

EXCLUSIVE FRANCHISE AGREEMENT
BETWEEN
THE PHELAN PIÑON HILLS COMMUNITY SERVICE DISTRICT
AND
CR&R, INC.
FOR
SOLID WASTE HANDLING AND RECYCLING SERVICES

Updated 5-15-2019

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THIS EXCLUSIVE FRANCHISE AGREEMENT FOR SOLID WASTE HANDLING AND RECYCLING SERVICES (“Agreement”) is entered into by and between the PHELAN PIÑON HILLS COMMUNITY SERVICES DISTRICT, organized under the laws of the State of California (“District”) and CR&R, INC., a California corporation (“Contractor”). District and Contractor are sometimes hereinafter individually referred to as a “Party” and collectively referred to as the “Parties”.

RECITALS

WHEREAS, California Government Code Section 61100 *et seq.*, authorizes District to determine and arrange for all aspects of solid waste handling; and

WHEREAS, California Public Resources Code section 41780 requires that local agencies divert 50% of their waste from landfill disposal; and

WHEREAS, California Public Resources Code Chapter 12.8 requires recycling of commercial solid waste; and

WHEREAS, California Public Resources Code Chapter 12.9 requires that jurisdictions implement a commercial organic waste recycling program; and

WHEREAS, California Public Resources Code Chapter 13.1 sets organic waste disposal reduction targets; and

WHEREAS, on February 9, 2012, the District adopted the existing San Bernardino County Solid Waste Program and exclusive franchise agreement with Contractor for Solid Waste Handling and Recycling Services (the “Original Agreement”); and

WHEREAS, District and Contractor entered into that certain agreement titled “Exclusive Franchise Agreement”; and

WHEREAS, the District’s Board of Directors (the “Board of Directors”) finds that Contractor has demonstrated through its good and workmanlike performance of the Existing Agreement and in its negotiations with the District that Contractor is qualified and competent to perform the solid waste services desired by District; and

WHEREAS, the Board of Directors finds that the District is in compliance with the waste diversion goals mandated by the State of California; and

WHEREAS, the Board of Directors finds that this Agreement will contribute to providing the best and most cost-effective Solid Waste Handling Services to its citizens.

NOW, THEREFORE, in consideration of the respective and mutual covenants and promises contained and made in this Agreement, and subject to all of the terms and conditions of this Agreement, the Parties agree as follows:

ARTICLE 1. DEFINITIONS

1.01 DEFINITIONS

Unless the context otherwise requires, capitalized terms used in this Agreement shall have the meanings set forth in the definitions contained in Attachment A, Definitions.

1.02 STATUTORY DEFINITIONS

Unless a term is otherwise defined in this Agreement, capitalized terms used in this Agreement shall have the same meaning as the definitions of those terms contained in the California Integrated Waste Management Act, California Public Resources Code Section 40000 *et seq.* (the "Act"). In the event of a conflict between the definition of a term in the Act and in this Agreement, the definition in this Agreement shall prevail.

ARTICLE 2. REPRESENTATIONS AND WARRANTIES

2.01 CONTRACTOR

Contractor represents and warrants as follows:

- a. Status. Contractor is a corporation duly organized, validly existing and in good standing under the laws of the State of California ("State") and is qualified to do business in the State.
- b. Authority and Authorization. Contractor has full legal right, power and authority to execute and deliver this Agreement and perform its obligations hereunder. This Agreement has been duly executed and delivered by Contractor and constitutes a legal, valid and binding obligation of the Contractor enforceable against the Contractor in accordance with its terms.
- c. Accuracy of Representations. Contractor's representations and warranties made throughout this Agreement are accurate, true and correct on and as of the Effective Date (defined in [Section 4.01](#), below) of this Agreement.
- d. No Conflicts. Neither the execution or delivery by Contractor of this Agreement, the performance by Contractor of its performance obligations, nor the fulfillment by Contractor of the terms and conditions hereof: (i) conflicts with, violates or results in a breach of applicable law; (ii) conflicts with, violates or results in a breach of any term or condition of any judgment, order or decree of any court, administrative agency or

- other government authority, or any agreement or instrument to which Contractor is a party or by which Contractor or any of its properties or assets are bound, or constitutes a default thereunder; or (iii) will result in the creation or imposition of any lien, charge or encumbrance of any nature whatsoever upon any of the properties or assets of Contractor.
- e. No Approvals Required. No approval, authorization, license, permit, order or consent of, or declaration, registration or filing with any governmental or administrative authority, commission, board, agency or instrumentality is required for the valid execution and delivery of this Agreement by Contractor, except such as have been duly obtained from its board of directors.
 - f. No Litigation. There is no action, suit, proceeding or investigation, at law or in equity, before or by any court or governmental authority, commission, board, agency or instrumentality pending or, to the best of Contractor's knowledge, threatened, against Contractor wherein an unfavorable decision, ruling or finding, in any single case or in the aggregate, would materially adversely affect the performance by Contractor of its obligations hereunder or in connection with the transactions contemplated hereby, or which, in any way, would adversely affect the validity or enforceability of this Agreement or any other agreement or instrument entered into by Contractor in connection with the transactions contemplated hereby.
 - g. Due Diligence. Contractor has made an independent investigation satisfactory to it of the conditions and circumstances surrounding the Agreement and services it is required to perform.
 - h. Duty. Contractor shall be at all times during the Term (as defined in **Section 4.02**, below) of this Agreement, ready, willing and able to collect and transport all Solid Waste generated within District in accordance with the provision of this Agreement and all applicable laws, rules and regulations.
 - i. Insurance and Bonds. Contractor will furnish evidence of the insurance and bonds required under this Agreement prior to the Effective Date of this Agreement.
 - j. Criminal Activity. Contractor has represented that none of its officers or directors have a criminal conviction from a court of competent jurisdiction with respect to conviction for any crime, including racketeering, which indicates a lack of business integrity or business honesty that seriously and directly affects the present responsibility of Contractor or its officers or directors; nor has Contractor or any of its respective officers or directors made an admission of guilt or pled no contest to the conduct as described above.

2.02 DISTRICT

District represents and warrants as follows:

- a. Status. District is a California Community Services District pursuant to California Government Code Section 61000 *et seq.* under the Constitution and laws of the State.
- b. Authority and Authorization. District has full legal right, power and authority to execute, deliver, and perform its obligations hereunder. This Agreement has been duly executed and delivered by District and constitutes a legal, valid and binding obligation of District enforceable against District in accordance with its terms.
- c. No Conflicts. Neither the execution or delivery by District of this Agreement, the performance by District of its performance obligations, nor the fulfillment by District of the terms and conditions hereof: (i) conflicts with, violates or results in a breach of applicable law; or (ii) conflicts with, violates or results in a breach of any term or condition of any judgment, order or decree of any court, administrative agency or other government authority, or any agreement or instrument to which District is a party or by which District or any of its properties or assets are bound, or constitutes a default thereunder.
- d. No Approvals Required. No approval, authorization, license, permit, order or consent of, or declaration, registration or filing with any governmental or administrative authority, commission, board, agency or instrumentality is required for the valid execution and delivery of this Agreement by District, except such as have been duly obtained from its Board of Directors.
- e. No Litigation. There is no action, suit, proceeding or investigation, at law or in equity, before or by any court or governmental authority, commission, board, agency or instrumentality pending or, to the best of District's knowledge, threatened, against District wherein an unfavorable decision, ruling or finding, in any single case or in the aggregate, would materially adversely affect the performance by District of its obligations hereunder or in connection with the transactions contemplated hereby, or which, in any way, would adversely affect the validity or enforceability of this Agreement or any other agreement or instrument entered into by District in connection with the transactions contemplated hereby.
- f. No Warranty Regarding Waste Characterization. District makes no warranties with respect to the characterization of Solid Waste within District. District expressly disclaims any warranties, either express or implied, as to the merchantability or fitness for any particular purpose of Solid Waste or Recyclable Materials collected by Contractor.

ARTICLE 3. EXCLUSIVE FRANCHISE AGREEMENT

3.01 GRANT OF FRANCHISE

Upon the Effective Date of this Agreement (defined in Section 4.01, below) and continuing for the Term of this Agreement or any extension or renewal thereof, District hereby grants Contractor the exclusive right and duty to collect, transfer, transport, recycle, compost, process and dispose of Solid Waste, Green Waste, Organic Materials, Construction and Demolition Waste including concrete wash-out waste and Recyclable Material generated or accumulated within District by any Residential, Commercial or Industrial Premises. This grant of franchise shall be exclusive except as provided in Section 3.02 below, and shall be subject to all of the terms and conditions of this Agreement. Should the District be required to take administrative, law enforcement, or other legal action against any Person that infringes on Contractor's exclusive rights, Contractor shall reimburse the District for its reasonable administrative, law enforcement, and other legal costs related to any such action. Nothing herein shall preclude Contractor from taking such legal action against third parties as it deems appropriate to protect the exclusive nature of its Franchise.

3.02 LIMITATIONS ON EXCLUSIVE FRANCHISE

The Franchise granted to Contractor shall be exclusive except for the categories of Solid Waste listed in this Section. The granting of this Franchise shall not preclude the categories of Solid Waste listed below from being delivered to and collected and transported by others provided that nothing in this Agreement is intended to or shall be construed to excuse any Person from obtaining authorization from the District which is otherwise required by law:

- a. The sale or donation of non-discarded Recyclable Material by the Waste Generator to any person or entity other than Contractor; provided however, that the Waste Generator is paid monetarily for the material, or the material is picked up and disposed of at no cost to the Waste Generator. Waste Generator may not contract with another hauler to pay for removal of materials which have no intrinsic value;
- b. Solid Waste, Green Waste, Organic Materials, Construction and Demolition Waste and Recyclable Materials which is removed from any premises by the Waste Generator, and which is transported personally by such generator (or his or her full-time employees) to a Recycling, Processing or Disposal Facility in a manner consistent with all applicable laws and regulations, utilizing equipment owned and or leased by the Waste Generator;

- c. Containers delivered for Recycling under the California Beverage Container Recycling Litter Reduction Act (California Public Resources Code, section 14500, *et seq.*):
- d. Green Waste removed from premises by a gardening, landscaping, or tree trimming contractor, utilizing its own equipment, as an incidental part of a total service offered by that contractor rather than as a hauling service;
- e. The collection, transfer, transport, Recycling, processing, and disposal of animal remains from slaughterhouse or butcher shops for use as tallow;
- f. The collection, transfer, transport, Recycling, processing, and disposal of by-products of sewage treatment, including sludge, sludge ash, grit and screenings;
- g. The collection, transfer, transport, Recycling, processing, and disposal of Hazardous Substances, Hazardous Waste, and radioactive waste regardless of its source;
- h. The collection, transfer, transport, Recycling, processing, and disposal of Solid Waste by the District through District officers or employees in the normal course of their employment;
- i. Solid Waste Handling Services for governmental agencies other than District, which may have facilities in District, but over which District has no jurisdiction in connection with the regulation of Solid Waste; and
- j. In addition to the foregoing, in the event that future interpretations of current law, future enactments or developing legal trends limit the ability of District 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 District shall not be responsible for any lost profits claimed by Contractor as a result thereof.

3.03 FRANCHISE AREA DEFINED

The Franchise Area granted by this Agreement shall include all Residential, Commercial, and Industrial Generators within the District limits except as limited by this Agreement. As provided for below, the Franchise Area may be changed by annexation.

3.04 ANNEXATION COVERED BY EXISTING AGREEMENT

Territory annexed into the District that is covered by an existing Solid Waste permit, license, agreement or franchise granted by another public entity to

another contractor may continue to be served by the same contractor pursuant to California Public Resources Code section 49520, et seq.

ARTICLE 4. TERM OF AGREEMENT

4.01 EFFECTIVE DATE

This Agreement shall become effective on **DATE** (the “Effective Date”), and shall supersede the Existing Agreement.

4.02 TERM

The term of this Agreement shall be ten (10) years, commencing on the Effective Date. At the end of each year of the term, the Agreement shall automatically be extended for an additional one (1) year unless either party shall provide written notice to the other of its intent not to extend the term, not later than one hundred eighty (180) days prior to the end of any year of the term. The word “Term” as used hereinafter may include references to the Initial Term or any subsequent extension thereof as provided for in this Article. Contractor may request an adjustment to the Term in the event it is required to invest in new equipment required due to changes in law or at the request of the District. Any such request shall be handled in the same manner as a request for extraordinary rate adjustments under Section **9.06**.

4.03 EARLY TERMINATION

Nothing contained in this **Article 4** shall limit the District’s rights to terminate this Agreement at any time for a failure of the Contractor to perform hereunder pursuant to **Article 13** hereof.

ARTICLE 5. CONTRACTOR SERVICES

5.01. PERFORMANCE STANDARDS

- a. General. The work to be performed by Contractor pursuant to this Agreement shall include the furnishing of all labor, supervision, equipment, materials, supplies, and all other items necessary to perform the services required. All services performed and Solid Waste generated is subject to the exclusive rights to operate and collect, provided under the terms of this Agreement.
- b. The work to be performed by Contractor pursuant to this Agreement shall be accomplished in a thorough and professional manner so that the residents and businesses within District are provided reliable, courteous, and high-quality service at all times.

- c. Scope of Services. The services to be performed by Contractor are generally described in Attachment B, Scope of Services, but may also be specified and described in detail in other Sections of this Agreement, including without limitation this Section 5.01.
- d. Frequency and Location. Contractor shall collect Solid Waste and Recyclables from Residential Premises receiving individual collection one time per week from Contractor-provided containers. Contractor shall collect Solid Waste and Recyclables from Commercial Premises, including Residential Premises utilizing Bins, and Industrial Premises a minimum of one time per week from Contractor-provided Bins or Roll-Off Boxes or from stationary Compactors provided by Contractor or Customer.
- e. Residential Organic Material Composting. The District and Contractor will cooperate to develop and implement a residential organic material disposal reduction program as required by law
- f. Drop Off Site. The District may at its own expense, staff and operate a drop-off location for collection of recycling, residential organic compostable materials, and residential landfill materials during days of operation as established by the District. Contractor will provide containers and transport collected materials from the drop off location to District-approved facilities one (1) time per week, and will not combine separated drop-off materials. District will pay associated facility tipping fees, including any direct residue disposal charges. Additional service will be charged at the rates in Exhibit A as may be amended from time to time.
- g. Commercial Recycling and Organics Program. Contractor will implement a comprehensive Commercial Recycling and Organics Disposal Reduction Program, including Source Separated and Select Commercial Recycling and Organics collection and composting.

The program will consist of periodic customer outreach, including waste disposal and recycling educational information included in Contractor's bills and website. All accounts receiving Commercial Solid Waste Collection Service will be presented with recycling service options including source separated and comingled recycling service. Service options will be driven by end market and processing availability.

Once a recycling or composting service option is selected or assigned, the Solid Waste Service level may be adjusted and the appropriate recycling or composting containers may be delivered. The containers will be collected on the scheduled route and the material will be processed accordingly.

Multi-family Bin service customers will be included in the Commercial Recycling Program.

It is the intent that the Commercial Recycling Program include, at a minimum, all customers receiving solid waste service of 4 cubic yards or more per week. ~~This program will comply with California state laws requiring Mandatory Commercial Recycling, Mandatory Commercial Organics Composting, and Organics Disposal Reduction.~~

Commented [KW1]: Need to match to ordinance language as to which customers must have commercial recycling.

- h. Emergencies. Contractor's equipment and staff will be available to assist with District-declared emergencies.
- i. Public Outreach. Contractor will be responsible for the following services which include, but are not limited to:
 - 1) Establish a residential route audit program, with procedures approved by the District to assure service verification of accurate customer billings and accurate tipping fee charges;
 - 2) Development and management of commercial recycling outreach program.

Within 90 days of the Effective Date of this Agreement, Contractor shall develop a plan for District approval for each of the services to be provided in paragraphs 1 and 2 above. The plan shall include verifiable performance measurement factors and quarterly program reports presenting performance results.

- j. Community Clean-Up. Supply equipment and manpower for a no charge drop off community clean-up two (2) times per year.

5.02 COLLECTION DAYS AND TIMES

- a. Residential Premises. Collections from Residential Premises shall be made Monday through Friday between the hours of 6:00 a.m. and 8:00 p.m. Collections of Solid Waste and Recyclable Materials shall be made on the same day.
- b. Non-Residential Premises. Collections from Non-Residential Premises shall be made Monday through Saturday between the hours of 4:30 a.m. and 8:00 p.m. Collections shall be scheduled at a day and time mutually agreed upon by Contractor and Customer. Collections of Solid Waste and Recyclable Materials may be made on different days.
- c. Holiday Schedule. Contractor's collection operations shall observe the same holiday schedule as the Disposal Facility and the Processing Facility that may be used during the term of this Agreement. When a holiday falls on a regular collection day, scheduled collections shall occur on the next regularly scheduled Collection the remainder of that week. Contractor shall advise District annually of the upcoming holiday schedule, and immediately notify District of any changes to that

schedule. Contractor shall advise all Customers of upcoming holidays and the holiday collection schedule in advance of the holiday.

5.03 SERVICE STANDARDS

- a. Overfilled Carts or Bins. All materials placed in Carts or Bins by Customers must be fully contained in the Carts or Bins with the lid closed and Contractor shall not be required to collect Carts or Bins that are overfilled. Contractor shall attach a notice on Carts or Bins not collected, citing the reason for non-Collection ("Notice of Non-Collection"). The form and content of the Notice of Non-Collection shall be approved by District.
- b. Clean out of Enclosures. Contractor shall clean out any overflowing Bins or enclosures within twenty-four (24) hours of notification by District, the cost of which shall be borne by the Customer. Contractor shall work with the General Manager or General Manager's designee in identifying and resolving continual problems of overages or misuse in Customer Bins or enclosures.
- c. Uncontained Materials. Contractor shall only collect uncontained Solid Waste and Recyclable Materials when such Collection has been arranged in advance by Customer and for which Customer has agreed to pay the appropriate Rate.
- d. Bins may be required for Apartment Complexes. Multi-Family Premises or apartment complexes with more than four (4) individual dwelling units shall use Bins for Solid Waste Collection if Contractor determines barrel service is inadequate.
- e. Bin Placement. When delivering Bins to new Customers at Residential Premises and Commercial Premises, including Multi-Family Premises, Contractor shall advise Customer to consult District's adopted standards and requirements for enclosures and Bin placement.

ARTICLE 6. OTHER SERVICES

6.01 CUSTOMER SERVICE

- a. Contractor shall perform all of the customer service functions which shall consist of providing Customer service representatives for telephone, electronic mail and in-person contacts by Customers regarding: (i) starting or stopping service, (ii) ordering extra Containers, (iii) ordering exchanges of damaged Containers, (iv) inquiring or expressing concerns about service, (v) inquiring about sanitation bills, and (vi) processing payments ("Customer Service Functions").

- b. **Role of Contractor.** Contractor shall handle Customer Service for all services hereunder.
- c. **Office Hours.** Contractor's office hours shall be, at a minimum, from 8:00 a.m. to 5:00 p.m. Monday through Friday. A representative of Contractor shall be available during office hours for communication with District at Contractor's principal office.
- d. **Missed Collections.** All missed Collections will be made by the earlier of (i) as soon as reasonably practicable or (ii) the following Collection day.
- e. **Service Complaints.** All Customer Collection Service complaints shall be directed promptly in light of the severity of the complaint (and in any event not less frequently than once per month) to Contractor by the General Manager.
- f. **Resolution of Disputes.** Contractor shall notify Customers of this complaint resolution procedure at the time Customers apply for, or are provided, service.

Before reviewing the complaint, the General Manager shall refer it to Contractor. If Contractor fails to cure the complaint within ten (10) days, General Manager shall review Customer's complaint and determine if further action is warranted. General Manager may request written statements from Contractor and Customer, and/or oral presentations.

General Manager shall determine if Customer's complaint is unresolved; and if so, what remedy, if any, shall be imposed. The remedy under this Section shall be limited to rebate of Customer charges related to the period of complaint.

General Manager may delegate these duties to a designee. The decision of General Manager or Manager's designee shall be final on any matter under One Thousand Dollars (\$1,000). In the event of a decision on a matter awarding One Thousand Dollars (\$1,000) or more, Contractor may seek review by the Board of Directors.

- g. **Bulky Item Collection.** Each Single Family Residential Premises receiving individual Collection Service shall be entitled to two (2) Collections of up to four (4) Bulky Waste items, which includes but is not limited to tires, furniture, televisions and computers, in each twelve (12) month period at no additional charge. Collections of additional Bulky Items or Bulky Items collected from Multi-Family Apartment Dwellings or Non Residential Customers shall be subject to the Rates included in the Customer Rate Schedule, Attachment D.

6.02 PAYMENT FOR TEMPORARY BINS AND ROLL-OFF BOXES.

Contractor may require payment in advance for temporary Bin or temporary Roll-Off Box services provided at Residential, Commercial or Industrial Premises.

6.03 BAD DEBT RECOVERY.

- a. Residential. Contractor shall recover debt for residential solid waste and services rendered by Contractor.
- b. Commercial. District shall recover debt annually for solid waste and services rendered by Contractor after Contractor has attempted to collect debt. Debt remaining unpaid for a period of ninety (90) days after the date upon which they were billed will be submitted to the District whereby the District, pursuant to applicable law, may place a lien and may collect thereafter as follows:
 - 1) Once a year, the Board of Directors shall cause to be prepared a report of delinquent fees. The Board shall fix a time, date and place for hearing the report and any objections or protests thereto.
 - 2) The Board shall cause notice of the hearing to be mailed to the landowners listed on the report not less than ten (10) days prior to the date of the hearing.
 - 3) At the hearing, the Board shall hear any objections or protests of landowners liable to be assessed for delinquent fees. The Board may make such revisions or corrections to the report as it deems just, after which by resolution, the report shall be confirmed.
 - 4) The delinquent fees set forth in the report as confirmed shall constitute special assessments against the respective parcels of land and are a lien on the property for the amount of such delinquent fees. A certified copy of the confirmed report shall be filed with the county auditor, on or before August 10, for the amounts of the respective assessments against the respective parcels of land as they appear on the current assessment roll. The lien created attaches upon recordation, in the office of the county recorder of the county in which the property is situated, of a certified copy of the resolution of confirmation. The assessment may be collected at the same time and in the same manner as ordinary county ad valorem property taxes are collected and shall be subject to the same penalties and the same procedure and sale in case of delinquency as provided for such taxes. All laws applicable to the levy, collection and enforcement of county ad valorem property taxes shall be applicable to such assessment,

except that if any real property to which such lien would attach has been transferred or conveyed to a bonafide purchaser for value, or if a lien of a bona fide encumbrance for value has been created and attaches thereon, prior to the date on which the first installment of such taxes would become delinquent, then the lien which would otherwise be imposed by this section shall not attach to such real property and the delinquency fees, as confirmed, relating to such property shall be transferred to the unsecured roll for collection.

ARTICLE 7. REQUIREMENTS FOR OPERATIONS

7.01 COLLECTION STANDARDS

- a. Servicing of Containers. Contractor shall Collect the contents and return each Container to the location where Occupant properly placed the Container for Collection. Following Collection, Contractor shall place the Containers upright. Contractor shall use due care when handling Containers.
- b. Christmas Tree Collection. Curbside Collections of Christmas Trees from Single Family Residential Dwellings receiving individual Collection Service shall be performed free of charge for two collection cycles following Christmas Day. Contractor shall provide adequate Roll Off containers for Christmas Trees drop-off at District's Administrative Center for one month starting December 26. Contractor shall accept and manage Christmas Trees dropped-off at CR&R's service yard in Phelan.
- c. Missed Pick-Ups. When notified of a missed pick-up, Contractor shall Collect the Solid Waste, Recyclable Materials, or Green Waste the earlier of (i) as soon as reasonably practicable or (ii) the following Collection day. If service is not completed by the following Collection day, Contractor shall notify District by email or fax immediately.
- d. New Bin Service Customers. Contractor shall deliver containers and initiate Collection services for a new Customer requiring Bin service within five (5) business days of the Customer's request for service.
- e. Change in Bin Service. If an existing Customer requests a change in the number or size of their Solid Waste or Recyclable Materials Containers and/or frequency of collection, Contractor shall deliver and/or remove Containers and initiate changes in the Collection services within five (5) Business Days of the Customer's request for a change in service.
- f. Separate Collection. Contractor shall separately Collect Solid Waste, Organic Material and Recyclable Materials from each other and shall not

commingle these materials at any time during the transportation or delivery of those materials to the Disposal Facility or Processing Facility.

- g. Non-Collection Notices. Contractor may choose to not Collect materials for the following reasons: (i) Recyclable Materials contain excessive contamination; (ii) materials contain Hazardous Waste; (iii) the loaded weight of a Container exceeds the maximum load limit specified by the Cart manufacturer; (iv) materials are not fully contained within Containers; and, (v) Container is not accessible due to vehicles or other obstacles. In such case, Contractor shall issue Non-Collection Notices stating the reason(s) the materials were not collected. The Notice of Non-Collection shall be affixed prominently on the Container to ensure that it is not inadvertently removed due to weather conditions. Contractor shall immediately notify District of all Non-Collection Notices. Contractor shall maintain a master record of Notices of Non-Collection issued for inspection by District.
- h. Excess Materials. Materials not contained within Customer's container shall be considered as excess materials and Contractor shall not be required to collect the excess amounts unless Customer has previously arranged and paid for such Collection with Contractor.
- i. Care of Private Property. Contractor shall not damage private property and shall ensure that its employees: (i) close all gates opened in making collections, (ii) not cross landscaped areas, and (iii) do not climb or jump over hedges and fences.

District shall refer complaints about damage to private property to Contractor who shall, after investigation and determination of responsibility, repair, to its previous condition, all damage to private or public property caused by its employees or operations.

Contractor shall use its best efforts to repair damage and/or resolve claims regarding damage to property within forty-five (45) business days of receipt of the complaint.
- j. Spills and Cleanup. Contractor shall instruct employees to cleanup any spills or scattered materials resulting from its Collection operation. Contractor shall not be required to cleanup spilled or scattered materials resulting from the actions of others including materials falling from overfilled containers or uncontained materials.
- k. Warning Tags. Contractor shall prepare Warning Tags approved by District for use to advise Customers of collection rule infractions and/or non-collection such as but not limited to: (i) uncontained materials, (ii) prohibited contents, (iii) excess weight, and (iv) blocked or inaccessible container. Warning Tags shall have an adhesive strip affixed to the back to adhere the tag to the Container. Warning Tags shall be of two-part

construction so that Contractor's employee can submit copies of all Warning Tags to Contractor's field supervisor, dispatch office or customer service representative. Contractor shall immediately notify District of all Warning Tags. Contractor shall maintain a master record of Warning Tags issued for inspection by District

7.02 VEHICLES

- a. General. Contractor shall provide a fleet of Collection vehicles sufficient in number and capacity to efficiently perform the work required by the Agreement in strict accordance with its terms. Contractor shall have available sufficient back-up vehicles to respond to mechanical breakdowns, complaints and emergencies.
- b. Age. Contractor shall not introduce a used vehicle into service in District as a frontline collection vehicle that is more than five (5) years of age when introduced. Contractor shall not operate a vehicle in District as a regular route collection vehicle that is more than seven (7) years of age unless said vehicle is exceptionally well-maintained and has been accepted by District. Contractor shall not operate a vehicle in District more than ten (10) years of age as a regular route collection vehicle.

Contractor shall be permitted to use vehicles older than the above limitations for periods up to thirty (30) days as back-ups for regular route vehicles when such vehicles are out of service for repair or maintenance or to supplement the regular collection vehicles for special programs such as community clean-ups or emergency situations.

- c. Vehicle Emissions. Contractor shall comply with all applicable air quality rules and regulations in its vehicle deployment.
- d. Specifications. All vehicles operated in District by Contractor shall: (i) be registered with the California Department of Motor Vehicles; (ii) have leak proof bodies designed to prevent leakage, spillage, and/or overflow; and (iii) comply with California Environmental Protection Agency noise emission and California Air Resources Board air quality regulations.
- e. Identification. Contractor's name, local telephone number and vehicle identification number designated by Contractor shall be prominently displayed on the sides of each Collection vehicle.
- f. Condition and Maintenance. Contractor shall maintain all of its vehicles and equipment used in providing service under this Agreement in a good, safe, neat, clean, and operable condition at all times.
- g. Operation. Vehicles shall be operated in compliance with Federal, State and local laws and regulations.

- h. Vehicle Inventory and Replacement Plan. Annually, on or before January 1st of each year, Contractor shall provide District with an inventory of all collection vehicles currently operating in District listing (i) Contractor's vehicle identification number, (ii) year manufactured, (iii) make, (iv) body style, and (v) fuel type.

7.03 CONTAINERS

- a. General. Contractor shall provide all Carts, Bins, Roll-Off Boxes, other Containers and Compactors, as appropriate, to all Customers as part of its obligations under the terms of this Agreement.

All Containers used in the performance of this Agreement shall remain the property of the Contractor.

- b. Carts. Contractor shall supply Carts for individual collection to all Residential Premises and certain small business Commercial Premises. Where residential recycling is available, each such Single Family Residential Customer shall receive one (1) cart for Solid Waste and one (1) cart for Recyclable Materials. At Contractor's reasonable discretion, one (1) additional Recycling Material cart is available at no charge for each Single Family Resident. Where residential recycling is NOT available, each such Single Family Residential Customer may receive up to two (2) carts for Solid Waste. Eligible Multi-Family Dwellings and Commercial establishments shall receive one (1) Cart for Solid Waste and once (1) cart for Recyclable Materials.

Unless otherwise specified by law, Carts provided by Contractor shall be offered uniformly in different colors for different materials: (i) 65-gallon Carts with for Solid Waste; and (ii) 65-gallon Carts for Recyclable Materials, or such other Carts as the parties may agree are appropriate from time-to-time. All Carts shall be equipped with hinged lids and wheels and shall be labeled for appropriate material types.

- c. New Customer Carts. Contractor shall provide new Customers with Carts no later than the next regular service day following notification of subscription. New Customers shall receive Carts that are new, or alternatively, used Carts that have been pressure washed.
- d. Cart Repair and Replacement. Contractor shall be responsible to maintain all containers in a clean and functional condition, including but not limited to routine, on location, repair or replacement of lids, handles and/or wheels, it being the intent of the parties that replacement containers will only be provided at such time as a container is lost, unserviceable or incapable of routine repair. Contractor shall replace all lost, unserviceable or irreparable Carts by the next service day following receipt of Customers request. Carts damaged by Contractor, or from

normal wear and tear, shall be replaced at no charge to Customer. Contractor may charge customers to replace missing Carts or Carts damaged by Customer. Contractor shall notify Customer by the next service day following receipt of Customer's request if charges shall apply and shall additionally notify District of its findings. Should District determine that the need for cart replacement is the result of Contractor's actions and not the actions of Customer, District shall instruct Contractor to deliver a replacement cart at no charge to Customer. District's decision shall be final.

- e. Bins. Contractor shall provide metal Bins in 1.5 cubic yard, 2 cubic yard, 3 cubic yard and 4 cubic yard sizes to select Residential Premises, select Multi-Family Premises complexes and select Commercial and Industrial Premises. All Bins shall meet applicable Federal, State and local regulations for Bin safety, and shall be covered with attached lids.
- f. Recycling Bins. Contractor shall distinguish Recycling Bins by color, and shall clearly label them "Recyclables Only."
- g. Multiple Bins. Contractor is to identify and propose recycling collection options for locations with multiple Bin site limitations.
- h. Temporary Bins. Contractor shall provide metal 3 cubic yard Bins for temporary use by any premises in the District for removal of Solid Waste, Construction and Demolition Debris or Green Waste. Contractor shall cover temporary Bins during transport to prevent the release of litter and debris.
- i. Roll-Off Boxes. Contractor shall provide metal Roll-Off Boxes of 10 cubic yard, 20 cubic yard and 40 cubic yard sizes for regular use by select Commercial and Industrial Premises and for temporary use by any Premises in District. Contractor shall cover Roll-Off Boxes during transport to prevent the release of litter and debris.
- j. Compactors. Contractor may provide, for a fee, stationary compactors for use by Customers or may service stationary compactors owned and provided by Customers provide that any stationary compactor provided by Customer shall meet the specifications of Contractor and be compatible with Contractor's collection vehicles.

7.04 PERSONNEL

- a. General. Contractor shall furnish such qualified drivers, mechanical, supervisory, Customer service, sales, recycling, clerical and other personnel as may be necessary to provide the services required by this Agreement in a safe and efficient manner.

- b. No Gratuities. Contractor shall not permit its employees to demand, solicit or accept any additional compensation or gratuity in exchange for Collection Service.
- c. Conduct and Courtesy. Contractor shall employ only competent and qualified personnel who serve the public in a courteous, helpful, and impartial manner. Contractor shall use its best efforts to assure that all employees present a neat appearance and conduct themselves in a courteous manner. If any employee is found not to be courteous or not to be performing services in the manner required by this Agreement, Contractor shall, after proper investigation and due process, take appropriate measures.
- d. Uniforms. While performing services under this Agreement, all Contractor's employees performing field service shall be dressed in clean uniforms.

7.05 HAZARDOUS WASTE

- a. To the extent practical, Contractor shall inspect containers for the presence of Hazardous Waste and take reasonable precautions to prevent the Collection of Hazardous Waste.
- b. If the presence of Hazardous Waste is detected in any container, Contractor's personnel shall not collect the contents of the container and shall leave a Notice of Non-Collection.
- c. If Hazardous Waste is later detected in a load, Contractor shall attempt to contact the offending Customer who shall be responsible for its removal and cost of removal.

ARTICLE 8. DISTRICT FEES

8.01 GENERAL

In consideration for the rights and privileges provided in this Agreement, and the costs associated in providing the Customer service functions set forth in **Section 6.01**, including all billing services, and subject to payments to the Contractor as provided in **Article 9** below, the Contractor shall receive and/or retain all sums collected from Customers for all services contemplated in this Agreement.

8.02 REVENUE TO THE DISTRICT

- a. **Franchise Fees.** A franchise fee of fifteen percent (15%) of the Grantee's Gross Receipts, net of the tipping fee component of Contractor's authorized rates, shall be payable by Contractor to District. For residential billing services performed by District, District shall deduct its franchise fee, net of the tipping fee component, from residential fees or

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receipts received by District billings each month. District shall submit a monthly detailed statement to Contractor, along with their payment, outlining residential billing activity each month. Contractor shall pay the Franchise Fees to the District for each calendar month during the term of this Agreement on or before 30 days after the end of such month.

- b. **Environmental/Administration Fee.** At the request of District, Contractor shall invoice commercial and roll-off customers for an additional environmental/administration fee, of a type and in an amount specified and authorized by the District. Residential customers shall be invoiced by the District for any District approved Environmental/Administrative Fees. This fee shall be included as a separate line item on all invoices. For commercial and roll-off customers, Contractor shall remit payment to the District of District Approved Environmental/Administrative Fee amounts collected on a monthly basis. The environmental or administration fee shall not affect the amount of Contractor's compensation as determined in accordance with **Section ? (Customer Billing and Payment/Service Rates)**
- c. **New or Increased Fees.** The District has the right to impose new fees on the provision of solid waste handling services, and to increase the amount or percentage of the franchise fee from that set forth above. In such event, Contractor shall receive an adjustment to the rates to fully compensate its increased costs, including, if applicable, a one-time rate adjustment to the rates to fully compensate it where there is any delay between the effective date of the new or increased fee and the date on which it begins to receive increased compensation from billings related to the new or increased fee.

8.03 RECORDS

The Contractor shall keep and maintain accurate records of all persons, firms and corporations for whom refuse collection services are provided, the amount of money billed and the amount of money collected for each type of service. The District and the person served by the Contractor shall have the right to examine such records at all reasonable times. Such records shall be maintained in accordance with generally accepted accounting standards and shall include all necessary information as to the accuracy of revenues and billings.

ARTICLE 9. CONTRACTOR COMPENSATION AND RATES

9.01 GENERAL

Contractor's compensation provided for in this **Article 9** shall be the full, entire, and complete compensation due to Contractor pursuant to this Agreement for all labor, equipment, materials and supplies, taxes, insurance, bonds, overhead, profit, and all other items necessary to perform all of the services in the manner required by the Agreement.

9.02 CART SERVICE, BIN SERVICE AND ROLL-OFF BOX SERVICE

As compensation for the performance of services for Cart service, all Bin Service and all Roll-Off Box service work in each calendar month, Contractor shall bill for and retain an amount equal to the applicable "Rate to Customer" as set forth in Attachment D, Residential Bin and Commercial Services. This compensation is subject to Franchise Fee payments by Contractor to District.

The current "Rate to Customer" shall be effective upon the Effective Date of this Agreement.

9.03 CUSTOMER RATES

All Customers shall pay for Collection Service in accordance with those rates specified in **Attachment C**.

9.04 ANNUAL FORMULA-BASED COMPENSATION ADJUSTMENT

Subject to the **Section ?**, the maximum rates set forth in **Attachment C**, Residential Bin and Commercial Services shall be adjusted annually effective each July 1st as follows: (i) during the first three (3) years of the Term, by an amount equal to the calendar year annual twelve-month change in the Consumer Price Index ("CPI") for All Urban Consumers (CPI-U) for the Los Angeles/Anaheim/Riverside Metropolitan Area, (1982-84=100), as published by the United States Department of Labor, Bureau of Labor Statistics CUURS49ASA0LE, and (ii) during the remainder of the Term by an amount equal to the calendar year twelve-month change in the Consumer Price Index ("CPI") for All Urban Consumers (CPI-U) for the Riverside/San Bernardino/Ontario Area, (December 2017=100) CUURS49CSA0LE.

Notwithstanding **Section ?**, Contractor acknowledges that various legal procedures, including but not limited to those contained in Proposition 218, may be applicable to any rate increases (and District agrees to undertake such procedures in the exercise of its sole discretion). In the event such rate increases do not receive the requisite approval

under such procedures, the District shall not be required to adopt such rate increases, nor shall the District be liable to Contactor for the failure to implement any such increases.

- a. Adjustment Request Procedure. Contractor shall submit its request for a CPI-based rate adjustment not later than April 1 of each year using the format specified in Attachment C, accompanied by a complete revised proposed Attachment C, Residential Bin and Commercial Services, reflecting the CPI-based rate adjustment. The District may determine that the request be submitted earlier than April 1.
- b. Adjustment Approval Procedure. Contractor's request shall be subject to review and approval by the Board of Directors. Subject to all applicable requirements of law, the Board of Directors' decision shall be based solely upon verification of the change in CPI in accordance with the formula set forth in this Agreement and verification of Contractor's computations of the changes in Attachment C, Residential Bin and Commercial Services. As long as Contractor timely complies with its requirements under Subsection "a" immediately above, the Board of Directors' decision shall be rendered prior to the beginning of District's the fiscal year, and shall not be unreasonably withheld.

9.05 CHANGES IN SCOPE OF SERVICES

The rates and fees identified in Attachment D, Contractor Service Unit Rates, provided for in Section 10.03 hereof, shall be adjusted for Contractor's operating expense, overhead expense and profit to reflect any changes or additions to Attachment B, Scope of Services, which are mutually agreed-upon by the Parties in writing or ordered by District. Contractor's compensation for changes in Attachment B, Scope of Services, shall be established by the following procedure:

- a. District shall provide Contractor written notice describing the addition or change in the Scope of Services desired by District.
- b. Within thirty (30) days following receipt of District's written notice, Contractor shall submit its written proposal to provide the services requested by District. At a minimum, Contractor's proposal shall include (i) a description of how the service will be rendered; (ii) Contractor's schedule to provide the requested services; (iii) Contractor's cost to render the requested service; and (iv) a description of any options or alternatives Contractor deems appropriate.
- c. Within thirty (30) days following the submittal of Contractor's written proposal, District and Contractor shall meet and negotiate in good faith to agree on an amendment to this Agreement to provide the services described by District.

- d. Should District and Contractor be unable to reach a negotiated agreement on an amendment to this Agreement to provide the services requested by District, the Board of Directors may order that Contractor provide the services for the compensation determined by the Board of Directors which shall be reasonable compensation for Contractor's cost for providing the service.

9.06 EXTRAORDINARY RATE ADJUSTMENTS

Contractor may request an adjustment to its Rates at reasonable times other than that allowed in **Sections 10.06 and 10.07** in the event of extraordinary changes in the cost of providing service under this Agreement.

- a. Included Changes. Changes in the cost of providing service considered extraordinary shall include but not be limited to:
 - 1) Changes in Law. Changes in law or regulations enacted during or after the Effective Date of this Agreement by Federal, State, or local regulatory agencies, including amendments to the District's ordinances, resolutions, rules, regulations, policies, and/or procedures.
 - 2) Extraordinary Costs. Changes in operating costs brought about by unforeseen circumstances beyond the control of the Contractor.
 - 3) Change in Disposal Facility. Temporary or permanent changes in the location of the Disposal Facility.
- b. Request and Review. For each request for an extraordinary Rate adjustment to Rates that Contractor may charge Customers brought pursuant to this **Section 10.09**, Contractor shall prepare a schedule documenting the extraordinary costs and request for Reasonable Compensation. Such request shall be prepared in a form acceptable to District with support for assumptions made by Contractor in preparing the estimate. District shall review the Contractor's request and, in District's reasonable discretion make the final determination as to whether an adjustment to the Rates will be made, and, if an adjustment is to be permitted, the appropriate amount of the adjustment. District's approval shall not be unreasonably withheld, but shall include consideration of any rate increases obtained by Contractor pursuant to **Section 10.05**. Any approved extraordinary adjustments will be limited to one year from approval, and be subject to verification that the circumstances warranting the adjustment did not change during that year.

9.07 ADDITIONAL CUSTOMER RATE INCREASE PROCEDURES

Contractor acknowledges that various legal procedures, including but not limited to those contained in Proposition 218, may be applicable to any rate increases proposed to be passed on to customers, including the rate increases contemplated above. If such procedures are applicable, increases to Customer rates will not become effective until the District has complied with any and all applicable legal requirements. In the event such rate increases do not receive the requisite approval under such procedures, the District shall not be required to adopt such rate increases, nor shall the District be liable to Contractor for the failure to implement any such increases, nor shall District be required to compensate Contractor for any requested rate increases or “pass through” rates. However, with respect to Scope of Services changes requested by the District pursuant to **Section 10.06**, the Board of Directors may, at its sole discretion, determine whether the District shall compensate Contractor for such additional services without increasing Customer rates.

9.08 RATES FOR ORGANIC MATERIALS

Rates for Collection of Commercial and Residential Organic Materials shall be determined by agreement between the District and Contractor at such time as such programs are developed pursuant to this Agreement.

ARTICLE 10. RECORDS AND REPORTS

10.01 RECORDS

- a. General. Contractor shall maintain records required to conduct its operations, to support requests it may make to District, and to respond to requests from District.
- b. Inspection. Contractor’s records shall be available for inspection by District during regular business hours and upon reasonable notice.
- c. Records Retention. Contractor shall maintain pertinent records required in the performance of this Agreement for a period of five (5) years after its expiration or early termination.
- d. Customer Records. Contractor shall maintain Customer service information by service route including: (i) name and address of Customer; and, (ii) service level.
- e. Service Records. Contractor shall maintain records of Customer complaints and inquiries for three (3) years.

- f. **Materials Records.** Contractor shall maintain a monthly record by service route of the weight of Solid Waste, Recyclable Materials and Construction and Demolition Waste collected from all Premises in District.
- g. **Disposal Records.** Contractor shall maintain a monthly record of all Solid Waste disposed of at the Disposal Facility.
- h. **Route Information.** Contractor shall maintain a record of its routes and collection days by service route for review by District.

10.02 REPORTS

- a. **General.** Contractor shall submit reports according to the following schedule: (i) quarterly reports within forty-five (45) days after the end of the reporting quarter; (ii) annual reports within forty-five (45) days after the end of the calendar year; and (iii) event-specific reports shall be submitted forty-five (45) Days following the occurrence. Quarterly reports shall include total number of Commercial Refuse, Organics and Recycling customers demonstrating compliance with California's Mandatory Commercial Recycling and Mandatory Commercial Organics Collection requirements. Quarterly reports also shall include total number of Residential Refuse and Recycling customers.
- b. **Recycling and Diversion Reporting.** Contractor shall prepare and deliver to District all reports necessary to enable the District to comply with its obligations under applicable law.
- c. **Residential Route Audit.** Upon District request, but not more frequently than one time per year, Contractor shall provide the annual residential route audit to District. This audit shall demonstrate verified service levels for all residential customers, shall list all locations where service levels did not correspond to billings, and shall demonstrate corrective actions for all service level discrepancies.
- d. **Reporting Violations.** The failure or neglect of the Contractor to file any of the required reports, 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 District under the Agreement or otherwise.
- e. **Commercial Recycling Report.** Contractor will provide a quarterly report:
 - 1) Showing all Commercial Recycling, Organics, and refuse Customers (including location and service level);
 - 2) Identifying progress in reducing refuse only Customers and increasing Recycling and Organics tonnage.

10.03 AUDIT

Auditable Records. Contractor shall maintain in auditable form all pertinent records relating to the services provided hereunder, including but not limited to, customer lists, maps, compliance records, and Customer complaints, for the full Term of this Agreement, and an additional period of not less than three (3) years, or any longer period required by law or by District. The District shall have the right, upon giving thirty (30) days advance written notice to Contractor, to inspect maps, compliance records, Customer complaints, and other like materials of Contractor which reasonably relate to Contractor's compliance with the provisions of this Agreement. Such records shall be made available to District at Contractor's regular place of business.

ARTICLE 11. INDEMNITY AND INSURANCE

11.01 INDEMNIFICATION

- a. Indemnification of District. Contractor shall indemnify, defend and hold harmless District, its officers, employees and agents (collectively, the "Indemnitees"), from and against (i) any and all liability, penalty, claim, demand, action, proceeding or suit, of any and every kind and description, whether judicial, quasi-judicial or administrative in nature, (ii) any and all loss including, but not limited to, injury to and death of any person and damage to property, and (iii) contribution or indemnity demanded by third parties (collectively, the "Claims"), arising out of or occasioned in any way by, directly or indirectly, Contractor's performance of, or its failure to perform, its obligations under this Agreement. Contractor shall defend (with attorneys reasonably acceptable to District) the Indemnitees. Contractor's duty to defend, indemnify and hold harmless Indemnitees shall survive the expiration or earlier termination of this Agreement. If, due to the joint, concurring, comparative or contributory fault, negligence or willful misconduct of the Parties which gives rise to the Claims for which the Indemnitees are entitled to indemnification under this section, then liability for such Claims shall be allocated between the Parties in proportion to their respective degrees of fault, negligence, or willful misconduct contributing to such Claims.
- b. Indemnification of Contractor. District shall indemnify, defend and hold harmless Contractor, its officers, directors, shareholders, employees and agents (collectively, the "Indemnified Parties"), from and against (i) any and all liability, penalty, claim, demand, action, proceeding or suit, of any and every kind and description, whether judicial, quasi-judicial or administrative in nature, (ii) any and all loss including, but not limited to, injury to and death of any person and damage to property, and (iii) contribution or indemnity demanded by third parties (collectively, the

“Claims”), arising out of or occasioned in any way by, directly or indirectly, District’s performance of, or its failure to perform, its obligations under this Agreement. District shall defend (with attorneys reasonably acceptable to District) the Indemnified Parties. District’s duty to defend, indemnify and hold harmless the Indemnified Parties shall survive the expiration or earlier termination of this Agreement. If, due to the joint, concurring, comparative or contributory fault, negligence or willful misconduct of the Parties which gives rise to the Claims for which the Contractor is entitled to indemnification under this section, then liability for such Claims shall be allocated between the Parties in proportion to their respective degrees of fault, negligence, or willful misconduct contributing to such Claims.

- c. PRC 41821.2 Indemnification. Contractor agrees to indemnify and hold harmless the Indemnitees against all fines and/or penalties imposed on the District pursuant to California Public Resources Code Section 41821.2 et seq., including but not limited to Section 41850, due to Contractor’s failure to comply with laws, regulations or permits or to the extent caused or contributed to by Contractor’s failure to perform its obligations under this Agreement. This indemnity obligation is subject to the limitations and conditions in California Public Resources Code section 40059.1, but is enforceable to the maximum extent allowable by that Section

- d. **Hazardous Waste Indemnification.** Except with respect to Disposal of Solid Waste collected from District residences by the County of San Bernardino during collection events hosted by the County of San Bernardino, Contractor shall indemnify, defend with counsel approved by District, protect and hold harmless Indemnitees and any successor or successors to District’s interest from and against all claims, actual damages, natural resources damage, injuries, costs, response, remediation and removal costs, losses, demands, debts, liens, liabilities, causes of action, suits, legal or administrative proceedings, interest, fines, charges, penalties, and expenses (including but not limited to attorneys’ and expert witness fees and costs incurred in connection with defending against any of the foregoing or in enforcing this indemnity) of any kind whatsoever paid, incurred or suffered by, or asserted against, Indemnitees arising from or attributable to any disposal, storage, handling, repair, clean up or detoxification, or preparation and implementation of any removal, remedial, response, closure or other plan, of hazardous substance or hazardous wastes at any place where Contractor stores, handles, transports or disposes of any material pursuant to this Agreement. Contractor shall also indemnify, defend with counsel approved by District, protect and hold harmless Indemnitees and any successor or successors to District’s interest from and against all

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claims asserted by third parties for special, consequential, and/or punitive damages arising from or attributable to any disposal, storage, handling, repair clean up or detoxification, or preparation and implementation of any removal, remedial, response, closure or other plan, of hazardous substance or hazardous wastes at any place where Contractor stores, handles, transports or disposes of any material pursuant to this Agreement. The foregoing indemnity is intended to operate as an agreement pursuant to Section 107 (e) of the Comprehensive Environmental Response, Compensation and Liability Act, "CERCLA", 42 U.S.C. section 9607 (e), and California Health and Safety Code section 25364, to insure, protect, hold harmless, and indemnify District from liability. This provision is in addition to all other provisions of this Agreement and is intended to apply to Contractor's actions during the term of this Agreement and survive the end of the Term of this Agreement.

12.02 INSURANCE

Without limiting Contractor's indemnification of Indemnitees pursuant to **Section 12.01** above, and at its sole expense, Contractor shall procure from an insurance company or companies admitted to do business in the State, and shall maintain in force at all times during the Term of this Agreement, the following types and amounts of insurance:

- a. **Workers' Compensation and Employer's Liability.** Contractor shall maintain workers' compensation insurance covering its employees in statutory amounts and otherwise in compliance with the laws of the State. Contractor shall maintain employer's liability insurance in an amount not less than one million dollars (\$1,000,000) per accident or disease. Contractor shall not be obligated to carry workers' compensation insurance if: (i) Contractor qualifies under California law and continually complies with all statutory obligations to self-insure against such risks; (ii) furnishes a certificate of Permission to Self-Insure issued by the Department of Industrial Relations; and (iii) furnishes updated certificates of Permission to Self-Insure periodically to evidence continuous self insurance.
- b. **General Liability Insurance and Commercial Vehicle Liability Insurance.** The limits of such insurance coverage, and companies, if any, shall be subject to review and approval by District's Risk Manager. Contractor shall obtain and maintain in full force and effect throughout the entire Term of this Agreement a Broad Form Comprehensive General Liability (occurrence) policy with a minimum limit of Four Million Dollars (\$4,000,000.00) aggregate and One Million Dollars (\$2,000,000.00) per occurrence for bodily injury and property damage. Said insurance shall

protect Contractor and District from any claim for property damage which may arise from operations performed pursuant to this Agreement, whether such operations are by Contractor itself, or by its agents, employees, and/or sub-contractors. Contractor shall also obtain and maintain a Commercial Vehicle Liability Insurance policy, covering personal injury and property damage, of not less than Two Million Dollars (\$2,000,000) combined single limit, covering any vehicle utilized by Contractor, its officers, employees, servants, volunteers, agents and independent contractors and/or subcontractors in performing the services required by this Agreement.

- c. Endorsements. Copies of the endorsements evidencing the above required insurance coverage shall be filed with the District. All of the following endorsements are required to be made a part of the insurance policies required by this Section:

“District, its employees, agents, contractors, and officers, are hereby added as additional insured as respects liability arising out of activities performed by or on behalf of Contractor.”

“This policy shall be considered primary insurance as respects any other valid and collectible insurance the District may possess including any self-insured retention District may have, and any other insurance District does possess shall be considered excess insurance and shall not contribute with it.”

“This insurance shall act for each insured, as though a separate policy had been written for each. This, however, shall not act to increase the limit of liability of the insuring company.”

“Thirty (30) days prior written notice by certified mail, return receipt requested, shall be given to District in the event of suspension, cancellation, reduction in coverage or in limits, or non-renewal of this policy for whatever reason. In the case of cancellation for non-payment, ten (10) days advance written notice shall be given. Such notices shall be sent to the District.”

The limits of such insurance coverage, and companies, shall be subject to review and approval by District’s General Manager every year and may be increased at that time to match the coverage provided by District’s own liability insurance policy. District shall be included as an additional insured on all policies and endorsements. The requirements of this Section may be satisfied in whole or in part by Contractor’s self-insurance program.

- d. Modification. The insurance requirements provided herein may be modified or waived in writing by the Board of Directors upon request of Contractor, or in the reasonable discretion of District provided the Board

of Directors determines such modification or waiver is in the best interests of District considering all relevant factors, including acceptable coverage amounts.

ARTICLE 13. CONTRACTOR PERFORMANCE

13.01 ANNUAL REVIEW

- a. **General Manager Review.** Annually within sixty (60) days of the anniversary of the Effective Date of this Agreement, General Manager may, and, if a public hearing review before Board of Directors is to be held, shall conduct a review of Contractor's performance, quality of service, Collection systems and programs, feasibility of new services and new technologies, Customer complaints, rights of privacy, amendments to Agreement, developments in law, new initiatives for meeting or exceeding diversion goals, complying with statewide recycling obligations and initiatives, regulatory constraints and other services, jointly with Contractor for the purpose of identifying problems, progress and opportunities. Within sixty (60) days of such General Manager review, General Manager shall issue a written report summarizing the findings and conclusions of the review. Within thirty (30) days following receipt of General Manager's written report, Contractor shall provide General Manager a written response.
- b. **Board Presentation.** At District's sole option, within sixty (60) days following General Manager's review, the General Manager may make a presentation to the Board of Directors (the "Board Presentations") at which Contractor shall be present and shall participate, to discuss General Manager's review regarding Contractor's performance, quality of service, Collection systems, programs and other services.
- c. **District Report.** Within sixty (60) days after the conclusion of the Board Presentation, District shall issue a report with respect to: (i) the adequacy of Contractor's performance and quality of service; and (ii) a listing of any service changes desired and considered technically and economically feasible by District. District may require Contractor to provide such services within a reasonable time, for reasonable rates and compensation. If any noncompliance with Agreement is found, District may direct Contractor to correct the inadequacies by issuing a Notice of Noncompliance in accordance with this **Section 13.01.**
- d. **Contractor Response to Inadequacies.** Within sixty (60) days after receiving a notice of noncompliance from District, Contractor shall submit a report to District indicating: (i) inadequacy cited by District; (ii) cause of inadequacy; (iii) corrective measures taken by Contractor including dates

action was taken; and (iv) measures taken by Contractor to prevent reoccurrence of the inadequacy.

13.02 BREACH

Each of the following shall constitute a material breach of this Agreement by Contractor:

- a. Contractor fails to perform its obligations under any Section of this Agreement and its failure to perform is not cured within fifteen (15) days after written notice from District, provided that if the nature of the breach is such that it will reasonably require more than ten (10) business days to cure, Contractor shall not be in breach so long as it promptly advises District in writing of the reasonable additional time required to cure, subsequently commences the cure and diligently proceeds to completion of the cure; and provided further that neither notice nor opportunity to cure applies to events described in Subsections c through f, below;
- b. Contractor ceases to provide Collection and transportation services for a period of seven (7) days for any reason within Contractor's control;
- c. Contractor files a voluntary petition for relief under any bankruptcy, insolvency or similar law;
- d. An involuntary petition brought against Contractor under any bankruptcy, insolvency or similar law which remains undismissed or unstayed for ninety (90) days;
- e. A representation or warranty contained in **Section 2.01**, above proves to be false or misleading in a material respect as of the date such representation or warranty was made.

13.03 ADMINISTRATIVE HEARING

- a. Hearing Required. An administrative hearing shall be held: (i) if either Party alleges a breach of this Agreement by the other; and (ii) preceding a default hearing before the Board of Directors. Should either Party contend a breach of this Agreement by the other Party, the offended Party shall give a written request with the other Party for an administrative hearing within fourteen (14) days of the alleged breach.
- b. Hearing Officer Selection. Within ten (10) days of receipt by either Party of a written notice requesting an administrative hearing, General Manager and Contractor shall meet to mutually agree on the selection of a hearing officer. If agreement is not reached within twenty (20) days after the notice requesting an administrative hearing is received, the offended Party shall select the hearing officer from a list of three

potential hearing officers who are retired California Superior Court or appellate Court justices, none of whom are related to the Parties, prepared in advance by the General Manager and approved by the Board of Directors.

- c. **Hearing Procedure and Venue.** The hearing shall be conducted according to California Code of Civil Procedure Section 1280, *et seq.* (the “California Arbitration Act”). The exclusive venue shall be in San Bernardino County, California. A hearing officer to whom a matter is referred shall have the authority to (i) order the District or Contractor to undertake remedial action to cure the breach and to prevent occurrence of similar breaches in the future; (ii) assess damages and/or levy a penalty upon the District or the Contractor consistent with the terms of this Agreement; or (iii) find there has been no breach. If the hearing officer finds there has been no breach, such a decision precludes the District from conducting a default hearing.
- d. **Payment of Fees.** The Party losing the hearing shall be liable for the hearing officer’s fees.
- e. **Failure to Comply.** Any failure of Contractor to comply with the hearing officer’s order shall be deemed a material breach of the Agreement, and may be grounds for termination of the Agreement.
- f. **Hearing Commencement; Discovery.** The hearing officer shall commence the hearing within thirty (30) days of selection unless the Parties and the hearing officer otherwise agree. Any Party to the hearing may issue a request to compel reasonable document production from the other Party. Disputes concerning the scope of document production and enforcement of document requests shall be subject to agreement by the Parties, or if agreement is not reached within twenty (20) days of that document request, then by disposition by order of the hearing officer. Any such document request shall be subject to the proprietary rights and rights of privilege of the Parties, and the hearing officer shall adopt procedures to protect such rights. Except as may be otherwise specifically agreed by the Parties, no other form of pretrial discovery shall be available to the Parties; provided that if either Party notifies the hearing officer that a material violation of the Franchise or rights in connection therewith is claimed by either Party, the provisions of Code of Civil Procedure section 1283.05 shall apply.
- g. **Communications.** Neither Party may communicate separately with the hearing officer after the hearing officer has been selected. All subsequent communications between a Party and a hearing officer shall be simultaneously delivered to the other Party. This provision shall not apply to communications made to schedule a hearing or request a continuance.

- h. Effective Date; Findings. Until a final decision is entered by the hearing officer proceeding under the foregoing provisions and the time for appeal or other post judgment petition has expired, the imposition or enforcement of any penalties or sanctions provided in this Agreement and related to the subject matter of the hearing shall be stayed. The hearing officer may modify or cancel any proposed penalties or sanctions upon finding that the Party subject thereto acted with substantial justification or if the interest of justice so requires.
- i. Appeal. Any Party to an administrative hearing as set forth in this Section may petition the Superior Court in San Bernardino County, California to confirm, correct, or vacate the decision on the grounds stated in the California Arbitration Act. Any proceedings on appeal shall be in accordance with California Code of Civil Procedure sections 1294 and 1294.2.
- j. Award/Decision Non-Binding. To the extent that the administrative hearing procedure set forth herein is interpreted as a requirement for arbitration, any decision by a hearing officer arising out of such administrative hearing shall be **NON-BINDING**, and nothing in this Article or elsewhere in this Agreement, shall prevent the Parties from seeking judicial review or a trial de novo with respect to any decision rendered by a hearing officer as set forth herein.

13.04 LIQUIDATED DAMAGES

- a. Material Breach. District 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 District as a result of a material breach by Contractor of its obligations under this Agreement. The factors relating to the impracticality 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 services; (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 services 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 breaches, and other remedies are, at best, a means of future correction and not remedies which make the public whole for past breaches.

- b. Amount. After providing Contractor notice and an opportunity to cure set forth herein, the Board of Directors may, in its discretion, assess liquidated damages in an amount not to exceed Eight Hundred Dollars (\$800.00) per day, for each calendar day that service is not provided by Contractor in accordance with this Agreement. The amount of the liquidated damages shall be adjusted annually each September 1 by the amount of change in the Consumer Price Index according to the procedure specified in Section 10.06 above, for Contractor compensation.
- c. Payment. District finds, and Contractor acknowledges and agrees, that the above described liquidated damage provisions represent a reasonable sum in light of all the circumstances. Said liquidated damages sums shall be applicable to each business day of delay during which Contractor has been found by the Board of Directors to be in material breach pursuant to this Section. The Contractor shall pay any liquidated damages assessed by the Board of Directors within ten (10) days after they are assessed.

13.05 DISTRICT'S ADDITIONAL REMEDIES

In addition to the remedies set forth in this Section, District shall have the following rights and remedies:

- a. Performance by Others. The right to license others to perform the services otherwise to be performed by Contractor hereunder or to perform such services itself.
- b. Damages. The District's right to obtain damages and/or injunctive relief. Both Parties recognize and agree that in the event of a breach of the terms of this Agreement by Contractor, District may suffer irreparable injury and incalculable damages sufficient to support injunctive relief, to enforce the provisions of this Agreement and to enjoin the breach thereof.

13.06 FORCE MAJEURE

Contractor shall not be in breach under this Agreement in the event that the services to be provided by Contractor are temporarily interrupted or discontinued for any of the following events which are beyond the reasonable control of and not caused by the actions of Contractor: (i) riots, wars, sabotage, severe civil disturbances, insurrections, and explosions; (ii) natural disasters such as floods, earthquakes, landslides, and fires; (iii) strikes, lockouts, and other labor disturbances; or (iv) other catastrophic events. Other catastrophic events do not include the financial inability of Contractor to perform or failure of Contractor to

obtain any necessary permits or licenses from other governmental agencies or the right to use the facilities of any public utility where such failure is due solely to the acts or omissions of Contractor.

13.07 PERFORMANCE BOND

Contractor shall, prior to the Effective Date of this Agreement, execute and file with the District a surety bond in the penal sum of Two Hundred Thousand Dollars (\$200,000.00) conditioned upon the faithful performance of this Agreement by Contractor, and its subcontractors, if any. Said bond may be written for a term of one (1) year, and may thereafter be renewed by certificate, proved however, that Contractor agrees to and shall maintain such bond in force for the complete Term of this Agreement (including any extensions thereof).

ARTICLE 14. OTHER AGREEMENTS OF THE PARTIES

14.01 RELATIONSHIP OF PARTIES; INDEPENDENT CONTRACTOR

The Parties intend that Contractor shall perform the services required by this Agreement as an independent contractor engaged by District, and not as an officer or employee of District, nor as a partner of or joint venture with District. No employee of Contractor shall be deemed to be an employee or agent of District. Except as expressly provided herein, Contractor shall have the exclusive control over the manner and means of conducting the services performed under this Agreement, and over all persons performing such services. Contractor shall be solely responsible for the acts and omissions of its officers, employees, subcontractors and agents. Neither Contractor, nor its officers, employees, subcontractors or agents shall obtain any rights to retirement benefit, workers' compensation benefits, or any other benefits which accrue to District employees by virtue of their employment with District.

14.02 COMPLIANCE WITH LAWS

In providing the services required under this Agreement, Contractor shall at all times comply with all applicable laws of the United States, the State and District, with all applicable regulations promulgated by Federal, State, regional or local administrative and regulatory agencies, and by District, now in force and as they may be enacted, issued or amended during the Term, and with all permits affecting the services to be provided.

14.03 ASSIGNMENT; TRANSFER; CHANGE IN CONTROL

- a. District Consent Required. It is the expressed intent of the Parties to this Agreement that the rights and privileges granted by this Agreement shall

not be transferred, sold, hypothecated, leased, assigned, nor shall any of the rights or privileges herein be hypothecated, leased, assigned, sold, or transferred, either in whole or in part, nor shall title thereto, either legal or equitable, or any right, interest, or property therein, pass to or vest in any person, except Contractor, either by act of Contractor or by operation of law, nor shall any Change in Control (as defined in Subsection c, below) occur, without the prior written consent of District, expressed by resolution adopted by the Board of Directors.

It is further understood and agreed that District's consent to any of the above actions or transactions may be withheld for any reason, with or without cause, and that upon the occurrence of any of the above events, without consent of District, District shall have the absolute right to terminate the Agreement without notice.

- b. **Penalty for Unauthorized Transfer.** In addition to the rights provided District with respect to terminating this, Agreement should Contractor take any of the actions set forth in **Subsection 14.03. a** above, prior to obtaining written consent of District, twenty-five percent (25%) of the gross monthly billings for Solid Waste and Recycling, from the date of the unauthorized action until the date District receives notice of the unauthorized action, shall be returned to District.
- c. **Change In Control Defined.** District consent is required for any change in control of Contractor. "Change in Control" shall mean any sale, transfer, or acquisition of Contractor. Contractor is a corporation, and any acquisition of more than twenty-five percent (25%) of Contractor's voting stock by any person, or groups of persons acting in concert, who already own less than fifty percent (50%) of the voting stock, shall be deemed a change in control. Provided, however, that the transfer of stock of Contractor to another solid waste company shall be deemed a transfer and not a change in control.
- d. **Application Fee.** Any application for a Franchise transfer, assignment of this Agreement or Change in Control, as described in this Section 14.03, shall be made in the manner prescribed by the General Manager. The application shall include the payment and reimbursement to District of: (i) up to Ten Thousand Dollars (\$10,000) to cover the cost of all direct or indirect administrative expenses including consultants and attorneys, necessary to adequately analyze the application (the "Transfer Application Fee"); and (ii) all additional associated costs not covered by the Transfer Application Fee. Bills evidencing the costs and expenses associated with a Franchise transfer, assignment or Change of Control shall be supported with evidence of the expense or cost incurred. The applicant shall pay such bills within thirty (30) days of receipt. The

- Transfer Application Fee and cost reimbursements set forth in this Subsection are in addition to any other fees specified in this Agreement.
- e. Assignment to Family Member. Notwithstanding the fact it would otherwise fall within the provisions of this **Section 14.03**, any transfer of interests to an immediate family member of any existing shareholder may occur with the written approval of the General Manager, and without any of the other provisions of this **Section 14.03** applying if Contractor certifies and the General Manger verifies that the transfer is in fact to an immediate family member or members; and, the General Manager finds both of the following: (i) that the transfer of interest will have no adverse impact on Contractor's operations in District, and (ii) that the transfer of interest will not result in any interest in Contractor being vested in any person who is not an immediate family member of an existing shareholder of Contractor. In the event the General Manager is unable to make these findings, or has any concern regarding his/her ability to do so, he/she may refer the matter in whole or part to the Board of Directors for its consideration, approval, or other action, and the Board of Directors shall have the discretion to consider the matter as if it were a transfer as described in this **Section 14.03**. Any assignment to a family member shall not incur a Transfer Application Fee.

14.04 SUBCONTRACTING

Contractor shall not engage any subcontractors to perform any of the services required of it by this Agreement without the prior written consent of District. Contractor shall notify District no later than thirty (30) days prior to the date on which it proposes to enter into a subcontract. District's approval shall not be unreasonably withheld. Contractor retains the right to enter into an arrangement with an affiliated entity to perform any of the services, activities or administration of services or activities which Contractor is required or allowed to perform under this Agreement. Any arrangement by Contractor with an affiliated entity shall neither be considered as a subcontracting nor as an assignment.

14.05 CONTRACTOR'S INVESTIGATION

Contractor has made an independent investigation, satisfactory to it, of the conditions and circumstances surrounding the Agreement and the work to be performed by it. Contractor has taken those matters into consideration in agreeing to provide the service required under this Agreement for the compensation to be provided herein.

14.06 NOTICE

All notices, demands, requests, proposals, approvals, consents and other communications which this Agreement requires, authorizes or contemplates shall be in writing and shall either be personally delivered to a representative of the Parties at the addresses below, or be deposited in the United States mail, first class postage prepaid, addressed as follows:

a. If to District:

General Manager
PHELAN PIÑON HILLS COMMUNITY SERVICES DISTRICT
4176 Warbler Road
PO BOX 294049
Phelan, CA 92329

b. If to Contractor:

CFO
CR&R, Incorporated
11292 Western Ave
Stanton, Ca. 90680

With Copy to:

General Manager
CR&R Incorporated
9828 Buckwheat Road
Phelan, Ca. 92371

- c. The address to which communications may be delivered may be changed from time to time by a notice given in accordance with this Section.
- d. All notices shall be deemed delivered upon receipt by personal service or as of the second (2nd) day after deposit in the United States mail.

14.07 REPRESENTATIVES

- a. Representatives of District. References in this Agreement to actions to be taken by the District shall mean action taken by the Board of Directors, except as provided below or elsewhere in this Agreement. The General Manager shall be deemed to be the administrator of this Agreement and may in turn delegate authority to other District officials in writing. Contractor may rely upon actions taken by the delegates of the General Manager if such actions are within the scope of the authority delegated to them.

- b. Representative of Contractor. Contractor shall designate a responsible representative to serve as its “government liaison” and act in its behalf in all matters related to the Agreement and shall inform District in writing of such designation and of any limitations upon his or her authority to bind Contractor. District may rely upon action taken by such designated representative as actions of Contractor unless they are outside the scope of the authority delegated to him/her by Contractor as communicated to District. Contractor shall provide District prior written notification of a change in its government liaison. District reserves the right to require a change of Contractor’s government liaison.

14.08 DUTY OF CONTRACTOR NOT TO DISCRIMINATE

In the performance of this Agreement Contractor shall not discriminate, nor permit any subcontractor to discriminate, against any employee, applicant, for employment, or Customer an account of race, color, national origin, ancestry, religion, sex, age, physical disability, medical condition, sexual orientation, marital status, or other characteristic, in violation of any applicable law.

14.09 TRANSITION TO NEXT SERVICE PROVIDER

At the expiration of the Term or the earlier termination of this Agreement, or upon District’s approval of a proposed assignment, Contractor shall cooperate fully with District to ensure an orderly transition to any and all new service providers. Contractor shall further cooperate with District by providing route and account data for the development of a request for proposals should District decide to seek proposals for the services provided under this Agreement.

14.10 OWNERSHIP OF SOLID WASTE

- a. Once Solid Waste, Recyclable Materials, Green Waste, Organic Materials, and Construction and Demolition Waste is placed in Commercial containers for Collection, or Residential containers for curbside, collection, ownership shall transfer to Contractor. Contractor is hereby granted the right to retain, Recycle, Compost, dispose of, and otherwise use such Solid Waste, Recyclable Materials, Green Waste, Organic Materials, and Construction and Demolition Waste, or any part thereof, in any lawful fashion or for any lawful purpose as agreed to by District and Contractor in order to meet AB 939 requirements.
- b. Transfer of Ownership. When disposed of at a Disposal Site or Processing Facility (whether landfill, transformation facility, transfer station, or material recovery facility) Solid Waste, Recyclable Materials, Green Waste, Organic Materials and Construction and Demolition Waste shall become the property of the owner or operator of the Disposal Facility or

Processing Facility once deposited there by Contractor. At no time does District obtain any right of ownership or possession of Solid Waste placed for Collection as described herein, and nothing in this Agreement shall be construed as giving rise to any inference that District has such rights.

ARTICLE 15. MISCELLANEOUS PROVISIONS

15.01 GOVERNING LAW

This Agreement shall be governed by, and construed and enforced in accordance with the laws of the State of California.

15.02 JURISDICTION

Any lawsuits between the Parties arising out of this Agreement shall be brought and concluded in the courts of the State of California, which shall have jurisdiction over such lawsuits. With respect to venue, the Parties agree that this Agreement is made and will be performed in San Bernardino County.

15.03 BINDING ON SUCCESSORS

The provisions of this Agreement shall inure to the benefit of and be binding on the successors and permitted assigns of the Parties.

15.04 PARTIES IN INTEREST

Nothing in this Agreement is intended to confer any rights on any Persons other than the Parties to it and their permitted successors and assigns.

15.05 WAIVER

The waiver of either Party of any breach or violation of any provisions of this Agreement shall not be deemed to be a waiver of any breach or violation of any other provision nor of any subsequent breach or violation of the same or any other provision.

15.06 ATTACHMENTS

Each of the Attachments to this Agreement, identified as Attachments "A" through "C", are attached hereto and incorporated herein and made a part of this Agreement by this reference.

15.07 ENTIRE AGREEMENT

This Agreement, including the Attachments, represents the full and entire agreement between the Parties with respect to the matters covered herein and supersedes all prior negotiations and agreements, either written or oral.

15.08 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.

15.09 INTERPRETATION

This Agreement shall be interpreted and construed reasonably and neither for nor against either Party, regardless of the degree to which either Party participated in its drafting.

15.10 AMENDMENT

This Agreement may not be modified or amended in any respect except by a writing signed by the authorized representatives of the Parties.

15.11 SEVERABILITY

If a court of competent jurisdiction holds any provision of this Agreement to be invalid and unenforceable, the invalidity or unenforceability of such provision shall not affect any of the remaining provisions of this Agreement which shall be enforced as if such invalid or unenforceable provision had not been contained herein.

15.12 COSTS AND ATTORNEYS' FEES

The prevailing Party in any action brought to enforce the terms of this Agreement or arising out of this Agreement may recover its reasonable costs and attorneys' fees expended in connection with such an action from the other Party.

15.13 NO DAMAGES FOR INVALIDATION OF AGREEMENT

Except as otherwise set forth in **Section 15.15** below, if a final judgment of a court of competent jurisdiction determines that this Agreement is illegal or was unlawfully entered into by District, neither Party shall have any claim against the

other for damages of any kind (including but not limited to loss of profits) on any theory.

15.14 REFERENCE TO LAWS

All references in this Agreement to laws and regulations shall be understood to include such laws and regulations as they may be subsequently amended or recodified, unless otherwise specifically provided. In addition, references to specific government agencies shall be understood to include agencies that succeed to or assume the functions they are currently performing.

15.15 INDEMNITY AGAINST CHALLENGES TO AGREEMENT

For the Term of this Agreement, Contractor shall indemnify, defend and hold harmless Indemnitees from and against any and all liability, claim, demand, action, proceeding or suit of any and every kind and description brought by a third person challenging the process by which this Agreement was negotiated or awarded.

(Signature page follows)

LAST PAGE OF AGREEMENT

In WITNESS WHEREOF, District and Contractor have executed this Agreement as of the day and year first written above.

PHELAN PIÑON HILLS COMMUNITY CR&R, INC.
SERVICES DISTRICT:

By: _____
President of the Board

By: _____
President

APPROVED:

General Manager

ATTEST:

Secretary

APPROVED AS TO FORM:

Legal Counsel

ATTACHMENT A

DEFINITIONS

Unless the context otherwise requires, capitalized terms used in this Agreement shall have the meanings set forth below.

- a. Agreement – The term “Agreement” shall mean this contract, entered into between District and Contractor.
- b. Bin- The term "Bin" means a metal container with hinged lids and wheels serviced by a front-end loading truck. Some “Bins” may not have wheels due to their placement or customer request.
- c. Bulky Waste – The term “Bulky Waste” shall mean large items of Solid Waste such as appliances, furniture, large auto parts, trees, branches greater than 4 inches in diameter and 36 inches in length, stumps and other oversize wastes whose large size precludes or complicates their handling by normal collection, processing or disposal methods.
- d. District– The term “District” shall mean the Phelan Piñon Hills Community Services District.
- e. Board of Directors – The term “Board of Directors” shall mean the Board of Directors of the Phelan Piñon Hills Community Services District.
- f. General Manager – The term “General Manager” shall mean the General Manager of the Phelan Piñon Hills Community Services District.
- g. Cart- the term "Cart" means a plastic container with a hinged lid and wheels provide for automated refuse and recycling service.
- h. Code – The term “Code” shall mean the ordinances, resolution, rules, regulations, policies, and/or procedures of the Phelan Piñon Hills Community Services District.
- i. Collection Service – The term “Collection Service” shall mean all or any part of the activities involved in collecting and transporting solid waste, recyclable materials or green waste to an appropriate disposal or recycling facility.
- j. Commercial/Industrial Premises – The term “Commercial/Industrial Premises” shall mean stores, offices, including manufacturing and industrial offices and facilities, restaurants, warehouses, schools, colleges, universities, hospitals, and other non-manufacturing entities.
- k. Commercial Recycling Program – The term “Commercial Recycling Program” shall mean Source Separated Commercial Recycling or Select Commercial Recycling

- l. Commercial Organics Program – The term “Commercial Organics Program” shall mean collection and processing of organic material from Commercial/Industrial Premises as required by application law. Compost – The term “Compost” shall mean shall mean controlled biological decomposition of organic material, producing a stable soil amendment.
- m. Construction and Demolition Waste – The term “Construction and Demolition Waste” shall mean used or discarded construction materials removed from a premise during construction, demolition or renovation of a structure where a District permit has been issued.
- n. Customer – The term “Customer” shall mean those generators of solid waste, recyclable materials or green waste to whom a franchisee provides collection service.
- o. Disposal Facility – The term “Disposal Facility” shall mean any dump site, transfer station or other place specifically designed for the receipt and disposition of refuse collected by Contractor pursuant to this agreement.
- p. Disposal and Processing Fees – The term “Disposal and Processing Fees” shall mean the basic processing fee charged to process commingled recycling materials, including residue disposal and Recycled materials revenues.
- q. Exclusive Solid Waste Handling Services – The term “Exclusive Solid Waste Handling Services” means any action by District, whether by franchise, contract, license, permit, or otherwise, whereby the District itself or one or more other local agencies or solid waste enterprises has the exclusive right to provide solid waste handling services of any class or type within all or any part of the territory of the local agency.
- r. Franchise – The term “Franchise” shall mean a certificate, contract, or license issued by the District authorizing a person to provide solid waste and recycling collection service and to use District streets.
- s. Franchisee – The term “Franchisee” shall mean the person granted the exclusive franchise by this Agreement.
- t. Gate Fee – The term “Gate Fee” shall mean the fee charged for the disposal of solid waste at any public or private landfill, transfer station and/or resource recovery or recycling facilities.
- u. General Manager – The term “General Manager” shall mean the Phelan Pinon Hills Community Service’s District’s Chief Executive or his/her designee.
- v. Green Waste – The term “Green Waste” shall mean compostable materials including grass clippings, leaves, pruning and similar vegetative materials; but does not include sod, stumps, or similar bulky materials, rocks or dirt.
- w. Multi-Family Premises – The term “Multi-Family Premises” shall mean any building or group of buildings that contain 5 or more dwellings.

- x. Organic Material – The term “Organic Material” shall mean Solid Waste materials that are biologically synthesized by plants or animals from simpler substances, are no longer suited for their intended purpose, and may be readily broken down by biological processes into soil constituents. Examples include, but are not limited to, food waste, green waste and putrescible material which are generally a source of food for bacteria.
- y. Non-Residential Premises – The term “Non-Residential Premises” shall mean Commercial/Industrial and Multi-Family Premises.
- z. Processing Facility – The term “Processing Facility” shall mean a facility designated by the District to accept Recycling Material, Organic Material and/or Compost for the purpose of reduction, separation, recovery and conversion.
- aa. Recyclable Materials – The term “Recyclable Materials” shall mean Solid Waste that is source separated, has some potential economic value, and is set aside, handled, packaged, or offered for collection in a manner different from Refuse in order to allow it to be processed for recycling. Recycling Materials must be acceptable to the Processing Facility, and include paper, cardboard, glass, metal, and rigid plastic containers.
- bb. Refuse – The term “Refuse” shall mean Solid Waste, as defined herein. However, the term “Refuse”, for purposes of this Agreement, shall not be deemed to refer to or include dead animals, manure, sewage waste or waste water, explosive substances, radioactive materials, materials which have been exposed to highly infectious or contagious diseases, or other hazardous materials.
- cc. Residential Premises – The term “Residential Premises” shall mean a single family dwelling or a multi-family dwelling with up to and including 4 dwelling units on a single tax lot.
- dd. Roll-Off Box- the term “Roll-Off Box” means an open-top metal container serviced by a roll-off truck with a capacity of 10 to 40 cubic yards.
- ee. Select Commercial Recycling – The term “Select Commercial Recycling” shall mean the collection of non-residential Bins that include high concentrations of Recyclable Materials, as evidenced by the Customers’ typical generation, but that are not otherwise collected as Commercial Recycling.
- ff. Service Unit – The term “Service Unit” shall mean each of the following which receives standard service: each single-family dwelling, each dwelling unit within a duplex, triplex or multi-family residential building, each apartment or condominium unit within an apartment or condominium building, and each business, professional, industrial or other non-residential use unit.
- gg. Service Component-The term Service Component shall mean that portion of all of the fees collected hereunder for Solid Waste Handling Services except Disposal and Processing Fees and Administrative Fees.

- hh. Solid Waste – The term “Solid Waste” shall mean all putrescible and nonputrescible solid and semisolid wastes, including garbage, trash, refuse, paper, rubbish, ashes, industrial wastes, demolition and construction wastes, discarded home and industrial appliances, manure, vegetable or animal solid and semisolid wastes, and other discarded solid and semisolid wastes. “Solid Waste” does not include hazardous waste as defined by the State of California, or low-level radioactive waste. “Solid Waste” does not include medical waste which has not been treated for disposal at a solid waste facility.
- ii. Solid Waste Handling Services – The term “Solid Waste Handling Services” shall mean the collection, transportation, storage, and transfer of solid wastes for residential, commercial, institutional, or industrial users or customers.
- jj. Source Separated Commercial Recycling – The term “Source Separated Commercial Recycling” shall mean the collection of Bins that have high concentrations of source separated Recyclable Materials.
- kk. Standard Service – The term “Standard Service” shall mean curbside collection service required for all service units not arranging with the Contractor for Bin service nor required by the District to obtain Bin service from the Contractor.
- ll. Waste Generator – The term “Waste Generator” shall mean any Person, including any contractors or subcontractors acting on such Person’s behalf, whose act or process produced Solid Waste, or whose act first causes Solid Waste to become subject to District’s regulatory authority. A contractor or subcontractor engaged for the purpose of collecting, hauling, and transporting waste is not a waste generator.

ATTACHMENT B

SCOPE OF SERVICES

The services to be performed by Contractor are as follows and are subject to change as described in **Section 10.08** of this Agreement.

- a. Provide Carts for semi-automated collection of residential Solid Waste and Recyclable Materials in accordance with **Section 7.03**.
- b. Provide fully automated, once a week collection of residential Solid Waste and Recyclable Materials.
- c. Provide annual residential curbside Christmas Tree Collection.
- d. Provide containers for collection of commercial Solid Waste, Organic and Recyclable Materials in accordance with **Section 7.03**.
- e. Provide for collection of commercial Solid Waste, Organic and Recyclable Materials up to five days per week.
- f. Provide Records and Reports in accordance with **Article 11**.
- g. Upon District request, work with District to develop a residential Organic material collection and composting program.
- h. Provide an annual event for document destruction (“Shred-Fest”), at Contractor’s sole cost.
- i. Development and management of commercial recycling outreach program.
- j. Establish a periodic residential route audit and service verification program in compliance with **Section...**
- k. Provide a marketing program based program to reduce recycling contamination and increased recyclable material recovery for residential and non-residential customers, including periodic customer outreach, including waste disposal and recycling educational information included in Contractor’s bills, and website, and a comprehensive container inspection and compliance element
- l. Provide for the development and management of school outreach recycling programs including annual site visits to all schools and classrooms within the District limits which receive Collection Services provided by Contractor under this Agreement, provided such schools and classrooms continue to receive such Collection Services.

- m. Supply equipment and manpower for a no charge drop off community clean-up two (2) times per year.

ATTACHMENT C

RATE SCHEDULE

Effective July 1, 2019

ATTACHMENT D