / September 2015	2,088.00
117209	10/14/2015	ANDERSONPENNA PARTNERS, INC.	Landscape Inspection Services / September 2015	3,919.50
117210	10/14/2015	AT&T	Telephone / 458-3487 / September 2015	38.21
117211	10/14/2015	AT&T	Telephone / 452-0600 / September 2015	727.89
117212	10/14/2015	AT&T	Telephone / 639-0500 / September 2015	201.75
117213	10/14/2015	AT&T	Telephone / 770-9359 / September 2015	18.36
117214	10/14/2015	AT&T	White Pages / October 2015	4.53
117215	10/14/2015	IRWIN B BORNSTEIN, CPA	Financial Consulting Services / September 2015	127.50
117216	10/14/2015	CAA	Water Quality Consulting Services / September 2015	3,760.50
117217	10/14/2015	COPYFORCE	Business Cards / Building Services	174.96
117218	10/14/2015	DATA TICKET, INC.	Citation Processing Fees / September 2015	1.32
117219	10/14/2015	GOLDEN STATE OVERNIGHT	Courier Services / September 2015	14.41
117220	10/14/2015	ICMA RETIREMENT CORPORATION	Plan Administrative Fee - 4th Quarter 2015	125.00
117221	10/14/2015	KONICA MINOLTA BUSINESS	Copier Services - 3rd Quarter 2015	206.09
117222	10/14/2015	ROCHELLE LEBOVIC	Taxi Voucher Refund - Replace Missing Check #117071	27.50
117223	10/14/2015	LILLEY PLANNING GROUP	Building Official Services / September 2015	7,176.00
117223	10/14/2015	LILLEY PLANNING GROUP	Building Official Services / April 2015	1,989.00
117224	10/14/2015	MOTOROLA SOLUTIONS, INC.	Law Enforcement Equipment 800 MHz Radios	50,598.15
117225	10/14/2015	MR. VIDEO	Self-Laminating Card Covers for Taxi Voucher ID Cards	105.89
117226	10/14/2015	NIEVES LANDSCAPE, INC.	Landscape Maintenance Services	1,050.00
117227	10/14/2015	ORANGE COUNTY REGISTER-NOTICES	Public Notices / September 2015	301.95
117228	10/14/2015	PACIFIC MUNICIPAL CONSULTANTS	Planning / GIS Services / August & September 2015	200.00
117229	10/14/2015	PV MAINTENANCE, INC.	Street Maintenance Services / September 2015	11,605.23
117230	10/14/2015	REILLY, DOUGLAS C.	Employee Benefit Program / D. Reilly / October 2015	109.49
117231	10/14/2015	DESIREE SMITH	Employee Benefit Program / D. Smith / June-October 2015	174.75
117232	10/14/2015	SOUTHERN CALIFORNIA EDISON	City Hall Landscape Maintenance / September 2015	660.25
117233	10/14/2015	SOUTHERN CALIFORNIA EDISON	Irrigation Controller / September 2015	67.61

**CITY OF LAGUNA WOODS  
WARRANT REGISTER  
11/18/2015**

ITEM 6.3

Number	Date	Vendor Name	Description	Amount
117234	10/14/2015	SOUTHERN CALIFORNIA EDISON	Traffic Signal Control / September 2015	369.28
117235	10/14/2015	STAPLES	General Office Supplies	268.12
117236	10/14/2015	THE GAS COMPANY	City Hall Utilities / October 2015	15.29
117237	10/14/2015	TRAUMA INTERVENTION PROGRAM	Community Services Grant / 3rd Quarter, Calendar Year 2015	625.00
117238	10/14/2015	WM CURBSIDE, LLC	HHW/E-Waste/Medical Waste Collection Program / September 2015	4,022.55
117239	10/28/2015	BETTY ADAMO	Taxi Voucher Refund	50.00
117240	10/28/2015	ALLIED PRODUCTS	City Hall / Flag Replacements	149.91
117241	10/28/2015	AT&T	Telephone / 581-3974 / October 2015	98.14
117242	10/28/2015	AT&T	Telephone / 583-1105 / October 2015	18.37
117243	10/28/2015	CALIFORNIA YELLOW CAB	NEMT Taxi Voucher Services / August & September 2015	12,933.00
117243	10/28/2015	CALIFORNIA YELLOW CAB	Taxi Voucher Services / September 2015	13,710.00
117244	10/28/2015	CITY OF LAGUNA BEACH	Animal Control & Shelter Services / October 2015	8,156.25
117245	10/28/2015	COUNTY OF ORANGE	800MHz Communication Charges / 2nd Quarter / FY 15/16	361.00
117246	10/28/2015	DELTA DENTAL OF CALIFORNIA	Employee Dental Benefits / November 2015	430.06
117247	10/28/2015	EL TORO WATER DISTRICT	City Hall Water & Sewer Services / October 2015	118.30
117248	10/28/2015	EL TORO WATER DISTRICT	Fire Code Requirement - Backflow - City Hall / October 2015	28.00
117249	10/28/2015	PARVIZ ENSHAIE	Taxi Voucher Refund - Replace Missing Check #116999	50.00
117250	10/28/2015	FOUNDATION OF LAGUNA WOODS	Community Services Grant / 3rd Quarter, Calendar Year 2015	3,750.00
117251	10/28/2015	KONE, INC.	City Hall Elevator Maintenance / October 2015	245.58
117252	10/28/2015	JEANNIE MORRIS	Taxi Voucher Refund - Replace Missing Check #116929	12.00
117253	10/28/2015	NIEVES LANDSCAPE, INC.	City Hall Landscape Maintenance / October 2015	325.00
117253	10/28/2015	NIEVES LANDSCAPE, INC.	Right of Way Landscape Maintenance / October 2015	10,725.41
117254	10/28/2015	NUVIS	Design Services / Moulton Parkway Median Landscape Project / September 2015	7,152.50
117255	10/28/2015	OFFICE DEPOT	General Office Supplies	75.59
117256	10/28/2015	OFFICE TEAM	Temporary Administrative Services / Week Ending 10/16/2015	402.08
117257	10/28/2015	PACIFIC MUNICIPAL CONSULTANTS	General Plan Comprehensive Update Services / September 2015	10,555.50
117258	10/28/2015	ELIZABETH POLLMAN	Taxi Voucher Refund	52.50
117259	10/28/2015	PRINCIPAL FINANCIAL GROUP	Long-Term Disability Insurance / November 2015	417.12
117260	10/28/2015	SOUTHERN CALIFORNIA EDISON	City Hall / October 2015	1,844.16
117261	10/28/2015	STAPLES	General Office Supplies	2.69
117262	10/28/2015	WAGE WORKS	Benefit Administration / September 2015	50.00
117263	11/04/2015	AT&T	Telephone / 458-3487 / October 2015	38.42
117264	11/04/2015	AT&T	Telephone / 452-0600 / October 2015	744.23
117265	11/04/2015	AT&T	Telephone / 639-0500 / October 2015	204.01
117266	11/04/2015	AT&T	Telephone / 770-9359 / October 2015	18.50
117267	11/04/2015	AUTOMATED GATE SERVICES, INC.	Santa Maria Avenue Gate/Key/Code Changes	9.48
117268	11/04/2015	BALLIET, MICHAEL	Waste & Recycling Consulting Services / April-June 2015	2,082.50
117268	11/04/2015	BALLIET, MICHAEL	Waste & Recycling Consulting Services / July-August 2015	2,210.00
117269	11/04/2015	BLUEPRINT TECHNOLOGIES	Telephone System Maintenance / City Hall	135.00
117270	11/04/2015	BRAILLE INSTITUTE	Community Services Grant / 3rd Quarter, Calendar Year 2015	5,000.00

**CITY OF LAGUNA WOODS  
WARRANT REGISTER  
11/18/2015**

ITEM 6.3

Number	Date	Vendor Name	Description	Amount
117271	11/04/2015	CALIFORNIA SOCIETY OF MUNICIPAL FINANCE OFFICERS	Calendar Year 2016 Membership Dues / Senior Accountant	110.00
117272	11/04/2015	CAPTIONING UNLIMITED	Closed Captioning / 10/13/2015 and 10/28/2015 City Council Meetings	600.00
117273	11/04/2015	CIVIL SOURCE	Engineering & Traffic Services / August 2015	9,260.00
117273	11/04/2015	CIVIL SOURCE	Engineering & Traffic Services / September 2015	10,483.75
117273	11/04/2015	CIVIL SOURCE	Building Inspection Services / September 2015	27,515.00
117274	11/04/2015	CLEAN HARBORS ENVIRONMENTAL SERVICES	Household Hazardous Waste Collection Event / September 19, 2015	5,104.75
117275	11/04/2015	CYNTHIA CONNERS	Auto Allowance / November 2015	300.00
117276	11/04/2015	COUNTY OF ORANGE	Communication Charges - 800 MHz Flat Rate / July-September 2015	547.06
117277	11/04/2015	CSG CONSULTANTS, INC.	Plan Check Services / September 2015	1,870.00
117278	11/04/2015	DAYLE MCINTOSH CENTER	Community Services Grant / 3rd Quarter, Calendar Year 2015	2,500.00
117279	11/04/2015	MARC DONOHUE	Administrative Services - September & October 2015	800.00
117280	11/04/2015	EL TORO WATER DISTRICT	Landscape Irrigation / October 2015	3,029.40
117281	11/04/2015	EL TORO WATER DISTRICT	Ridge Route Dog Park Irrigation / October 2015	17.97
117282	11/04/2015	EL TORO WATER DISTRICT	Ridge Route Linear Park Irrigation / October 2015	691.84
117283	11/04/2015	GOLDEN TOUCH CLEANING, INC.	Public Assistance Services / Goods Exchange Event / October 17, 2015	408.00
117284	11/04/2015	HACK, BERT	Auto Allowance / November 2015	300.00
117285	11/04/2015	DOUGLAS HASSEN	Taxi Voucher Refund	199.50
117286	11/04/2015	ROBERT NOEL HATCH	Auto Allowance / November 2015	300.00
117286	11/04/2015	ROBERT NOEL HATCH	Travel Expense Reimbursement / League of California Cities Conference	55.19
117287	11/04/2015	SHARI HORNE	Travel Expense Reimbursement / League of California Cities Conference	98.90
117287	11/04/2015	SHARI HORNE	Auto Allowance / November 2015	300.00
117288	11/04/2015	KONICA MINOLTA	Copier Lease / November 2015	483.84
117289	11/04/2015	LAURA'S HOUSE	Community Services Grant / 3rd Quarter, Calendar Year 2015	625.00
117290	11/04/2015	MANAGED HEALTH NETWORK	Employee Benefits Program / November 2015	19.76
117291	11/04/2015	AGNES MCGLONE	NEMT Taxi Voucher Refund	16.00
117292	11/04/2015	OFFICE TEAM	Temporary Administrative Services / Week Ending 10/23/2015	402.08
117293	11/04/2015	ORKIN	Pest Control Services / October 2015	105.01
117294	11/04/2015	PEAK LIGHTING & ELECTRIC, INC.	Residential Streetlighting Maintenance / October 2015	682.89
117295	11/04/2015	ROXANNA TODD HODGES FOUNDATION	Community Services Grant / 3rd Quarter, Calendar Year 2015	1,250.00
117296	11/04/2015	RUTAN & TUCKER, LLP	Legal Services - Saddleback Golf Cars / September 2015	427.50
117297	11/04/2015	SADDLEBACK WINDOWS AND DOORS	CDBG Energy Efficiency Improvement Program	24,126.00
117298	11/04/2015	SBLI OF MASSACHUSETTS	Employee Benefit Program / P. Foley / October-December 2015	203.06
117299	11/04/2015	SIEMENS INDUSTRY, INC.	Traffic Signal Maintenance / September 2015	1,316.60
117300	11/04/2015	SONITROL	City Hall Fire Monitoring / November 2015	64.38
117301	11/04/2015	SOUTHERN CALIFORNIA EDISON	Irrigation Controllers / October 2015	105.54
117302	11/04/2015	SOUTHERN CALIFORNIA EDISON	Irrigation Controllers / October 2015	27.56
117303	11/04/2015	SOUTHERN CALIFORNIA EDISON	Residential Streetlights / October 2015	2,126.61
117304	11/04/2015	SOUTHERN CALIFORNIA EDISON	Ridge Route Dog Park / October 2015	56.02
117305	11/04/2015	STAPLES	General Office Supplies	64.42
117306	11/04/2015	THALES CONSULTING, INC.	Annual Cities Financial Transactions Report / FY 2014-15	1,000.00
117307	11/04/2015	TRAUMA INTERVENTION PROGRAMS, INC.	Annual Contract / FY 2015-16	1,998.24

**CITY OF LAGUNA WOODS  
WARRANT REGISTER  
11/18/2015**

<b>Number</b>	<b>Date</b>	<b>Vendor Name</b>	<b>Description</b>	<b>Amount</b>
117308	11/04/2015	YOLIE TRIPPY	Reimbursement - Janitorial Supplies for City Hall	111.88
117309	11/04/2015	UNITED STORM WATER, INC.	Storm Drain Maintenance - Catch Basins / September 2015	2,226.00
117310	11/04/2015	VISION SERVICE PLAN OF AMERICA	Employee Benefits Program / November 2015	174.97
<b>Total Warrants:</b>				<b><u><u>\$593,592.85</u></u></b>
 <b>Credit Card Statement Detail / September 6 - October 5, 2015</b>				
		Bank of America	Visa Credit Card Membership Fees	50.00
		Inter Continental Hotels - San Francisco	California Joint Powers Insurance Authority Risk Management Educational Forum - Hotel / Cady and Macon	973.48
		Billy Berk's	League of California Cities 2015 Annual Conference & Expo - Food / Hatch, Horne and Macon	70.03
		Jailal Galato	League of California Cities 2015 Annual Conference & Expo - Transportation / Hatch, Horne, Moore and Macon	40.25
		League of California Cities	2015 City Clerk New Law & Elections Seminar / Trippy & Macon	500.00
		The Fairmont San Jose	League of California Cities 2015 Annual Conference & Expo - Hotel / Hatch, Horne, Moore and Macon	1,657.44
		Orange County Register	Bi-Monthly Online Access Fee	72.00
<b>Total Credit Cards:</b>				<b><u><u>3,363.20</u></u></b>

6.4

**CITY HALL JANITORIAL SERVICES AGREEMENT**

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**AGREEMENT FOR CONSULTANT SERVICES  
BETWEEN THE  
CITY OF LAGUNA WOODS  
AND  
TEAM ONE MANAGEMENT  
FOR CITY HALL JANITORIAL SERVICES**

This AGREEMENT FOR CONSULTANT SERVICES ("AGREEMENT"), is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_ 2015 ("EFFECTIVE DATE"), by and among the City of Laguna Woods, a California municipal corporation ("CITY"), and Team One Management ("CONSULTANT").

In consideration of the mutual covenants and conditions set forth herein, the parties agree as follows:

**SECTION 1. TERM OF AGREEMENT.**

Subject to the provisions of SECTION 19 "TERMINATION OF AGREEMENT" of this AGREEMENT, the term of this AGREEMENT shall be for a period beginning on the date of execution of this AGREEMENT, as first shown above, and ending at 11:59 p.m. on June 30, 2018. Such term may be extended upon written agreement of both parties to this AGREEMENT through a maximum of 11:59 p.m. on June 30, 2020.

**SECTION 2. SCOPE OF SERVICES.**

CONSULTANT shall perform the services set forth in EXHIBIT "A" "SCOPE OF SERVICES" and made a part of this AGREEMENT. All work to be performed by CONSULTANT shall be coordinated with, and approved by City Manager of CITY or his or her designee. CONTRACTOR shall not begin work on any individual task or assignment until authorized by the City Manager of CITY or his or her designee to proceed.

**SECTION 3. ADDITIONAL SERVICES.**

CONSULTANT shall not be compensated for any services rendered in connection with its performance of this AGREEMENT which are in addition to or outside of those set forth in this AGREEMENT or listed in EXHIBIT "A" "SCOPE OF SERVICES", unless such additional services are authorized in advance and in writing by the City Council or the City Manager of CITY or his or her designee. CONSULTANT shall be compensated for any such additional services only in the amounts and in the manner agreed to by the City Council or City Manager of CITY or his or her designee.

**SECTION 4. COMPENSATION AND METHOD OF PAYMENT.**

(a) Subject to any limitations set forth in this AGREEMENT, CITY agrees to pay CONSULTANT the amounts specified in EXHIBIT "B" "COMPENSATION" and made a part of this AGREEMENT. CONSULTANT shall perform work only as requested by CITY.

## ITEM 6.4

This AGREEMENT does not state, convey, imply or infer a specific, minimum or expected amount of work or compensation for as needed services or reimbursables. Compensation for services shall not exceed the amounts specified in EXHIBIT "B" "COMPENSATION".

(b) No later than the 15<sup>th</sup> of each month CONSULTANT shall furnish to CITY an **original** invoice for all work performed and expenses incurred during the preceding month. The invoice shall detail charges by the categories required by CITY, which are subject to change at the discretion of CITY. CITY shall independently review each invoice submitted by the CONSULTANT to determine whether the work performed and expenses incurred are in compliance with the provisions of this AGREEMENT. In the event that no charges or expenses are disputed, the invoice shall be approved and paid according to the terms set forth in subsection (c). In the event that any charges or expenses are disputed by CITY, the original invoice shall be returned by CITY to CONSULTANT for correction and resubmission.

(c) Except as to any charges for work performed or expenses incurred by CONSULTANT which are disputed by CITY, CITY will use its best efforts to cause CONSULTANT to be paid within thirty (30) days of receipt of CONSULTANT's invoice.

(d) Payment to CONSULTANT for work performed pursuant to this AGREEMENT shall not be deemed to waive any defects in work performed by CONSULTANT, nor to constitute any waiver of any type of relief or remedy, legal or equitable, arising out of any breach or nonperformance of any aspect of the AGREEMENT by CONSULTANT.

### **SECTION 5. INSPECTION AND FINAL ACCEPTANCE.**

CITY may inspect and accept or reject any of CONSULTANT's work under this AGREEMENT, either during performance or when completed. CITY shall reject or finally accept CONSULTANT's work in its discretion within sixty (60) days after submitted to CITY. Any rejection of work by CITY shall be by written explanation. Acceptance of any of CONSULTANT's work by CITY shall not constitute a waiver of any of the provisions of this AGREEMENT including, but not limited to, sections 15 and 16, pertaining to indemnification and insurance, respectively.

### **SECTION 6. OWNERSHIP OF DOCUMENTS.**

All original maps, models, designs, drawings, photographs, studies, surveys, reports, data, notes, computer files, files and other documents prepared, developed or discovered by CONSULTANT in the course of providing any services pursuant to this AGREEMENT shall become the sole property of CITY and may be used, reused or otherwise disposed of by CITY without the permission of the CONSULTANT. Upon completion, expiration or termination of this AGREEMENT, CONSULTANT shall turn over to CITY all such original maps, models, designs, drawings, photographs, studies, surveys, reports, data, notes, computer files, files and other documents, notwithstanding any billing or compensation disputes that may then exist between CITY and CONSULTANT.

**SECTION 7. CONSULTANT'S BOOKS AND RECORDS.**

(a) CONSULTANT shall maintain any and all documents and records demonstrating or relating to CONSULTANT's and any of CONSULTANT's subcontractors' performance of services pursuant to this AGREEMENT. CONSULTANT shall maintain any and all drafts of studies or planning documents, correspondence, notices, ledgers, books of account, invoices, vouchers, canceled checks, or other documents or records evidencing or relating to work, services, expenditures and disbursements charged to CITY pursuant to this AGREEMENT. Any and all such documents or records shall be maintained in accordance with generally accepted accounting principles and shall be sufficiently complete and detailed so as to permit an accurate evaluation of the services provided by CONSULTANT pursuant to this AGREEMENT. Any and all such documents or records shall be maintained for five (5) years from the end of the term of this AGREEMENT and to the extent required by laws relating to audits of public agencies and their expenditures.

(b) Any and all records or documents required to be maintained pursuant to this section shall be made available for inspection, audit and copying, at any time during regular business hours, upon written request by CITY, Federal government, State of California, or their designated representatives. Copies of such documents or records shall be provided directly to the requesting party for inspection, audit and copying when it is practical to do so; otherwise, unless an alternative is mutually agreed upon, such documents and records shall be made available at CONSULTANT's address indicated for receipt of notices in this AGREEMENT.

(c) Where CITY has reason to believe that any of the documents or records required to be maintained pursuant to this section may be lost or discarded due to dissolution or termination of CONSULTANT's business, CITY may, by written request, require that custody of such documents or records be given to the requesting party and that such documents and records be maintained by the requesting party. Access to such documents and records shall be granted to CITY, as well as to its successors-in-interest and authorized representatives.

(d) CONSULTANT shall prepare and submit to CITY reports concerning the performance of the work in this AGREEMENT as CITY shall require.

**SECTION 8. STATUS OF CONSULTANT.**

(a) CONSULTANT is and shall at all times remain a wholly independent contractor and not an officer, official, employee or agent of CITY. CONSULTANT shall have no authority to bind CITY in any manner, nor to incur any obligation, debt or liability of any kind on behalf of or against CITY, whether by contract or otherwise, unless such authority is expressly conferred under this AGREEMENT or is otherwise expressly conferred in writing by CITY.

(b) The personnel performing the services under this AGREEMENT on behalf of CONSULTANT shall at all times be under CONSULTANT's exclusive direction and control. Neither CITY, nor any elected or appointed boards, officers, officials, employees or agents of

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CITY, shall have control over the conduct of CONSULTANT or any of CONSULTANT's officers, officials, employees or agents, except as set forth in this AGREEMENT. CONSULTANT shall not at any time or in any manner represent that CONSULTANT or any of CONSULTANT's officers, officials, employees or agents is in any manner officials, officers, employees or agents of CITY.

(c) Neither CONSULTANT, nor any of CONSULTANT's officers, officials, employees or agents, shall obtain any rights to retirement, health care or any other benefits which may otherwise accrue to CITY'S employees. CONSULTANT expressly waives any claim CONSULTANT may have to any such rights.

(d) This AGREEMENT shall in no way prohibit the CITY from entering into other agreements or contracts, hiring staff or making other such arrangements with other persons and/or entities relative to the services set forth in EXHIBIT "A" "SCOPE OF SERVICES".

### **SECTION 9. STANDARD OF PERFORMANCE.**

CONSULTANT represents and warrants that it has the qualifications, experience, personnel, and facilities necessary to properly perform the services required under this AGREEMENT in a thorough, competent and professional manner. CONSULTANT shall at all times faithfully, competently and to the best of its ability, experience and talent, perform all services described herein. In meeting its obligations under this AGREEMENT, CONSULTANT shall employ, at a minimum, generally accepted standards and practices utilized by persons engaged in providing services similar to those required of CONSULTANT under this AGREEMENT.

### **SECTION 10. COMPLIANCE WITH APPLICABLE LAWS; PERMITS AND LICENSES.**

(a) CONSULTANT shall keep itself informed of and comply with all applicable federal, state and local laws, statutes, codes, ordinances, regulations and rules in effect during the term of this AGREEMENT, including but not limited to regulations and rules pertaining to any grant awards or third-party funding with which this AGREEMENT is funded in whole or in part. CONSULTANT shall obtain any and all licenses, permits and authorizations necessary to perform the services set forth in this AGREEMENT. CITY shall not be responsible for monitoring CONSULTANT's compliance with federal, state, and local laws, statutes, codes, ordinances, or regulations. Neither CITY, nor any elected or appointed boards, officers, officials, employees or agents of CITY, shall be liable, at law or in equity, as a result of any failure of CONSULTANT to comply with this section.

(b) CONSULTANT shall not be debarred, suspended, or otherwise excluded from or ineligible for participation in federal assistance programs, or from receiving Federal contracts, subcontracts, or financial or nonfinancial assistance or benefits, under Executive Order 12549, "Debarment and Suspension" (24 CFR 85.35) or other Federal laws, statutes, codes, ordinances, regulations or rules, at any time during the term of this AGREEMENT.

**SECTION 11. NONDISCRIMINATION.**

CONSULTANT shall not discriminate, in any way, against any person on the basis of race, color, religious creed, national origin, ancestry, sex, age, physical handicap, medical condition, sexual orientation or marital status in connection with or related to the performance of this AGREEMENT.

**SECTION 12. UNAUTHORIZED ALIENS.**

CONSULTANT shall comply with all of the provisions of the Federal Immigration and Nationality Act, 8 U.S.C.A. §§ 1101, et seq., as amended from time to time or replaced by a successor statute, and in connection therewith, shall not employ unauthorized aliens as defined therein. The term "unauthorized aliens" means and includes "undocumented foreign nationals" as defined in the proposed Federal Correcting Hurtful and Alienating Names in Government Expression (CHANGE) Act (H.R. 3785, introduced October 21, 2015). Should CONSULTANT so employ such unauthorized aliens for the performance of work and/or services covered by this AGREEMENT, and should the any liability or sanctions be imposed against CITY for such use of unauthorized aliens, CONSULTANT shall reimburse CITY for the cost of all such liabilities or sanctions imposed, together with any and all costs, including attorneys' fees, incurred by CITY.

**SECTION 13. CONFLICTS OF INTEREST.**

(a) CONSULTANT covenants that neither it, nor any officer or principal of its firm, has or shall acquire any interest, directly or indirectly, which would conflict in any manner with the interests of CITY or which would in any way hinder CONSULTANT's performance of services under this AGREEMENT. CONSULTANT further covenants that in the performance of this AGREEMENT, no person having any such interest shall be employed by it as an officer, official, employee, agent or subcontractor without the express written consent of the City Manager of CITY or his or her designee. CONSULTANT agrees to at all times avoid conflicts of interest or the appearance of any conflicts of interest with the interests of CITY in the performance of this AGREEMENT.

(b) CITY understands and acknowledges that CONSULTANT is, as of the date of execution of this AGREEMENT, independently involved in the performance of non-related services for other governmental agencies and private parties. CONSULTANT is unaware of any stated position of CITY relative to such projects. Any future position of CITY on such projects shall not be considered a conflict of interest for purposes of this section.

**SECTION 14. CONFIDENTIAL INFORMATION; RELEASE OF INFORMATION.**

(a) All information gained or work product produced by CONSULTANT in performance of this AGREEMENT shall be considered confidential, unless such information is in the public domain or already known to CONSULTANT. CONSULTANT shall not release or disclose any such information or work product to persons or entities other than CITY without

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prior written authorization from the City Manager of CITY or his or her designee, except as may be required by law.

(b) CONSULTANT, its officers, employees, agents or subcontractors, shall not, without prior written authorization from the City Manager of CITY or his or her designee or unless requested by the City Attorney of CITY, voluntarily provide declarations, letters of support, testimony at depositions, response to interrogatories or other information concerning the work performed under this AGREEMENT. Response to a subpoena or court order shall not be considered "voluntary" provided CONSULTANT gives CITY notice of such court order or subpoena.

(c) If CONSULTANT, or any officer, employee, agent or subcontractor of CONSULTANT, provides any information or work product in violation of this AGREEMENT, then CITY shall have the right to reimbursement and indemnity from CONSULTANT for any damages, costs and fees, including attorneys fees, caused by or incurred as a result of CONSULTANT's conduct.

(d) CONSULTANT shall promptly notify CITY should CONSULTANT, its officers, officials, employees, agents or subcontractors be served with any summons, complaint, subpoena, notice of deposition, request for documents, interrogatories, request for admissions or other discovery request, court order or subpoena from any party regarding this AGREEMENT or the work performed thereunder. CITY retains the right, but has no obligation, to represent CONSULTANT or be present at any deposition, hearing or similar proceeding. CONSULTANT agrees to cooperate fully with CITY and to provide CITY with the opportunity to review any response to discovery requests provided by CONSULTANT. However, this right to review any such response does not imply or mean the right by CITY to control, direct, or rewrite said response.

### **SECTION 15. INDEMNIFICATION.**

(a) CITY and its respective elected and appointed boards, officials, officers, agents, employees and volunteers (individually and collectively, "INDEMNITEES") shall have no liability to CONSULTANT or any other person for, and CONSULTANT shall indemnify, defend and hold harmless INDEMNITEES from and against, any and all liabilities, claims, actions, causes of action, proceedings, suits, damages, judgments, liens, levies, costs and expenses of whatever nature, including reasonable attorneys' fees and disbursements (collectively "CLAIMS"), which INDEMNITEES may suffer or incur or to which INDEMNITEES may become subject by reason of or arising out of any injury to or death of any person(s), damage to property, loss of use of property, economic loss or otherwise occurring as a result of the CONSULTANT's performance of or failure to perform any services under this AGREEMENT or by the negligent or willful acts or omissions of CONSULTANT, its agents, officers, directors, subcontractors or employees, committed in performing any of the services under this AGREEMENT, including without limitation the violation of any federal, state, and local law, statute, code, ordinance, regulation, or rule.

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(b) If any action or proceeding is brought against INDEMNITEES by reason of any of the matters against which CONSULTANT has agreed to indemnify INDEMNITEES as provided above, CONSULTANT, upon notice from CITY, shall defend INDEMNITEES at CONSULTANT's expense by counsel acceptable to CITY, such acceptance not to be unreasonably withheld. INDEMNITEES need not have first paid for any of the matters to which INDEMNITEES are entitled to indemnification in order to be so indemnified. The insurance required to be maintained by CONSULTANT under Section 16 shall insure CONSULTANT's obligations under this section, but the limits of such insurance shall not limit the liability of CONSULTANT hereunder. The provisions of this section shall survive the expiration or earlier termination of this AGREEMENT.

(c) The provisions of this section do not apply to CLAIMS occurring as a result of the CITY's sole negligence or willful acts or omissions.

### **SECTION 16. INSURANCE.**

CONSULTANT agrees to obtain and maintain in full force and effect during the term of this AGREEMENT the insurance policies set forth in EXHIBIT "C" "INSURANCE" and made a part of this AGREEMENT. All insurance policies shall be subject to approval by CITY as to form and content. These requirements are subject to amendment or waiver if so approved in writing by the City Manager of CITY or his or her designee. CONSULTANT agrees to provide CITY with copies of required policies upon request.

### **SECTION 17. ASSIGNMENT.**

The expertise and experience of CONSULTANT are material considerations for this AGREEMENT. CITY has an interest in the qualifications of and capability of the persons and entities who will fulfill the duties and obligations imposed upon CONSULTANT under this AGREEMENT. In recognition of that interest, CONSULTANT shall not assign or transfer this Agreement or any portion of this AGREEMENT or the performance of any of CONSULTANT's duties or obligations under this AGREEMENT without the prior written consent of the City Council. Any attempted assignment shall be ineffective, null and void, and shall constitute a material breach of this AGREEMENT entitling CITY to any and all remedies at law or in equity, including summary termination of this AGREEMENT. CITY acknowledges, however, that CONSULTANT, in the performance of its duties pursuant to this AGREEMENT, may utilize subcontractors. CONSULTANT shall be solely liable and responsible for the actions, conduct, and performance of subcontractors, including but not limited to ensuring their compliance with Section 10 of this AGREEMENT (Compliance with Applicable Laws; Permits and Licenses).

### **SECTION 18. CONTINUITY OF PERSONNEL.**

CONSULTANT shall make every reasonable effort to maintain the stability and continuity of CONSULTANT's staff assigned to perform the services required under this AGREEMENT. CONSULTANT shall obtain approval, in writing, from CITY of any changes in CONSULTANT's staff assigned to perform the services required under this AGREEMENT,

prior to any such performance.

#### **SECTION 19. TERMINATION OF AGREEMENT.**

(a) CITY may terminate this AGREEMENT, with or without cause, at any time by giving thirty (30) days written notice of termination to CONSULTANT. In the event such notice is given, CITY may require CONSULTANT to cease immediately all work in progress.

(b) CONSULTANT may terminate this AGREEMENT at any time upon sixty (60) days written notice of termination to CITY. In the event such notice is given, CITY may require CONSULTANT to cease immediately all work in progress.

(c) If CONSULTANT fails to perform any material obligation under this AGREEMENT, then, in addition to any other remedies, CITY may terminate this AGREEMENT immediately upon written notice.

(d) Upon termination of this AGREEMENT by either CONSULTANT or CITY, all property belonging exclusively to CITY which is in CONSULTANT's possession shall be returned to CITY immediately upon demand by CITY, notwithstanding any billing disputes that may then exist under this AGREEMENT. CONSULTANT shall furnish to CITY a final invoice for work performed and expenses incurred by CONSULTANT, prepared as set forth in SECTION 4 of this AGREEMENT. This final invoice shall be reviewed and paid in the same manner as set forth in SECTION 4 of this AGREEMENT.

#### **SECTION 20. DEFAULT.**

In the event that CONSULTANT is in default under the terms of this AGREEMENT, the CITY shall not have any obligation or duty to continue compensating CONSULTANT for any work performed after the date of default and may terminate this AGREEMENT immediately by written notice to the CONSULTANT.

#### **SECTION 21. EXCUSABLE DELAYS.**

CONSULTANT shall not be liable for damages, including liquidated damages, if any, caused by delay in performance or failure to perform due to causes beyond the control of CONSULTANT. Such causes include, but are not limited to, acts of God, acts of the public enemy, acts of federal, state or local governments, court orders, fires, floods, epidemics, strikes, embargoes, and unusually severe weather. The term and price of this AGREEMENT shall be equitably adjusted for any delays due to such causes.

#### **SECTION 22. COOPERATION BY CITY.**

All public information, data, reports, records, and maps as are existing and available to CITY as public records, and which are necessary for carrying out the work as outlined in the EXHIBIT "A" "SCOPE OF SERVICES", shall be furnished to CONSULTANT in a reasonable way to facilitate, without undue delay, the work to be performed under this AGREEMENT.

**SECTION 23. NOTICES.**

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

To CITY: City of Laguna Woods  
Attn: City Manager  
24264 El Toro Road  
Laguna Woods, CA 92637

To CONSULTANT: Team One Management  
ATTN: President  
27762 Forbes Road #18D  
Laguna Niguel, CA 92677

Notice shall be deemed effective on the date personally delivered or transmitted by facsimile or, if mailed, three (3) days after deposit of the same in the custody of the United States Postal Service.

**SECTION 24. AUTHORITY TO EXECUTE.**

The person or persons executing this AGREEMENT on behalf of CONSULTANT represents and warrants that he/she/they has/have the authority to so execute this AGREEMENT and to bind CONSULTANT to the performance of its obligations hereunder.

**SECTION 25. BINDING EFFECT.**

This AGREEMENT shall be binding upon the heirs, executors, administrators, successors and assigns of the parties.

**SECTION 26. MODIFICATION OF AGREEMENT.**

No amendment to or modification of this AGREEMENT shall be valid unless made in writing and approved by the CONSULTANT and by the City Council or City Manager of CITY. The parties agree that this requirement for written modifications cannot be waived and that any attempted waiver shall be void.

**SECTION 27. WAIVER.**

Waiver by any party to this AGREEMENT of any term, condition, or covenant of this AGREEMENT shall not constitute a waiver of any other term, condition, or covenant. Waiver by any party of any breach of the provisions of this AGREEMENT shall not constitute a waiver of any other provision, nor a waiver of any subsequent breach or violation of any provision of this AGREEMENT. Acceptance by CITY of any work or services by CONSULTANT shall not constitute a waiver of any of the provisions of this AGREEMENT.

**SECTION 28. LAW TO GOVERN; VENUE.**

This AGREEMENT shall be interpreted, construed and governed according to the laws of the State of California. In the event of litigation between the parties, venue in state trial courts shall lie exclusively in the County of Orange. In the event of litigation in a U.S. District Court, venue shall lie exclusively in the District of California in which CITY is located.

**SECTION 29. ATTORNEYS FEES, COSTS AND EXPENSES.**

In the event litigation or other proceeding is required to enforce or interpret any provision of this AGREEMENT, the prevailing party in such litigation or other proceeding shall be entitled to an award of reasonable attorney's fees, costs and expenses, in addition to any other relief to which it may be entitled.

**SECTION 30. ENTIRE AGREEMENT.**

This AGREEMENT, including the attached EXHIBITS "A" through "C", is the entire, complete, final and exclusive expression of the parties with respect to the matters addressed therein and supersedes all other agreements or understandings, whether oral or written, or entered into between CONSULTANT and CITY prior to the execution of this AGREEMENT. No statements, representations or other agreements, whether oral or written, made by any party which is not embodied herein shall be valid and binding. No amendment to this AGREEMENT shall be valid and binding unless in writing duly executed by the parties or their authorized representatives.

**SECTION 31. SEVERABILITY.**

If a term, condition or covenant of this AGREEMENT is declared or determined by any court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions of this AGREEMENT shall not be affected thereby and the AGREEMENT shall be read and construed without the invalid, void or unenforceable provision(s).

**SECTION 32. NO THIRD PARTY BENEFICIARIES.**

This AGREEMENT, its provisions, and its covenants, are for the sole and exclusive benefit of CITY and CONSULTANT. No other parties or entities are intended to be, nor shall be considered, beneficiaries of the performance by either party of any of the obligations under this AGREEMENT.

[SIGNATURES ON FOLLOWING PAGE]



**EXHIBIT "A"**  
**SCOPE OF SERVICES**

CONSULTANT shall provide janitorial services for Laguna Woods City Hall ("City Hall") located at 24264 El Toro Road, Laguna Woods, CA 92637. City Hall is approximately 7,910 square feet and includes a combination of office space, conference rooms, public meeting areas, restrooms, and a small kitchen/break room. Temporary accommodations, if ever utilized by CITY, for City Hall shall also be covered by this AGREEMENT without the right for CONSULTANT to seek to renegotiate this AGREEMENT, provided that the total square footage of all properties for which services are provided does not exceed 7,910 square feet.

The services identified in this EXHIBIT "A" are not all-inclusive, and CONSULTANT understands and agrees that all tasks incidental to cleaning functions not specifically listed, but normally included in general janitorial practices, shall be provided. CONSULTANT shall furnish experienced, reliable personnel to perform the following services including, but not limited to:

**A. Daily Service (TO OCCUR EVERY WEDNESDAY AND FRIDAY BETWEEN 6 P.M. AND 11:59 P.M. AND AS-REQUESTED BY CITY)**

- *Internal Building Surfaces:* Remove smudges, fingerprints, marks, and streaks from washable hard surfaces, including mirrors, light switches, doors, doorways, door handles, telephone stations, display cases, and all other hard surfaces.
- *Lobbies & Entrances:* Clean glass doors, both inside and outside, removing smudges, fingerprints, marks, and streaks; and vacuum entrance mats.
- *Waste Receptacles:* Empty all waste receptacles within the building, with the exception of recycling containers, and return the same to their initial locations. The interior, exterior, housing of waste receptacles, and walls next to the receptacles shall be cleaned and disinfected. Plastic liners of waste receptacles shall be replaced after each cleaning.
- *Carpeted Floors:* Vacuum all carpeted areas free of all visible debris, including areas underneath furniture, mats, and behind doors.
- *Carpet Spot Cleaning:* Check all carpeted areas for new dirty spots, stains, and gum and, if found, treat with a carpet spot cleaning solution.
- *Non-Carpeted Floors:* Vacuum or sweep all non-carpeted floors free of all visible debris, including areas underneath furniture, mats, and behind doors. The entire non-carpeted floor shall be damp-mopped and cleaned with an appropriate solution to remove dust, dry soil, and other surface debris.
- *Tables & Desks:* Remove any non-permanent stains, spots, spills, and marks from tables, counters, and desks, including all cabinets, bookcases, and surface areas that are empty. Cleaning shall not be of such a degree as to remove the finish or leave abrasive marks.
- *Kitchen Area & Break Room:* Clean and disinfect sinks, counters, exterior surfaces of appliances and cabinets, tables, and chairs. Wash coffee pots, coffee cups, and other dishes. Refill soap dispensers and paper dispensers as necessary.
- *Restrooms:* Clean and disinfect sinks, counters, receptacles, dispensers, partitions, walls, doors, toilets, and urinals, including fixtures and other metal surfaces. Remove smudges,

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fingerprints, marks, and streaks from mirrors. Damp-mop and disinfect non-carpeted floors. Refill soap dispensers and paper dispensers as necessary.

- *Drinking Fountains:* Clean and disinfect all metal surfaces, including the orifice and drain, as well as remove all smudges, fingerprints, marks, streaks, and other obvious soil from the drinking fountains.
- *Elevator:* Vacuum the carpeted floor of the elevator, as well as clean and disinfect the control panel and metal railing.
- *Stairwells:* Sweep and dispose of debris in both stairwells. Clean and disinfect handrails and banisters.
- *Outside Balcony:* Sweep and dispose of debris on the outside balcony.
- *Furniture:* Clean, disinfect, and remove all spills and soiling.

### **B. Monthly Service (TO OCCUR ONE CONSISTENTLY SCHEDULED WEEKDAY PER MONTH BETWEEN 6 P.M. AND 11:59 P.M. AND AS-REQUESTED BY CITY)**

- *Air Conditioner Supply Vents, Returns, & Exhaust Fan Grills:* Clean all particles from vents and wall or ceiling areas adjacent to the vent.
- *Windows:* Clean the interior surface of all windows and the exterior surface of all front-facing windows, removing smudges, fingerprints, marks, and streaks.
- *Blinds & Shutters:* Clean all blinds and shutters.
- *Dusting:* Dust all surfaces, including windowsills, ledges, pictures, plaques, cubicle wall tops, door tops, tops, and sides of book shelves and cabinets.
- *Furniture:* Vacuum all cloth furniture. Removable cushions shall be lifted and vacuumed underneath. Wipe down all vinyl and hard surfaces with a damp cloth and dry.

### **C. Special Event Service (TO OCCUR AS-REQUESTED BY CITY)**

- *Internal Building Surfaces:* Remove smudges, fingerprints, marks, and streaks from washable hard surfaces, including mirrors, light switches, doors, doorways, door handles, telephone stations, display cases, and all other hard surfaces.
- *Waste Receptacles:* Empty all waste receptacles within the building, with the exception of recycling containers, and return the same to their initial locations. The interior, exterior, housing of waste receptacles, and walls next to the receptacles shall be cleaned and disinfected. Plastic liners of waste receptacles shall be replaced after each cleaning.
- *Carpeted Floors:* Vacuum all carpeted areas free of all visible debris, including areas underneath furniture, mats, and behind doors.
- *Carpet Spot Cleaning:* Check all carpeted areas for new dirty spots, stains, and gum and, if found, treat with a carpet spot cleaning solution.
- *Non-Carpeted Floors:* Vacuum or sweep all non-carpeted floors free of all visible debris, including areas underneath furniture, mats, and behind doors. The entire non-carpeted floor shall be damp-mopped and cleaned with an appropriate solution to remove dust, dry soil, and other surface debris.
- *Restrooms:* Clean and disinfect sinks, counters, receptacles, dispensers, partitions, walls, doors, toilets, and urinals, including fixtures and other metal surfaces. Remove smudges,

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fingerprints, marks, and streaks from mirrors. Damp-mop and disinfect non-carpeted floors. Refill soap dispensers and paper dispensers as necessary.

- *Drinking Fountains:* Clean and disinfect all metal surfaces, including the orifice and drain, as well as remove all smudges, fingerprints, marks, streaks, and other obvious soil from the drinking fountains.
- *Public Assistance.* Assist members of the public by removing items from vehicles, moving items to designated collection areas, and performing similar manual labor. Items may be up to fifty (50) pounds in weight and include items for disposal or recycling (e.g., universal waste, electronic waste, light bulbs, batteries, and medication).
- *Furniture:* Clean, disinfect, and remove all spills and soiling.

### **Securing of Alarms, Doors, and Windows**

CONSULTANT shall ensure that City Hall is alarmed, with all exterior doors and windows securely closed and locked prior to departure. In the event that City Hall is occupied by CITY staff at the time of departure, CONSULTANT shall securely close and lock all exterior doors and windows, and notify CITY staff of their departure, but not alarm the building. CONSULTANT shall exercise reasonable care and attention to ensure that no entry to City Hall is made by non-CITY employees while performing services outside of City Hall's business hours.

### **Waste Disposal**

From the effective date of this agreement through December 31, 2015, CONSULTANT shall self-haul all waste generated or collected in the performance of its duties. Beginning on January 1, 2016, CONSULTANT shall deposit such waste in a location(s) specified by CITY.

### **Holiday Services and Schedule Modifications**

CONSULTANT shall not provide Daily Services or Monthly Services on the following holidays unless requested, in writing, by CITY: New Years Day, Martin Luther King's Birthday, President's Day, Memorial Day, Independence Day, Labor Day, Veteran's Day, Thanksgiving and Friday after Thanksgiving, Christmas Eve, and Christmas Day.

CITY reserves the right to cancel any scheduled service by providing at least forty-eight (48) hours written notice to CONSULTANT. Cancellations shall not require compensation.

### **Supplies & Equipment**

- *Supplies:* CONSULTANT shall notify CITY at least seven (7) business days in advance of the need for any supplies necessary for the performance of its duties. Unless otherwise authorized, in writing, by CITY, CITY shall furnish all supplies deemed necessary by CITY to perform the requested services. CONSULTANT shall use all chemicals and other supplies in accordance with federal, state, and local laws, as well as comply with Material Safety Data Sheets standards. Material Safety Data Sheets shall be on-site and available for all chemicals stored and used within a service area prior to performing

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work. CITY or CONSULTANT, whichever furnished each, shall post copies of Material Safety Data Sheets for all chemicals used in each janitorial closet in compliance with OSHA Hazard Communication Standard 29 CFR 1900.1200.

- *Equipment:* CITY shall supply a vacuum, mop, and mop bucket, which CONSULTANT may, but is not required, to use in the performance of its duties. All other necessary equipment, including all personal protective equipment (which, for the purpose of this AGREEMENT shall also include gloves, face masks, and similar materials), shall be purchased and maintained by CONSULTANT without compensation from CITY.

### **On-Site Storage**

CITY shall provide a small janitorial closet at City Hall for use by CONSULTANT. Said closet may be used to store supplies and equipment purchased and provided by both CITY and CONSULTANT. CONSULTANT acknowledges that it does not have exclusive control over said closet, that supplies and equipment are stored in said closet at CONSULTANT's own risk, and that said closet may be of insufficient size to store all necessary supplies and equipment. CITY shall not be responsible for CONSULTANT's losses from on-site storage.

**EXHIBIT "B"**  
**COMPENSATION**

CONSULTANT shall be compensated using the following rates:

*Table 1-1: Compensation Schedule*

<b>Regular Work</b>	
<b>Service<sup>1</sup></b>	<b>Rate<sup>2</sup></b>
Daily Services (twice per week and as-requested)	\$65/per day
Monthly Services (once per month and as-requested)	\$50/per month
<b>Additional Work</b>	
<b>Service<sup>1</sup></b>	<b>Rate<sup>2</sup></b>
Special Event Services (as-requested)	\$20/per hour/per person
Daily Services (as-requested; holidays identified in Scope of Work)	\$65/per holiday daily service
Monthly Services (as-requested; holidays identified in Scope of Work)	\$50/per holiday monthly service

<sup>1</sup> CITY reserves the right to cancel any scheduled service by providing at least forty-eight (48) hours written notice to CONSULTANT. Cancellations shall not require compensation and such cancellation shall not change the rates established in Table 1-1.

<sup>2</sup> Hourly rates are not subject to minimums or maximums and are all inclusive. CONSULTANT shall not receive separate compensation for travel, lodging, mileage, telephone service, internet service, equipment, supplies, food, drink, or attire, except as noted in this AGREEMENT. Rates shall be adjusted upward to reflect increases in applicable minimum wage rates measured on July 1 of each year. In the event that applicable minimum wage rates decrease or remain unchanged when measured on any July 1, rates shall remain unchanged.

**EXHIBIT "C"**  
**INSURANCE**

A. **Insurance Requirements.** CONSULTANT shall provide and maintain insurance, acceptable to the City Manager of CITY or his or her designee or City Attorney, in full force and effect throughout the term of this AGREEMENT, against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by CONSULTANT, its agents, representatives or employees. Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII. CONSULTANT shall provide the following scope and limits of insurance:

1. **Minimum Scope of Insurance.** Coverage shall be at least as broad as:

(1) Insurance Services Office form Commercial General Liability coverage (Occurrence Form CG 0001).

(2) Insurance Services Office form number CA 0001 (Ed. 1/87) covering Automobile Liability, including code 1 "any auto" and endorsement CA 0025, or equivalent forms subject to the written approval of CITY.

(3) Workers' Compensation insurance as required by the Labor Code of State of California and Employer's Liability insurance and covering all persons providing services on behalf of the CONSULTANT and all risks to such persons under this AGREEMENT.

(4) Errors and omissions liability insurance appropriate to the CONSULTANT's profession.

2. **Minimum Limits of Insurance.** CONSULTANT shall maintain limits of insurance no less than:

(1) General Liability: \$1,000,000 per occurrence for all covered losses and no less than \$2,000,000 general aggregate for bodily injury, personal injury and property damage.

(2) Automobile Liability: \$1,000,000 per accident for bodily injury and property damage.

(3) Workers' Compensation and Employer's Liability: Workers' Compensation as required by the Labor Code of the State of California and Employers Liability limits of \$1,000,000 per accident.

ITEM 6.4

B. Other Provisions. Insurance policies required by this AGREEMENT shall contain the following provisions:

1. All Policies. Each insurance policy required by this AGREEMENT shall be endorsed and state that the coverage shall not be suspended, voided, cancelled by the insurer or either party to this AGREEMENT, reduced in coverage or in limits except after 30 days' prior written notice by Certified mail, return receipt requested, has been given to the City Manager of CITY or his or her designee.

2. General Liability and Automobile Liability Coverages.

(1) CITY, and its respective elected and appointed officers, officials, and employees and volunteers are to be covered as additional insureds as respects: liability arising out of activities CONSULTANT performs; products and completed operations of CONSULTANT; premises owned, occupied or used by CONSULTANT; or automobiles owned, leased, hired or borrowed by CONSULTANT. The coverage shall contain no special limitations on the scope of protection afforded to CITY, and their respective elected and appointed officers, officials, or employees.

(2) CONSULTANT's insurance coverage shall be primary insurance with respect to CITY, and its respective elected and appointed, its officers, officials, employees and volunteers. Any insurance or self insurance maintained by CITY, and its respective elected and appointed officers, officials, employees or volunteers, shall apply in excess of, and not contribute with, CONSULTANT's insurance.

(3) CONSULTANT's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

(4) Any failure to comply with the reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to CITY, and its respective elected and appointed officers, officials, employees or volunteers.

3. Workers' Compensation and Employer's Liability Coverage.

Unless the City Manager of CITY or his or her designee otherwise agrees in writing, the insurer shall agree to waive all rights of subrogation against CITY, and its respective elected and appointed officers, officials, employees and agents for losses arising from work performed by CONSULTANT.

C. Other Requirements. CONSULTANT agrees to deposit with CITY, at or before the effective date of this contract, certificates of insurance necessary to satisfy CITY that the insurance provisions of this contract have been complied with. The City Attorney may require that CONSULTANT furnish CITY with copies of original endorsements effecting coverage required by this Section. The certificates and endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf. CITY reserves the right to inspect

ITEM 6.4

complete, certified copies of all required insurance policies, at any time.

1. CONSULTANT shall furnish certificates and endorsements from each subcontractor identical to those CONSULTANT provides.

2. Any deductibles or self-insured retentions must be declared to and approved by CITY. At the option of CITY, either the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects CITY or its respective elected or appointed officers, officials, employees and volunteers or the CONSULTANT shall procure a bond guaranteeing payment of losses and related investigations, claim administration, defense expenses and claims.

3. The procuring of such required policy or policies of insurance shall not be construed to limit CONSULTANT's liability hereunder nor to fulfill the indemnification provisions and requirements of this AGREEMENT.

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**6.5**  
**AMENDMENT TO BUILDING SERVICES**  
**AGREEMENT**

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**AMENDMENT TO THE  
AGREEMENT FOR CONSULTANT SERVICES  
BETWEEN THE  
CITY OF LAGUNA WOODS  
AND  
CIVILSOURCE, INC.  
FOR BUILDING INSPECTION AND PERMIT COUNTER SERVICES**

This AMENDMENT of the AGREEMENT FOR CONSULTANT SERVICES ("AGREEMENT") that was approved by the City Council on September 17, 2014, by and among the City of Laguna Woods, a California municipal corporation ("CITY") and CivilSource, Inc., ("CONSULTANT"), is made and entered into this \_\_\_\_ day of \_\_\_\_\_ 2015 by and among the CITY and CONSULTANT.

**WHEREAS**, as provided for in EXHIBIT "A" of the AGREEMENT, the CITY has requested additional permit counter services from CONSULTANT as a result of increased activity and demands at the CITY's permit counter; and

**WHEREAS**, CONSULTANT believes that the additional services can be provided by contract personnel at a title and hourly rate less than provided for in the AGREEMENT.

**NOW THEREFORE**, the parties amend the AGREEMENT as follows and, by doing so, memorializes prior authorized terms of agreement and performance consistent with same from and after October 21, 2015 until the date of signing hereto:

1. The CITY and CONSULTANT hereby agree to an AMENDMENT of the AGREEMENT with no changes to the terms and conditions of the AGREEMENT except for the addition of a "Permit Assistant" title and "\$30 per hour<sup>1</sup>" rate under the heading of "Permit Counter Services" in Table 1-3 of EXHIBIT "B" of the AGREEMENT. The Permit Assistant's duties shall not include issuing building permits or conducting video/photo inspections.

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

**CITY OF LAGUNA WOODS:**

By \_\_\_\_\_ Date \_\_\_\_\_  
Christopher Macon, City Manager

**CONSULTANT:**

By \_\_\_\_\_ Date \_\_\_\_\_  
Amy Amirani, PE, Principal

**APPROVED AS TO FORM:**

\_\_\_\_\_  
David B. Cosgrove, City Attorney Date \_\_\_\_\_

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**7.1**  
**SOLID WASTE HANDLING SERVICES**  
**FRANCHISE AGREEMENT**

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# City of Laguna Woods Agenda Report

**TO:** Honorable Mayor and City Councilmembers  
**FROM:** Christopher Macon, City Manager  
**FOR:** November 18, 2015 Regular Meeting  
**SUBJECT:** Solid Waste Handling Services Franchise Agreement

---

## **Recommendation**

1. Receive staff report.  

AND
2. Open public hearing.  

AND
3. Receive public testimony.  

AND
4. Close public hearing.  

AND
5. Approve a franchise agreement with Waste Management Collection and Recycling, Inc. for solid waste handling services and authorize the Mayor to execute the franchise agreement, subject to approval as to form by the City Attorney.  

AND

6. Extend the term of the Ad Hoc Solid Waste Franchise Committee that consists of Mayor Connors and Councilmember Horne from December 31, 2015 through February 29, 2016 with direction to assist staff with the transition and implementation of the new solid waste handling services franchise agreement and make related recommendations to the City Council.

### **Background**

In June 2014, the City Council initiated a competitive process to select solid waste handling services franchisee(s) in order to provide Laguna Woods residents and businesses with affordable rates and access to a variety of environmentally friendly recycling and disposal opportunities. The City's existing franchise agreement with Ware Disposal, Inc. will end on December 31, 2015.

Mayor Connors and Councilmember Horne were appointed by the City Council to serve on its Ad Hoc Solid Waste Franchise Committee. The Ad Hoc Committee's charge was to assist with the preparation of a Request for Proposals (RFP) for solid waste handling services and make recommendations to the City Council regarding approval of the same. The Ad Hoc Committee was also to review, evaluate, and make recommendations to the City Council regarding the proposals received.

Prior to the finalization and release of the RFP, the City conducted an extensive public outreach process, which included three public hearings (June 17, 2015; July 29, 2015; and, August 19, 2015), a business roundtable (September 16, 2014), a resident roundtable (October 7, 2014), and two meetings with the City's former Planning & Environmental Services Committee (October 9, 2014 and November 13, 2014). In total, seven public meetings were held over the course of one year.

Invitations for community-specific meetings were also extended to all residential communities and homeowner's associations in Laguna Woods; however, only the Golden Rain Foundation chose to participate (October 8, 2014). Since this process began, those communities and any other interested parties have been able to request meetings or provide input by contacting Laguna Woods City Hall.

The City Council approved the RFP on August 19, 2015.

The RFP was released on August 28, 2015 with proposals due by October 9, 2015. Prior to submitting proposals, interested firms were required to participate in a service area tour to orient themselves with Laguna Woods, including the spatial configuration of streets and roads, addressing, enclosures, and curbside locations.

## Discussion

Today's meeting is an opportunity for City Council discussion and direction, as well as public testimony, regarding the potential award of a franchise agreement.

### Introduction and Summary

The City received proposals from three firms – CR&R, Inc., Ware Disposal, Inc., and Waste Management Collection and Recycling, Inc. (“Waste Management”). After review and evaluation by both the Ad Hoc Solid Waste Franchise Committee and City staff, the unanimous recommendation is that the solid waste handling services franchise agreement be awarded to Waste Management. Key factors resulting in that recommendation include, but are not limited to the following:

- *Rates.* Laguna Woods has historically enjoyed solid waste handling services rates among the lowest in Orange County; the same would continue to be true under the proposed franchise agreement. Waste Management proposed residential rates that, in many cases, are lower than the existing rates charged by Ware Disposal, Inc. and commercial rates that, while higher than existing rates, would remain regionally competitive. The rates proposed by the other firms can generally be characterized as more expensive (CR&R, Inc.) and less expensive (Ware Disposal, Inc.) than existing rates, compared overall and assuming service levels comparable to those that exist currently. Waste Management's proposed rates are the highest for organics waste recycling, followed by CR&R, Inc. and Ware Disposal, Inc., although the nature of the programs varies by firm. While the review and evaluation of proposals placed a significant emphasis on rates, other factors were also considered, including understanding of local needs and the ability to most effectively comply with legal and policy requirements for waste diversion.
- *Organics.* The City is required to implement a new organics waste recycling program to comply with Assembly Bill 1826 (2013-14). Waste Management began recycling organics in 2010 and operates an anaerobic digestion facility in the city of Orange. Their proposed approach to organics recycling appears best designed to meet the needs of Laguna Woods, particularly the limited space available in many trash enclosures for source separation. Waste Management would offer several different container options (including bags, carts, bins, and compactors) and work with the City to implement a robust and ongoing public education program. Waste Management also has

experience implementing innovative organics recycling programs in the city of Laguna Beach and operating an in-county anaerobic digestion facility that would minimize vehicle miles traveled, fuel consumption, and emissions generated by transportation (CR&R, Inc. and Ware Disposal, Inc. proposed transport to the city of Perris and Mira Loma/Riverside county, respectively). The organics program proposed by CR&R, Inc. included processing at an anaerobic digestion facility that is not yet open (although, scheduled to open in the near future), while Ware Disposal, Inc. lacked a defined, long-term plan for complying with Assembly Bill 1826.

- *In-Home Bulky Item Collection.* The RFP sought to enhance in-home bulky item collection by transitioning from a periodic offering (typically, once or twice per year) to an on-call service with collections to occur within 45 days of each request. Waste Management has proposed a further enhancement of that service with collections to occur within seven days of each request and is the only responding firm with significant experience providing in-home bulky item collection. While both CR&R, Inc. and Ware Disposal, Inc. proposed enhancements from what was requested in the RFP (collection to occur no more than one month and 48 hours/seven days from each request, respectively), Waste Management's experience and commitment to collect within seven days is viewed as best meeting the needs of Laguna Woods.

In general, the Ad Hoc Committee and City staff feel that Waste Management has the strongest understanding of the City's goals and service levels, coupled with a significant body of experience providing both conventional solid waste handling services, as well as more emergent services (including organics recycling) with a demonstrated commitment to reducing the carbon footprint of their operations.

Waste Management provides various solid waste services to Irvine, Laguna Beach, Mission Viejo, Santa Ana, and various unincorporated areas in Orange County.

The RFP and proposals can be obtained or reviewed at Laguna Woods City Hall.

The proposed franchise agreement, as negotiated, is included as Attachment A. The insurance and indemnification provisions have been reviewed by the City's insurer, the California Joint Powers Insurance Authority (CJPIA).

### Initial Term and Potential Extension

The term of the proposed franchise agreement would begin on January 1, 2016 and end on December 31, 2022 (seven years). The City Council would have discretion to extend the agreement from January 1, 2023 through December 31, 2026 (four additional years). Such an extension would need to be acted on by the City Council by September 30, 2022 and is expected to follow a formal performance review in Fiscal Year 2020-21 conducted at the franchisee's expense.

### Significant Requested Changes in Service Level

The proposed franchise agreement includes provisions relating to: maximum rates and minimum levels of service for all customers located within Laguna Woods including, but not limited to, cart and bin collection; services to ensure compliance with applicable State laws and promote the City's waste diversion goals; and, a new organics waste recycling program to comply with Assembly Bill 1826 (2013-14) and increase waste diversion.

The proposed franchise agreement includes the following significant changes in service level, many of which are intended to comply with changes in state law and all of which are intended to be responsive to customer needs. In addition to service level changes, the proposed franchise agreement also includes administrative and enforcement-related changes. (Note: The following list was presented at the City Council meeting on August 19, 2015. For ease of reference, significant changes from that date are struck, italicized, and underlined.)

- Franchisee to divert at least 55% of the solid waste that it collects from landfills beginning in 2019, in order to qualify for the potential extension of the term of the agreement. Prior to 2019, the requirement is 50%.
- New organic waste recycling program to comply with Assembly Bill 1826 (required for certain commercial and residential customers).
- New "walk-out service" for residential customers with curbside service who are unable to bring their carts to the collection location. Service to be offered free of charge to medically eligible residents.
- In-home bulky item collection to be offered as an on-call service (as opposed to once or twice a year, previously) with collections to occur within ~~45 days~~ seven days of the date that customers make a request of the franchisee.

- All residential customers with curbside service to receive both a refuse and recycling cart with an option to request that the recycling cart be removed under certain circumstances, including if there is insufficient storage space.
- Franchisee to distribute brochures regarding monthly bulky item collection, in-home bulky item collection, and the commercial recycling program, on an annual basis. Franchisee to reimburse the City for additional public outreach.
- Bin and cart collection vehicles must be powered by compressed natural gas (CNG), track vehicle miles traveled (VMT), and be equipped with a lag-axle in order to assist with reducing traffic and noise, as well as to support environmental improvement efforts. CNG-powered bin and cart collection vehicles must also be equipped with on-board methane detection systems. Bin delivery and bulky item collection vehicles must track VMT.
- Franchisee's office to have the ability to communicate with customers in English, Spanish, Korean, Mandarin Chinese, and Tagalog.
- Residential carts and bins to be accessibility-minded, including features such as lightweight lids (lightweight standard lids on all bins and carts; additional lightweight lid options available for bins upon request – photographs are included as Attachment B), low-profile casters, and multilingual labeling.
- Free manure, shavings, and straw bed recycling for equestrian centers (one two- or three-yard bin, collected once per week, subject to conditions).

### Customer Rates and Rate Adjustments

While rates have been a significant consideration in the review and evaluation of proposals, the City is under no legal obligation to award an agreement based solely on cost. That said, Waste Management's proposed rates are competitive and, for many residential customers, may lead to reduced costs depending on the manner in which organics recycling is implemented, site-by-site. A comparison of proposed to existing rates for comparable common services is included as Attachment C. For reference, the majority of solid waste handling services provided in Laguna Woods are residential and the majority of commercial services involve smaller bins with once or twice per week collection. Many commercial businesses also share bins.

As provided for in the RFP, the proposed franchise agreement allows for an annual increase of rates charged by the franchisee based on 90% of the change in the consumer price index (CPI), subject to a 3% cap per year. The franchisee would be able to request increases for unusual changes in the costs of providing services; however, instances in which such requests could be made would be limited and, ultimately, subject to the City Council's discretion.

### Transition between Franchisees

If the proposed franchise agreement is approved, Ware Disposal, Inc. would cease to provide solid waste handling services on January 1, 2016. Prior to that date, staff would work with both Ware Disposal, Inc. and Waste Management to facilitate an orderly replacement of containers and related public education.

### Ad Hoc Solid Waste Franchise Committee

It is also recommended that the City Council extend the term of the Ad Hoc Solid Waste Franchise Committee for a two month period to assist City staff with the transition and implementation of the new solid waste handling services franchise agreement and make related recommendations to the City Council. It is anticipated that the Ad Hoc Committee's primary function would be to participate in public education efforts, which are expected to be many.

### Fiscal Impact

Funds to support this project are included in the City's budget.

The franchisee would make several payments to the City, including a 5% franchise fee based on gross annual receipts (5% or \$70,000, adjusted annually, whichever is greater), an annual reimbursement to defray costs related to the administration of the franchise agreement and other waste management activities (\$150,000, adjusted annually), and a one-time reimbursement for costs related to the RFP and franchise agreement negotiation process (\$55,000). While similar payments are provided for in the existing franchise agreement with Ware Disposal, Inc., the manner in which those payments are structured in the proposed franchise agreement would provide the City with greater budgetary predictability. It is also anticipated that the City would be able to take a more proactive role in monitoring the franchisee's performance, the cleanliness of trash enclosures, and illegal dumping.

The proposed franchise agreement also includes a provision for certain refuse and recycling collection services at Laguna Woods City Hall that would reduce the need for the City to construct a dedicated trash enclosure on the property.

Report Prepared With: Douglas C. Reilly, Assistant City Manager

Attachments: A – Proposed Franchise Agreement  
B – Proposed Lightweight Lid Options  
C – Proposed Rates Comparison to Existing Rates – Common Services

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**AGREEMENT**

BETWEEN

**CITY OF LAGUNA WOODS**

AND

**WASTE MANAGEMENT COLLECTION AND RECYCLING,  
INC.**

FOR

**SOLID WASTE HANDLING SERVICES**

**EFFECTIVE JANUARY 1, 2016**

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## **AGREEMENT**

This Agreement (“Agreement”) is entered into to be effective as of the 1<sup>st</sup> day of January 2016, by and between the City of Laguna Woods (“City”) and Waste Management Collection and Recycling, Inc. (“Contractor”) (collectively, the “Parties”) to provide an exclusive franchise for Solid Waste Handling Services within the City.

### **R E C I T A L S:**

A. The Legislature of the State of California, by enactment of the California Integrated Waste Management Act of 1989 (“AB 939”), has declared that it is in the public interest to authorize and require local agencies to make adequate provision for the disposal of all Solid Waste within their jurisdictions.

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

C. City and Contractor are mindful of the provisions of the laws governing the safe collection, transport, recycling, and disposal of Solid Waste, including AB 939, AB 341, the Resource Conservation and Recovery Act (“RCRA”), and the Comprehensive Environmental Response, Compensation and Liability Act (“CERCLA”). City and Contractor desire to leave no doubts as to their respective roles, and to memorialize that by entering into this Agreement, City is not thereby becoming an “arranger” or a “generator” as those terms are used in CERCLA, and that it is Contractor, not City, who is “arranging for” the collection, transport for disposal, composting, and recycling of municipal Solid Waste in the City which may contain hazardous substances. City and Contractor understand and agree that it is Contractor, and not City, who will arrange to collect Solid Waste, that City has not, and, by this Agreement does not, instruct Contractor on its collection methods, nor supervise the collection process, nor do the Parties intend to place title to such Solid Waste in City, but rather intend that whatever, if any, title in and to such Solid Waste that otherwise might exist in or with City in the absence of this Agreement is hereby transferred to Contractor, and further that if Contractor gains title to such Solid Waste it is by operation of law and agreement with its Customers and is not the result of this Agreement. By entering into this Agreement City and Contractor further desire to confirm that Contractor has agreed to indemnify the City in connection with any claims relating to the inadvertent or intentional collection, transportation and/or disposal of hazardous materials that may occur in connection with Contractor’s performance under this Agreement.

E. Contractor has agreed, as part of this Agreement, to provide such services as are necessary or desirable to ensure City complies with the requirements of AB 939, AB 341 and Public Resources Code Section 40000, et seq.

F. City desires, among other things, to ensure adequate landfills remain available to meet the public’s need for the safe handling and disposal of Solid Waste, and further desires to ensure its citizens do not incur undue costs in safely disposing of Solid Waste they generate, and has thus entered into the County Agreement. Contractor has agreed, as part of this Agreement, to

provide such services and take such actions as are necessary or desirable to ensure City complies with its obligations pursuant to the County Agreement.

## **C O V E N A N T S:**

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

### **SECTION 1. RECITALS**

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

### **SECTION 2. DEFINITIONS**

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

#### 2.1 AB 341

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

#### 2.2 AB 939

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

#### 2.3 AB 1594

“AB 1594” shall mean Assembly Bill 1594 from the 2013-2014 Regular Session of the California Legislature (Chapter 719, Statutes 2014).

#### 2.4 AB 1826

“AB 1826” shall mean Assembly Bill 1826 from the 2013-2014 Regular Session of the California Legislature (Chapter 727, Statutes 2014).

#### 2.5 Affiliate

“Affiliate” means a business in which Contractor owns a direct or indirect ownership interest, a business (including corporations, limited and general partnerships and sole proprietorships) which has a direct or indirect ownership interest in Contractor and/or a business which is also owned, controlled or managed by any business or individual which has a direct or

indirect ownership interest in Contractor. For purposes of determining whether an indirect ownership interest exists, the constructive ownership provisions of Section 318(a) of the Internal Revenue Code of 1986, as in effect on the date of this Agreement, shall apply; provided, however, that (i) “ten percent (10%)” shall be substituted for “fifty percent (50%)” in Section 318(a)(2)(C) and in Section 318(a)(3)(C) thereof; and (ii) Section 318(a)(5)(C) shall be disregarded. For purposes of determining ownership under this paragraph and constructive or indirect ownership under Section 318(a), ownership interest of less than ten percent (10%) shall be disregarded and percentage interests shall be determined on the basis of the percentage of voting interest or value which the ownership interest represents, whichever is greater.

## 2.6 Animal Waste

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

## 2.7 Applicable Laws

“Applicable Laws” shall mean all federal, state, county, and local laws, regulations, rules, orders, judgments, decrees, permits, approvals, or other requirements of any governmental agency having jurisdiction over an aspect of this Agreement that are in force on the Effective Date, and as may be enacted, issued or amended thereafter, including without limitation City’s Municipal Code, AB 341, AB 939, AB 1594 and AB 1826.

## 2.8 Billings

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

## 2.9 Bins

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

## 2.10 Bulky Items

“Bulky Items” means Solid Waste that cannot and/or would not typically be accommodated within a Cart or Bin including specifically: furniture (including chairs, sofas, mattresses, and rugs); appliances (including refrigerators with and without Freon, ranges, washers, dryers, water heaters, dishwashers, plumbing, small household appliances and other similar items, commonly known as “white goods”); residential wastes (including wood waste, tree branches, scrap wood, in the aggregate not exceeding one cubic yard per Collection); and clothing. For purposes of this Agreement, and notwithstanding any provision hereof to the contrary, Bulky Items shall specifically include items commonly known in the waste industry as “brown goods,” “e-waste” and “universal waste” (including, without limitation all types of electronic waste, stereos, televisions, computers and monitors, cellular phones, VCRs, microwaves and other similar type of equipment and products). Bulky Items do not include car bodies, Construction and Demolition Debris, Hazardous Waste, or (with the exception of appliances/white goods described above) items

that cannot reasonably and safely be loaded and unloaded into a vehicle by two people using equipment of the type which, pursuant to industry standards, would normally be carried in a vehicle used in Collecting Bulky Items. In the event a question arises as to whether a specific item, or category of items meets the definition of Bulky Items, City shall be responsible to determine whether said definition shall apply, which determination shall be final and binding on the Parties.

2.11 Cart

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

2.12 City

“City” shall mean the City of Laguna Woods, a municipal corporation, located in Orange County, California.

2.13 City Council

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

2.14 City Limits

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

2.15 City Manager

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

2.16 Collect/Collection/Collecting

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

2.17 Collection Vehicle

“Collection Vehicle” shall have the meaning ascribed in Section 9 of this Agreement.

2.18 Commercial Premises

“Commercial Premises” means Premises upon which business activity is conducted, including but not limited to retail sales, wholesale operations, manufacturing, industrial operations, and services, including, but not limited to, professional services, hospitality services, and restaurant and food services, but excluding Residential Premises upon which business activities are conducted when such activities are permitted under applicable zoning regulations and are not the primary use of the property. Notwithstanding any provision to the contrary herein, in the

Municipal Code, or otherwise, for purposes of this Agreement and to the extent permitted by law, Premises upon which assisted living facilities, community care facilities (and other similar types of facilities), hotels, and motels are operated shall be deemed to be Commercial Premises.

2.19 Container

“Container” means any and all types of Solid Waste receptacles, including but not limited to Carts and Bins.

2.20 Contractor

“Contractor” shall mean Waste Management Collection and Recycling, Inc., the entity granted the franchise pursuant to this Agreement, or any party permitted pursuant to the terms hereof permitted to become the successor or assignee thereof.

2.21 Contractor’s Proposal

“Contractor’s Proposal” shall mean Waste Management Collection and Recycling, Inc.’s proposal submitted in response to the City’s Request for Proposal for Solid Waste Handling Services dated October 9, 2015 and subsequent submittals from Contractor prior to award.

2.22 County Agreement.

“County Agreement” shall mean that certain waste disposal agreement entered between various Orange County cities, including specifically the City of Laguna Woods, and the County of Orange relating to the use of County landfills for the disposal of Solid Waste collected in such cities, and which is on file in the office of City’s City Clerk, as the same may be amended from time to time.

2.23 Customer

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

2.24 Dwelling Unit

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

2.25 Effective Date

“Effective Date” shall mean the 1<sup>st</sup> day of January 2016.

2.26 Environmental Laws

“Environmental Laws” means all federal and state statutes, county, local and City ordinances concerning public health, safety and the environment including, by way of example and not limitation, the Comprehensive Environmental Response, Compensation and Liability Act

of 1980, 42 USC §9601 et seq.; the Resource Conservation and Recovery Act, 42 USC §6901 et seq.; the Federal Clean Water Act, 33 USC §1251 et seq.; the Federal Clean Air Act, 42 USC §7401 et seq.; the Toxic Substances Control Act, 15 USC §2601 et seq.; the Occupational Safety and Health Act, 29 USC §651 et seq.; the California Hazardous Waste Control Act, California Health and Safety Code §25100 et seq.; the Carpenter-Presley-Tanner Hazardous Substance Account Act, California Health and Safety Code §25300 et seq.; the Porter-Cologne Water Quality Control Act, California Water Code §13000 et seq.; the Safe Drinking Water and Toxic Enforcement Act, California Health and Safety Code §25249.5 et seq.; as currently in force or as hereafter amended, and all rules and regulations promulgated thereunder, and the Municipal Code, as may be amended from time to time.

#### 2.27 Food Waste

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

#### 2.28 Franchise Area

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

#### 2.29 Franchise Fee

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

#### 2.30 Green Waste

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

#### 2.31 Gross Receipts

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

### 2.32 Hazardous Substance

“Hazardous Substance” shall mean any of the following: (a) any substances defined, regulated or listed (directly or by reference) as “Hazardous Substances,” “hazardous materials,” “Hazardous Wastes,” “toxic waste,” “pollutant” or “toxic substances” or similarly identified as hazardous to human health or the environment, in or pursuant to (i) the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 USC §9601 et seq.(CERCLA); (ii) the Hazardous Materials Transportation Act, 49 USC §5101, et seq.; (iii) the Resource Conservation and Recovery Act, 42 USC §6901 et seq.; (iv) the Clean Water Act, 33 USC §1251 et seq.; (v) California Health and Safety Code §§25115-25117, 25249.8, 25281, and 25316; (vi) the Clean Air Act, 42 USC §7401 et seq.; and (vii) California Water Code §13050; (b) any amendments, rules or regulations promulgated thereunder to such enumerated statutes or acts currently existing or hereafter enacted; and (c) any other hazardous or toxic substance, material, chemical, waste or pollutant identified as hazardous or toxic or regulated under any other applicable federal, state or local laws or regulations, including any of the Environmental Laws, currently existing or hereinafter enacted, including, without limitation, friable asbestos, polychlorinated biphenyl’s (“PCBs”), petroleum, natural gas and synthetic fuel products, and by-products.

### 2.33 Hazardous Waste

“Hazardous Waste” means all substances defined as Hazardous Waste, acutely Hazardous Waste, or extremely Hazardous Waste by the State of California in Health and Safety Code §25110.02, §25115, and §25117 or in the future amendments to or recodifications of such statutes or identified and listed as Hazardous Waste by the US Environmental Protection Agency (EPA), pursuant to the Federal Resource Conservation and Recovery Act (42 USC §6901 et seq.), all future amendments thereto, and all rules and regulations promulgated thereunder.

### 2.34 Equestrian Waste

“Equestrian Waste” means equestrian manure, wood shavings used for equestrian purposes, and straw bedding.

### 2.35 Multi-Family Dwelling

“Multi-Family Dwelling” means any building or lot containing more than one Dwelling Unit. Unless otherwise determined as set forth above, any Premises upon which four (4) or more Dwelling Units exists shall be deemed to be a Multi-Family Dwelling. Any ambiguity as to whether a Customer’s Premises qualifies for purposes of this Agreement as a Single Family Dwelling or Multi-Family Dwelling shall be resolved by the City Manager whose decision shall be final.

### 2.36 Municipal Code

“Municipal Code” shall mean City’s Municipal Code (“Laguna Woods Municipal Code”).

2.37 Organics

“Organics” shall mean compostable materials including Food Waste and Green Waste.

2.38 Person

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

2.39 Premises

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

2.40 Recyclable Material

“Recyclable Material” or “Recyclables” shall mean Solid Waste discarded within the Franchise Area for the purpose of being returned to the economic mainstream by Contractor using its available processes or economically viable processes generally available within the Solid Waste handling services industry. Should any dispute exist as to the economic viability of any process Contractor shall bear the burden of demonstrating the lack of viability to the City Manager, and the City Manager’s determination on the issue shall be final.

2.41 Recycling Bin

“Recycling Bin” shall have the meaning ascribed in Section 8.2.3.2 of this Agreement.

2.42 Recycling Cart

“Recycling Cart” shall have the meaning ascribed in Section 8.2.3.1 of this Agreement.

2.43 Recycling Container

“Recycling Container” shall mean a Recycling Bin or Recycling Cart, as the context requires.

2.44 Residential Premises

“Residential Premises” shall mean all Premises upon which Dwelling Units exist and includes Multi-Family Dwellings. Residential Premises shall also include clubhouses, golf course facilities, offices/service yards, and other Premises located within the private gated community located within City Limits and known as Laguna Woods Village. City shall provide Contractor with a list of such qualifying Laguna Woods Village properties, and update such list from time-to-time. Notwithstanding any provision to the contrary herein, in the Municipal Code, or otherwise, for purposes of this Agreement and to the extent permitted by law, Premises upon which assisted living facilities, community care facilities (and other similar types of facilities), hotels, and motels are operated shall be deemed to be Commercial Premises.

#### 2.45 Responsible Customer

“Responsible Customer” means the Customer who is responsible for making arrangements with Contractor to ensure Collection services are provided at Commercial Premises or Residential Premises in circumstances where a management company, homeowner association, or similar type entity arranges Collection services for such Premises. In the event of any dispute as to whether a right or obligation set forth herein is held by a Customer or a Responsible Customer, the City Manager is authorized to resolve such dispute in a manner that he determines best implements the intent of this Agreement.

#### 2.46 Rolloff Box

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

#### 2.47 Single Family Dwelling

“Single Family Dwelling” means a building or lot containing one Dwelling Unit, and for purposes of this Agreement includes buildings and lots with more than one Dwelling Unit where such Dwelling Units are determined by the City to be reasonably able to receive individualized Solid Waste Collection service by the automated process utilizing Carts contemplated herein.

#### 2.48 Solid Waste

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

#### 2.49 Solid Waste Handling Services

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

#### 2.50 Special Wastes

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

2.51 Temporary Service

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

2.52 Term

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

2.53 Transformation

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

**SECTION 3.**

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

3.1 Scope of Franchise

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

3.2 Matters Excluded from Scope of Franchise

Notwithstanding any other provisions set forth in this Agreement to the contrary, the exclusive franchise granted herein shall exclude the Collection, transportation, recycling, and disposal of:

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

(B) any Solid Waste otherwise within the scope of this Agreement during a locally proclaimed emergency (defined as a “local emergency” pursuant to Section 8630 of the California Emergency Services Act) or subsequent recovery period, provided that Contractor lacks the ability to perform the necessary work in a timely manner, or for any other reason determined by City related to public health, safety or welfare;

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

(D) any Solid Waste otherwise within the scope of this Agreement which is Collected or transported to a disposal or recycling facility by City agents or employees in the course and scope of services provided for the City;

(E) any Solid Waste Collected at any City sponsored event if City does not request Contractor provide Collection services for the City sponsored event;

(F) the Collection, transportation, or disposal of Hazardous Waste; universal waste; E-Waste; biohazardous waste; untreated medical waste; infectious waste; Animal Waste; used cooking fats, oils, grease and similar waste; or other materials which do not constitute Solid Waste;

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

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

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

In addition, notwithstanding any of the provisions of Section 8.6 or Section 8.7, nothing in this Agreement shall be constructed as granting Contractor exclusivity with respect to the Collection and/or recycling of Equestrian Waste or fluorescent lightbulbs.

**SECTION 4.  
ENFORCEMENT OF EXCLUSIVITY**

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

**SECTION 5.  
ACCEPTANCE; WAIVER**

Contractor agrees to be bound by and comply with all the requirements of this Agreement. Contractor waives Contractor's right to challenge the terms of this Agreement under federal, state, or local law, or administrative regulation. Contractor waives any right or claim to serve the City or any part of the City under any prior grant of franchise, contract, license, or permit issued or granted by any governmental entity including any right under Section 49520 of the Public Resources Code.

**SECTION 6.  
TERM**

The term of this Agreement (the "Term") shall be for an approximate period of seven (7) years commencing on the Effective Date. The Solid Waste Collection services provided to Customers shall commence on January 1, 2016 ("Service Commencement Date"). The Term of this Agreement shall end at midnight on December 31, 2022, unless this Agreement is terminated sooner pursuant to Section 18 hereof, or otherwise. Unless Contractor provides written notice to City on or before January 1, 2021 that it desires to opt out of the City's right to unilaterally extend this Agreement as provided herein, the City Council shall have the option to exercise one (1) four (4) year extension to the Term of this Agreement such that if the one (1) four (4) year extension option is exercised, the Term of this Agreement expires at midnight on December 31, 2026. Prior to exercising its extension option, the City Council may, at its discretion, require the City Manager to conduct a performance review during fiscal year 2020-2021 after receiving an advance deposit from Contractor to cover the cost of such review, in an amount subject to the City Manager's reasonable determination, and said performance review will be separate from and in addition to the performance review set forth in Section 17. This performance review may include, but is not limited to, an assessment of opportunities for Contractor to reduce vehicle miles traveled based on data acquired by Contractor pursuant to Section 9.3(Q), as well as an assessment of the greenhouse gas emissions generated by Contractor during Contractor's performance of this Agreement.

If the City Council does not exercise the option to extend the Term as set forth above, as evidenced by a formal action of the City Council taken in a duly noticed open meeting, on or before September 30, 2022, said option shall expire and this Agreement shall automatically terminate at 11:59 p.m. on December 31, 2022. The decision to exercise said option shall be subject to the City Council's sole, absolute and unfettered discretion.

**SECTION 7.  
CONDITIONS TO EFFECTIVENESS OF AGREEMENT**

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

7.1 Accuracy of Representation

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

7.2 Absence of Litigation

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

7.3 Furnishing of Insurance and Bonds, Letter of Credits, or Asset Pledge

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

7.4 Effectiveness of City Council Action

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

7.5 Payment of Fees and Costs

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

**SECTION 8.  
SOLID WASTE HANDLING SERVICES  
PROVIDED BY CONTRACTOR**

8.1 General

8.1.1 Equipment

Contractor shall furnish all labor, supervision, materials, supplies, and equipment necessary to provide for all services required by the terms of this Agreement.

#### 8.1.2 Performance Standards

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

#### 8.1.3 Noise and Disruption

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

#### 8.1.4 Collection Times

Contractor shall not commence Collection of Solid Waste for Customers until 7:00 a.m., nor shall such activities occur after 4:30 p.m. at Residential Premises and after 7:00 p.m. for Commercial Premises. No Solid Waste Collection shall occur on Sundays at Residential Premises or Commercial Premises, except in exceptional circumstances for which specific approval is given by the City Manager. Solid Waste Collection shall not occur on the following holidays: New Year's Day, Memorial Day, the Fourth of July, Labor Day, Thanksgiving Day, and Christmas Day.

#### 8.1.5 Collection Schedule

All Collection routes shall be subject to final approval by the City Manager. Customers at all Residential and Commercial Premises within the City shall have not less than one established Collection day each week. Contractor shall provide notice to each Customer of its established Collection day(s), and shall provide at least thirty (30) days' notice to Customers of any change in their established Collection day(s). Notwithstanding any provision herein to the contrary, should any established Collection day fall on a legal holiday, or on any other holiday which is observed by either a landfill or other lawful disposal site to which Solid Waste is taken for disposal, or a recycling facility to which Recyclable Material is taken, Contractor shall provide for Collection one (1) day later during the pick-up week, and the regular Collection schedule shall be resumed the following week. A pick-up week shall be defined as Monday through Saturday. Contractor may not change its established Collection schedules without obtaining the prior written consent of the City Manager.

#### 8.1.6 Commingling of Routes

Contractor shall not during its Collection process commingle Solid Waste Collected hereunder with Solid Waste Collected in any other City, or on behalf of any other entity operating or existing within City that is not subject to this Agreement, and is specifically prohibited from combining Collection routes related to services provided pursuant to this Agreement with Collection routes for other jurisdictions it may service.

#### 8.1.7 Replacement of Containers

Contractor shall, whenever possible, return Carts to the location where they were found (e.g., on the sidewalk or in the street gutter, adjacent to the curb) upon completing Collection.

Contractor shall replace all Bins in the location upon the property of each Customer utilizing Bins designated for storage of Bins, and shall secure gates, doors, and/or enclosures when applicable.

8.1.8 Contractor's Containers

(A) City owns certain Recycling Containers (i.e., approximately 133 plastic Bins, 1,500 thirty-two (32) gallon Carts, and 1,500 indoor recycling containers) ("City Containers") which Contractor shall take possession of upon the Effective Date of this Agreement. Contractor may utilize the City Containers to provide the services required in this Agreement provided that all other requirements in this Agreement applicable to the City Containers are met. Notwithstanding anything in this Agreement to the contrary, Contractor acknowledges and agrees that the City Containers were obtained pursuant to a grant and Contractor shall utilize the City Containers in a manner that is consistent with the terms and conditions of said grant. The City Manager shall resolve any dispute with regards to Contractor's use of the City Containers and the terms and conditions of the respective grant.

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

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

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

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

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

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

(H) Indoor recycling containers shall be provided and/or replaced at no cost upon request by Customer.

(I) Upon request and up to one time per calendar year, Contractor shall exchange a Customer's Cart for a "like new" Cart at no additional charge. In addition, within twenty-four (24) hours after notification (Sundays and holidays excepted), Contractor shall repair and maintain, remove graffiti from, and replace lost, stolen or damaged Carts at no charge to Customers. However, Contractor shall be entitled to charge

Customers for the replacement of any Cart that has been damaged by a Customer's willful neglect or abuse, ordinary wear and tear excepted, with such charges being subject to the City Manager's approval and at a fee no higher than Contractor's actual cost of repair and replacement.

(J) Contractor shall, at Responsible Customer's request, refurbish, replace, and steam clean as necessary all Bins and Rolloff Boxes at no charge to Customers up to two times per calendar year. City may require the steam cleaning or replacement of Bins more frequently if it determines such action is needed to protect public health and safety. Additional steam cleaning or replacement shall be provided within 24 hours of notification by City or request by a Responsible Customer at a charge not to exceed the maximum rate set forth in Exhibit A hereto.

(K) Contractor shall remove any graffiti that appears on a Container within twenty-four (24) hours (Sundays and holidays excepted) after becoming aware of it at no charge to Customers.

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

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

(N) Contractor shall mark its Containers with conspicuous warning notices stating disposal of Hazardous Substances in the Containers is prohibited.

(O) Contractor is responsible for cleaning and maintaining Collection Container enclosures in a manner reasonably acceptable to City, including, but not limited to, sweeping and removing litter and debris from the floor of the enclosure after each Collection and annually steam cleaning the enclosure area.

#### 8.1.9 Missed Pick-ups

In case of a missed pick-up called in by a Customer, Contractor shall Collect Solid Waste and Recyclable Material from such Customer by 5:00 p.m. on the day of the call if Contractor was notified before 12:00 p.m. that same day or, for calls received after 12:00 p.m., within twenty-four (24) hours after the call is received. Records of the addresses of all missed pick-ups shall be maintained by Contractor, and shall be reported to City on a monthly basis in accordance with Section 23.1. If Contractor demonstrates to the satisfaction of the City Manager a pattern of ongoing late "set-outs" by a given Customer, missed pick-ups resulting from late set-outs by that Customer shall not be counted as missed pick-ups in evaluating Contractor's performance hereunder. The Customer service phone system required by Section 10.8.2 hereof is intended, among other things, to serve as a "hotline" for Customers to call in the event Solid Waste placed for Collection is not Collected by Contractor and to facilitate having such Solid Waste Collected as soon as reasonably possible, and in no event later than as required by the provisions hereof.

#### 8.1.10 Record of Non-collection

As more fully set forth herein, Contractor shall Collect all Solid Waste placed for Collection by Customers in Containers, excepting materials that do not meet the definition of Solid Waste (such as hazardous materials) or which are commingled with such materials. Whenever Contractor determines not to Collect any Solid Waste deposited for Collection, Contractor shall leave a tag at least 2” by 6” in size, indicating the reason for Contractor’s refusal to do so. This information may be either handwritten or left by means of a check system (i.e., checking off boxes on a preprinted form). The tag shall provide Contractor’s business name and its local telephone number and shall be securely fastened to the Container or the article refused. Contractor shall maintain a record of all such taggings at its place of business. Such record shall contain the date of such notice, street address, reason for non-collection, and a summary of any communications between Contractor and the Customer involved. Such record shall be retained and reported to the City on a monthly basis in accordance with Section 23.1. Contractor shall follow-up with all Customers receiving a tag for non-collection by telephone within twenty-four (24) hours.

### 8.2 Residential Solid Waste Handling Service

#### 8.2.1 Residential Premises – Automated Collection

Contractor shall provide each Residential Premises Customer with the number of thirty-two (32) gallon Cart(s) (“Refuse Cart(s)”) and Bins (“Mixed Waste Bins”) designated for the Collection of mixed Solid Waste as requested by the Responsible Customer. Upon request from any Customer Contractor shall provide any Customer requesting a larger Refuse Cart(s) with a sixty-four (64) gallon or ninety-six (96) gallon Refuse Cart at no additional charge.

Contractor shall Collect all Solid Waste placed out for Collection in a Refuse Cart not less than once per week using an automated Collection system at rates that do not exceed the maximum rates set forth in Exhibit A. Upon request from any Customer, and if approved by the Responsible Customer, Contractor shall provide such Customer with one or more additional Refuse Carts, and shall Collect all Solid Waste placed for Collection in such additional Refuse Carts at rates that do not exceed the maximum rates set forth in Exhibit A. Wherever feasible, Customers shall be directed by Contractor to place Carts for Collection on the sidewalk or in the street gutter, against the curb, in front of their Premises, or adjacent to their Premises in the alley or easement in the rear of their Premises. If a Customer and Contractor cannot agree upon a Collection location, or if City determines the selected location may cause safety or other concerns, City may make the final determination of the Collection location. The Mixed Waste Bins Contractor provides Residential Premises Customers shall meet the minimum standards set forth in Exhibit B, and Contractor shall Collect all Solid Waste placed therein for Collection not less than once per week, at rates that do not exceed the maximum rates set forth in Exhibit A. The size of Mixed Waste Bins utilized, and the frequency of their Collection, shall be mutually agreed upon by Contractor and its Responsible Customers, except that Collection shall occur not less than one time per week and City shall have the right to impose minimum requirements for Bin sizes and more frequent Collection should it determine such action is needed to protect public health, safety and welfare.

In the event of any dispute as to the adequacy of the number of Bins or Carts at any given Residential Premises, the City Manager shall have the ability to approve the number of Mixed Waste Bins or Carts used at such location.

In the event extra pickups are required at a Residential Premises in any given month, Contractor may charge the Responsible Customer for such pickups an amount that does not exceed the maximum rate for “extra dumps” or “extra pick-ups” as set forth in the attached Exhibit A.

It is the intent of the parties that the services provided under this Agreement will result in an automated Collection system that includes source separation of recyclable materials. Accordingly, if Solid Waste is routinely placed for Collection other than in a Refuse Cart or Mixed Waste Bin, Contractor shall work with the Responsible Customer involved to determine if the Customer is in need of additional or larger Refuse Carts or Mixed Waste Bins. The City Manager is authorized to require Contractor to deliver additional Refuse Carts or Mixed Waste Bins to any such Customers or to require such other action of Contractor as is reasonably deemed necessary to ensure the Collection system, including specifically the recycling programs, contemplated by this Agreement is achieved; Contractor shall Collect all Solid Waste placed for Collection in such additional or larger Refuse Carts or Mixed Waste Bins at rates that do not exceed the maximum rates set forth in Exhibit A.

#### 8.2.2 Walk-Out Service

Contractor shall provide eligible Residential Premises Customers with “walk-out service” as set forth in this paragraph at no additional charge. This service shall require Contractor to use its own forces to bring a Customer’s Carts from the garage, backyard, side yard, or such other location of a Dwelling Unit at which the Containers are regularly stored, to Contractor’s Collection Vehicle; and, after disposal of the contents thereof, returning said Containers to the location where they are regularly stored. To be eligible for this service the person at the Residential Premises shall have a DMV issued disabled person placard/license plates, and provide a letter to Contractor from a physician confirming the he or she is unable to move his/her Carts to the curb, and that to the best of the physician’s knowledge there is no other capable persons living in the Residential Premises household to provide this service. Contractor may require each eligible person at the Residential Premises to provide a new letter from a physician on an annual basis in order to maintain eligibility for walk-out service. Any dispute regarding eligibility for walk-out service shall be resolved by the City Manager. Contractor may provide Customers who are not eligible for free walk-out service pursuant to the forgoing with walk-out service at a rate which shall not exceed the maximum rate set forth in Exhibit A.

Contractor may require as a condition of walk-out service that a Customer sign a standardized agreement, the terms of which shall be subject to City’s approval, which authorizes entry onto the Residential Premises serviced under Customer’s account and holds Contractor harmless from liability (including specifically liability related to pets escaping) associated with Contractor providing such service.

### 8.2.3 Residential Premises Recycling Program

Contractor shall offer and provide a recycling program to all Residential Premises (the “Recycling Program”) that maximizes the recovery of materials and, at a minimum meets, the standards required under AB 341 and provides for the Collection of Recyclables in Bins and Carts. Contractor’s Recycling Program shall, at a minimum, include Collection of Recyclables as specified in Sections 8.2.3.1 and 8.2.3.2. Contractor shall also assist the City in identifying any Customers whose service accounts include Multi-Family Dwellings that are not in compliance with the recycling requirements set forth in AB 341. Contractor shall be responsible for ensuring that its Recycling Program, combined with its other programs, enables it to achieve the required diversion rates specified in this Agreement and may be required to modify its program from time to time, at no additional cost to the City or Customers, to meet such diversion requirements. Contractor shall produce, keep current, and provide public information specifically outlining its Recycling Program, which shall specifically include the annual publication and distribution of a brochure describing this service to all applicable Customers in City. Contractor shall not provide source separated Collection of newspapers, telephone books, or any other Recyclables beyond that which is explicitly described in this Section 8.2.3 without prior written authorization from City.

#### 8.2.3.1 Recycling Carts

For each corresponding Refuse Cart Customer receives, Contractor shall provide Customer with one (1) thirty-two (32) gallon Cart designated for the Collection of Recyclables (a Recycling Cart), excepting that any Customer requesting a larger Recycling Cart(s) shall instead be provided with a sixty-four (64) gallon or ninety-six (96) gallon Recycling Cart, at no additional charge. Any Customer requesting an additional Recycling Cart shall be provided a second Cart at no additional cost. Upon request from any Customer, and if approved by the Responsible Customer, Contractor shall provide such Customer with one or more additional Recycling Cart(s) (above two) at rates that do not exceed the maximum rates set forth in Exhibit A. Contractor shall Collect Recyclable Material placed in Recycling Carts for Collection on the same day as such Customer’s Refuse Cart is Collected, utilizing an automated Collection process. Customers shall be directed to place Recycling Carts in the same location for Collection as Refuse Carts.

A Customer (or Responsible Customer) receiving a Recycling Cart(s) may request that Contractor remove the Recycling Cart(s) at no additional charge to Customer (or Responsible Customer) provided Contractor meets with the Customer (or Responsible Customer) and determines either: (1) there is a lack of sufficient space out of the public view for Customer to store the Recycling Cart, (2) in the interest of public health, safety, and welfare the Recycling Cart should not be provided, or (3) the Customer is adequately served by nearby Recycling Containers located in common areas. In the event of any dispute as to the adequacy of the number of Recycling Cart(s) at any given location, the City Manager shall have the ability to approve the number of or removal of Recycling Cart(s) at such location. Contractor shall annually, and as requested by City, provide City with a list of Customers (or Responsible Customers), including contact information, who elect to not receive a Recycling Cart and the reasons and locations thereof. Contractor shall also annually, and as requested by City, follow up with Customers (and Responsible Customers) who elect not to receive a Recycling Cart to determine whether the Customers (or Responsible Customers) would like to begin receiving a Recycling Cart. Contractor

shall provide for the removal or return of Recycling Carts to Customers (or Responsible Customers) at no additional charge.

#### 8.2.3.2 Recycling Bins

Contractor shall provide Customer, if approved by the Responsible Customer, with the requested number of Bins (“Recycling Bins”) designated for the Collection of Recyclables. Contractor shall Collect all Recyclables placed in Recycling Bins for Collection not less than once per week, at rates that do not exceed the maximum rates set forth in Exhibit A. The size of Recycling Bins utilized, and the frequency of their Collection, shall be mutually agreed upon by Contractor and its Responsible Customers, except that Collection shall occur not less than one time per week and City shall have the right to impose minimum requirements for Bin sizes and more frequent Collection should it determine such action is needed to protect public health, safety and welfare.

#### 8.2.4 Curbside Grease Collection Program

If ever required by the applicable water and sewer district, other regulatory agency, or City, Contractor shall design a program for the collection of grease, fat, oils and similar waste generated from household cooking activities (the “Curbside Grease Collection Program”) that the City Manager finds satisfactory and approves. Contractor shall be responsible to ensure the Curbside Grease Collection Program complies with all Applicable Laws and regulations. At such time as (if) a Curbside Grease Collection Program is implemented, Contractor and City shall meet and confer in good faith to determine a fair and reasonable adjustment to the maximum rates set forth on Exhibit A in order to compensate Contractor for implementing such a program.

#### 8.2.5 Green Waste Program

As of the Effective Date of this Agreement, source separated Green Waste generated from Residential Premises is collected by a third-party and Contractor shall not be required to provide source separated Green Waste Collection from Residential Premises. However, should source separated Green Waste generated from Residential Premises cease to be Collected by a third-party, Contractor shall, if requested by City, commence source separated Collection of that Green Waste and Contractor and City shall meet and confer in good faith to determine a fair and reasonable adjustment to the maximum rates set forth on Exhibit A in order to compensate Contractor for the source separated Collection and proper handling of Green Waste. City reserves the right to contract with a Person other than Contractor for the Collection of source separated Green Waste.

Notwithstanding the above, Contractor is required to Collect Green Waste that a Customer discards as Solid Waste and places in a Refuse Cart or Mixed Waste Bin for Collection pursuant to Section 8.2.1.

#### 8.2.6 Bulky Item Service for Residential Premises

##### 8.2.6.1 Monthly Bulky Item Collection

Contractor shall provide Bulky Item Collection services to Residential Premises in City at no charge on one (1) designated Saturday a month. The no-charge Bulky Item Collection service

set forth in this Section shall only apply to Bulky Items generated at the Dwelling Unit. Customers shall be directed to place Bulky Items in the same location for Collection as where Customer places Refuse Carts or Mixed Waste Bins for Collection. The designated Saturdays for Bulky Item Collection shall be determined by the City and may change from time-to-time. The Bulky Item Collection may occur on a different day from the Customer's Solid Waste Collection services. Contractor shall produce, keep current, and provide public information specifically outlining its Bulky Item Collection service, which shall specifically include the annual publication and distribution of a brochure describing this service to all Residential Premises in City. Contractor may charge rates for the Collection of Bulky Items that are requested and occur outside the regularly scheduled Saturday Bulky Item Collection service day that do not exceed those rates set forth on Exhibit A, with the exception of Incidental Bulky Item Collection.

#### 8.2.6.2 In-Home Bulky Item Collection

In addition to the services described above in Section 8.2.6.1, Contractor shall also provide In-Home Bulky Item Collection services to Residential Premises at no charge on an on-call basis. Customers are limited to scheduling two (2) In-Home Bulky Item Collection services per calendar year, with a maximum of five (5) items per scheduled In-Home Bulky Item Collection. In-Home Bulky Item Collection service shall involve Contractor removing and Collecting the requested Bulky Items from a Customer's Dwelling Unit. All Persons who have access to a Customer's Dwelling Unit shall be bonded for the benefit of the Customer, Responsible Customer, and City against theft and any other actions which may arise from or as a result of the Person's access to the Dwelling Unit. The bond shall be in an amount approved by the City Manager. Contractor shall provide City with written evidence of such bonding in a form and content satisfactory to City fifteen (15) days prior to the Effective Date of this Agreement. Contractor shall not permit any Customer or Person, other than its duly bonded personnel, to assist with the In-Home Bulky Item Collection. In order to receive such service, residents shall provide Contractor with notice by phone of the number and type of Bulky Items to be collected. In-Home Bulky Item Collection service calls shall be responded to within a reasonable time but not longer than one (1) business day from the date of Customer's call for service, with actual Collection occurring within seven (7) calendar days from the date of Customer's call for service. Contractor shall produce, keep current, and provide public information specifically outlining its In-Home Bulky Item Collection service, which shall specifically include the annual publication and distribution of a brochure describing this service to residents of all Residential Premises in City.

#### 8.2.7 Incidental Collection of Bulky Items

In addition to the services described above in Sections 8.2.6.1 and 8.2.6.2, Contractor shall also Collect Bulky Items placed out for Collection in an enclosure or adjacent to Containers at no charge ("Incidental Bulky Item Collection"). The Incidental Bulky Item Collection service shall only occur on the same day as the scheduled Collection day for the Residential Premises. It is the intent that this Incidental Bulky Item Collection shall occur on an occasional basis; however, Contractor acknowledges that City cannot control illegal dumping or abandonment of Bulky Items.

#### 8.2.8 Bulky Item Diversion

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

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

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

#### 8.2.9 Proper Handling of Bulky Items

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

#### 8.2.10 Rolloff Service

Residential Premises shall, if requested by a Customer, receive Rolloff Collection services in the same manner as Commercial Premises as set forth in Section 8.3.1 below.

### 8.3 Commercial Solid Waste Handling Services

#### 8.3.1 Commercial Bins and Rolloff Boxes

Contractor shall provide all Customers at Commercial Premises ("Commercial Customers") with at least one Cart, Bin and/or Rolloff Box for Collection of mixed Solid Waste, and shall Collect all Solid Waste placed therein for Collection not less than once per week, at rates that do not exceed the maximum rates set forth in Exhibit A. Contractor shall provide additional Containers to Customers and shall provide additional Collections upon request, if approved by the Responsible Customer where applicable, or as may be required by City's Municipal Code, health and safety requirements, or by the City Manager, and may charge rates for such services which do not exceed the maximum rates set forth in Exhibit A. Carts, Bins and Rolloff Boxes shall be Collected by Contractor from the location upon each Customer's property designated for their storage, and replaced to that location with gates and/or doors secured, as applicable, after Collection is completed, unless different arrangements are agreed upon by the Customer or Responsible Customer, where applicable, and Contractor.

### 8.3.2 Commercial Bulky Item Service

Contractor shall provide unlimited Bulky Item Collection services to Commercial Customers on an on-call basis. Contractor may charge rates for such services which shall not exceed the maximum rates set forth in the attached Exhibit A. Bulky Item Collection service calls shall be responded to within a reasonable time but not longer than seven (7) days from the date of the Customer's call for service. Contractor shall produce, keep current, and provide public information specifically outlining the Bulky Item pick-up service. Bulky Items Collected pursuant to this Section are subject to the diversion and handling requirements set forth in Sections 8.2.8 and 8.2.9.

### 8.3.3 Commercial Recycling Services

Contractor shall offer and provide a commercial recycling program (the "Commercial Recycling Program") that maximizes the recovery of materials and, at a minimum both meets the standards required under AB 341 and implements the related provisions of Contractor's Proposal. Contractor may charge rates for such services which do not exceed the maximum rates set forth in Exhibit A. Contractor shall assist the City in identifying Commercial Customers, if any, that are not in compliance with the recycling requirements set forth in AB 341. Contractor shall be responsible for ensuring that its Commercial Recycling Program, combined with its other programs, enables it to achieve the required diversion rates specified in this Agreement and may be required to modify its program from time to time, at no additional cost to the City or Customers, to meet such diversion requirements. As part of Contractor's Commercial Recycling Program, Contractor shall provide Customers with the requested number of indoor Recycling containers (e.g., deskside or larger cardboard or plastic receptacles) ("Indoor Recycling Containers") to assist Customer with the source separation of Recyclable Materials. Contractor shall not charge Customers for the Indoor Recycling Containers. Contractor shall produce and distribute to Customers as part of its public information materials instructions on proper usage of the source separated Indoor Recycling Containers. Contractor shall produce, keep current, and provide public information specifically outlining its Commercial Recycling Program, which shall specifically include the annual publication and distribution of a brochure describing this service to all applicable Customers in City.

### 8.3.4 Scout and Push Out Services

Certain Commercial Premises within the City Limits are uniquely configured such that Contractor may determine that a smaller vehicle may be needed to retrieve a Customer's Container in order for a regular Collection vehicle to service the Container ("Scout Service"). Certain Commercial Premises may be configured such that a Customer's Container must be manually moved in order to be serviced by a Collection Vehicle ("Push Out Service"). Contractor shall provide Scout Service and Push Out Service to Commercial Premises as it deems appropriate, however Contractor may not charge for either Scout Service or Push Out Service.

## 8.4 Other Collection Programs As May Be Required by Law

In the event CalRecycle, or any federal, state, or local law or regulation, imposes upon City or Contractor a requirement for the implementation of any source separated program for the

Collection of any waste material (whether or not meeting the definition of Solid Waste hereunder) not already covered by this Agreement, whether Commercial or Residential in nature, Contractor shall design and present a program to City to comply with such requirement, which program shall meet the City Manager's reasonable approval ("Proposed Program"). Except with respect to programs which are required due to Contractor's failure to achieve the diversion requirements set forth herein (which programs are subject to Section 8.6.6), at such time as (if) any such Proposed Program is implemented, Contractor and City shall meet and confer in good faith to determine a fair and reasonable adjustment to the maximum rates set forth on Exhibit A in order to compensate Contractor for implementing said Proposed Program.

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

Contractor shall present the Proposed Program within sixty (60) days of a request to do so by City. The Proposed Program shall include a detailed description of the following: (1) Containers to be used and method of Collection; (2) equipment to be used (e.g., vehicle number, models, capacity, and age); (3) number of employees required for the Proposed Program; (4) materials to be Collected; (5) promotional and public education materials; (6) a two-year projected financial analysis of the Proposed Program's operations in an operating statement format, including documentation of the key assumptions underlying the projections, and the support for those assumptions; and (7) any other information required by City to evaluate the Proposed Program.

#### 8.5 Temporary Services

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

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

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

(C) Temporarily placed Bins may be used for small cleanup type projects at Single Family and Multi-Family Dwellings; provided, however, Bins used for such purposes shall not remain at the same address for a period that exceeds four consecutive weeks. Bins may not be placed in any public rights-of-way so as to create a safety hazard or so as to block any right-of-way to a degree that it is not reasonably usable. Bins placed in City's rights-of-way shall be subject to such requirements as may be imposed by City,

and at a minimum shall be equipped with reflectors, reflective tape, reflective paint, or other reflective devices which, to the satisfaction of the City Manager, make such Bins reasonably visible to vehicle traffic at night.

(D) Contractor shall work with Customers requesting construction and demolition debris Collection services to ensure that requirements under the City's ordinance regulating the recycling and disposal of construction and demolition waste are met, including, but not limited to, ensuring that each covered project meets the minimum required diversion level. Contractor agrees to comply with all provisions of the ordinance, as may be amended from time to time, and to provide services for construction contractors in City as may be contemplated by any such ordinance at no charge (such as assistance in preparing plans for the collection, recycling and disposal of construction and demolition waste in accordance with this Agreement and providing data for reporting to the City).

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

## 8.6 Recycling Obligations and Public Education Program

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

Contractor shall utilize a truck dedicated for the purpose of Collecting Recyclable Materials, such that Recyclable Material Collected in Recycling Carts or Recycling Bins, once Collected, is not commingled with other Solid Waste (including Green Waste, if incorporated into this Agreement pursuant to Section 8.2.5). All material Collected by Contractor in Recycling Carts or Bins pursuant to this Agreement shall be delivered to a properly permitted facility for recycling and reuse purposes. If incorporated into this Agreement pursuant to Section 8.2.5, all Green Waste separated prior to Collection and thereafter Collected by Contractor pursuant to this Agreement (including specifically materials Collected in Green Waste Carts) shall be delivered to a properly permitted facility for recycling, mulching, composting, or alternative uses for which diversion credit is provided as may be approved by CalRecycle. Contractor shall not be entitled to a rate adjustment due to the State elimination of diversion credit for Green Waste used as alternative daily cover pursuant to AB 1594 or other Applicable Laws. All Rolloff Boxes, whether for Commercial Customers or Temporary Service shall be delivered to a properly permitted facility for recycling and reuse purposes.

## 8.6.2 Extent of Applicable Franchise Rights

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

## 8.6.3 AB 939 Obligations, Guarantee, and Indemnification

### 8.6.3.1 Warranties and Representations

Contractor warrants and represents that it is aware of and familiar with City's Source Reduction and Recycling Element (the "SRRE"), that it is familiar with City's waste stream, and that it has the ability to and will provide sufficient programs and services to ensure City will meet or exceed the diversion goals (including, without limitation, amounts of Solid Waste to be diverted, time frames for diversion, and any other requirements) set forth in AB 939 and AB 341, and all amendments thereto, and that it shall do so without imposing any costs or fees other than those set forth on the attached Exhibit A (including if it implements new programs to achieve such goals which are not called out herein). Stated otherwise, Contractor acknowledges that it is responsible for ensuring that its various programs achieve the diversion requirements hereunder, and that it may be required to modify its programs from time to time, at no additional cost to the City or Customers, to meet such diversion requirements. Contractor specifically acknowledges that the City's current mandated diversion goal as set forth pursuant to the Applicable Laws is fifty percent (50%), and that this is subject to possible modification pursuant to the provisions of AB 341.

### 8.6.3.2 Mutual Cooperation

City and Contractor shall reasonably cooperate in good faith with all efforts by each other to meet City's diversion and other compliance requirements imposed by AB 939, AB 341 and other Applicable Laws. In this regard, City's obligations shall include, without limitation, making such petitions and applications as may be reasonably requested by Contractor for time extensions in meeting diversion goals, or other exceptions from the terms of AB 939, AB 341 and other Applicable Laws.

### 8.6.3.3 Waste Reduction and Program Implementation

Contractor shall implement the programs identified in the SRRE immediately upon the Service Commencement Date hereof, and will implement any programs required by any amendments or modifications thereto. In meeting this obligation Contractor shall be mindful of and comply with all requirements of the County Agreement, including specifically, without limitation, the requirements thereof generally relating to (i) the delivery of Solid Waste only to transfer stations that provide quarterly certifications of Solid Waste delivered, and (ii) the disposal of residual Solid Waste that remains after recycling processes have been completed. On and after the Service Commencement Date, Contractor shall provide City with monthly, quarterly and annual written reports in a form adequate to meet City's AB 939 and AB 341 related filing and reporting requirements to CalRecycle and to the County of Orange throughout the Term of this Agreement wherein City's performance under the above programs shall be set forth in detail. Contractor shall be responsible to prepare, or assist City with the preparation of, all reports and other information as may be required by any agency, including specifically, the State of California,

in order to comply with AB 939 and/or AB 341. Contractor shall reimburse City for any costs City incurs in appearing before CalRecycle and/or the County of Orange in relation thereto.

#### 8.6.3.4 Guarantee and Indemnification

Contractor warrants and guaranties that it will carry out its obligations under this Agreement such that: (i) both it and City will at all times be in compliance with the requirements of all Applicable Laws including specifically AB 939, AB 341 and AB 1826, and (ii) City will meet or exceed the diversion requirements (including, without limitation, amounts of Solid Waste to be diverted, time frames for diversion, and any other requirements) set forth in AB 939, AB 341 and all amendments thereto. In this regard, Contractor agrees that it will, in addition to any other requirement contained herein, at its sole cost and expense:

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

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

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

(D) assist City in applying for any extension if so directed by City;

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

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

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

(H) defend, with counsel acceptable to City, City and City's officials, employees, and agents against the imposition of fines and/or penalties, or any other liabilities, issued by CalRecycle pursuant to AB 939;

(I) be responsible for and pay, any fees, penalties or other costs imposed against the City by CalRecycle, and indemnify and hold harmless City from and against any fines, penalties, or other liabilities, levied against it for violation of AB 939's diversion

requirements, or violation of any other provision of the Applicable Laws, arising from or in any way related to Contractor's performance of its obligations under this Agreement.

#### 8.6.4 Guaranteed Minimum Contractor Recycling Rate

Contractor shall divert a minimum of fifty percent (50%) of all Solid Waste it Collects under this Agreement for each calendar year beginning January 1, 2016 ("Recycling Diversion Requirement"). Diversion of materials not Collected by Contractor shall not be counted towards meeting the Recycling Diversion Requirement. In the event Contractor is required to commence source separated Collection of Green Waste pursuant to Section 8.2.5, City shall have the right to increase the Recycling Diversion Requirement percentage. For the purposes of this section, Contractor diversion includes only Recycling methods, Transformation, and/or other forms of converting Solid Waste into energy which are accepted by the State toward meeting the City's diversion goal under AB 939. Contractor shall not be entitled to a reduction in the Recycling Diversion Requirement, or a rate adjustment, if or when:

- Transformation or other facilities are no longer available for any reason;
- CalRecycle diversion credit under AB 939 or other Applicable Laws is no longer provided for Solid Waste sent to a Transformation facility; or
- CalRecycle diversion credit under AB 939, AB 1594, or other Applicable Laws expires for Green Waste used as alternative daily landfill cover.

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

In addition, in order to qualify for an extension of the Term pursuant to Section 6, Contractor must divert a minimum of fifty-five percent (55%) of all Solid Waste it Collects under this Agreement for each calendar year beginning January 1, 2019. In the event the City Council extends the Term pursuant to Section 6, the Recycling Diversion Requirement above shall be increased to fifty-five percent (55%). Nothing in this paragraph requires the City Council to grant an extension of the Term.

#### 8.6.5 Waste Generation/Characterization Studies

Contractor acknowledges that City must perform Solid Waste generation and disposal characterization studies periodically to comply with the requirements of AB 939. Contractor agrees to participate and cooperate with City and its agents and to accomplish studies and data collection and prepare reports, as needed and directed by City, to determine weights and volumes of Solid Waste Collected and characterize Solid Waste generated, disposed, transformed, diverted or otherwise handled/processed to satisfy the requirements of AB 939.

#### 8.6.6 Implementation of Additional Diversion Services

In the event City does not meet (i) the current diversion goal of fifty percent (50%) imposed by AB 939, or (ii) diversion requirements as modified under AB 341 when applicable with respect to all waste generated in City, City may direct Contractor to perform additional services (including the implementation of new diversion programs) or modify the manner in which it performs existing services, and Contractor agrees to do so at no additional charge. Contractor shall seek City approval for the implementation of new diversion programs, which City may deny, approve or conditionally approve in its reasonable discretion. Pilot programs and innovative services which may entail new Collection methods, and use of new or alternative waste processing and disposal technologies are included among the kinds of changes which City may direct.

#### 8.6.7 Organics Program

Contractor shall design and present a program to City that complies with the requirements of AB 1826 for an organic waste recycling program (“Organics Program”), which Organics Program shall be subject to the approval of the City Manager. Contractor’s Organics Program shall ensure that City and Customers meet the requirements of AB 1826 and shall, at a minimum, include the Containers specified in Exhibit B, as well as durable, closable bags for which pricing shall be proposed by Contractor on a site-by-site basis following a site and service evaluation. All such proposed pricing shall be subject to the approval of the City Manager.

#### 8.6.8 Equestrian Waste Recycling

Contractor shall provide Equestrian Waste recycling services to any Customer requesting such service, pursuant to the following conditions:

(A) Containers utilized in connection with Equestrian Waste recycling services shall meet the minimum standards set forth herein.

(B) At the time of Collection of Equestrian Waste, any Container containing Equestrian Waste shall be replaced with an empty and clean Container.

(C) Contractor shall transport all Equestrian Waste to a properly permitted facility where it shall be checked for contamination, and will endeavor to use a facility in Orange County for this purpose. Contractor shall then transfer Equestrian Waste that is not contaminated to an appropriate facility for use in commercial purposes. Contaminated loads of Equestrian Waste shall be disposed of or otherwise processed in a manner that complies with all applicable laws.

(D) Contractor shall provide Equestrian Waste recycling at no charge for one 2-yard Bin or 3-yard Bin per equestrian center located in City serviced once per week. The choice of Bin size and its precise location shall be selected by the Responsible Customer. Equestrian Waste that is determined to be contaminated with greater than thirteen and one-half percent (13.5%) of non-Equestrian Waste shall be billed at the rates for refuse Collection at Residential Premises set forth in Exhibit A. Equestrian Waste recycling services that require more than one Collection per week or Containers other than one 2-

yard Bin or 3-yard Bin shall be billed at the rates for refuse Collection at Residential Premises set forth in Exhibit A.

#### 8.6.9 Fluorescent Lightbulb Collection and Recycling Program for City Facilities

Contractor shall provide fluorescent lightbulb recycling services for City facilities that rely on fluorescent lighting pursuant to the following requirements:

(A) On an annual basis, the City shall select its preferred WM Lamp Tracker containers for each City facility. Contractor shall provide and deliver to each City facility the selected WM Lamp Tracker mail-back containers, free of charge, provided the collective annual cost for such containers does not exceed One Thousand Dollars (\$1,000).

(B) The City shall place used fluorescent lightbulbs in the WM Lamp Tracker containers and mail such containers to Contractor for disposal, utilizing pre-paid postage labels to be provided by Contractor.

(C) Contractor's fluorescent lightbulb recycling program is intended to apply to commercial fluorescent lightbulbs, including 4 foot, 6 foot and 8 foot tubes, HID, UV, Unbent, and other similar commercial fluorescent lightbulbs.

#### 8.6.10 Contaminated Recyclable Material and Organic Waste Containers

The City and Contractor mutually agree to negotiate in good faith to develop remedial actions as to Customers that habitually set out excessively contaminated Recyclable Material and Organic Waste Containers.

#### 8.7 Additional Services

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

##### 8.7.1 Monitoring and Cleaning of Bin Enclosures

In addition to the requirements in Section 8.1.8, Contractor shall work with the City Manager in identifying and resolving continual problems with overflowing Bins or Bin enclosures, and/or other unsanitary conditions caused by Customers. Contractor shall clean out any overflowing Bins or Bin enclosures within City within twenty-four (24) hours of notification by City or request by a Responsible Customer pursuant to Section 8.1.8.(J).

##### 8.7.2 Public Service Calls From City Departments and Service Providers

Contractor shall, free of charge, within twenty-four (24) hours respond to calls from City, City's code enforcement and other contract service providers, the Orange County Sheriff's Department, and Orange County Fire Authority, to provide Containers for and/or dispose of Bulky Items and other Solid Waste as a result of illegal or unauthorized dumping, or other Code enforcement matters, occurring within City. Contractor agrees that if requested to provide such

services in connection with abatement activities for which reimbursement is sought from the property owner by City through abatement liens or otherwise, Contractor will provide billing information sufficient for City to include it in its liens, and Contractor will be paid at such time as the abatement lien is paid, or reimbursement is otherwise obtained by City from the property owner. Upon receipt of a call for service from City made pursuant to this Section, Contractor shall advise City within four (4) hours as to when service will be provided, and unless otherwise agreed by City service shall be provided within twenty-four (24) hours.

#### 8.7.3 Collection at City Sponsored Events

Contractor shall provide Solid Waste, Organic Waste, and Recyclable Materials Collection at all City-sponsored or supported programs and events, and at all special events or events in large venues (such as concerts or sporting events) as requested by City. The number, type and service requirements for these programs and events may vary from year to year. This service shall include providing, servicing, and storing Containers (cardboard boxes and liners, Carts, Bins and/or Rolloff Boxes) to Collect and dispose of all Solid Waste generated, and providing, servicing and storing Containers to Collect and process source-separated Organic Waste and Recyclable Materials. Contractor shall provide these services (i) at no cost for City-sponsored or supported programs and events, and (ii) at rates subject to approval by the City Manager for non-City-sponsored or supported programs and events, following a site and service evaluation.

Contractor shall assist persons who are responsible to coordinate programs or events for which services are provided pursuant to this Section 8.7.3 in the implementation of recycling programs, as requested by City. Contractor shall be responsible to prepare and submit to City a “waste reduction and recycling plan” prior to such programs or events, and within thirty (30) days following each such event shall submit a waste characterization report listing the amount of each material collected for disposal and recycling at the program or event.

#### 8.7.4 Tire Recycling

Upon request by City, Contractor shall design and implement at no cost a program for the collection of illegal or unauthorized dumping of tires within City Limits (the “Tire Collection Program”) that the City Manager finds satisfactory and approves. Contractor shall be responsible to ensure the Tire Collection Program complies with all Applicable Laws.

#### 8.8 Special Services

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

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

9.1 General

Contractor shall provide vehicles for the Collection of Solid Waste (“Collection Vehicles”) that are sufficient in number and capacity to efficiently perform the work required by this Agreement in strict accordance with its terms. Contractor is expressly obligated to provide such Collection Vehicles and routes as are required to meet the service standards set forth herein. Contractor shall have available on Collection days sufficient back-up vehicles for each type of Collection Vehicle used to respond to complaints and emergencies. Upon or prior to the Effective Date of this Agreement and prior to the start of any extension period of this Agreement pursuant to Section 6, Contractor shall provide City with a report containing the information required under South Coast Air Quality Management District’s Rule 1193(d)(7). Notwithstanding anything in this Agreement to the contrary, the vehicles Contractor utilizes solely for delivery of Bins and for pick-up of Bulky Items shall not be considered “Collection Vehicles” for purposes of Section 9.3(A), Section 9.3(B), and Section 9.3(C).

9.2 Air Quality/Fuel Requirements

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

9.3 Specific Requirements

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

- (A) Each Collection Vehicle must be fueled by Compressed Natural Gas (“CNG”).
- (B) Each Collection Vehicle must shall be equipped with an on-board methane detection system capable of detecting methane leaks in the cab of the Collection Vehicle.
- (C) Each Collection Vehicle shall be equipped with a tag axle.
- (D) Each Collection Vehicle shall be registered with the California Department of Motor Vehicles.
- (E) Each Collection Vehicle shall be inspected regularly by Contractor to ensure it meets the requirements of the California Vehicle Code and the California Highway Patrol. Contractor shall provide copies of its Biannual Inspection of Terminal

("BIT") inspection reports to City within 30 days of its receipt of such reports and shall make all records related to its vehicles, including Contractor's maintenance records, available to City upon request by the City Manager.

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

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

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

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

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

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

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

(M) Contractor shall inspect each Collection Vehicle daily to ensure that all equipment is operating properly. Collection Vehicles which are not operating properly shall be removed from service until repaired and operating properly. Contractor shall

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

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

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

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

(Q) Contractor shall not load Collection Vehicles in excess of the manufacturer's recommendations or limitations imposed by state or local laws or regulations.

(R) Noise levels of equipment used for Collection shall not exceed 75db (seventy-five decibels) when measured at a distance of twenty-five (25) feet from the vehicle, five (5) feet from the ground; provided, however, in the event there is any conflict with this section and the noises levels permitted under the City's Municipal Code, as such may be amended from time to time, the provisions in the City's Municipal Code shall apply. Contractor shall submit to City, upon City's request, a certificate of Collection Vehicle noise level testing, by an independent testing entity, for any Collection Vehicle. Nothing in this Agreement shall be construed as granting Contractor any rights or waivers to violate any Applicable Laws.

(S) At the start of the Term, all Collection Vehicles shall be less than two (2) years old. It is the intent that the Collection Vehicles placed into service at the start of the Term shall continue to be used throughout the Term. Contractor may, however, at any time during the Term replace the Collection Vehicles currently in use with newer Collection Vehicles.

(T) All Collection Vehicles used by Contractor to perform Collection services under this Agreement shall be equipped with on-board routing systems capable of tracking vehicle miles traveled (VMT). VMT systems must be capable of generating reports as requested by City. In addition, all Collection Vehicles shall, at a minimum, be equipped with a global positioning system (GPS) and Contractor shall be able to provide evidence of the route location of each Collection Vehicle throughout each service day. City, in its sole discretion, may grant Contractor a waiver of this requirement due to the unavailability of equipment or delays in manufacture; evidence of such unavailability or delay shall be used by City to determine the period for which the waiver shall apply.

#### 9.4 Costs of Operation and Damages

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

#### 9.5 City Inspection

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

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

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

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

#### 10.1 Uniforms

Each of Contractor's Collection employees shall wear a clean uniform bearing Contractor's name. Uniforms must be well maintained and in good condition.

#### 10.2 Identification of Employees

Contractor shall provide identification badges, cards or similar devices, for all of its employees, and all authorized subcontractors, who may make personal contact with residents of the City. City may require Contractor to notify Customers yearly, or more frequently if determined necessary by City, of the form of said identification.

### 10.3 Employee List

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

### 10.4 Driver's License

Each employee operating a vehicle as part of his or her duties shall, at all times, carry a valid operator's license for the type of vehicle he or she is operating.

### 10.5 Screening of Field Employees

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

### 10.6 Discontinued Use of Unsatisfactory Employees

No employee shall continue to have any involvement whatsoever with regard to any work in anyway relating to or arising from this Agreement if City gives notice to Contractor that such employee is determined by City to be discourteous, disorderly, inefficient, unable to communicate effectively with Customers, or otherwise objectionable (provided the term "otherwise objectionable" shall not permit City to "ban" an employee for reasons that violate public policy; and, further, City shall give a reason for requesting the "ban" of any employee from engaging in work related to this Agreement).

### 10.7 Training and Legal Compliance

Contractor shall provide operating and safety training that meets minimum OSHA standards for all personnel, and shall comply with all laws and regulations applicable to its employees and personnel. Contractor shall periodically train employees on all the specific requirements of this Agreement applicable to the employee's effective performance of his or her duties. Not less than once per calendar year, Contractor shall be required to submit to City a copy of the training material, as well as, record documentation demonstrating the "Agreement-specific" training has occurred. In addition, Contractor shall require that all new employees with duties related to this Agreement receive the above "Agreement-specific" training as part of the orientation process, and Contractor shall provide documentation to City demonstrating said training has occurred.

### 10.8 Customer Service

#### 10.8.1 Office Hours

Contractor shall maintain a local office, within 50 miles of City, for communication with the public that at a minimum will be open from 8:00 a.m. to 5:00 p.m. Monday through Friday, holidays excepted. At least one responsible and qualified representative of Contractor, capable of

communicating in English and Spanish, shall be present and available during all times that an office is required to be open as noted above (“Office Hours”), for personal communication with the public regarding Billings (including the acceptance of in person Bill payments), complaints, customer service inquiries, etc. and a similarly qualified person shall be available for communication with the public by phone during any times other than Office Hours when Collection is occurring.

## 10.8.2 Telephone Customer Service Requirements

### 10.8.2.1 Toll Free Number

Contractor shall maintain a toll free telephone number that rings at an office at all times during Office Hours. Both English and Spanish speaking personnel will be available during Office Hours to assist Customers with telephonic inquiries. Contractor shall have the ability (through the use of outside resources or otherwise) to communicate with Customers who only speak Spanish, Korean, Mandarin Chinese, or Tagalog to ensure their inquiries, questions, complaints and other matters are dealt with in a reasonably timely fashion. All such personnel shall be polite and responsive, and shall be sufficiently knowledgeable, and have the authority to respond and/or advise Customers seeking assistance. Contractor’s telephone system shall be adequate to handle the volume of calls typically experienced on the busiest days. Contractor shall provide City with a 24-hour emergency telephone number to a live person, not voice-mail.

### 10.8.2.2 Call Responsiveness

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

## 10.8.3 Complaint Documentation

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

annual basis, a complaint log, in a form satisfactory to the City, that includes all of the complaints logged pursuant to this Section, the complainant and the resolution.

#### 10.8.4 Resolution of Customer Complaints

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

#### 10.8.5 Government Liaison

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

### 10.9 Education and Public Awareness

#### 10.9.1 General

Contractor acknowledges and agrees that education and public awareness are critical, key and essential elements of any efforts to achieve the requirements of AB 939 and AB 341. Accordingly, Contractor agrees to exploit opportunities to expand public and Customer knowledge concerning needs and methods to reduce, reuse and recycle Solid Waste and to cooperate fully with City in this regard.

#### 10.9.2 Written Program Materials

Contractor shall maintain a program of providing information relevant to the need and the methods to reduce, reuse and recycle Solid Waste, and Contractor upon request from City, may include such information along with bills provided to Customers. All public education materials shall be approved in advance by City, be produced and/or made available in both English and Spanish languages, and bear the City seal unless otherwise approved by City. Contractor shall keep a record of all promotional and public education materials utilized, and shall provide quarterly reports summarizing its public outreach and education efforts.

#### 10.9.3 Public Outreach

At a minimum, Contractor shall promote recycling through presentations and educational materials to businesses, business groups, homeowners associations, construction contractors and other civic groups. Contractor shall also provide articles on relevant waste and recycling topics for the City's website on at least a bi-monthly basis.

#### 10.9.4 Corrective Action Notice

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

#### 10.9.5 Contractor Representative

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

### **SECTION 11. CONTRACTOR'S CONSIDERATION**

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

#### 11.1 Reimbursement of Negotiation Costs

Concurrently with the execution of this Agreement, Contractor shall pay to City a one-time lump sum payment in the amount of Fifty-Five Thousand Dollars (\$55,000), to reimburse the City for its actual staff expenses and out-of-pocket costs (including specifically consultant and legal fees) it incurred in connection with the Request for Proposals ("RFP") process for Solid Waste Handling Services, the negotiation of this Agreement, and ultimate award of this Agreement.

#### 11.2 Franchise Fee

Contractor shall pay to City, a franchise fee equal to the greater of five percent (5%) of Contractor's annual Gross Receipts each year, or portion thereof, throughout the Term of this Agreement or seventy thousand dollars (\$70,000) (the "Franchise Fee"). Said Franchise Fee shall be paid to City monthly on or before the last day of the following month. Should any such due date fall on a weekend or holiday in which the City's business offices are closed, payment shall be due on the first day thereafter in which the City's business offices are open. The amount of each payment shall be equal to five percent (5%) of Contractor's Gross Receipts in the calendar month preceding the date payment was due. The Franchise Fee due hereunder shall apply to Gross Receipts of Contractor collected after the expiration of the Term hereof relating to Contractor's performance during the Term hereof. Franchise Fees shall be accompanied by a statement certified by an officer of Contractor attesting to the accuracy of the amounts paid, and setting forth the basis for their calculation in a manner acceptable to City.

As part of the twelfth and final Franchise Fee payment for each year (defined as July 1 through June 30) of this Agreement, Contractor shall prepare an accounting of all Franchise Fee payments for that year to determine if the minimum seventy thousand dollar (\$70,000) requirement has been met. If it has not, the Franchise Fee payment for that twelfth and final month of the contract year, established herein, will include the additional amount required to meet the \$70,000 requirement.

### 11.3 Services at City Premises

Upon request, Contractor shall provide Collection services at all Premises owned and/or operated by the City, at no cost to City and shall provide Containers for such service as City deems appropriate for each of its various Premises (i.e., Carts, Bins or Rolloff Boxes). Collection services Contractor provides for City Premises may include, but are not limited to, Collection of all Solid Waste, including Recyclable Materials, Organics Waste, Green Waste, and white paper. Contractor shall be required to use its own forces to bring City's Containers, as well as plastic bags provided by City, from the interior and exterior locations at which they are regularly stored by City, to Contractor's Collection Vehicle; and, after disposal of the contents thereof, return said Containers to the location where they are regularly stored by City. Such services shall be provided for all existing City Premises, as they may be expanded from time to time, as well as all new or additional Premises acquired/constructed during the Term hereof at no additional cost, provided however that any construction and demolition waste shall be subject to the maximum rates set forth in this Agreement for such Solid Waste applicable to commercial Customers. Contractor shall carry out its obligations pursuant to this provision in a manner, and to a degree (including specific days and times), approved by the City Manager.

In addition, Contractor shall deliver to City, at no charge, one (1) locking Rolloff Box in a size selected by the City Manager, to a location selected by the City Manager. The size and location may be changed from time to time in the discretion of the City Manager. City shall use such Rolloff Box for Solid Waste generated by City's Community Development Block Grant residential energy efficiency retrofit program and similar programs. Contractor shall provide Collection service for such Rolloff Box, free of charge, upon the request of City, provided such service is not requested more than six (6) times per year. Additional Collection service shall be subject to the applicable maximum rates set forth on Exhibit A.

### 11.4 Waste and Recycling Services Reimbursement

On or before April 30 and November 30 of each year thereafter, Contractor shall make a payment to City in the amount more fully set forth in this paragraph intended to defray its administrative costs related to this Agreement and waste management activities the City performs (the "Waste and Recycling Services Reimbursement"). The Waste and Recycling Services Reimbursement is intended to cover, but is not limited to or required to be applied to, the following: ongoing compliance review as noticed in Section 28.3, City's legal and consultant fees incurred in administration of this Agreement, City promotion of waste management through its website, local cable television station, community newsletters, and materials provided at City Hall, Household Hazardous Waste and e-waste Collection, paper shredding events, a SHARPS mail-in service, and City Hall drop-off location for medications, small electronics, batteries, and fluorescent bulbs. The total amount of the biannual Waste and Recycling Services Reimbursement shall be One Hundred and Fifty Thousand Dollars (\$150,000.00) [increased annually by any positive change in CPI as calculated under Section 24.3], payable in two installments of Seventy-Five Thousand Dollars (\$75,000.00) [increased annually by any positive change in CPI as calculated under Section 24.3] each due on or before April 30 and November 30 of each year during the Term of the Agreement. City shall not be required to send Contractor an invoice for the Waste and Recycling Services Reimbursement, and instead Contractor's Seventy-Five Thousand Dollars (\$75,000.00)

installment obligation shall automatically become due on April 30 and November 30 of each year during the Term of the Agreement.

## **SECTION 12. CHARGE FOR LATE PAYMENTS**

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

## **SECTION 13. CONTRACTOR'S BILLING SERVICES AND SYSTEMS**

### 13.1 Billing

Contractor shall provide services pursuant to this Agreement at rates it sets, charges to, and collects from Customers and Responsible Customers; provided, however, Contractor's rates shall not exceed those set forth in the attached Exhibit A, which sets out the maximum rates that may be charged by Contractor for the various different service options that may occur hereunder, as such maximum rates may be adjusted from time to time pursuant to the terms hereof. Contractor shall provide all Customers, or Responsible Customers, where applicable, with itemized Bills, detailing charges for all services, including charges for late payments, as well as the period of service to which the Bill applies. Contractor acknowledges that it, and not Customers nor Responsible Customers, is to pay a Franchise Fee and the other fees noted herein to City as consideration for this Agreement. Accordingly, Contractor's Bills shall not include separate itemization of a "Franchise Fee" or other similar designation relating to fees which Contractor is required to pay to City.

Billings may be made on a monthly basis for all Customers and Responsible Customers. Premises ordering service after the first of the month or canceling service prior to the end of the month shall be charged on a prorated per-pickup basis.

#### 13.1.1 Suspension of Service Due to Non-Payment

Contractor may discontinue service to any Customer, or Responsible Customer, where applicable, as set forth in this Section. Customers or Responsible Customers who have not remitted required payments within sixty (60) days after the date of Billing shall be notified on forms approved by the City Manager. Said forms shall contain a statement that services may be discontinued fifteen (15) days from the date of the notice if payment is not made before that time. If payment is not made by the expiration of said fifteen (15) day period, Contractor must contact City and advise of the delinquency and may discontinue service to that Customer or Responsible

Customer, forty-eight (48) hours thereafter with City's prior consent. Contractor shall resume Solid Waste Collection on the next regularly scheduled Collection day for any Customer or Responsible Customer whose service is discontinued upon receipt of payment of delinquent fees and any related service restart charges in accordance with the maximum rates set forth in Exhibit A, or at such sooner time as directed to do so by City. Contractor may not charge for service during any period in which service was suspended. Any delinquent fees or service charges to be imposed in connection with delinquent accounts shall be set by Contractor and be subject to City Manager approval. A deposit equal to the maximum rate for one month's service as set forth on Exhibit A, as such rates may be amended from time to time, may be required of accounts which have been discontinued for non-payment prior to re-instituting service at such accounts. Notwithstanding the above, in the event of a Billing dispute and/or to avoid negatively impacting public health or safety, Contractor shall not suspend service to any Customer or Responsible Customer without the City's prior consent, and shall continue to provide service to any Customer or Responsible Customer if directed to do so by City without regard to the status of said Customer's or Responsible Customer's account.

### 13.2 Minimum Requirements for Billing Statements

Bills shall be prepared and provided in a manner that adequately presents the services rendered in an easy to understand and verifiable format. The format of Contractor's Bills must be approved by City prior to the commencement of Solid Waste Collection services under this Agreement. City reserves the right to require changes to the Bill format during the Term of this Agreement. In addition to any other pertinent data, Billing statements mailed by Contractor shall be printed to contain the following information, and the language contemplated for compliance with this requirement shall be subject to the City Manager's approval:

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

(B) A notice to Customers or Responsible Customers that payments are due within thirty (30) days of the statement date, an advisement that the Customer's or Responsible Customer's account will become delinquent if payment is not received by the 60th day following the statement date, an advisement of the date and time by which payments must be received in order to avoid delinquent fees (i.e., 4:00 p.m. on the 75th day following the statement date), and a notification of the amount of fees that will be imposed and the potential for service interruptions if payments are not received by the specified date and time.

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

- (1) by mailing payment to Contractor at such address as Contractor may designate;
- (2) by automatic withdrawal from a checking account;
- (3) by major credit card on-line (i.e., via the Internet); or

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

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

### 13.3 Billing System

#### 13.3.1 Computerization of Account Information

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

#### 13.3.2 Minimum Computer Programming Requirements

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

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

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

(C) allow Customers or Responsible Customers to make payments on-line (i.e., via the Internet) by a major credit card, automatic withdrawal from a checking account, mail, cash or other acceptable forms of payment.

#### 13.3.3 Billing Inquiries

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

### 13.4 Payment, Accounting Systems

#### 13.4.1 Collection and Processing of Payments

##### 13.4.1.1 Accounting and Deposit of Funds

All payments received by Contractor shall be appropriately credited to Customer and Responsible Customer accounts, deposited in a bank account and accounted for in a businesslike

manner utilizing generally accepted accounting principles. To facilitate audits and record keeping Contractor shall make all withdrawals from its bank accounts by check, ACH debit/credit or wire, regardless of whether the withdrawal is to provide funds to City, Contractor, or any permissible subcontractor of Contractor.

#### 13.4.1.2 Allocation of Funds

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

### **SECTION 14. FAITHFUL PERFORMANCE**

#### 14.1 Surety

Contemporaneously with execution of this Agreement, as security for Contractor's faithful performance of all obligations of this Agreement, Contractor shall provide a surety mechanism (the "Surety") as more fully defined below in the amount of One Hundred and Fifty Thousand Dollars (\$150,000.00). The Surety may be comprised of either a performance bond or an irrevocable letter of credit, or a combination of both. If a letter of credit is utilized to satisfy some or all of the Surety requirement, it shall be drawn upon a financial institution with an office within one hundred (100) miles of City, and otherwise in a form acceptable to the City Attorney. The performance bond, if any, shall be issued by a duly authorized corporate surety company authorized to do business in California, and in a form acceptable to the City Attorney. The cost of the Surety shall be the sole responsibility of Contractor. The Surety shall be released within thirty (30) days after both (i) the expiration of the Term of this Agreement; and (ii) Contractor's satisfactory performance of all obligations hereunder.

##### 14.1.1 Forfeiture of Surety

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

##### 14.1.2 Use of Surety by City

Notwithstanding any provision hereof to the contrary, thirty (30) days following City providing Contractor with written notice of its failure to pay City any amount owing under this Agreement, either the letter of credit or performance bond comprising the Surety may be utilized by City for purposes including, but not limited to: (1) Payment of sums due under the terms of this Agreement which Contractor has failed to timely pay to City, including specifically liquidated

damages; and (2) Reimbursement of costs borne by City to correct violations of this Agreement not corrected by Contractor.

## 14.2 Cash Bond

Contemporaneously with execution of this Agreement, as security for Contractor's faithful performance of all obligations of this Agreement, Contractor shall also provide City with a cash bond ("Cash Bond") as more fully defined below in the amount of Fifty Thousand Dollars (\$50,000.00). The Cash Bond may be comprised of either a cash deposit or an irrevocable letter of credit, or a combination of both. If a letter of credit is utilized to satisfy some or all of the Cash Bond requirement, it shall be drawn upon a financial institution with an office within one hundred (100) miles of City, and otherwise in a form acceptable to the City Attorney. The cash deposit, if any, shall be deposited in an interest-bearing account at a financial institution with an office within one hundred (100) miles of City that is acceptable to the City Attorney. All interest on a cash deposit, if any, shall accrue to Contractor. Any costs associated with the Cash Bond shall be the sole responsibility of Contractor. The Cash Bond shall be released within thirty (30) days after both (i) the expiration of the Term of this Agreement; and (ii) Contractor's satisfactory performance of all obligations hereunder.

### 14.2.1 Forfeiture of Cash Bond

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

### 14.2.2 Use of Cash Bond by City

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

## 14.3 Replacement Letter of Credit

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

## **SECTION 15. INSURANCE COVERAGE**

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

### **15.1 Minimum Scope of Insurance**

Coverage shall be at least as broad as:

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

### **15.2 Minimum Limits of Insurance**

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

#### **15.2.1 Commercial General Liability**

Ten Million Dollars (\$10,000,000.00) limit aggregate and Five Million Dollars (\$5,000,000.00) limit per occurrence for bodily injury, personal injury and property damage. Such limits can be achieved through a combination of primary and excess liability policies.

#### **15.2.2 Automobile Liability**

Ten Million Dollars (\$10,000,000.00) combined limit per accident for bodily injury and property damage. Such limits can be achieved through a combination of primary and excess liability policies.

#### **15.2.3 Workers' Compensation and Employers Liability**

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

### **15.3 Deductibles and Self-Insured Retentions**

All deductibles or self-insured retentions (i) shall be for the account of Contractor and paid entirely by Contractor without contribution from City, and (ii) shall be declared to City. If, in the

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

#### 15.4 Other Insurance Provisions

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

##### 15.4.1 General Liability

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

##### 15.4.2 Workers' Compensation and Employers Liability Coverage

The insurer shall agree to waive all rights of subrogation against City and its elected and appointed officials, officers, employees, agents and volunteers for losses arising from work performed by Contractor for City. A Waiver of Subrogation Endorsement must be issued to City by the insurer.

##### 15.4.3 Environmental Pollution Control Insurance

Contractor shall maintain either an endorsement to its general liability policy, or a separate policy of insurance covering environmental pollution and contamination that names the City as an additional insured. Said coverage shall be in the amount of not less than One Million Dollars (\$1,000,000) per occurrence, and One Million Dollars (\$1,000,000) in the aggregate, and shall substantially comply with all other provisions set forth in Section 15.4.1.

##### 15.4.4 All Coverages

Except for Worker's Compensation, each insurance policy required by this clause shall be endorsed to state that coverage shall not be canceled by either party, except after thirty (30) days' prior written notice has been given to City. Additionally, Contractor agrees that it will not suspend, void or reduce in coverage or limits each insurance policy required by this clause without notice to the City.

### 15.5 Acceptability of Insurers

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

### 15.6 Verification of Coverage

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

### 15.7 Loss or Reduction in Insurance

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

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

### 16.1 General

Contractor shall not assign any portion of or all of its rights, nor delegate, subcontract or otherwise transfer any portion of or all of its obligations under this Agreement (collectively referred to as an "Assignment") to any other Person without the prior approval by the City Council. The City Council has unfettered discretion to approve or deny such an Assignment. The City Council's exercise of its unfettered discretion may include City Council review and approval of any Assignment terms, including, but not limited to, insurance obligations, indemnification language, bonding requirements, and any and all other terms the City Council may in its unfettered discretion require. Any such Assignment made without the approval by the City Council shall be void and the attempted Assignment shall constitute a material breach of this Agreement.

### 16.2 Assignment to be Broadly Interpreted

For purposes of this Section, the term "Assignment" shall be given the broadest possible interpretation, and shall include, but not be limited to: (i) a sale, exchange or other transfer of substantially all of Contractor's assets dedicated to service under this Agreement to a third party; (ii) a sale, exchange or other transfer of any membership interest of Contractor to a third party; (iii) any dissolution, reorganization, consolidation, merger, re-capitalization, stock issuance or re-issuance, voting trust, pooling agreement, escrow arrangement, liquidation or other transaction

which results in a change of ownership or control of Contractor; (iv) any assignment by operation of law, including those resulting from mergers or acquisitions by or of Contractor or any of its Affiliates, insolvency or bankruptcy, making assignment for the benefit of creditors, writ of attachment for an execution being levied against this Agreement, appointment of a receiver taking possession of Contractor's property, or transfer occurring in the event of a probate proceeding; (v) any combination of the foregoing (whether or not in related or contemporaneous transactions) which has the effect of any such transfer or change of ownership, or change of control of Contractor; and (vi) Contractor's subcontracting of only a portion of its rights and obligations under this Agreement (e.g., the In-Home Bulky Item Collection service).

### 16.3 Nature of Agreement – Personal to Contractor

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

### 16.4 Procedure for Consideration of Assignment

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

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

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

(C) Contractor shall furnish City with satisfactory proof: (i) that the proposed assignee has at least ten (10) years of Solid Waste management experience on a scale equal to or exceeding the scale of operations conducted by Contractor under this Agreement; (ii) that in the last five (5) years, the proposed assignee has not suffered any significant citations or other censure from any federal, state or local agency having jurisdiction over its Solid Waste management operations due to any significant failure to comply with state, federal or local laws, including the Environmental Laws and that the assignee has provided City with a complete list of such citations and censures; (iii) that the proposed assignee has at all times conducted its operations in an environmentally safe and conscientious fashion; (iv) that the proposed assignee conducts its Solid Waste management practices in accordance with sound Solid Waste management practices in full compliance with all federal, state and local laws regulating the Collection and disposal of Solid Waste including Hazardous Substances; and, (v) of any other information required by City to ensure the proposed assignee can fulfill the terms of this Agreement in a timely, safe and effective manner.

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

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

### **17.1 Performance Hearing**

(A) Commencing in or about January 2017, and on a biennial basis thereafter, City may hold a hearing to review Contractor's Solid Waste Collection efforts, source reduction, processing and other diversion services and overall performance under this Agreement (the "Solid Waste Services and Performance Review Hearing"). The purpose of the Solid Waste Services and Performance Review Hearing is to provide for a discussion and review of technological, economic, and regulatory changes in Collection, source reduction, recycling, processing and disposal to achieve a continuing, advanced Solid Waste Collection, source reduction and recycling and disposal system; and to ensure services are being provided by Contractor with adequate quality, effectiveness and economy and in full compliance with the terms of this Agreement. Topics for discussion and review at the Solid Waste Services and Performance Review Hearing shall include, but shall not be limited to, services provided, feasibility of providing new services, application of new technologies, Customer complaints, amendments to this Agreement, developments in the law, new initiatives for meeting or exceeding AB 939's goals and where applicable AB 341's goals, regulatory constraints and Contractor performance. City and Contractor may each select additional topics for discussion at any Solid Waste Services and Performance Review Hearing.

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

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

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

(2) Recommended changes and/or new services to improve the City's ability to meet the goals of AB 939 and AB 341 and to contain costs and minimize impacts on rates.

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

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

## **SECTION 18. CITY'S REMEDIES; DEFAULT AND TERMINATION**

### **18.1 Notice of Default**

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

City Manager may, in such written notice, set a reasonable time within which correction of such default shall be made. Unless a longer or shorter time is otherwise specified by the City Manager, a reasonable time for correction shall be thirty (30) days from the date such written notice is given.

#### 18.2 Failure to Cure

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

#### 18.3 Review by City Manager

If the City Manager reviews the matter and determines that Contractor has failed to properly or adequately cure any default set forth above, the City Manager, in the exercise of his discretion, may terminate this Agreement, or take such other action as he deems appropriate to pursue any remedy available to City. A decision or order of the City Manager shall be final and binding on Contractor unless Contractor files a "Notice of Appeal" with the City Clerk within five (5) business days of the date the notice of the City Manager's decision is given. The City Manager shall schedule any appeal for consideration by the City Council no later than the earliest feasible regular City Council Meeting following the date a Notice of Appeal is given to City.

#### 18.4 City Council Review

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

#### 18.5 Performance During Reviews

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

#### 18.6 Termination without Right to Cure

The above right of termination as a result of Contractor's failure to timely cure any deficiency is in addition to City's right to terminate this Agreement without affording Contractor an opportunity to cure in circumstances where Contractor is determined by City to have materially breached this Agreement. City shall thus be afforded the right to terminate this Agreement in the

event of any material breach hereof by Contractor without affording Contractor the right to cure as a result of any action, inaction or circumstance which is a legally defined material breach, or is defined herein as a material breach, and/or under any of the following circumstances which are hereby specifically defined as material breaches:

- (A) If Contractor practices, or attempts to practice, any fraud upon City.
- (B) If Contractor becomes insolvent, unable, or unwilling to pay its debts, or upon listing of an order for relief in favor of Contractor in a bankruptcy proceeding.
- (C) If Contractor willfully violates any orders or rulings of any regulatory body having jurisdiction over Contractor relative to this Agreement. So long as City's rights are not prejudiced during the pendency of any challenge to such orders or rulings by Contractor, Contractor may contest any such orders or rulings by appropriate proceedings conducted in good faith, in which case no material breach of this Agreement shall be deemed to have occurred until a final ruling has been rendered.
- (D) If Contractor ceases to provide Solid Waste Handling Services, including Collection of Solid Waste and/or Recyclable Material, as required under this Agreement over all or any portion of the Franchise Area for a period of seven (7) days or more, for any reason not specified as a force majeure event hereunder.
- (E) If Contractor fails to materially comply with any insurance or indemnification requirement set forth in this Agreement.
- (F) If City is required to pay any fine or penalty, which is not paid on its behalf by Contractor or which Contractor fails, refuses, neglects or is unable to pay or indemnify City against, relating to any diversion or other requirement of AB 939 and/or AB 341.
- (G) If Contractor, Contractor's shareholders, Contractor's directors, or any senior management level employee of Contractor (defined for purposes of this provision as any representative of Contractor who regularly is in communication with or regularly has contact with any member of the City Council or City Manager, or any of Contractor's employees who communicate with any City Department Head or City employee with decision making authority on matters related to the performance of the Agreement) is convicted of a Criminal Matter (as defined herein). For purposes of this Section the term Criminal Matter refers to any felony or misdemeanor offense having any relationship to either Solid Waste Handling Services or public corruption (including, without limitation, bribery, conflict of interest related allegations, vote selling, or any similar type charges).
- (H) If Contractor fails to meet the Recycling Diversion Requirement in Section 8.6.4 for any calendar year under this Agreement.

18.7 Liquidated Damages

18.7.1 General

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

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

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

Contractor \_\_\_\_\_ City  
Initial Here \_\_\_\_\_ Initial Here \_\_\_\_\_

18.7.3 Calculations for Liquidated Damages

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

#### 18.7.3.1 Collection Reliability

(A) For each failure to commence service to a new Customer account within seven (7) days after order: \$200.00.

(B) For each failure to Collect Solid Waste from any established Customer on the scheduled Collection day and not Collected within the period described in this Agreement which exceed five (5) such failures annually: \$200.00.

(C) For each failure to Collect Solid Waste, which has been properly set out for Collection, from the same Customer on two (2) consecutive scheduled pickup days: \$200.00.

#### 18.7.3.2 Collection Quality

(A) For each occurrence of failure to properly return empty Containers to avoid pedestrian or vehicular traffic impediments or to place Containers upright with lids secured which exceeds ten (10) such occurrences annually: \$150.00.

(B) For each occurrence of excessive noise or discourteous behavior which exceeds five (5) such occurrences annually: \$500.00.

(C) For each occurrence of Collecting Solid Waste during unauthorized hours which exceeds five (5) such occurrences annually: \$500.00.

(D) For each occurrence of damage to private property in an amount in excess of \$1,000 which exceeds five (5) such occurrences annually: \$500.00.

(E) For each failure to clean up Solid Waste spilled from Containers, excepting amounts that are so nominal in nature that they would not reasonably be expected to be noticed by the driver of a Collection Vehicle, within 90 minutes or in compliance with NPDES requirements, whichever is stricter: \$500.00.

#### 18.7.3.3 Customer Responsiveness

(A) For each failure to initially respond to a Customer complaint within one (1) business day, which exceeds five (5) such occurrences annually, and for each additional day in which the complaint is not addressed: \$150.00.

(B) For each failure to process Customer complaints to City as required herein, which exceeds five (5) such occurrences annually: \$200.00.

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

18.7.3.4 Timeliness of Submissions to City

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

- (1) Monthly Reports: \$100.00 per day.
- (2) Quarterly Reports: \$200.00 per day.
- (3) Annual Reports: \$500.00 per day.

18.7.3.5 Cooperation During Transition With Subsequent Solid Waste Enterprise

(A) For each day routing information, including billing information and other operating records needed to service premises, is requested by City or any subsequent solid waste enterprise in accordance with Section 29 and is received after City-established due dates, both for preparation of a request for proposals and for any subsequent solid waste enterprise's implementation of service: \$1,000.00 per day.

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

(C) For delay in not meeting the requirements from Section 29 in a timely manner, in addition to the daily liquidated damages for breach under Sections 18.7.3.5(A)-(B) above, a one-time charge of: \$35,000.

18.7.3.6 Minimum Hauler Recycling Requirements

(A) For each calendar year, beginning in 2017, in which Contractor fails to meet the guaranteed Recycling Diversion Requirement set forth in Section 8.6.4: \$40 for each ton below the tonnage level necessary to meet the Recycling Diversion Requirement.

18.7.4 Process for Assessment of Liquidated Damages

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

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

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

#### 18.7.5 Timing of Payment

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

### **SECTION 19. CONTRACTOR'S REMEDIES; ADMINISTRATIVE HEARING**

#### 19.1 Administrative Hearing

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

#### 19.2 Other Remedies; Claims

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

### 19.3 Actions for Damages

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

## **SECTION 20. CITY'S ADDITIONAL REMEDIES**

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

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

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

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

## **SECTION 21. RIGHTS OF CITY TO PERFORM DURING EMERGENCY**

### 21.1 Provision of Service

Should Contractor, for any reason whatsoever, refuse or be unable to provide Solid Waste Handling Services for a period of more than forty-eight (48) hours, and if as a result thereof, Solid Waste should accumulate in City to such an extent or in such a manner that the City Manager finds that such accumulation endangers or menaces the public health, safety, or welfare, City shall have the right, upon twelve (12) hours prior written notice to Contractor, during the period of such emergency, to temporarily take possession of any or all equipment and facilities of Contractor previously used in providing Collection, transportation, and disposal of Solid Waste and provide, through its own forces or otherwise, Solid Waste Handling Services which Contractor otherwise would be obligated to provide pursuant to this Agreement. Contractor agrees that in such event it shall fully cooperate with City to affect such a transfer of possession for City's use.

## 21.2 Possession of Equipment

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

## 21.3 Exclusions from Right to Possession of Equipment without Compensation

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

## **SECTION 22. PRIVACY**

Contractor shall strictly observe and protect the privacy rights of Customers. Information identifying individual Customers or the composition or contents of a Customer's Solid Waste stream, or any of the billing information pertaining to any Customers, shall not be revealed to any person, governmental unit, private agency, or company, unless upon the authority of a court of law, by statute, ordinance, or regulation of a governmental agency having jurisdiction, or upon valid authorization of the Customer. This provision shall not be construed to preclude Contractor from preparing, participating in, or assisting in the preparation of waste characterization studies or waste audits which may be required by AB 939 or this Agreement. Contractor shall not market or distribute, outside the normal course of its business, mailing lists with the names and addresses of Customers. The rights afforded Customers pursuant to this Section shall be in addition to any other privacy right afforded Customers pursuant to federal or state law.

## **SECTION 23. REPORTS AND ADVERSE INFORMATION**

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

### 23.1 Monthly Reports

At a minimum, Contractor shall report the following to City on a monthly basis: Solid Waste Collected by Contractor for each month, sorted by type of Solid Waste in tons broken down

at a level acceptable to City (which at a minimum shall include: refuse, Green Waste, e-waste and universal waste item counts, types of recyclables including PET, HDPE, mixed plastics, aluminum, cardboard, mixed paper, sand, and concrete), as well as by customer type (i.e., single family, multi-family, commercial, roll-off, curbside, etc.); the facilities where all Solid Waste Collected was processed or disposed; a list of all missed pick-ups; a list of the records related to non-collection notices; warning notices issued for contaminated Recyclable Materials, and Green Waste Containers (if applicable); and a narrative summary of problems encountered (including scavenging) and actions taken with recommendations for City, as appropriate. Contractor shall also provide a detailed list of all In-Home Bulky Item Collections including, at a minimum, Customer name, Customer address, Customer telephone number, date(s) of service, and a description of each item Collected.

### 23.2 Quarterly Reports

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

### 23.3 Annual Reports

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

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

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

(C) Information and reports required by City to meet its reporting obligations imposed by AB 939 and the regulations implementing AB 939, in a form and content approved by the City Manager;

(D) A revenue statement, certified by the chief financial officer of Contractor, setting forth Franchise Fees paid and the basis for the calculation thereof, including specifically a breakdown of sources of revenue included in Gross Receipts and the amount of revenue derived from each such source comprising Gross Receipts;

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

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

(G) A list of each service address or other identifying location associated with each Customer's or Responsible Customer's account, the total number of Carts at each such address or other identifying location, types of services being Billed and the serial numbers associated or other identifying information associated with each Cart at such address as required by Section 8.1.8(F).

(H) A list of Customers or Responsible Customers who elect not to receive a Recycling Cart, including contact information, reasons, and the locations thereof.

#### 23.4 Format of Reports

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

#### 23.5 Adverse Information

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

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

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

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

### 23.6 Disaster Plan

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

In addition to the disaster debris cleanup implementation plan, Contractor shall: (1) assist City in the event of a major disaster by providing Collection Vehicles and drivers normally assigned to City at rates which do not exceed the maximum rates set forth on Exhibit A; and (2) , upon request and at no additional charge, provide to City at City Hall or other locations designated by the City Manager, up to ten (10) Bins and/or Rolloff Boxes, with the quantity and size to be designated by City, for use as emergency containers to store emergency materials and supplies.

### 23.7 Failure to Report

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

## **SECTION 24. COMPENSATION**

### 24.1 Contractor Rates

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

### 24.2 Resolution of Disputes Regarding Rate Adjustments

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

### 24.3 Annual Consumer Price Index Adjustments

Commencing on January 1, 2017, the maximum rates as set forth in Exhibit A shall be adjusted, and such rates shall be adjusted annually thereafter on each subsequent January 1st during the Term hereof (the "Adjustment Dates"), by multiplying each rate by ninety percent (90%) of the percentage change in the average Consumer Price Index ("CPI") for All Urban Consumers, CUURA421SA0 not seasonally adjusted, all items index (CPI-U) – Los Angeles County, Riverside County, Orange County for the twelve (12) month period ending the September immediately prior to the applicable Adjustment Date versus the index average for the previous twelve months. At least forty-five (45) days prior to charging Customers any rate increased due to an increase in the CPI, Contractor shall obtain the City Manager's approval to do so. The City Manager shall approve such a request unless it is determined, based upon substantial evidence, that the requested adjustment to the maximum rate does not meet the requirements as set forth herein.

It is anticipated that to obtain City Manager's approval of Contractor's requested rate increase, Contractor shall provide all necessary information to justify the request. City will make an effort to verify information provided by Contractor, but ultimately Contractor bears the burden of ensuring the submitted information is correct and supported by all necessary documentation. Contractor agrees and acknowledges that City is entitled to rely, in good faith, on information submitted by Contractor, including mathematical calculations, CPI data, and other documentation, to justify Contractor's requested rate increase. In the event that there are errors in Contractor's requested rate increase request, including, but not limited to, an inaccurate rate adjustment request, inaccurate application of the rate increase formula described above, or usage of inaccurate data, Contractor acknowledges and agrees that City is entitled to seek recovery of damages on behalf of the public or impose future rate reductions to compensate for the errors. Contractor also waives any arguments or defenses Contractor now has or may have in the future, including estoppel, waiver, or other similar equitable remedies, with respect to any action, claim, demand, proceeding or suit in law or equity of any and every kind and description brought by or on behalf of City or Customers due to errors in Contractor's requested rate increase.

### 24.4 Limitations to Annual CPI Adjustments

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

#### 24.4.1 Three Percent (3%) Cap

Any maximum rate may not be increased in any given year by more than three percent (3%) without regard to any higher increase which may otherwise be justified by the formula set forth in Section 24.3. In the event an increase exceeds the three percent (3%) cap, the un-applied percentage may not be rolled forward and applied to maximum rate increases in subsequent years.

#### 24.4.2 Compliance with Agreement

No increase to the maximum rates shall occur if the City Manager determines that Contractor did not substantially comply with all terms of this Agreement in the Rate Year

preceding the increase, including without limitation, provisions hereof relating to reporting, diversion, and Customer service standards.

#### 24.5 Discretionary Adjustments

Contractor may request an adjustment to the maximum rates set forth in Exhibit A at reasonable times other than as set forth in Section 24.3 for unusual changes in the cost of providing service under this Agreement. For each request for an adjustment to the maximum rates brought pursuant to this Section Contractor shall prepare a schedule documenting the extraordinary costs. Such request shall be prepared in a form acceptable to City with support for assumptions made by Contractor in preparing the estimate. The City Council shall review Contractor's request and, in the City Council's sole judgment and absolute, unfettered discretion, make the final determination as to whether an adjustment to the maximum rates will be made, and, if an adjustment is permitted, the appropriate amount of the adjustment. The City Council may consider increases or decreases in Contractor's total revenues and total cost of services when reviewing an extraordinary rate adjustment request. Contractor may not request an extraordinary increase in the maximum rates as a result of: changes in fees or taxes such as Social Security, disability or income tax; changes in health care costs, including increases to the cost of health insurance or changes to the requirements for health insurance; changes in the market value of Recyclables or processing costs for Recyclables or Green Waste; inaccurate estimates by Contractor of its cost of operations; or costs of compliance with South Coast Air Quality Management District and Air Resource Board rules and standards for Collection Vehicles. An advance non-refundable payment of Five Thousand Dollars (\$5,000.00) shall be paid to City prior to City's consideration of each of Contractor's requests for an adjustment of the maximum rates pursuant to this Section.

#### 24.6 Grants

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

**SECTION 25.**  
**IDENTIFICATION OF CONTRACTOR**

Contractor has agreed to use the name “Waste Management” identify itself to the public as the specific organization that shall provide all services under this Agreement. Unless otherwise approved in writing by City, this name shall be used for all correspondence, Billing statements, directory listings, references, signs, and vehicle and Container identification.

**SECTION 26.**  
**CITY’S FLOW CONTROL OPTION/COUNTY AGREEMENT**

26.1 Flow Control Option

City shall have the absolute ability to choose the location for the delivery and/or disposal of all Solid Waste (including Recyclable Material, Organic Waste, Green Waste, and construction and demolition waste) Collected pursuant to this Agreement (hereinafter City’s “Flow Control Option”). Contractor expressly consents to City’s ability to direct the location for disposal of Solid Waste hereunder, and waives any and all rights to challenge City’s ability to do so, including without limitation any rights under the Commerce Clause of the United States Constitution. As of the Effective Date, City shall be deemed to have exercised its Flow Control Option so as to require delivery of all Solid Waste Collected hereunder to the Orange County landfill system in a manner consistent with its obligations under the County Agreement (including, without limitation, its obligations related to Solid Waste that is delivered to a processing/transfer facility prior to being delivered to a landfill for disposal), and Contractor has agreed to handle all Solid Waste Collected hereunder in a manner consistent with City’s exercise of its Flow Control Option as noted above. City shall be deemed to have further exercised its Flow Control Option so as to require processing of all source-separated Organic Waste at a properly permitted facility located in Orange County. At any time during the Term of this Agreement the City Manager may notify Contractor in writing that City no longer desires to exercise its Flow Control Option. In the event City so notifies Contractor of its desire to cease exercising its Flow Control Option, Contractor shall have the absolute discretion to utilize any disposal facility, transfer station, recycling facility, material recovery facility, landfill, or other facility of its choosing to retain, recycle, process, and dispose of Solid Waste generated within the City, provided the use of such facility by Contractor enables it to meet all other requirements of this Agreement.

26.2 County Agreement

Contractor expressly acknowledges its awareness of the County Agreement which has been adopted and entered into by City. Moreover, Contractor acknowledges that it has had an opportunity to review the County Agreement, and is aware of the provisions thereof that require all Solid Waste collected in the City Limits to be disposed of in the Orange County landfill system. Contractor further acknowledges that the County of Orange is an intended third party beneficiary of Contractor’s obligations relating in any way to the disposal of Solid Waste pursuant to this Agreement and the County Agreement. Contractor hereby adopts as its obligations hereunder such provisions of the County Agreement that require action or inaction by it as City’s Solid Waste franchisee. Contractor represents and warrants that it can and will perform its duties in connection with this Agreement in such a manner as to ensure that City does not breach the terms of the

County Agreement as a result of Contractor's actions or inaction. In the event City advises Contractor in writing that the County Agreement has been terminated, or that it no longer wishes to exercise its Flow Control Option in a manner consistent with the County Agreement, then Contractor's obligations pursuant to this paragraph shall be terminated.

## **SECTION 27. INDEMNIFICATION**

### **27.1 General**

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

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

or otherwise, asserting rights under the Dormant Commerce Clause or any other federal or state laws to provide Collection services in the City.

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

## 27.2 Hazardous Substances Indemnification

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

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

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

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

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

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

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

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

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

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

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

(F) With regard to any claim covered by this provision arising from the delivery of Solid Waste to the Orange County landfill system pursuant to the terms of the County Agreement, the indemnity provisions hereof are intended to be supplemental to any indemnification obligations owed to the City by the County of Orange pursuant to the County Agreement.

## **SECTION 28. CONTRACTOR’S BOOKS AND RECORDS; AUDITS**

### **28.1 Maintenance and Inspection of Records**

Contractor shall maintain all records relating to the services provided hereunder, including but not limited to Customer lists, billing records, accounts payable records, maps, AB 939 compliance records, records reflecting the number of refuse, recycling and Green Waste (if applicable) routes and route hours by service category (such as residential, multi-family, commercial, roll-off, and special services), records demonstrating facilities, equipment and personnel used to perform services, records reflecting the number of refuse, recycling and Green Waste (if applicable) Containers in service by frequency of Collection for each customer group (such as single family, multi-family, commercial, roll-off); records reflecting the number of roll-

off box pulls, and such other documents and materials which reasonably relate to Contractor's compliance with the provisions of this Agreement (the "Records"), for the full Term of this Agreement, and an additional period thereafter of not less than three (3) years, or any longer period required by law. City shall have the right, upon five (5) business days advance notice, to inspect the Records. Such Records shall be made available to City at Contractor's regular place of business, but in no event outside the County of Orange. Prior to destruction of records relating to the services provided pursuant to this Agreement, Contractor shall provide copies or originals of such records to City.

## 28.2 CERCLA Defense Records

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

## 28.3 Ongoing Compliance Review

City intends review Contractor's performance on an ongoing basis to ensure compliance with the terms and provisions of this Agreement, and it is City's intent that a designated portion of the Waste and Recycling Services Reimbursement, as more fully described in Section 11.4, will be used to fund City's costs associated with ensuring Contractor's ongoing compliance. At a minimum, City intends to have internal staff or outside consultants review Contractor's performance to ensure ongoing compliance with the terms hereof, including, but not limited to, the payment of required fees, performance of the services stated herein, implementation of programs required under the Agreement, Contractor's maintenance and upkeep of records, and compliance with all Applicable Laws. Contractor shall provide any and all information reasonably requested by City in connection with its efforts to ensure compliance with the terms hereof, regardless of whether such information is specifically otherwise called out herein as an item that Contractor is required to maintain and provide to City.

## 28.4 Audits

### 28.4.1 Examination of Services

From time to time, anticipated to occur as a result of reports and other submittals required by this Agreement, City may request Contractor to make available any or all of its records related to performance hereunder available to an independent auditor or examiner, to be selected by the City, for auditing and examination purposes (a "Discretionary Audit"). The first Discretionary Audit shall be performed in 2017 and shall be based on the Contractor's reports and records through calendar year 2016. The scope of the Discretionary Audit and auditor or examiner will be

determined by City and the scope may include, but is not limited to, compliance with terms of this Agreement, Customer service levels and Billing, fee payments, Gross Receipts, tonnage, and verification of diversion rates. Except as otherwise provided herein, City shall bear the cost of any Discretionary Audit. Should any Discretionary Audit reveal an underpayment of any Franchise Fee required pursuant to this Agreement, the amount of such underpayment shall become due and payable to City not later than fifteen (15) days after written notice of such underpayment is sent to Contractor by City, complete with any additional late charges as set forth herein. If a Discretionary Audit reveals inaccuracies or inconsistencies in more than five percent (5%) of all Customer accounts, either with Contractor's operations or billing systems, or an underpayment of Franchise Fees of more than three percent (3%), Contractor shall bear the entire cost of such Discretionary Audit.

#### 28.4.2 Route Audit

Contractor shall complete an audit at its expense of its Collection routes for all Customers at Residential and Commercial Premises at such times as may be requested by City; provided, however, that while City may request that such an audit occur at any time, it may not request such audits at Contractor's expense more than seven (7) times during the Term. The timing of such audits is at the City's discretion and may be required to be timed with the issuance of a request for proposals for a new agreement. The route audit, at minimum, shall consist of an independent physical observation by Person(s) other than the route driver or route supervisor of each Customer in the City. The route audit shall include, as a minimum, the following information for each account:

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

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

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

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

## **SECTION 29. TRANSITION OBLIGATIONS**

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

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

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

## **SECTION 30. GENERAL PROVISIONS**

### **30.1 Force Majeure**

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

### **30.2 Independent Contractor**

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

### **30.3 Pavement Damage**

Contractor shall be responsible for the cost of repair of any extraordinary damage to the public streets and streets, whether or not paved, located within the City resulting from providing the services required hereunder.

### **30.4 Property Damage**

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

30.5 Right of Entry

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

30.6 Law to Govern; Venue

The laws of the State of California shall govern this Agreement. In the event of litigation between the parties, venue in state trial courts shall lie exclusively in the County of Orange and venue in federal trial courts shall lie exclusively in the District of California in which City is located.

30.7 Amendment

This Agreement is intended to carry out City's obligations to comply with the provisions of AB 939 and AB 341, as implemented by regulations of CalRecycle, as they from time to time may be amended. In the event that, after the Effective Date of this Agreement, AB 939 or AB 341 is amended, or other state or federal laws or regulations are enacted and prevent or preclude compliance with one or more provisions of this Agreement, such provisions shall be modified or suspended as may be necessary to comply with such state or federal laws or regulations. Except as otherwise expressly stated herein, no other amendment of this Agreement shall be valid unless it is in writing and duly executed by the parties.

30.8 Notices

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

To City: City of Laguna Woods  
Attn: City Manager  
24264 El Toro Road  
Laguna Woods, CA 92637

To Contractor: Waste Management Collection and Recycling, Inc.  
Attn: President  
9081 Tujunga Avenue  
Sun Valley, CA 91352

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

### 30.9 Savings Clause

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

### 30.10 Exhibits Incorporated

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

### 30.11 Joint Drafting

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

### 30.12 Attorneys' Fees and Litigation Costs

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

### 30.13 City's Authorized Agent

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

### 30.14 Integrated Agreement

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

### 30.15 Section Headings

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

30.16 Compliance with Law

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

30.17 No Third Party Beneficiaries

Except as otherwise provided for in this Agreement, nothing in this Agreement, whether expressed or implied, is intended to confer any rights on any persons other than the parties to the Agreement and their representatives, successors, and permitted assigns.

[SIGNATURES ON FOLLOWING PAGE]

“City”

CITY OF LAGUNA WOODS

Dated: \_\_\_\_\_

By: \_\_\_\_\_

Cynthia S. Conners, Mayor

ATTEST:

By: \_\_\_\_\_

Yolie Trippy, Deputy City Clerk

APPROVED AS TO FORM:

By: \_\_\_\_\_

David B. Cosgrove, City Attorney

“Contractor”

WASTE MANAGEMENT COLLECTION  
AND RECYCLING, INC.

Dated: \_\_\_\_\_

By: \_\_\_\_\_

Larry Metter, President

Dated: \_\_\_\_\_

By: \_\_\_\_\_

Doug Corcoran, Director of Operations  
and Public Sector Solutions

**EXHIBIT A**

**MAXIMUM RATE SCHEDULE FOR SOLID WASTE HANDLING SERVICES**

**Residential Cart Service**

Service Category	Rate Per Month
Standard Rate – 32 Gallon (or 64 Gallon or 96 Gallon if requested) Cart (1 refuse and 1 recycling; once weekly pickup)	\$9.20
Extra Pickup of 32 Gallon (or 64 Gallon or 96 Gallon if requested) Cart Within Same Service Week	\$3.72
Additional 32 Gallon (or 64 Gallon or 96 Gallon if requested) Refuse Cart	\$6.04
Additional 32 Gallon (or 64 Gallon or 96 Gallon if requested) Recycling Cart (over 2 - <i>i.e.</i> , no charge for first additional Cart)	\$1.30
Walk-Out Service for Eligible Customers	\$0.00
Walk-Out Service for Other Customers	\$5.00
Additional Requested Bulky Item Collection (outside of the scheduled Monthly Bulky Item Collection Service)	\$28.33

Monthly Bin Rates							
Container Size/Type	Pickups per week						
	1	2	3	4	5	6	7
2 yard refuse bin*	\$46.11	\$70.32	\$141.27	\$188.36	\$221.33	\$254.28	\$298.98
3 yard refuse bin*	\$51.58	\$78.65	\$158.03	\$210.69	\$247.57	\$284.43	\$334.43
4 yard refuse bin	\$70.92	\$103.16	\$233.58	\$309.22	\$384.88	\$419.10	\$469.10
2 yard recycling bin	\$21.14	\$42.27	\$63.40	\$84.53	\$105.66	\$126.79	\$176.79
3 yard recycling bin	\$21.14	\$42.27	\$63.40	\$84.53	\$105.66	\$126.79	\$176.79
Other							
Locking Bin Service	\$6.37	\$7.01	\$7.33	\$7.65	\$7.97	\$8.29	\$9.56

Extra Refuse Bin Pickups (standard and compactor)	\$38.69/pickup
Extra Recycling Bin Pickups (standard and compactor)	\$15.85/pickup
Extra Bin Cleanings beyond two per year (requested by City or Customer)	\$40.00/cleaning
Extra Bin Exchange beyond two per year (requested by City or Customer)	\$50.00/exchange

\* Equestrian Waste Bins rates subject to Section 8.6.8.

**EXHIBIT A**

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

**Commercial Services**

<b>Service Category</b>	<b>Rate</b>
Restart Fee	\$26.32
Bulky Items	\$28.33/item
Indoor Recycling Containers	\$0.00

<b>Monthly Bin and Cart Rates</b>							
<b>Container Size/Type</b>	<b>Pickups per week</b>						
	<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>	<b>5</b>	<b>6</b>	<b>7</b>
2 yard refuse bin	\$86.43	\$137.12	\$259.69	\$345.58	\$432.01	\$518.43	\$563.13
3 yard refuse bin	\$96.67	\$153.38	\$290.48	\$386.56	\$483.23	\$579.90	\$629.90
4 yard refuse bin	\$151.03	\$209.87	\$428.69	\$567.49	\$706.35	\$845.17	\$984.69
2 yard recycling bin	\$23.73	\$47.44	\$71.16	\$94.88	\$118.60	\$142.32	\$192.32
3 yard recycling bin	\$23.73	\$47.44	\$71.16	\$94.88	\$118.60	\$142.32	\$192.32
32, 64, or 96 gallon refuse cart	\$51.51	\$71.75	\$88.50	\$106.57	\$124.69	\$142.81	\$187.81
32, 64, or 96 gallon recycling cart	\$12.64	\$22.19	\$21.68	\$26.16	\$30.60	\$35.05	\$57.34
<b>Other</b>							
Locking Bin Service	\$6.37	\$7.01	\$7.33	\$7.65	\$7.97	\$8.29	\$9.56

<b>Service Category</b>	<b>Rate</b>
Extra Refuse Bin Pickups (standard and compactor)	\$38.69/pickup
Extra Recycling Bin Pickups (standard and compactor)	\$15.85/pickup
Extra Bin Cleanings beyond two per year (requested by City or Customer)	\$40.00/cleaning
Extra Bin Exchange beyond two per year (requested by City or Customer)	\$50.00/exchange

**Other Services**

**Temporary Services**

<b>Service Category</b>	<b>Rate</b>
Temporary 3-Yard Bin Service (delivery, dump, seven day rental)	\$89.47/dump
Temporary Bin Rental per day beyond 7 without a pull	\$7.89/day

**EXHIBIT A**

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

**Other Services (continued)**

**Rolloff Box Services**

Service Category	Rate
Pull Rate (includes 6 tons processing/disposal, delivery, and 7-day rental)	
- Standard Rolloff Box	\$453.48
- Low Boy Rolloff Box	\$453.48
- Compactor (all sizes)	\$528.48
Per Ton Over 6 Tons	\$61.05/ton
Rolloff Box Rental per day beyond 7 without a pull	\$9.47/day
Rolloff Box Trip Charge (dry run, relocation)	\$78.95/trip

**Organics Services**

Monthly Bin and Cart Rates							
Container Size/Type	Pickups per week						
	1	2	3	4	5	6	7
3 yard organics bin	\$69.96	\$106.68	\$214.32	\$285.75	\$335.76	\$385.75	\$453.56
32, 64, or 96 gallon organics cart	\$25.65	\$39.11	\$78.58	\$104.77	\$123.11	\$141.44	\$166.31
Other							
Locking Bin Service	\$6.37	\$7.01	\$7.33	\$7.65	\$7.97	\$8.29	\$9.56

Service Category	Rate
Pull Rate (includes 6 tons processing/disposal, delivery, and 7-day rental)	
- Compactor (all sizes)	See Rolloff Box Services

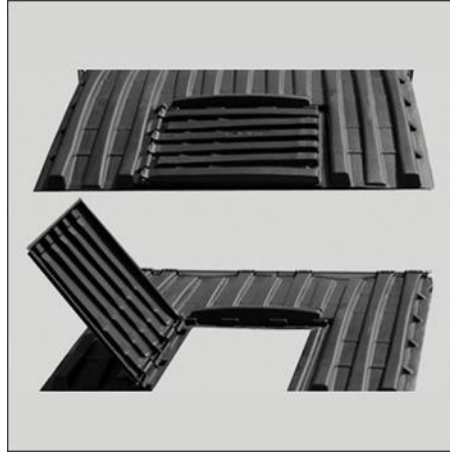
## EXHIBIT B

### CONTAINER/BIN SPECIFICATIONS

- Contractor's Container specifications shall be consistent with the specifications submitted by Contractor to City for the City's Request for Proposal for Solid Waste Handling Services. All Containers utilized by Contractor shall meet the standards of the industry and shall perform to the reasonable satisfaction of the City Manager in order to be utilized in City. Container sizes specified within this Agreement may vary by manufacturer type and specifications up to 10% more or less in volume than that identified.
- Each Refuse and Recycling Bin and Cart utilized by Contractor shall be labeled in English, Spanish, Korean, Mandarin Chinese and Tagalog and with graphics so as to: (1) explain/depict the items for which it is designated to Collect, and (2) identify the name of Contractor and Contractor's phone number for service related issues, including complaints. In addition, each such Bin and Cart shall include information, in a format acceptable to City (such as hot stamping or stickers), regarding Contractor's Bulky Item service, and a phone number that Customers can call to access such service. All such labeling shall be approved by the City Manager prior to use by Contractor.
- The body of Recycling Bins shall be a uniform blue color and the body and lids of Recycling Carts shall be a uniform blue color. Any alternative color schemes for Recycling Bins and Carts, color schemes for the lids of Recycling Bins, and color schemes for Refuse and Organics Bins and Carts shall be subject to the prior approval of the City Manager.
- Unless otherwise specified in the Agreement, any Cart distributed by Contractor in City after the Effective Date shall be newly manufactured and have never previously been used for the Collection of Solid Waste; excepting that Carts which have been refurbished such that they are "like new" may be used so long as their condition is satisfactory as determined by the City Manager.
- All Bins and Carts distributed pursuant to this Agreement shall have an identifying serial number hot stamped into the Bin or Cart body, or otherwise have an individual identification demarcation affixed to the Bin or Cart in a manner acceptable to the City Manager. Contractor shall keep current, and provide to City at the times set forth in this Agreement, a list of each address to which a Bin or Cart has been distributed and the serial number (or other acceptable identification) of all Bins and Carts at each such address.
- All Bins shall be equipped with "Single Wall Impact Plastic REC Lid, Lightweight" pursuant to Contractor's proposal and split vertically, unless otherwise requested by City or Customer. Replacement of Bin lids with any other lid type described in Contractor's Proposal shall be made at no cost to the City or Customer and completed within sixty (60) days of request. All Bins shall be equipped with low-profile casters not to exceed three (3) inches in height. Upon request of any Customer, Contractor shall provide Bins with lids that close securely and which are capable of being locked at rates that do not exceed those set forth in Exhibit A.
- All Carts shall have lightweight lids pursuant to Contractor's Proposal.

# WASTE MANAGEMENT

## 3-YARD BIN OPTIONAL LIGHTWEIGHT LIDS

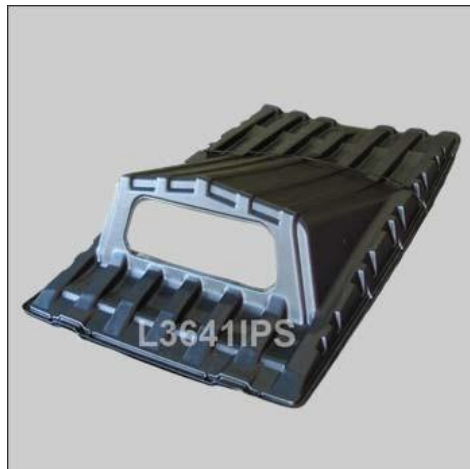


*Ever-dry Water Resistant Lid, Light-Loading Door*



\* Standard on all Bins;  
vertically split

*Single Wall Impact Plastic REC Lid - Lightweight*



*Plastic Lid, Impact Front Loader with Chute for Recycling*

**CITY OF LAGUNA WOODS**  
**SOLID WASTE HANDLING SERVICES RFP**  
**PROPOSED RATES COMPARISON TO EXISTING RATES - COMMON SERVICES**

		Existing Rates	Proposed Rates		
		Ware Disposal, Inc.	CR&R, Inc.	Ware Disposal, Inc.	Waste Management
<b>RESIDENTIAL - CART SERVICE (all rates are monthly; existing rates calculated for comparability, not all sizes available under existing franchise)</b>					
1	Standard Rate - 32 gallon (or 64 gallon or 96 gallon if requested) cart (1 refuse and 1 recycling; once weekly pickup)	9.23	8.11	6.01	9.20
2	Extra Pickup of 32 gallon (or 64 gallon or 96 gallon if requested) refuse cart within same service week	5.74	3.24	2.00	3.72
3	Additional 32 gallon (or 64 gallon or 96 gallon if requested) refuse cart (over 2 for existing franchise - i.e., no charge for first additional cart)	6.03	5.74	2.00	6.04
4	Additional 32 gallon (or 64 gallon or 96 gallon if requested) recycling cart (over 2 - i.e., no charge for first additional cart)	1.17	0.00	2.00	1.30
<b>RESIDENTIAL - THREE-YARD REFUSE BIN (all rates are monthly)</b>					
5	One weekly pickup	52.63	65.26	57.63	51.58
6	Two weekly pickups	80.26	109.15	83.37	78.65
7	Three weekly pickups	161.25	219.30	105.00	158.03
8	Four weekly pickups	214.99	292.39	141.95	210.69
9	Five weekly pickups	252.62	343.56	175.90	247.57
10	Six weekly pickups	290.23	394.71	209.88	284.43
<b>RESIDENTIAL - FOUR-YARD REFUSE BIN (all rates are monthly)</b>					
11	One weekly pickup	72.37	89.74	78.37	70.92
12	Two weekly pickups	105.27	130.53	121.12	103.16
13	Three weekly pickups	238.35	295.55	159.70	233.58
14	Four weekly pickups	315.53	391.26	221.20	309.22
15	Five weekly pickups	392.73	486.99	266.00	384.88
16	Six weekly pickups	427.65	530.29	310.00	419.10
<b>RESIDENTIAL - THREE-YARD RECYCLING BIN (all rates are monthly)</b>					
17	One weekly pickup	21.57	38.83	25.00	21.14
18	Two weekly pickups	43.13	43.13	35.00	42.27
19	Three weekly pickups	64.69	64.69	45.00	63.40
20	Four weekly pickups	86.25	86.25	55.00	84.53
21	Five weekly pickups	107.82	107.82	65.00	105.66
22	Six weekly pickups	129.38	129.38	75.00	126.79
<b>RESIDENTIAL - OTHER SERVICES</b>					
23	Extra refuse bin pickups (standard and compactor)	79.81/pickup	79.81/pickup	79.00/pickup	38.69/pickup
24	Extra recycling bin pickups (standard and compactor)	45.00/pickup	71.83/pickup	51.00/pickup	15.85/pickup
25	Extra bin exchange beyond two per year (requested by City or customer)	34.22/exchange	50.00/exchange	25.00/exchange	50.00/exchange

**CITY OF LAGUNA WOODS**  
**SOLID WASTE HANDLING SERVICES RFP**  
**PROPOSED RATES COMPARISON TO EXISTING RATES - COMMON SERVICES**

		Existing Rates	Proposed Rates		
		Ware Disposal, Inc.	CR&R, Inc.	Ware Disposal, Inc.	Waste Management
<b>COMMERCIAL - THREE-YARD REFUSE BIN (all rates are monthly)</b>					
26	One weekly pickup	58.35	67.69	65.95	96.67
27	Two weekly pickups	116.72	135.40	106.00	153.38
28	Three weekly pickups	175.33	203.38	125.00	290.48
29	Four weekly pickups	233.32	270.65	155.00	386.56
30	Five weekly pickups	291.67	338.34	185.00	483.23
31	Six weekly pickups	350.02	406.02	243.00	579.90
<b>COMMERCIAL - FOUR-YARD REFUSE BIN (all rates are monthly)</b>					
32	One weekly pickup	91.16	113.04	71.00	151.03
33	Two weekly pickups	174.96	216.95	122.48	209.87
34	Three weekly pickups	258.75	320.85	151.53	428.69
35	Four weekly pickups	342.53	424.74	185.00	567.49
36	Five weekly pickups	426.34	528.66	209.00	706.35
37	Six weekly pickups	510.13	632.56	249.00	845.17
<b>COMMERCIAL - THREE-YARD RECYCLING BIN (all rates are monthly)</b>					
38	One weekly pickup	21.57	38.83	25.00	23.73
39	Two weekly pickups	43.13	43.13	35.00	47.44
40	Three weekly pickups	64.69	64.69	45.00	71.16
41	Four weekly pickups	86.25	86.25	55.00	94.88
42	Five weekly pickups	107.82	107.82	65.00	118.60
43	Six weekly pickups	129.38	129.38	75.00	142.32
<b>COMMERCIAL - OTHER SERVICES</b>					
44	Extra refuse bin pickups (standard and compactor)	97.54/pickup	79.81/pickup	79.00/pickup	38.69/pickup
45	Extra recycling bin pickups (standard and compactor)	45.00/pickup	71.83/pickup	51.00/pickup	15.85/pickup
46	Extra bin exchange beyond two per year (requested by City or customer)	34.24/exchange	50.00/exchange	25.00/exchange	50.00/exchange
<b>TEMPORARY SERVICES</b>					
47	Temporary 3-Yard Bin Service (delivery, dump, 7 day rental)	92.84/dump	111.41/dump	89.80/dump	89.47/dump
<b>ROLLOFF BOX SERVICES</b>					
48	Pull Rate (includes 6 tons processing/disposal, delivery, and 7-day rental)				
48A	Standard Rolloff Box	357.00-453.40	446.25	365.00	453.48
48B	Low Boy Rolloff Box	357.00-453.40	446.25	389.00	453.48
48C	Compactor (all sizes)	357.00	566.75	419.00	528.48
49	Per Ton Over 6 Tons	68.29	63.00	65.00	61.05

**8.1**  
**CITY INVESTMENT POLICY**

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# City of Laguna Woods

## Agenda Report

**TO:** Honorable Mayor and City Councilmembers

**FROM:** Christopher Macon, City Manager

**FOR:** November 18, 2015 Regular Meeting

**SUBJECT:** City Investment Policy

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### **Recommendation**

1. Approve a resolution entitled:

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LAGUNA WOODS, CALIFORNIA, REVIEWING AND ADOPTING AN ANNUAL STATEMENT OF THE INVESTMENT POLICY, ADOPTING A NEW AND MODIFIED INVESTMENT POLICY, AND RENEWING ITS DELEGATION OF INVESTMENT AUTHORITY PURSUANT TO GOVERNMENT CODE SECTION 53607 TO THE CITY TREASURER

AND

2. Dissolve the Ad Hoc Investment Policy Update Committee that consists of Mayor Pro Tem Hatch and Councilmember Horne.

### **Background**

Local government investment policies and activities are subject to standards and limitations set forth in California Government Code, including Section 53601 et seq., which describes permissible investment types and maximum investments.

Government Code Section 53607 requires that the City Council review the City's investment policy, as it relates to any delegation of investment authority, at least annually. Separately, Government Code Section 53646 speaks to the advisability

of regular investment policy reviews. The existing investment policy (Attachment A) was last reviewed and approved by the City Council on December 17, 2015.

At the adjourned regular meeting on June 24, 2015, the City Council appointed Mayor Pro Tem Hatch and Councilmember Horne to an Ad Hoc Investment Policy Update Committee to prepare recommendations for consideration by the City Council regarding potential updates to the City's investment policy that would ensure adequate safety and liquidity of assets, while maximizing yield.

### **Discussion**

Today's meeting is an opportunity for City Council discussion and direction, as well as public testimony, regarding the City's investment policy. The Ad Hoc Committee, City Treasurer, and staff are recommending adoption of a significantly modified, but still conservative, investment policy (Attachment B).

The Ad Hoc Investment Policy Update Committee has reviewed the City's existing investment policy, met with representatives from the Investment Trust of California (CalTrust) and the Orange County Investment Pool to explore local government investment pool options, and worked with the City Treasurer and staff to draft a proposed investment policy for consideration by the City Council. Recognizing that the City is not most effectively leveraging its investment potential, and that the City has the potential to generate additional revenue to support public programs, projects, and services at relatively little risk, the proposed investment policy would expand authorized investment types, modify maximum investments and maturities, and make a variety of other changes based, in part, on guidance provided by the State and the California Municipal Treasurer's Association.

Under the existing investment policy, the City Treasurer is permitted to hold the City's financial assets in either Federal Deposit Insurance Corporation (FDIC) insured accounts, the State's Local Agency Investment Pool (LAIF), or overnight government securities. The proposed investment policy would authorize all of the following, subject to a variety of limitations and standards described therein:

- FDIC Insured Accounts
- Bankers' Acceptances
- Commercial Paper
- Local Government Investment Pools (including, but not limited to, LAIF)
- Money Market Mutual Funds

- Non-Negotiable Certificates of Deposit
- Passbook Savings Demand Deposits
- Repurchase Agreements
- United States Treasury Obligations
- United States Agency Obligations
- State of California and Others States-issued Obligations
- California Local Government-issued Municipal Obligations
- Negotiable Certificates of Deposit

In proposing authorized investment types, the Ad Hoc Committee, City Treasurer, and staff considered factors such as potential risk and tolerances, performance expectations, available cash balances, and future liquidity needs. The result is a conservative mix with maximum investments and maturities set at or below those which are set forth in State law. Each investment type is subject to rating and other requirements described in the proposed investment policy.

When compared to peer cities, the proposed investment policy is generally more conservative, which is appropriate when considering variances between cities in cash balances available to invest and short-term liquidity requirements.

Having completed its charge and recommended both a new investment policy and a new structure for City Council oversight of investment activities (see Section 2.2.04 of the proposed investment policy), it is recommended that the City Council dissolve the Ad Hoc Investment Policy Update Committee. It is anticipated that the City Council would consider making appointments to a new standing Investment Policy Review Committee at the regular meeting on December 18, 2015.

### **Fiscal Impact**

Funds to support this project are included in the City's budget.

While the fees and other charges necessary to implement the proposed investment policy (e.g., broker/dealer fees) are unknown and would change over time, they are expected to be nominal and offset by the overall portfolio's investment return.

Report Prepared With: Margaret Cady, CPA, Administrative Services Director/City Treasurer

Attachments: A – Existing Investment Policy  
B – Proposed Resolution  
Exhibit A – Proposed Investment Policy

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**CITY OF LAGUNA WOODS**  
**ADMINISTRATIVE POLICY 3.2**  
**CITY INVESTMENT POLICY**

3.2.01 PURPOSE

To provide an investment policy in keeping with the goals and objectives of the City of Laguna Woods, in conformance with California Government Code Sections 5921 and 53600 et. seq.

3.2.02 INVESTMENT POLICY

It shall be the policy of the City of Laguna Woods to invest funds in a manner which will provide the highest investment return possible consistent with maximum security while meeting daily cash flow demands and conforming to all other statutes governing the investment of City funds.

3.2.03 SCOPE

This investment policy shall apply without exception to any and all financial assets and funds of the City of Laguna Woods.

3.2.04 PRUDENCE

The standard of prudence to be used by investment officials shall be the “prudent investor” standard (CGC 53600.3):

*When investing, reinvesting, purchasing, acquiring, exchanging, selling, or managing public funds, a trustee shall act with care, skill, prudence and diligence under circumstances then prevailing, including, but not limited to, the general economic conditions and the anticipated needs of the agency, that a prudent person acting in a like capacity and familiarity with those matters would use in the conduct of funds of a like character and with like aims, to safeguard the principal and maintain the liquidity needs of the agency.*

Investment officers acting in accordance with the investment policy and exercising due diligence shall not be held personally responsible for an individual security’s credit risk or market price changes, provided that the reporting requirements of this policy are made in a timely manner and appropriate action is taken to control adverse developments.

3.2.05 OBJECTIVES

When investing, reinvesting, purchasing, acquiring, exchanging, selling and managing public funds, the primary objectives of investment activities, in absolute priority order, shall be:

- A. Safety:** Safety of principal is the foremost objective of the investment program. Investments shall be undertaken in a manner that seeks to ensure the preservation of capital in the overall portfolio.
- B. Liquidity:** The investment portfolio will remain sufficiently liquid to enable the City to meet all operating requirements that might reasonably be anticipated.
- C. Yield:** The investment portfolio shall be designed with the objective of attaining the highest investment return consistent with safety and liquidity objectives. Yield should become a consideration only after the basic requirements of safety and liquidity have been met.

3.2.06 DELEGATION OF AUTHORITY

Management responsibility for the investment program is hereby delegated to the:

City Manager  
City Treasurer

No person may engage in an investment transaction except as provided under the terms of this policy

3.2.07 ETHICS AND CONFLICTS OF INTEREST

Officers and employees involved in the investment process shall refrain from personal business activity that could conflict with the proper execution of the investment program, or which could impair their ability to make impartial investment decisions.

3.2.08 AUTHORIZED INVESTMENTS

- A. FDIC Insured Accounts:** Monies required for immediate cash flow needs shall be deposited in an FDIC insured checking account at the Bank of America or similar institution authorized by the City Council.
- B. Local Agency Investment Fund (LAIF):** Monies not required for immediate cash flow needs shall be deposited in LAIF, a special fund in the California State Treasury.
- C. Overnight Government Securities:** Monies not required for immediate cash flow needs may be invested by the City's primary bank (Bank of America or other

similar institution authorized by the City Council) in overnight securities of U.S. Treasuries, Agencies and Instrumentalities.

- D. *Prohibited Investments.* Under the provisions of CGC 53601.6 and 53631.5, the City of Laguna Woods shall not invest any funds covered by this Investment Policy in inverse floaters, range notes, interest-only strips derived from mortgage pools or any investment that may result in a zero interest accrual if held to maturity.

### 3.2.09 PUBLIC TRUST

All participants in the investment process shall act as custodians of the public trust. Investment officials shall recognize that the investment portfolio is subject to public review and evaluation. The overall program shall be designed and managed with a degree of professionalism that is worthy of the public trust. In a diversified portfolio it must be recognized that occasional measurement losses are inevitable, and must be considered within the context of the overall portfolio's investment return, provided that adequate diversification has been implemented.

### 3.2.10 DIVERSIFICATION

The City of Laguna Woods will diversify its investments in keeping with the objectives enunciated in this Statement of Investment Policy.

### 3.2.11 REPORTING

- A. The City Treasurer shall prepare and submit an investment report to the City Council on a quarterly basis.
- B. The report shall include a complete description of the portfolio, the type of investments, the issuers, maturity dates, par values and the current market values of each component of the portfolio, including funds managed for City of Laguna Woods by third party contracted managers. The report will include the source of the portfolio valuation.
- C. For funds placed in LAIF, U.S. government securities and/or FDIC insured accounts, the foregoing report elements may be replaced by copies of the latest statements from such institutions.
- D. The report shall include a certification that:

1. All investment actions executed since the last report have been made in full compliance with the Investment Policy and that,
2. The City of Laguna Woods will meet all expenditure obligations which might reasonably be anticipated for the next six months.

3.2.12 INVESTMENT POLICY ADOPTION

The Investment Policy and modifications, if any, shall be adopted at least annually by resolution of the City Council at a public meeting.

EXISTING

**RESOLUTION NO. 15-XX**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LAGUNA WOODS, CALIFORNIA, REVIEWING AND ADOPTING AN ANNUAL STATEMENT OF THE INVESTMENT POLICY, ADOPTING A NEW AND MODIFIED INVESTMENT POLICY, AND RENEWING ITS DELEGATION OF INVESTMENT AUTHORITY PURSUANT TO GOVERNMENT CODE SECTION 53607 TO THE CITY TREASURER

**WHEREAS**, the legislature of the State of California has declared that the deposit and investment of public funds by local officials and agencies is an issue of statewide concern (Government Code sections 53600.6 and 53630.1); and

**WHEREAS**, the City Council is able to invest surplus monies not required for the immediate necessities of the City in accordance with Government Code sections 5921 and 53601 et seq.; and

**WHEREAS**, the City's investment policy is contained in Administrative Policy 2.2 and was last adopted by the City Council on December 17, 2014; and

**WHEREAS**, the City Council is required to review the City's investment policy, annually, and consider any changes thereto at a public meeting; and

**WHEREAS**, on June 24, 2015, the City Council appointed Mayor Pro Tem Hatch and Councilmember Horne to an Ad Hoc Investment Policy Update Committee to prepare recommendations for consideration by the City Council regarding potential updates to the City's investment policy that would ensure adequate safety and liquidity of assets, while maximizing yield; and

**WHEREAS**, the Ad Hoc Investment Policy Update Committee has worked with the City Treasurer and staff to prepare updates to the City's investment policy for consideration by the City Council (incorporated into the administrative policy attached hereto as Exhibit A), including an expansion of authorized investments, modification of maximum investments and maturities, and other changes to ensure adequate safety and liquidity of assets, while maximizing yield; and

**WHEREAS**, Government Code Section 53607 provides that the authority of City Council to invest or to reinvest City funds, or to sell or exchange securities so purchased, may be delegated for a one-year period by the City Council to the City Treasurer, who shall thereafter assume full responsibility for those transactions

until the delegation of authority is revoked or expires. Subject to review, the City Council may renew the delegation of authority annually.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF LAGUNA WOODS, DOES HEREBY RESOLVE, DECLARE, DETERMINE AND ORDER AS FOLLOWS:

**SECTION 1.** That the administrative policy attached hereto as Exhibit A is approved and is a statement of the City’s investment policy. The City Council receives and files said statement in accordance with the City’s investment policy and applicable Government Code and Laguna Woods Municipal Code provisions. The administrative policy attached hereto as Exhibit A replaces and supersedes all previous City investment policies.

**SECTION 2.** After independent review and consideration, the City Council renews its delegation of investment authority to the City Treasurer, as described in the administrative policy attached hereto as Exhibit A, in accordance with applicable Government Code and Laguna Woods Municipal Code provisions.

**SECTION 3.** The Deputy City Clerk shall certify to the adoption of this resolution.

PASSED, APPROVED AND ADOPTED on this XX day of XX 2015.

\_\_\_\_\_  
CYNTHIA S. CONNERS, Mayor

ATTEST:

\_\_\_\_\_  
YOLIE TRIPPY, Deputy City Clerk

STATE OF CALIFORNIA     )  
COUNTY OF ORANGE     ) ss.  
CITY OF LAGUNA WOODS   )

I, YOLIE TRIPPY, Deputy City Clerk of the City of Laguna Woods, do HEREBY CERTIFY that the foregoing **Resolution No. 15-XX** was duly adopted by the City Council of the City of Laguna Woods at a regular meeting thereof, held on the XX day of XX 2015, by the following vote:

AYES:           COUNCILMEMBERS:  
NOES:           COUNCILMEMBERS:  
ABSENT:        COUNCILMEMBERS:

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YOLIE TRIPPY, Deputy City Clerk

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**CITY OF LAGUNA WOODS  
ADMINISTRATIVE POLICY 2.2**

**INVESTMENT OF FINANCIAL ASSETS**

**2.2.01. Statement of Purpose.**

This Administrative Policy is intended to assist the City of Laguna Woods with the investment of the City’s financial assets in a manner that ensures adequate safety and liquidity, while maximizing yield (return) and complying with the requirements of California Government Code sections 5921 and 53600 et seq.

**2.2.02. Scope.**

This Administrative Policy generally applies to all financial assets of the City. Such funds are accounted for, or disclosed, in annual audited financial statements and include the General Fund, Special Revenue Funds, and the Capital Projects Fund. Funds invested separately with independent fiduciaries, including funds held and managed by the California Public Employees’ Retirement System (CalPERS) for the purpose of funding employee retirement obligations and other post-employment benefits (OPEB) are exempt from this Administrative Policy.

**2.2.03. Objectives.**

The objectives of the City’s investment activities, in priority order, shall be:

1. Safety – Safety of principal shall be the foremost objective. Investments shall be undertaken in a manner that seeks to ensure the preservation of capital in the overall investment portfolio and the mitigation of credit risk and interest rate risk. Diversification is required with the goal of ensuring that potential losses on individual investments do not exceed the overall income generated from the balance of the portfolio. In a diversified portfolio, it is acknowledged and understood that occasional measurement losses may occur. Such losses shall be considered within the overall portfolio’s investment return.
2. Liquidity – The investment portfolio shall remain sufficiently liquid (i.e., capable of being converted to cash quickly) in order to enable the City to meet all reasonably anticipated cash demands and operational requirements and to maintain compliance with all applicable indenture agreements. Since unusual or unanticipated cash demands and operational requirements may occur from

time-to-time, the portfolio shall primarily consist of investments in securities with active secondary and resale markets.

3. Yield (Return) – The investment portfolio shall be designed in a manner that seeks to attain the highest rate of return, consistent with established safety and liquidity objectives. While it is acknowledged and understood that occasional measurement losses may occur, the overall portfolio should generally earn at least market interest rates (market-average rates of return throughout budgetary and economic cycles for similar investments).

#### **2.2.04. Delegation of Authority.**

##### *City Treasurer*

No person other than the City Treasurer or Acting City Treasurer (hereafter referred to jointly as the “City Treasurer”) shall engage in an investment transaction using the City’s financial assets. The City Treasurer shall additionally be responsible for all transactions undertaken and shall establish and maintain a system of internal controls to regulate all investing activities.

In accordance with Government Code Section 53607, the City Council delegates investment authority for a one-year period to the City Treasurer. Such delegation of authority is subject to annual review and renewal by the City Council, as well as revocation at the City Council’s discretion. Adoption of this Administrative Policy shall constitute renewal of such delegation for an additional one-year period.

Pursuant to Laguna Woods Municipal Code Section 2.10.010, the City Treasurer is appointed by, and reports to, the City Manager. The City Manager may serve as, or appoint, an Acting City Treasurer at any time during the absence of a permanent City Treasurer. During his or her appointment, the Acting City Treasurer shall have all of the powers and duties of the City Treasurer.

The City Treasurer and City Manager (with respect to his or her role appointing and supervising the City Treasurer, and participating in investment decisions) shall be relieved of personal responsibility for an individual investment’s performance or losses, market price changes, and the performance of or losses incurred by the overall portfolio provided that (1) actions were undertaken in accordance with this Administrative Policy and applicable federal and state law, (2) significant deviations from expectations were reported to the City Council in a timely manner, and (3) appropriate action was taken to mitigate future adverse developments.

*Investment Policy Review Committee of the City Council*

The City Council shall appoint two of its members to serve on an Investment Policy Review Committee for calendar year terms commencing on January 1 of each year. The Investment Policy Review Committee shall be responsible for conducting at least biannual reviews of the adequacy and effectiveness of this Administrative Policy and preparing related recommendations for City Council consideration.

The Investment Policy Review Committee shall be considered a standing committee, subject to all applicable provisions of the Ralph M. Brown Act.

**2.2.05. Public Trust.**

The City Council, City Manager, City Treasurer, and all individuals authorized to participate in investment decisions on behalf of the City shall act as custodians of the public trust and recognize that the investment portfolio is subject to public review and evaluation. The City's overall approach to investment shall be designed and managed with a degree of professionalism that is worthy of the public trust.

**2.2.06. Prudence.**

The City Council, City Manager, City Treasurer, and all individuals authorized to participate in investment decisions on behalf of the City, are considered to be trustees and, therefore, fiduciaries subject to the prudent investor standard. The prudent investor standard is summarized in Government Code Section 53600.3, as follows:

*All governing bodies of local agencies or persons authorized to make investment decisions on behalf of those local agencies investing public funds pursuant to this chapter are trustees and therefore fiduciaries subject to the prudent investor standard. When investing, reinvesting, purchasing, acquiring, exchanging, selling, or managing public funds, a trustee shall act with care, skill, prudence, and diligence under the circumstances then prevailing, including, but not limited to, the general economic conditions and the anticipated needs of the agency, that a prudent person acting in a like capacity and familiarity with those matters would use in the conduct of funds of a like character and with like aims, to safeguard the principal and maintain the liquidity needs of the agency. Within the limitations of this section and considering individual investments as part of an overall strategy, investments may be acquired as authorized by law.*

**2.2.07. Ethics and Conflicts of Interest.**

As set forth in the City’s Conflict of Interest Policy, and as otherwise required by the Political Reform Act and Fair Political Practices Commission, public officials who manage public investments are required to file economic interest disclosures.

In addition to federal, state and local statutes relating to conflicts of interest, the City Council, City Manager, City Treasurer, and all individuals authorized to participate in investment decisions on behalf of the City shall refrain from personal business association or activity that conflicts with proper execution of this Administrative Policy, or which could impair their ability to make impartial investment decisions.

**2.2.08. Internal Controls and Routine External Review.**

The City Treasurer shall develop, implement, and maintain a system of internal controls designed to ensure the effectiveness and efficiency of investment activities, compliance with applicable laws and regulations, and the reliability of financial reporting. Such internal controls shall seek to prevent the loss of public funds due to fraud, error, misrepresentation, and unanticipated market changes.

As a part of their annual review of internal controls, the City’s independent, external auditors shall review internal controls related to investment activities.

**2.2.09. Authorized Financial Dealers, Depositories, and Institutions.**

In accordance with Government Code Section 53601.5, investments shall either be purchased (1) directly from the issuer, (2) from an institution licensed by the State of California as a Broker-Dealer, as defined in Corporations Code Section 25004, provided that the institution is a primary or regional dealer qualified under federal Securities and Exchange Commission Rule 15C3-1 (Uniform Net Capitol Rule), (3) from a member of a federally regulated securities exchange, (4) from a national or state-chartered bank, from a savings association or federal association, as defined by Financial Code Section 5102, or (5) from a brokerage firm designated as a primary government dealer by the Federal Reserve bank. In addition, investments shall only be purchased from entities or deposits made in qualified public depositories, as established by State law, with a physical presence in California and at least five years’ experience providing similar services to other California municipalities.

The selection of financial dealers, depositories, and institutions shall follow a periodic competitive procurement process (e.g., requests for proposals or requests

for qualifications) and be subject to ultimate approval of the City Council or City Manager in accordance with established purchasing regulations and policies. The nature of the competitive procurement process, frequency thereof, and submittals required, shall be designed and determined by the City Treasurer.

On an annual basis, the City Treasurer shall send a copy of the current version of this Administrative Policy to all financial dealers, depositories, and institutions approved to do business with the City. Receipt of this Administrative Policy shall be considered confirmation that the parties to whom they were distributed understand the City's authorized investment types and requirements thereof.

### **2.2.10. Authorized Investments.**

In accordance with the requirements set forth in this Administrative Policy and in California Government Code sections 53601, 53601.6, 53601.8, 53635, 53635.2, 53638, and 53684, the following types of investment are authorized:

A. Monies required to meet immediate cash flow needs:

- *Federal Deposit Insurance Corporation (FDIC) Insured Accounts*  
Fully insured under \$250,000 or collateralized

B. Monies not required to meet immediate cash flow needs, but which can be reasonably anticipated to be required over the following 12 months:

- *Bankers' Acceptances*  
Minimum Standard & Poor's Rating: A1, Minimum Moody's Rating: P1
- *Commercial Paper*  
Minimum Standard & Poor's Rating: A1, Minimum Moody's Rating: P1
- *Local Government Investment Pools*
- *Money Market Mutual Funds*  
Minimum Standard & Poor's Rating: AAA, Minimum Moody's Rating: Aaa
- *Non-Negotiable Certificates of Deposit*  
Fully insured by FDIC or collateralized with a minimum Standard & Poor's Rating: AA, Minimum Moody's Rating: Aa
- *Passbook Savings Demand Deposits*  
Fully insured by FDIC or collateralized
- *Repurchase Agreements*  
Minimum Standard & Poor's Rating: AA, Minimum Moody's Rating: Aa

- *All investments authorized under Section 2.2.10(A).*

C. Monies not required to meet immediate cash flow needs, and which cannot be reasonably anticipated to be required over the following 12 months:

- *United States Treasury Obligations (notes, bonds, bills, or other certificates or coupons)*  
Explicit full faith and credit guarantee of the United States Government with a minimum Standard & Poor's Rating: A1, Minimum Moody's Rating: P1
- *United States Agency Obligations*  
Implied full faith and credit guarantee of the United States Government with a minimum Standard & Poor's Rating: A1, Minimum Moody's Rating: P1
- *State of California and Others States-issued Obligations (notes, bonds, or warrants)*  
Minimum Standard & Poor's Rating: AA, Minimum Moody's Rating: Aa
- *California Local Government-issued Municipal Obligations (notes, bonds, warrants, or other indebtedness issued by a California county, city, or local district/agency)*  
Minimum Standard & Poor's Rating: AA, Minimum Moody's Rating: Aa
- *Negotiable Certificates of Deposit*  
Minimum Standard & Poor's Rating: A1, Minimum Moody's Rating: P1
- *All investments authorized under sections 2.2.10(A) and (B).*

### **2.2.11. Local Government Investment Pools.**

While local government investment pools generally provide significant safety and liquidity, the City Treasurer shall complete a thorough investigation prior to making any such investment and consider the same during the monthly compliance review required by Section 2.2.13. Due diligence in investigations shall generally include a review of written statements of investment policies, objectives, fees schedules, and reporting schedules, as well as issues related to (1) eligible investors and securities, (2) the permitted frequencies and sizes of deposits and withdrawals, (3) security safeguards, including settlement processes, (4) the frequency with which securities are priced and the program audited, (5) the treatment of gains and losses, including interest calculations and distribution, (6) whether and, if so, how reserves, retained earnings, and similar funds are utilized by the investment pool, and (7) whether the investment pool is eligible for and, if so, accepts bond proceeds. In addition, only local government investment pools with at least five years' experience providing similar services to other California municipalities may be utilized.

**2.2.12. Prohibited Investments.**

Notwithstanding those types of investments that are otherwise prohibited by law or this Administrative Policy, financial derivatives (e.g., futures, options, and interest rate swaps) and foreign investments (e.g., indices and currencies) are prohibited.

**2.2.13. Monthly Internal Compliance Review of Investment Portfolio.**

Investments shall be in compliance with the ratings and other requirements set forth in this Administrative Policy at the time of purchase. It is acknowledged and understood that some investments may not fully comply with the same following purchase. The City Treasurer shall review the overall investment portfolio on a monthly basis and identify any investments that no longer comply. Non-compliant investments shall be reported to the City Council, City Manager, and City Attorney within 10 business days of discovery and corrected as soon as practical.

**2.2.14. Safekeeping and Custody.**

All investments shall be registered in the name of the City and all interest, principal payments, and withdrawals shall indicate the City as the sole payee.

All investments, with the exception of Federal Deposit Insurance Corporation (FDIC) Insured Accounts, Local Government Investment Pools, and Money Market Funds shall be held by a third party custodian designated by the City Treasurer and evidenced by custodial agreements or safekeeping receipts. Third-party custodians shall comply with the requirements set forth in Section 2.2.09.

All security transactions, where applicable, shall use a Delivery-versus-Payment (DVP) settlement procedure with the City's payment due at the time of delivery.

**2.2.15. Collateralization.**

Collateral for non-negotiable certificates of deposit and negotiable certificates of deposit shall comply with Government Code, Chapter 4, Bank Deposit Law Section 16500 et seq. and the Savings and Loan and Credit Union Deposit Law Government Code Section 16600 et seq. In addition, if the Non-Negotiable Certificate of Deposit is not Federal Deposit Insurance Corporation (FDIC) insured or exceeds the FDIC insured limit, collateral is required equal to 100% of the principal.

Collateral for repurchase agreements shall be 110% of the market value of principal and accrued interest. Collateral can be either United States Treasury securities or United States Agency securities. The City Treasurer is authorized to grant the right of collateral substitution for repurchase agreements.

All collateral shall be held by an independent third party with whom the City has a current custodial agreement. A clearly marked evidence of ownership (safekeeping receipt) must be supplied to the City and retained.

**2.2.16. Diversification and Maximum Maturities.**

The overall investment portfolio shall be diversified to avoid incurring unreasonable and avoidable risks associated with concentrating investments in specific investment types, maturity segments, or individual financial institutions.

Authorized investments shall be invested subject to the following:

*Table 2.2-1: Diversification and Maximum Maturities Table*

<b>Type of Investment</b>	<b>Maximum Amount of Portfolio Investment</b>	<b>Maximum Maturity</b>
Federal Deposit Insurance Corporation (FDIC) Insured Accounts	100%	N/A
Bankers’ Acceptances	20% (no more than 5% with one bank)	180 days
Commercial Paper	15% (no more than 10% of a single issuer)	270 days
Local Government Investment Pools	90%	N/A
Money Market Mutual Funds	10%	N/A
Non-Negotiable Certificates of Deposit	20% (no more than 5% with one bank or issuer)	3 years
Passbook Savings Demand Deposits	100%	3 years
Repurchase Agreements	10% (no more than 20% of a single issuer)	30 days

Type of Investment	Maximum Amount of Portfolio Investment	Maximum Maturity
United States Treasury Obligations	30% of overall portfolio for any one investment type (no more than 20% of a single issuer)	3 years
United States Agency Obligations		3 years
State of California and Other States-issued Obligations	20% of overall portfolio for any one investment type (no more than 20% of a single issuer)	3 years
California Local Government-issued Municipal Obligations		3 years
Negotiable Certificates of Deposit	30% (no more than 5% with one bank or single issuer)	3 years

**2.2.17. Reporting.**

The City Treasurer shall prepare and submit a monthly investment report to the City Council. The report shall include similar information required for optional quarterly investment reports by Government Code Section 53646(b), to the extent that such information is available. The report shall also comply with Government Accounting Standard Board (GASB) Statement No. 40 and include the following:

- A. Certification that all investment actions executed since the last report have been made in full compliance with this Administrative Policy; and
- B. Certification that the City is able to meet all cash flow needs which might reasonably be anticipated for the next 12 months.

**2.2.18. Annual City Council Review and Adoption of this Administrative Policy.**

This Administrative Policy shall be reviewed, modified as necessary, and adopted, at least annually, by resolution of the City Council at a duly noticed public meeting. Such annual review shall be in addition to the reviews conducted by the Investment Policy Review Committee as described in Section 2.2.04.

**2.2.19. Relationship to Federal and State Laws.**

Where federal or state laws are more restrictive than or contradict this Administrative Policy, such laws shall take precedence. Where this Administrative Policy is more

restrictive than federal or state laws, this Administrative Policy shall take precedence. The City Treasurer shall advise the Investment Policy Review Committee of any contradictions of federal or state law for consideration during its reviews conducted as described in Section 2.2.04.

**2.2.20. Attachments.**

Attachment A, “Glossary of Terms and Acronyms,” is incorporated by reference.

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City Council Approval: November XX, 2015

**Attachment A, “Glossary of Terms and Acronyms”**

*This Glossary of Terms and Acronyms contains common investment terminology to provide users with a better understanding of basic investment terms. It is intended to be used as a basic reference only, is not intended to be all inclusive, and should not be treated as a substitute for professional counsel or analysis.*

**ACCRUED INTEREST:** Coupon interest accumulated on a bond or note since the last interest payment or, for a new issue, from the dated date to the date of delivery.

**ASSET-BACKED SECURITIES:** Securities that are supported by pools of assets, such as installment loans or leases, or by pools of revolving lines of credits. Asset-backed securities are structured as trusts in order to perfect a security interest in the underlying assets.

**AVERAGE:** An arithmetic mean of selected stocks intended to represent the behavior of the market or some component of it.

**BANK DEPOSITS:** Deposits in banks or other depository institutions that may be in the form of demand accounts (checking) or investments in accounts that have a fixed term and negotiated rate of interest.

**BANK NOTES:** A senior, unsecured, direct obligation of a bank or United States branch of a foreign bank.

**BANKERS’ ACCEPTANCE:** A draft or bill of exchange accepted by a bank or trust company. The accepting institution, as well as the issuer, guarantees payment of the bill.

**BASIS POINTS:** Refers to the yield on bonds. Each percentage point of yield in bonds equals 100 basis points (1/100% or 0.01%). If a bond yield changes from 7.25% to 7.39% that is a rate of 14 basis points.

**BENCHMARK:** A passive index used to compare the performance, relative to risk and return, of an investor’s portfolio.

**BOND PROCEEDS:** The money paid to the issuer by the purchaser or underwriter of a new issue of municipal securities. These moneys are used to finance the project or purpose for which the securities were issued and to pay certain costs of issuance as may be provided in the bond contract.

**BONDS**: A debt obligation of a firm or public entity. A bond represents the agreement to repay the debt in principal and, typically, in interest on the principal.

**BOOK VALUE**: The value at which an asset is carried on a balance sheet.

**BROKER**: A person or firm that acts as an intermediary by purchasing and selling securities for others rather than for its own account.

**CALL OPTION**: The terms of the bond contract giving the issuer the right to redeem or call an outstanding issue of bonds prior to its stated date of maturity.

**CASH FLOW**: A comparison of cash receipts (revenues) to required payments (debt service, operating expenses, etc.).

**CERTIFICATE OF DEPOSIT**: A short-term, secured deposit in a financial institution that usually returns principal and interest to the lender at the end of the loan period. Certificates of Deposit (CDs) differ in terms of collateralization and marketability. CDs appropriate to public agency investing include:

*Negotiable Certificates of Deposit* – Generally, short-term debt instruments that pay interest and re issued by a bank, savings or federal association, state or federal credit union, or state-licensed branch of a foreign bank. The majority of negotiable CDs mature within six months while the average maturity is two weeks. Negotiable CDs are traded in a secondary market and are payable upon order to the bearer or initial depositor (investor). Negotiable CDs are insured by the FDIC up to \$250,000, but they are not collateralized beyond that amount.

*Non-Negotiable Certificates of Deposit* – CDs that carry a penalty if redeemed prior to maturity. A secondary market does exist for non-negotiable CDs, but redemption includes a transaction cost that reduces returns to the investor. Non-negotiable CDs issued by banks and savings and loans are insured by the FDIC up to the amount of \$250,000, including principal and interest. Amounts deposited above this amount may be secured with other forms of collateral through an agreement between the investor and the issuer. Collateral may include other securities, including treasuries or agency securities (e.g., issued by the Federal National Mortgage Association).

**CERTIFICATE OF DEPOSIT ACCOUNT REGISTRY SYSTEM (CDARS)**: A private CD placement service that allows local agencies to purchase more than \$250,000 in CDs from a single financial institution (must be a participating institution of CDARS) while still maintaining FDIC insurance coverage. CDARS is

currently the only entity providing this service. CDARS facilitates the trading of deposits between the California institution and other participating institutions in amounts that are less than \$250,000 each, so that FDIC coverage is maintained.

CD PLACEMENT SERVICE: A service that allows local agencies to purchase more than \$250,000 in CDs from a single financial institution while still maintaining FDIC insurance coverage. See “CDARS”.

COLLATERALIZATION OF DEPOSITS: A process by which a bank or other financial institution pledges securities or other deposits for the purpose of securing the repayment of deposited funds.

COMMERCIAL PAPER: An unsecured short-term promissory note issued by corporations or municipalities, with maturities ranging from two to 270 days.

CORPORATE NOTES AND BONDS: Debt instruments, typically unsecured, issued by corporations, with original maturities in most cases greater than one year and less than ten years.

COUNTY POOLED INVESTMENT FUNDS: The aggregate of all funds from public agencies placed in the custody of the county treasurer or chief finance officer for investment and reinvestment.

COUPON: The annual rate of interest that a bond’s issuer promises to pay the bondholder in the bond’s face value; a certificate attached to a bond evidencing interest due on a payment date.

CREDIT RATING: Various alphabetical and numerical designations used by institutional investors, Wall Street underwriters, and commercial rating companies to give relative indications of bond and note creditworthiness. Standard & Poor’s and Fitch Ratings use the same system, starting with their highest rating, of AAA, AA, A, BBB, BB, B, CCC, CC, C, and D for default. Moody’s Investors Service uses AAA, AA, A, BAA, BA, B, CAA, CA, and D. Each of the services use pluses (+), minuses (-), or numerical modifiers to indicate steps within each category. The top four letter categories are considered investment grade ratings.

CREDIT RISK: The chance that an issuer will be unable to make scheduled payments of interest and principal on an outstanding obligation. Another concern for investors is that the market’s perception of an issuer/borrower’s credit will cause the market value of a security to fall, even if default is not expected.

CUSTODIAN: A bank or other financial institution that keeps custody of stock certificates and other assets.

DEALER: Someone who acts as a principal in all transactions, including underwriting, buying, and selling securities, including from his or her own account.

DEFAULT RISK: The risk that issuers or borrowers will be unable to make the required payments on their debt obligations.

DEFEASED BOND ISSUES: Issues that have sufficient money to retire outstanding debt when due, so that the agency is released from the contracts and covenants in the bond document.

DELIVERY-VERSUS-PAYMENT (DVP): The payment of cash for securities as they are delivered and accepted for settlement.

DERIVATIVE: Securities that are based on, or derived from, some underlying asset, reference date, or index.

DISCOUNT: The difference between the par value of a security and the cost of the security, when the cost is below par. Investors purchase securities at a discount when return to the investor (yield) is higher than the stated coupon (interest rate) on the investment.

DISCOUNT RATE: The interest rate used in discounted cash flow analysis to determine the present value of future cash flows. The discount rate in discounted cash flow analysis takes into account not just the time value of money, but also the risk or uncertainty of future cash flows; the greater the uncertainty of future cash flows, the higher the discount rate.

DIVERSIFICATION: The allocation of different types of assets in a portfolio to mitigate risks and improve overall portfolio performance.

DURATION: A measure of the timing of the cash flows to be received from a security that provides the foundation for a measure of the interest rate sensitivity of a bond. Duration is a volatility measure and represents the percentage change in price divided by the percentage change in interest rates. A high duration measure indicates that for a given level of movement in interest rates, prices of securities will vary considerably.

EFFECTIVE DURATION: A measurement of the weighted average of the present value of the cash flows of a fixed-income investment. Effective duration measures the price sensitivity of fixed-income investments, especially for those with embedded option features such as call options. As yields rise, the effective duration of a callable investment rises to reflect the fact that it has become less likely to be called. The more rates rise, the longer the effective duration will become, approaching the duration to maturity. The converse is true in a declining interest rate environment (that is, the more rates fall, the shorter the effective duration will become, approaching the duration to call). For securities without an embedded option, the duration to call, maturity, and effective duration are all the same. The calculation for effective duration is complicated and involves averaging the duration under a simulation of many possible interest rate scenarios in the future.

EVENT RISK: The risk associated with a changing portfolio value due to a market event causing swings in market prices and/or spreads.

EXTENDABLE NOTES: Securities with maturity dates that can be extended by mutual agreement between the issuer and investor. When investing in these types of securities, the maturity date plus the stated extendable option must not exceed the time frames that are allowed in California Government Code or the investment policy for the investment type.

FEDERAL DEPOSIT INSURANCE CORPORATION (FDIC): A federal agency that insures bank deposits, currently up to \$250,000 per entity.

FIDUCIARY: An individual who holds something in trust for another and bears liability for its safekeeping.

FIRST TIER SECURITIES: Securities that have received short term debt ratings in the highest category from the requisite nationally recognized statistical-rating organizations (NRSROs), or are comparable unrated securities, or are issued by money market funds, or government securities. [See SEC Rules: Paragraph (A) (12) of rule 2A-7.]

FLOATING RATE SECURITY: A security that has a variable or “floating” interest rate.

GOVERNMENT ACCOUNTING STANDARDS BOARD (GASB): A standard-setting body, associated with the Financial Accounting Foundation, which prescribes standard accounting practices for governmental units.

GOVERNMENT SPONSORED ENTERPRISES (GSE): Privately held corporations with public purposes created by the United States Congress to reduce the cost of capital for certain borrowing sectors of the economy. Securities issued by GSEs carry the implicit backing of the United States Government, but they are not direct obligations of the United States Government. For this reason, these securities will offer a yield premium over Treasuries.

GUARANTEED INVESTMENT CONTRACT (GIC): An agreement acknowledging receipt of funds for deposit, specifying terms for withdrawal, and guaranteeing a rate of interest to be paid.

INDEX: An indicator that is published on a periodic basis that shows the estimated price and/or yield levels for various groups of securities.

INTEREST: The amount a borrower pays to a lender for the use of his or her money.

INTEREST RATE RISK: The risk that an investment's value will change due to a change in the absolute level of interest rates, spread between two rates, shape of the yield curve, or any other interest rate relationship.

INVESTMENT AGREEMENTS: Contracts with respect to funds deposited by an investor. Investment agreements are often separated into those offered by banks and those offered by insurance companies. In the former case, they are sometimes referred to as “bank investment contracts.”

LONDON INTERBANK OFFERED RATE (LIBOR): The average rate at which a leading bank can obtain unsecured funding in the London interbank market. LIBOR serves as a benchmark for various interest rates. Obligations of parties to such transactions are typically expressed as a spread to LIBOR.

LIQUIDITY: The measure of the ability to convert an instrument to cash on a given date at full face or par value.

LIQUIDITY RISK: The risk that a security, sold prior to maturity, will be sold at a loss of value. For a local agency, the liquidity risk of an individual investment may not be as critical as how the overall liquidity of the portfolio allows the agency to meet its cash needs.

LOCAL AGENCY INVESTMENT FUND (LAIF): A voluntary investment fund open to government entities and certain non-profit organizations in California that is managed by the State Treasurer’s Office.

LOCAL GOVERNMENT INVESTMENT POOL (LGIP): Investment pools that range from the State Treasurer’s Office Local Agency Investment Fund (LAIF) to county pools to Joint Powers Authorities (JPAs). These funds are not subject to the same SEC rules applicable to money market mutual funds.

MARKET RISK: The chance that the value of a security will decline as interest rates rise. In general, as interest rates fall, prices of fixed income securities rise. Similarly, as interest rates rise, prices fall. Market risk also is referred to as systematic risk or risk that affects all securities within an asset class similarly.

MARKET VALUE: The price at which a security is trading and presumably could be purchased or sold at a particular point in time.

MATURITY: The date on which the principal or stated value of an investment becomes due and payable.

MEDIUM-TERM NOTE: Corporate or depository institution debt securities meeting certain minimum quality standards (as specified in California Government Code) with a remaining maturity of five years or less.

MONEY MARKET MUTUAL FUNDS (MMFs): Mutual funds that invest exclusively in short-term money market instruments. MMFs seek the preservation of capital as a primary goal while maintaining a high degree of liquidity and providing income representative of the market for short term investments.

MORTGAGE-BACKED SECURITIES (MBS): Securities created when a mortgagee or a purchaser of residential real estate mortgages creates a pool of mortgages and markets undivided interests or participations in the pool. MBS owners receive a pro-rata share of the interest and principal cash flows (net of fees) that are “passed through” from the pool of mortgages. MBS are complex securities whose cash flow is determined by the characteristics of the mortgages that are pooled together. Investors in MBS face prepayment risk associated with the option of the underlying mortgagors to pre-pay or payoff their mortgage. Most MBS are issued and/or guaranteed by federal agencies and instrumentalities (e.g., Government National Mortgage Association (GNMA), Federal National Mortgage Association (FNMA), and Federal Home Loan Mortgage Corporation (FHLMC)).

**MORTGAGE PASS-THROUGH OBLIGATIONS:** Securities that are created when residential mortgages (or other mortgages) are pooled together and undivided interests or participations in the stream of revenues associated with the mortgages are sold.

**MUNICIPAL ADVISOR RULE:** Regulations for non-dealer "municipal advisors" such as financial advisors, swap advisors, GIC brokers, etc. In addition, the rule pertains to banks and broker dealers acting as municipal advisors. Municipal advisors have a fiduciary responsibility to the government agency receiving their services and they must register with the Securities Exchange Commission (SEC). Municipal finance professionals that do not have a fiduciary duty to issuers cannot provide advice to governments unless certain exemptions are met. The SEC has published a list of frequently asked questions: [www.sec.gov/info/municipal/mun-advisors-faqs.pdf](http://www.sec.gov/info/municipal/mun-advisors-faqs.pdf).

**MUNICIPAL NOTES, BONDS, AND OTHER OBLIGATIONS:** Obligations issued by state and local governments to finance capital and operating expenses.

**MUTUAL FUNDS:** An investment company that pools money and can invest in a variety of securities, including fixed-income securities and money market instruments.

**NEW ISSUE:** Securities sold during the initial distribution of an issue in a primary offering by the underwriter or underwriting syndicate.

**NET ASSET VALUE (NAV):** A determination of the average price per share of a pool or mutual fund. How this measure varies over time provides information on whether the pool is stable or variable. NAV is the market value of all securities in a mutual fund, less the value of the fund's liabilities, divided by the number of shares in the fund outstanding. Shares of mutual funds are purchased at the fund's NAV.

**NET PRESENT VALUE:** An amount that equates future cash flows with their value in present terms.

**NOTE:** A written promise to pay a specified amount to a certain entity on demand or on a specified date. Usually bearing a short-term maturity of a year or less (though longer maturities are issued—see "Medium-Term Note").

**OPTIONS:** A contract that gives the buyer the right to buy or sell an obligation at a specified price for a specified time. Exchange Traded Options are standardized

option contracts that are actively traded on the Chicago Board of Exchange on a daily basis whereas Over-the-Counter Options are traded directly between the buyer and seller at agreed upon prices and conditions (the former type of option is therefore more liquid than the latter).

PAR AMOUNT OR PAR VALUE: The principal amount of a note or bond which must be paid at maturity. Par, also referred to as the “face amount” of a security, is the principal value stated on the face of the security. A par bond is one sold at a price of 100 percent of its principal amount.

PASSBOOK SAVINGS DEMAND DEPOSITS: An interest-bearing bank deposit that unlike time deposits which have a specified term, is typically considered readily available funds and can be withdrawn without advance notice.

PLACEMENT SERVICE DEPOSIT: Deposits at depository institutions placed by a private sector placement service entity.

PLACEMENT SERVICE CERTIFICATES OF DEPOSIT: Certificates of deposit placed with a private sector entity that assists in the placement of certificates of deposit with eligible financial institutions located in the United States.

PORTFOLIO: Combined holding of more than one stock, bond, commodity, real estate investment, cash equivalent, or other asset. The purpose of a portfolio is to reduce risk by diversification.

PREMIUM: The difference between the par value of a security and the cost of the security, when the cost is above par. Investors pay a premium to purchase a security when the return to the investor (yield) is lower than the stated coupon (interest rate) on the investment.

PRICE: The amount of monetary consideration required by a willing seller and a willing buyer to sell an investment on a particular date.

PRINCIPAL: The face value or par value of a debt instrument, or the amount of capital invested in a given security.

PROSPECTUS: A disclosure document that must be provided to any prospective purchaser of a new securities offering registered with the SEC that typically includes information on the issuer, the issuer’s business, the proposed use of proceeds, the

experience of the issuer’s management, and certain certified financial statements (also known as an “official statement”).

PRUDENT INVESTOR STANDARD: A standard of conduct where a person acts with care, skill, prudence, and diligence when investing, reinvesting, purchasing, acquiring, exchanging, selling, and managing funds. The test of whether the standard is being met is if a prudent person acting in such a situation would engage in similar conduct to ensure that investments safeguard principal and maintain liquidity.

REINVESTMENT RISK: The risk that interest rates may be lower than the yield on a fixed income security when the investor seeks to reinvest interest income or repaid principal from the security.

REPURCHASE AGREEMENTS: An agreement of one party (for example, a financial institution) to sell securities to a second party (such as a local agency) and simultaneous agreement by the first party to repurchase the securities at a specified price from the second party on demand or at a specified date.

RISK: The uncertainty of maintaining the principal or interest associated with an investment due to a variety of factors.

RULE G-37 OF THE MUNICIPAL SECURITIES RULEMAKING BOARD: Federal regulations to sever any connection between the making of political contributions and the awarding of municipal securities business.

SAFEKEEPING SERVICE: Offers storage and protection of assets provided by an institution serving as an agent.

SAFETY: In the context of investing public funds, safety relates to preserving the principal of an investment in an investment portfolio; local agencies address the concerns of safety by controlling exposure to risks.

SECURITIES AND EXCHANGE COMMISSION (SEC): The federal agency responsible for supervising and regulating the securities industry.

SECURITIES LENDING AGREEMENT: An agreement of one party (for example, a local agency) to borrow securities at a specified price from a second party (for example, another local agency) with a simultaneous agreement by the first party to return the security at a specified price to the second party on demand or at a specified date. These agreements generally are collateralized and involve a third party

custodian to hold the securities and collateral. Economically similar to reverse repurchase agreement.

TAX AND REVENUE ANTICIPATION NOTES (TRANS): Notes issued in anticipation of receiving tax proceeds or other revenues at a future date.

TOTAL RETURN: Interest, realized gains and losses, and unrealized gains and losses over a given period of time.

TRUSTEE, TRUST COMPANY OR TRUST DEPARTMENT OF A BANK: A financial institution with powers to act in a fiduciary capacity for the benefit of the bondholders in enforcing the terms of the bond contract.

UNDERWRITER: A dealer that purchases a new issue of municipal securities for resale.

UNITED STATES AGENCY OBLIGATIONS: Federal agency or United States government-sponsored enterprise obligations, participations, or other instruments, including those issued by or fully guaranteed as to principal and interest by federal agencies or United States government-sponsored enterprises, including federal agency mortgage-backed securities. Types of instruments may include mortgage-backed securities from the Federal National Mortgage Association (FNMA) including Fannie Mae and Freddie Mac securities.

UNITED STATES TREASURY OBLIGATIONS: Debt obligations of the United States government sold by the Treasury Department in the forms of bills, notes, and bonds. Bills are short-term obligations that mature in one year or less and are sold at a discount. Notes are obligations that mature between one year and ten years. Bonds are long-term obligations that generally mature in 10 years or more.

WEIGHTED AVERAGE MATURITY (WAM): The average maturity of all the securities that comprise a portfolio, typically expressed in days or years.

YIELD: The current rate of return on an investment security generally expressed as a percentage of the securities current price.

YIELD CURVE: A graphic representation that shows the relationship at a given point in time between yields and maturity for bonds that are identical in every way except maturity.

YIELD-TO-CALL: The rate of return to the investor earned from payments of principal and interest, with interest compounded semi-annually at the stated yield when the security is redeemed on a specified call date. In addition, if the security is redeemed at a premium call price, the amount of the premium is also reflected in the yield.

YIELD-TO-MATURITY: The rate of return to the investor earned from payments of principal and interest, with interest compounded semi-annually at the stated yield as long as the security remains outstanding until the maturity date.

YIELD-TO-WORST: For a given dollar price on a municipal security, the lowest of the yield calculated to the pricing call, par option or maturity.

ZERO-COUPON BOND: A bond on which interest is not payable until maturity (or earlier redemption), but compounds periodically to accumulate to a stated maturity amount. Zero-interest bonds are typically issued at a discount and repaid at par upon maturity.