

## TERMS AND CONDITIONS

### 1. SERVICES:

ORR agrees to furnish the solid waste collection and disposal services and/or Equipment specified herein and Customer grants to ORR the exclusive right to collect and dispose of all the Customer's waste material (including all recyclables) specified herein and the Customer agrees to make payment as provided for herein and abide by the terms and conditions of this Agreement.

**2. TERM:** This term of this Agreement is for five (5) years and shall be renewed for successive five (5) year periods without further action by the parties, but may be terminated at the end of any five (5) year period by either of the parties hereto by not less than sixty (60) days prior written notice sent by certified mail. At the completion of this Term, Customer grants ORR the right to compete with any offer which Customer receives (or intends to make) relating to services rendered herein, and agrees to give ORR written notice of any such offer and a reasonable opportunity to respond to it.

**3. CHARGES AND PAYMENT:** Customer shall pay ORR for its services in accordance with the schedule of charges shown on the face of this Agreement on a monthly basis. Payment shall be made by Customer to ORR within ten (10) days of the receipt of an invoice from ORR. Customer shall be liable for all taxes, fees or other charges imposed by federal, state, local or provincial laws and regulations upon the collection, transportation or disposal of Customer's waste materials or the services performed hereunder. An account is past due if it has not been paid within thirty (30) days from the invoice date. If an account is past due, ORR has the option to terminate this Agreement or to temporarily suspend service until the account is brought current without terminating this Agreement or otherwise affecting the remaining terms hereof. Customer agrees to pay interest at the rate of 18% per annum on all amounts past due.

**4. RATE ADJUSTMENTS:** The monthly charge will be guaranteed for a period of one (1) year with a maximum price increase of ten percent (10%) per year. Customer acknowledges that this guarantee does not apply to fuel, landfill costs, taxes, fees or other governmental charges. In the event of and if for any reason fuel costs or the landfill fees at any disposal site utilized in the performance of this Agreement are increased, or if additional taxes, fees or other governmental charges are imposed on the collection, transportation or disposal of the waste being collected hereunder, ORR may change the price(s) under this Agreement with not less than thirty (30) days written notice.

**5. CHANGES:** Changes in ORR's charges, frequency of collection service, number, capacity and/or type of equipment may be agreed to orally, in writing or by the actions and practices of the parties. Otherwise, no amendment, modification or waiver of any provision of this Agreement, and no consent by ORR to any departure therefrom by Customer, shall be effective unless such amendment, modification, or waiver shall be in writing and signed by each of the parties hereto.

**6. WASTE MATERIAL:** The waste material to be collected and disposed of by ORR pursuant to this Agreement is solid waste generated by Customer excluding radioactive, volatile, highly flammable, explosive, biomedical, toxic or hazardous material. Customer shall solely and exclusively use ORR's Equipment and service for the collection, removal and disposal of all of its non-hazardous solid waste including all recyclable materials. The term "hazardous-material" shall include, but not be limited to, any amount of waste listed or characterized as hazardous by the United States Environmental Protection Agency or any state agency pursuant to the Resource Conservation and Recovery Act, as amended, or applicable state law. ORR shall acquire title to the solid waste material when it is loaded into ORR trucks. Title to and liability for any waste excluded above shall remain with Customer and Customer expressly agrees to defend, indemnify and hold harmless ORR from and against any and all damages, penalties, fine and liabilities resulting from or arising out of such waste excluded above. Customer shall not place any waste that requires special handling in the Equipment, including but not limited to items such as tires, brush, demolition or construction waste, white goods and foam products.

**7. EQUIPMENT:** All Equipment supplied by ORR shall remain the property of ORR (referred to herein as the "Equipment"). Customer shall have no right, title, or interest in the Equipment. Customer shall not make any alterations or improvements to the Equipment without prior written consent of ORR. Customer shall not overload the Equipment or use it for incineration purposes. Customer shall keep the Equipment free and clear of all levies, liens and encumbrances.

(a) **Liability:** Customer shall protect and care for all of ORR's Equipment in its possession and control pursuant to this Agreement (the "Equipment"), and shall be responsible for all damages to the Equipment beyond ordinary wear and tear. Customer also acknowledges that it has the care, custody and control of Equipment owned by ORR and accepts responsibility for the Equipment and its contents, except when it is being physically handled by ORR. THEREFORE, CUSTOMER EXPRESSLY AGREES TO DEFEND, INDEMNIFY AND HOLD HARMLESS SWS FROM AND AGAINST ANY AND ALL CLAIMS FOR LOSS OF OR DAMAGE TO PROPERTY, OR INJURY TO OR DEATH OF PERSON OR PERSONS, RESULTING FROM AND ARISING IN ANY MATTER OUT OF THE CUSTOMER'S USE, OPERATION, OR POSSESSION OF ANY EQUIPMENT FURNISHED UNDER THIS AGREEMENT.

(b) **Access:** On collection day, ORR shall have clear access to the Equipment. If the Equipment is blocked to prohibit collection, Customer will be notified and one additional attempt for collection shall be made by ORR. However, ORR reserves the right to charge an additional fee for any additional collection service required by Customer's failure to provide such access. Customer shall immediately remove or cause to be removed from its premises any equipment of any other waste collection entity (including recyclables).

(c) **Driveways:** Customer covenants that ORR shall not be liable for any damages to pavement, curbing or driving surface resulting from its truck servicing in agreed upon access area and releases ORR in advance for any such damages. Customer warrants that any such right of way provided by Customer from Equipment location to the most convenient public right of way is sufficient to bear the weight of all ORR Equipment and ORR shall not be responsible for damage to any private pavement or accompanying subsurface of any route reasonable necessary to perform the services herein contracted,

**8. FAILURE TO PERFORM:** In the event Customer breaches this Agreement prior to the expiration of its term, Customer agrees to pay ORR as liquidated damages the amount equal to:

- (a) Customer's average monthly billings for the most recent six (6) full months, multiplied by the lesser of ten (10) or the number of months remaining in the Term;
- (b) If a Customer received less than six (6) full months of service, Customer's average monthly billings for all months serviced, multiplied by ten (10); or
- (c) If a Customer received less than one full month of service, the monthly standard charge or the billing projected by ORR (whichever applies to customer for one month of service, multiplied by ten (10)).

Customer acknowledges that the foregoing liquidated damages are reasonable in light of the anticipated loss to ORR by the breach of this Agreement and that the liquidated damages are not imposed as a penalty. In the event the Customer fails to pay ORR all amounts which become due under this Agreement, or fails to perform its obligations hereunder, Customer agrees to pay, in the addition to the amount due, any and all costs of enforcement or collection incurred by ORR, including court costs, travel expenses of any nature, out of pocket expenses of any kind whatsoever, expert fees and reasonable attorneys' fees.

**9. LIMIT OF LIABILITY:** In no event shall the liability of ORR relating to this Agreement exceed three hundred dollars.

**10. ASSIGNMENT/RELOCATION:** This Agreement is a legally binding contract between ORR and Customer, their respective principals, successors in interest and assigns in accordance with the terms and conditions set out herein. If Customer moves its place of business to another location in ORR's collection areas, ORR may elect to continue to provide service at the new location in accordance with this Agreement. The Customer hereby expressly consents to the assignment of this Agreement by ORR to any successors, assigns or purchasers of the whole or any parts of its business and expressly consents to be bound by all of the terms herein to any such successors, assigns or purchasers.

**11. FORCE MAJURE:** ORR shall not be liable for its failure to perform hereunder if performance is made impossible or impracticable due to any occurrence beyond its reasonable control, including, but not limited to, labor shortages or strikes, riots, fires, accidents, governmental regulations or laws, and acts of God.

**12. VENUE:** Venue for any action relating to, arising out of or concerning this Agreement shall solely and exclusively lie in Dallas County, Texas. Customer acknowledges that this venue selection clause results in cost savings to the Customer in the form of highly competitive waste services prices.

**13. PARTIAL INVALIDITY:** In event any provision or portion of this Agreement shall be declared void and of no force and effect, the remaining portions of the Agreement shall be binding and remain in full force and effect.

**14. ENTIRE AGREEMENT / REPRESENTATIONS:** This agreement constitutes the entire agreement between the parties and hereby supersedes all prior and contemporaneous agreements, representations and understandings, whether written or oral, between the parties hereto. The Parties represent to each other that this Agreement shall not be construed in favor or against any party; that no oral, written, express, or implied representations, statements, promises, warranties, agreements or other inducement of any nature or sort have been made by the parties to induce any party hereto to execute this Agreement other than as is expressly set forth herein; and that no party relies upon any oral, written, express, or implied representations, statements, promises, warranties, agreements or other inducement of any nature or sort have been made by the parties to induce any party hereto to execute this Agreement other than as is expressly set forth herein. By this paragraph, the parties agree to waive any claim for fraudulent inducement to enter into this Agreement.