

RESOLUTION NO. 2017-4590

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF KING APPROVING A REVISED AND RESTATED FRANCHISE AGREEMENT BETWEEN THE CITY OF KING AND USA WASTE OF CALIFORNIA (WASTE MANAGEMENT) FOR SOLID WASTE, RECYCLING AND ORGANICS COLLECTION AND PROCESSING SERVICES FROM JANUARY 1, 2017 THROUGH JUNE 30, 2025 IN SUBSTANTIAL FORM AND CONTENT AND AUTHORIZING THE CITY MANAGER TO EXECUTE SAID AGREEMENT ON BEHALF OF THE CITY OF KING AND APPROVING THE FY 2017-18 GARBAGE COLLECTION AND DISPOSAL RATES

WHEREAS, the City of King (City) has contracted for solid waste, recycling, and organic waste collection and processing services through a Franchise with Waste Management since 1996; and

WHEREAS, the current Franchise approved on November 22, 2016 requires minor updates and approval of 2017-18 service rate cap adjustments; and

WHEREAS, the existing Franchise Agreement contains a provision for a Consumer Price Index (CPI) variable escalation of the service and fuel components on July 1 of each subsequent year during the term of the Franchise; and

WHEREAS, Waste Management has requested an adjustment of increased Garbage Collection and Disposal Service Rate Caps, including annual cost of living adjustments and disposal rate pass-throughs not yet approved for 2017-18; and

WHEREAS, the existing Franchise Agreement contains a provision that allows Council to adopt appropriate services fees for each account or special service and approve annual adjustments of the corresponding rates; and

WHEREAS, City Staff and the Salinas Valley Recycles, as Contract Administrator, have reviewed proposed revisions to the Restated Franchise Agreement and increases to the service fees and corresponding Customer Service Rate Caps and found them to be reasonable and consistent with the terms of the agreement; and

WHEREAS, given that the proposed franchise agreement will provide for the continued collection of solid waste in the service area in the same basic manner as it currently exists in the service area, the Council finds that the approval of the franchise agreement is exempt from CEQA pursuant to CEQA Guidelines Section 15301- licensing of existing operations, involving negligible or no expansion of use. Alternatively, the Council also finds that it can be seen with certainty that there is no possibility that approval of the franchise agreement may have a significant effect on the environment (CEQA Guidelines Section 15061 (b) (3)).

NOW THEREFORE, BE IT HEREBY RESOLVED, by the City Council of the City of King that the Council hereby approves, as to substantial form and content, the Revised and Restated Franchise Agreement for Solid Waste, Recycling, and Organics Collection and Processing, between the City of King and Waste Management as set forth in the form attached hereto as Exhibit "2," and by this reference incorporated herein, effective January 1, 2017.

BE IT FURTHER RESOLVED that the proposed increases to the 2017-18 Customer Service Rate Caps, attached hereto in Exhibit 2, Appendix B, and by this reference incorporated herein, are hereby approved to become effective July 1, 2017.

PASSED AND ADOPTED by the City Council of the City of King at a regular meeting duly held on the 24th day of June, 2017 by the following vote:

AYES, and in favor thereof, Councilmembers: LeBarre, Victoria, Acosta, Cullen, DeLeon

NOES, Councilmembers:

ABSTAIN, Councilmembers:

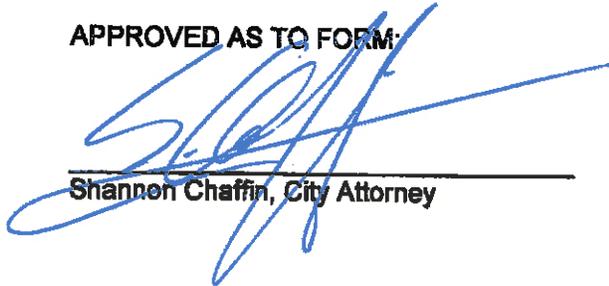
ABSENT, Councilmembers:


MIKE LEBARRE, Mayor

ATTEST:


STEVE ADAMS, City Clerk

APPROVED AS TO FORM:


Shannon Chaffin, City Attorney

**REVISED AND RESTATED
FRANCHISE AGREEMENT
BETWEEN
THE CITY OF KING
AND
USA WASTE OF CALIFORNIA, INC. DBA
CARMEL MARINA CORPORATION
FOR
SOLID WASTE, RECYCLING, AND
ORGANICS COLLECTION SERVICES**

**Accepted on: November 22, 2016
Revised and Restated on: June 27, 2017**

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**SOLID WASTE, RECYCLING AND
ORGANICS COLLECTION SERVICES FRANCHISE AGREEMENT**

Revised and Restated

THIS Revised and Restated FRANCHISE AGREEMENT ("Franchise") is made and entered into on January 1, 2017, between the CITY OF KING, California, a political subdivision of the State of California (hereinafter "City"), and USA WASTE OF CALIFORNIA, INC. DBA CARMEL MARINA CORPORATION (aka: Waste Management), a California corporation (hereafter "Franchisee").

RECITALS:

WHEREAS, the Legislature of the State of California, by enactment of the California Integrated Waste Management Act of 1989 ("AB 939") established a solid waste management process which requires Cities and other local jurisdictions to implement source reduction, reuse and recycling as integrated waste management practices; and

WHEREAS, AB 939 authorizes and requires local agencies to make adequate provisions for solid waste handling within their jurisdictions; and

WHEREAS, the Legislature of the State of California, by enactment of AB 341 and AB 1826 established expanded standards for the provision of collection, handling and processing of commercial and multi-family wastestreams, recycling and organics; and

WHEREAS, the City is obligated to protect the public health and safety of the residents of the City and have determined that arrangements by waste haulers for the collection of Solid Waste should be made in a manner consistent with the protection of public health and safety; and

WHEREAS, the Franchisee has previously been granted a Franchise for similar services by the City, and has demonstrated to the City that it has the experience, responsibility, and qualifications to conduct the services detailed herein for the collection, safe transportation and processing or disposal of Franchise Materials as described herein; and

WHEREAS, the City Council shall determine and find that the public interest, health, safety and well being would be served if the Franchisee performs the Solid Waste handling services described herein for single family residential, multi-family dwellings and commercial service recipients; and

WHEREAS, the City Council authorized the execution of this Agreement on November 22, 2016; and

WHEREAS, the City Council authorized the revision and restatement of this agreement on June 27, 2017.

The City therefore grants the Franchisee the revised and restated franchise described herein on the terms and conditions established hereby:

ARTICLE I
DEFINITIONS

SECTION 1.1 DEFINITIONS

The following capitalized names and terms shall have the meanings set forth below:

AB 341 means the Mandatory Commercial Recycling Law, signed into law January 2012 and as defined now and into the future under Division 30 of the Public Resources Code, requiring businesses and multi-family facilities of a certain size wastestream to conduct recycling onsite through subscribed services or self-hauling to achieve an increase in diversion from landfilling and reduce greenhouse gases.

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

AB 1826 means the Mandatory Commercial Organics Recycling Law, signed into law October 2014 and as defined now and in the future under Division 30 of the Public Resources Code, requiring businesses of a certain size waste stream and waste profile to recycle their organic wastes.

Appendix means an Appendix to this Franchise, as the same may be amended or modified from time to time in accordance with the terms hereof.

Applicable Law means any law, rule, regulation, requirement, guideline, permit, action, determination or order of any Governmental Body having jurisdiction, applicable from time to time to the Franchise Services; the Franchise Operating Assets; the siting, design, acquisition, permitting, construction, equipping, financing, ownership, possession, shakedown, testing, operation or maintenance of any of the Franchise Operating Assets; or any other transaction or matter contemplated hereby (including any of the foregoing which concern health, safety, fire, environmental protection, labor relations, mitigation monitoring plans, building codes, non-discrimination and the payment of minimum wages, and further including the Monterey County Integrated Waste Management Plan).

Authority means the SalinasValley Solid Waste Authority (Salinas Valley Recycles).

Bulky Goods means large and small household appliances, furniture, tires, carpets, mattresses and similar large items of Solid Waste.

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

1. the enactment, adoption, promulgation, issuance, modification, or written change in administrative or judicial interpretation on or after the Franchise Date of any Applicable Law; or

2. the order or judgment of any Governmental Body, on or after the Franchise Date, to the extent such order or judgment is not the result of willful or negligent action, error or omission or lack of reasonable diligence of the City or of the Franchisee, whichever is asserting the occurrence of a Change in Law; provided, however, that the contesting in good faith or the failure in good faith to contest any such order or judgment shall not constitute or be construed as such a willful or negligent action, error or omission or lack of reasonable diligence.

City means the City of King City, a political subdivision of the State of California.

City Facility means any building, park, rights of way or other site owned, leased or used regularly and significantly by employees or contractors of the City.

City Indemnified Parties has the meaning specified in Section 10.1 hereof.

City Manager means the City Manager of the City or his designee.

Commercial Customer means any person who subscribes to Commercial Service provided by the Franchisee pursuant to this Franchise.

Commercial Premises means any building or site in the Franchise Area, other than a Residential or Multiple-Dwelling Premises, from which any business, service, non-profit, governmental, institutional, commercial or industrial activity is conducted, including without limitation motels, hotels, recreational vehicle parks, restaurants, professional offices, clubhouses, places of entertainment, manufacturing plants, and private schools.

Construction and Demolition Debris (C&D) means recyclable and non-recyclable waste building materials, packaging and rubble resulting from construction, remodeling, repair and demolition operations on pavements, houses, commercial buildings and other structures, and includes Mixed Waste. (California Code of Regulations, Section 20150-20164. Article 1-2. Chapter 2. Title 27)

Containers means collection containers for Solid Waste, Recyclables, Yard Waste, and/or Food Waste as specified in Appendix A.

Contract Administration Fees means the fees paid to the City and/or their designated Service Coordinator for the purposes of administering the Agreement, as specified in Section 6.9.

Customer means any Residential Customer or Commercial Customer.

Customer Rate Caps or Rates means the maximum rates or charges that can be billed by the Franchisee and paid by Franchisee Customers for collection, processing, transportation, disposal and other related services received under the Franchise, and as shown in Appendix B and as adjusted annually according to Section 7 of the Franchise.

Designated transfer, processing or disposal facility means a transfer station, recycling facility, composting facility, C&D processing facility or landfill to which the City designates that materials collected by the exclusive franchisee and those involved in self-hauling are to be delivered, as specified in Section 4.7 A.

Disposal Fees means the fees collected by the Franchisee to provide for payment to the Designated Transfer, Processing or Disposal site for the purpose of handling, processing and disposal of Franchise Waste and Franchise Organic Materials. Franchisee is responsible for establishing Disposal Fees adequate to cover Designated Transfer, Processing or Disposal Site's published costs of handling, processing and disposal during each Franchise Year, including but not limited to landfill disposal (tipping) fees, green waste or organics processing fees, and AB 939 fees.

Excluded Materials means (1) Hazardous Waste, (2) Medical Waste, (3) Qualified Household Hazardous Waste, (4) Self-Hauled Waste, and (5) Excluded Recyclable Materials.

Excluded Recyclable Materials has the meaning specified in Section 3.1.C.1.

Fees-and-Costs means reasonable fees and expenses of employees, attorneys, architects, engineers, expert witnesses, contractors, consultants and other persons, and costs of transcripts, printing of briefs and records on appeal, copying and other reimbursed expenses, and expenses of any Legal Proceeding.

Food Waste means all source-separated organic material originally acquired for animal or human consumption, including but not limited to: vegetable waste, fruit waste, grain waste, dairy waste, meat waste, fish waste; and compostable paper. Food Waste is a subset of Organic Waste.

Franchise means this Revised and Restated Solid Waste, Recycling and Organics Collection Services Agreement between the City and the Franchisee, dated January 1, 2017.

Franchise Area shall be that geographic area comprising the city limits of King City, which may be periodically amended to reflect changes to the geographic limits of the City.

Franchise Date means the date of execution of this Franchise by all parties hereto.

Franchise Fee means the fee paid to the City for the exclusive rights granted under the Franchise in accordance with Section 7.6.

Franchisee means USA Waste of California, Inc. DBA Carmel Marina Corporation.

Franchisee Operating Assets means all real and personal property of any kind, which is owned, leased, managed or operated by or under contract to the Franchisee for providing the Franchise Services, including without limitation, containers, vehicles, transfer stations, processing facilities, maintenance and storage facilities, administrative facilities, and other equipment, machinery, parts, supplies and tools.

Franchise Organic Materials or Waste means that portion of Franchise Materials consisting of Yard Waste, Wood Waste, Food Waste and any other similar materials mutually agreed by the parties which are set aside, handled, packaged, or offered for collection separate from solid waste for the purpose of being processed and then returned to the economic mainstream in the form of commodities such as, but not limited to, compost, soil amendments, mulch, animal feed, and fertilizer. Franchise Organic Waste shall not include any materials identified in Section 3.1 C or otherwise mutually agreed by the parties to be excluded from the definition.

Franchise Materials means materials generated in the Franchise Area, and shall include Franchise Solid Waste, Franchise Recyclable Materials and Franchise Organic Materials; provided, however, that Franchise Materials shall not include Excluded Materials.

Franchise Recyclable Materials means that portion of Franchise Materials (other than Franchise Organic Waste) which is separated from other Franchise Materials for Recycling. Franchise Recyclable Materials include newspaper, cardboard, office paper, mixed waste paper (including junk mail, catalogs, paperboard, egg cartons, phone books, brown paper, grocery bags, colored paper, construction paper, envelopes, legal pad backings, shoe boxes, cereal and other similar food boxes), computer paper, magazines, glass (including brown, clear, and green glass bottles and jars), aluminum, tin, steel, small metal scrap, polyethylene terephthalate (PETE), high-density polyethylene (HDPE), and mixed plastic containers (#3 through #7) except #6 polystyrene, clean PE film plastics, used motor oil and oil filters (unless the current County sponsored program is eliminated), and any other materials mutually agreed by the parties.

Franchise Services means all of the duties and obligations of the Franchisee hereunder.

Franchise Solid Waste means that portion of Franchise Materials which does not constitute Franchise Recyclable Materials or Franchise Organic Materials.

Franchise Year means the calendar year beginning on July 1 and ending on the following June 30, except that the first Franchise Year shall begin on the Franchise Date and end on the following June 30 and the last Franchise Year shall begin on the July 1 preceding the last day of the Term of this Franchise and end on such last day of the Term.

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

Habitual Contaminator means the cross-contamination of a receptacle designated for solid waste, recycling, green waste or food waste with an item(s) not specifically designated for that receptacle, or overloading/overfilling of waste containers on at least three occasions, in accordance with the provisions of Article Section 4.2 F.

Hazardous Waste means (a) any waste which by reason of its quality, concentration, composition or physical, chemical or infectious characteristics may do either of the following: cause, or significantly contribute to, an increase in mortality or an increase in serious irreversible, or incapacitating reversible, illness, or pose a substantial threat or potential hazard to human health or the environment when improperly treated, stored, transported or disposed of or otherwise mismanaged, or (b) any waste which is defined or regulated as a Hazardous Waste, toxic substance, hazardous chemical substance or mixture, or asbestos under Applicable Law, as amended from time to time including, but not limited to:

1. the Resource Conservation and Recovery Act and the regulations contained in 40 CFR Parts 260-281;
2. the Toxic Substance Control Act (15 U.S.C. Section 2601 et seq.) and the regulations contained in 40 CFR Parts 761-766;
3. the California Health and Safety Code, §25117;

4. the California Public Resources Code, §40141; and
5. future additional or substitute federal, state or local laws pertaining to the identification, treatment, storage or disposal of toxic substances or Hazardous Wastes; and (b) radioactive materials which are source, special nuclear or by-product material as defined by the Atomic Energy Act of 1954 (42 U.S.C. Section 2011 et M.) and the regulations contained in 10 CFR Part 40.

Insurance Requirement means any rule, regulation, code, or requirement issued by any fire insurance rating bureau or any body having similar functions or by any insurance company which has issued a policy with respect to the Franchise Operating Assets or the Franchise Services, and as required under Appendix F, Insurance Scope and Limits.

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

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

Loss-and-Expense means any and all loss, liability, obligation, damage, delay, penalty, judgment, deposit, cost, claim, demand, charge, tax, or expense, including all Fees-And-Costs.

Medical Waste means (a) any waste capable of producing an infection or pertaining to or characterized by the presence of pathogens, including without limitation certain wastes generated by medical practitioners, hospitals, nursing homes, medical testing labs, mortuaries, taxidermists, veterinarians, veterinary hospitals and medical testing labs and (b) any waste which includes animal wastes or parts from slaughterhouses or rendering plants.

Multiple-Dwelling Customer means any person who subscribes to Multiple-Dwelling Service provided by the Franchisee pursuant to this Franchise.

Multiple-Dwelling Premises means any building or structure, or portion thereof used for residential purposes and having three (3) or more distinct living units.

Organics means the definition of Organics under AB 1826.

Premises means any Residential, Multiple-Dwelling, or Commercial Premises.

Public Solid Waste and Recycling Containers means containers designated by the City for the collection of Franchise Solid Waste, and Franchise Recyclable Materials or Recyclables at City Facilities or public places as listed in Appendix C.

Qualified Household Hazardous Waste means waste materials determined by the State Integrated Waste Management Board, the Department of Health Services, the State Water Resources Control Board, or the Air Resources Board to be:

1. Of a nature that they must be listed as hazardous in State statutes and regulations;
2. Toxic/ignitable/corrosive/reactive; and

3. Carcinogenic/mutagenic/teratogenic;

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

Recycle, Recycled or Recycling means the process of separating, collecting, sorting, cleansing, treating, reconstituting or otherwise processing materials that are or would otherwise be disposed of in a landfill and returning them to the economic mainstream in the form of raw material for new, reused or reconstituted products which meet the quality standards necessary to be used in the marketplace.

Recycling Revenues means all revenues, including the California Department of Resources Recycling and Recovery's (CalRecycle) Beverage Container Recycling Curbside Payment Program, net of transportation, brokerage and processing costs, resulting from the sale of Residential, Multiple Dwelling and Commercial Recyclable Materials collected through provision of Franchise Services.

Residential Customer means any person who subscribes to Residential Service provided by the Franchisee pursuant to this Franchise.

Residential Premises means any building in the City used for or designated as a residential dwelling, including condominium projects, duplexes, townhouse projects, or mobile home parks.

Residue means materials which remain after processing Franchise Recyclable Materials or Franchise Organic Materials which cannot be recycled, marketed, or otherwise utilized, including but not limited to materials such as rocks, contaminated paper, putrescibles, and other debris.

Routing and Collection System means the routing and collection system (a description of which is attached hereto as Appendix E) for Franchise Materials which is utilized by the Franchisee to provide the Franchise Services, as it may be modified from time to time in accordance with Section 4.2 A hereof.

Salinas Valley Solid Waste Authority (Salinas Valley Recycles) is a joint powers agency created to provide Solid Waste Disposal and Recycling Processing services to its member agencies. The membership includes the City of King City. The Salinas Valley Solid Waste Authority may be designated by the City Manager as Service Coordinator to administer the provisions of this Franchise Agreement, at his/her sole discretion.

Self-Haul means the infrequent transport of solid waste, C&D, household hazardous waste, recyclables, c-waste, green waste or organic recyclable materials from a residence or commercial or industrial business, where the waste is being generated, directly to an authorized landfill, transfer station or processing facility. Transportation of materials must be accomplished by the resident, owner, or commercial/industrial business entity that generates the waste.

Service Coordinator means the City Manager or their designee.

Service Fee means the fees as specified in Section 7.1 and the fee schedules in Appendix B.

Service Fee Schedule means the Service Fee Schedule attached hereto as Appendix B.

Solid Waste means solid waste as defined in California Public Resources Code, Division 30, part 1, Chapter 2, section 40191 and regulations promulgated thereunder, as the same may be renumbered or amended from time to time, and without limitation including the following:

1. Refuse;
2. Bulky wastes;
3. Special wastes;
4. Vehicle parts as defined in California Code of Regulations, Title 23, Division 3, Chapter 15, sections 2520(d)(3) and 2523(c), as the same may be renumbered or amended from time to time.

Excluded from the definition of solid waste are hazardous, medical and infectious waste, and recyclable materials, green waste, C&D debris, and special wastes that cannot be disposed of in Class II or Class III landfills. Notwithstanding any provision to the contrary, "solid waste" may include de minimis volumes or concentrations of waste of a type and of an amount normally found in residential solid waste after implementation of programs for the sale collection, recycling, treatment, and disposal of household hazardous waste in compliance with Section 41500 and 41802 of the California Public Resources Code, as the same may be renumbered or amended from time to time.

State means the State of California.

Term has the meaning specified in Article IX hereof.

Ton means a "short ton" of 2,000 pounds.

Uncontrollable Circumstance means only the following acts, events or conditions, whether affecting the Franchise Operating Assets, the City, or the Franchisee, to the extent that it materially and adversely affects the ability of either party to perform any obligation under the Franchise (except for payment obligations), if such act, event or condition is beyond the reasonable control and is not also the result of the willful or negligent act, error or omission or failure to exercise reasonable diligence on the part of the party relying thereon as justification for not performing an obligation or complying with any condition required of such party under this Franchise; provided, however, that the contesting in good faith or the failure in good faith to contest such action or inaction shall not be construed as willful or negligent action or a lack of reasonable diligence of either party:

1. An Act of Nature (but not including reasonably anticipated weather conditions for the geographic area of the Facility), hurricane, landslide, lightning, earthquake, tsunami, fire, explosion, flood, sabotage or similar occurrence, acts of a public enemy, extortion, war, blockade or insurrection, riot or civil disturbance;
2. A Change in Law;
3. The failure of any appropriate Governmental Body or private utility having operational jurisdiction in the area in which the Franchise Operating Assets are located to provide and maintain the Designated Disposal Facility, utilities, services, water and sewer lines and power transmission lines to the Franchise Operating

Assets, which are required for the performance of the Franchise Services and which directly results in a delay or curtailment of the performance of the Franchise Services; and

- 4. Pre-emption of materials or services by a Governmental Body in connection with a public emergency or any condemnation or other taking by eminent domain of any portion of the Franchise Operating Assets.**
- 5. Strikes, work stoppages or other labor disputes or disturbances (collectively, "labor disturbances") occurring with respect to any activity performed or to be performed by the Franchisee or any of the Franchisee's subcontractors or suppliers in connection with the Franchise Operating Assets or the Franchise Services, to the extent labor disturbances to not exceed seven (7) days.**

It is specifically understood that none of the following acts or conditions shall constitute Uncontrollable Circumstances:

- 1. General economic conditions, interest or inflation rates, or currency fluctuation or changes in the cost or availability of fuel, commodities, supplies or equipment;**
- 2. Changes in the financial condition of the City, the Franchisee or any of its affiliates or any subcontractor affecting their ability to perform their obligations;**
- 3. The consequences of errors, neglect or omissions by the Franchisee, any of its affiliates or any subcontractor of any tier in the performance of the Franchise Services;**
- 4. The failure of the Franchisee to secure patents or licenses in connection with the technology necessary to perform its obligations hereunder;**
- 5. Union work rules, requirements or demands which have the effect of increasing the number of employees employed in connection with the Franchise Operating Assets or otherwise increase the cost to the Franchisee of operating and maintaining the Franchise Operating Assets or providing the Franchise Services;**
- 6. Labor disturbances occurring with respect to any activity performed or to be performed by the Franchisee or any of the Franchisee's subcontractors or suppliers in connection with the Franchise Operating Assets or the Franchise Services, to the extent labor disturbances exceed seven (7) days;**
- 7. Any failure of any subcontractor or supplier to furnish labor, materials, service or equipment for any reason;**
- 8. Equipment failure;**
- 9. Any impact of prevailing wage law, customs or practices on the Franchisee's construction or operating costs; or**
- 10. Any act, event or circumstance occurring outside of the State of California.**

Wood Waste means dimensional lumber, post-consumer, and other wood products, pallets and tree trunks, all of which are without paint or chemical treatment of any kind. Wood Waste is a subset of Organic Waste.

Yard Waste means all tree and plant trimmings, grass cuttings, dead plants, weeds, leaves, branches, and dead trees and similar materials and any other similar materials mutually agreed by the parties; provided, however, that the parties hereto may, from time to time, mutually agree to exclude certain materials from the definition. Yard Waste is a subset of Organic Waste.

SECTION 1.2 INTERPRETATION

In this Franchise, unless the context otherwise requires:

A. References Hereto: The terms "hereby," "hereof," "herein," "hereunder" and any similar terms refer to this Franchise, and the "hereafter" means after, and the term "heretofore" means before the date of execution of this Franchise.

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

C. Persons: Words importing persons include firms, companies, associations, general partnerships, limited partnerships, trusts, business trusts, corporations, non-profit corporations and other legal entities, including Governmental Bodies, as well as individuals.

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

E. Entire Franchise: This Franchise contains the entire agreement between the parties hereto with respect to the transactions contemplated by this Franchise and nothing in this Franchise is intended to confer on any person other than the parties hereto and their respective permitted successors and assigns hereunder any rights or remedies under or by reason of this Franchise.

F. Reference to Days: All references to days herein are to calendar days, including Saturdays, Sundays and holidays, except as otherwise specifically provided.

G. Counterparts: This Franchise may be executed in any number of original counterparts. All such counterparts shall constitute but one and the same Franchise.

H. Applicable Law: This Franchise shall be governed by and construed in accordance with the applicable laws of the State of California.

I. Severability: If any clause, provision, subsection, Section or Article of this Franchise shall be determined to be invalid by any court of competent jurisdiction, then the parties hereto shall:

1. Promptly meet and negotiate a substitute for such clause, provision, section or Article which shall, to the greatest extent legally permissible, effect the intent of the parties therein;

2. If necessary or desirable to accomplish item (1) above, apply to the court having declared such invalidity, for a judicial construction of, the invalidated portion of this Franchise;
3. Negotiate such changes in, substitutions for or additions to the remaining provisions of this Franchise as may be necessary in addition to and in conjunction with items (1) and (2) above to effect the intent of the parties in the invalid provision. The invalidity of such clause, provision, subsection, Section or Article shall not affect any of the remaining provisions hereof, and this Franchise shall be construed and enforced as if such invalid portion did not exist. Notwithstanding the foregoing, however, the provisions of this Franchise reserving to the City the right and power to designate the Designated Disposal Facility for Franchise Solid Waste, as provided in Section 4.7 A hereof and otherwise herein, shall not be deemed to be severable from the other provisions hereof. In the event such provisions are held in any Legal Proceeding which is binding upon the City to be null, void, in excess of the City's powers or otherwise invalid or unenforceable, and the Franchisee as a result thereof, utilizes a Disposal Facility other than the Designated Disposal Facility, this entire Franchise shall immediately terminate without any liability of the City to the Franchisee.

J. Defined Terms: The definitions set forth in Section 1.1 hereof shall control in the event of any conflict with the definitions used in the recitals hereto.

ARTICLE II

REPRESENTATIONS AND WARRANTIES OF THE FRANCHISEE

SECTION 2.1 REPRESENTATIONS AND WARRANTIES OF THE FRANCHISEE

The Franchisee, by acceptance of this Franchise, represents and warrants that:

A. Existence and Powers: The Franchisee is duly organized and validly existing as a corporation under the laws of the State of California, with full legal right, power and authority to enter into and perform its obligations under this Franchise.

B. Due Authorization and Binding-Obligation: The Franchisee has duly authorized the execution and delivery of this Franchise. This Franchise has been duly executed and delivered by the Franchisee and constitutes the legal, valid and binding obligation of the Franchisee, enforceable against the Franchisee in accordance with its terms except insofar as such enforcement may be affected by bankruptcy, insolvency, moratorium and other laws affecting creditors' rights generally.

C. No Conflict: Neither the execution nor the delivery by the Franchisee of this Franchise nor the performance by the Franchisee of its obligations hereunder:

1. Conflicts with, violates or results in a breach of any law or governmental regulations applicable to the Franchisee;
2. Conflicts with, violates or results in a breach of any term or condition of any judgment, decree, agreement (including, without limitation, the certificate of incorporation of the Franchisee) or instrument to which the Franchisee is a party or by which the Franchisee or any of its properties or assets are bound, or constitutes a default under any such judgment, decree, agreement or instrument, or
3. Will result in the creation or imposition of any encumbrance of any nature whatsoever upon any of the properties or assets of the Franchisee.

D. No Litigation: There is no action, suit or other proceeding as of the Franchise Date, at law or in equity, before or by any court or governmental authority, pending or, to the Franchisee's best knowledge, threatened against the Franchisee which is likely to result in an unfavorable decision, ruling or finding which would materially and adversely affect the validity or enforceability of this Franchise or any such agreement or instrument entered into by the Franchisee in connection with the transactions contemplated hereby, or which would materially and adversely affect the performance by the Franchisee of its obligations hereunder or by the Franchisee under any such other agreement or instrument.

E. No Legal Prohibition: The Franchisee has no knowledge of any Applicable Law in effect on the Franchise Date which would prohibit the performance by the Franchisee of this Franchise and the transactions contemplated hereby.

F. Information Supplied by the Franchisee. The information supplied by the Franchisee in all submittals made in connection with negotiation and execution of this Franchise is correct and complete in all material respects.

G. Waiver of Certain Rights: The Franchisee hereby:

1. Waives any right it may possess to contest the legal right, power or authority of the City to enter into and perform this Franchise, including particularly the provisions thereof, providing for the delivery to the Designated Disposal Facility of Franchise Materials which are not diverted from landfill disposal, and Franchise Organic Waste to the Designated Processing Facility and agrees to cooperate with and assist the City in supporting the legal validity of and authorization for such provisions in the event of any legal challenge thereto brought or made in any manner by a third party; and
2. Agrees to observe and comply with the operating rules and regulations established by the Authority with respect to the Designated Disposal/Processing Facility, including without limitation those governing delivery procedures, receiving hours, vehicle and waste inspection, Hazardous Waste screening, litter control and safety measures.

H. Free Market Decision: The Franchisee, without constraint and as a free market business decision in accepting this Franchise, agrees to use the Designated Disposal Facility for disposal of Franchise Solid Waste and the Designated Processing Facility for processing of Franchise Yard Waste and such decision in no way constitutes a restraint of trade notwithstanding any change in law regarding flow control limitations or any definition thereof.

I. Franchisee Investigation: The Franchisee has made an independent investigation to its satisfaction of matters, conditions, and circumstances relating to its execution and delivery of this Franchise and its obligations hereunder, including the nature and amount of Franchise Materials generated within the City and the source reduction and recycling programs now in effect or currently planned to be put into effect in the City. The City expressly disclaim any warranties, either express or implied, as to the accuracy or reliability for any particular purpose of any data supplied by the City.

ARTICLE III FRANCHISE

SECTION 3.1 GRANT AND ACCEPTANCE OF FRANCHISE

A. Franchise Service: Pursuant to Sections 40059 of the Act, the City hereby grants an exclusive franchise, license, and privilege, on the terms and conditions set forth herein, to the Franchisee for the service in the Franchise Area of collecting, transporting, handling, processing, and/or disposing of Franchise Materials. By its executed acceptance hereof the Franchisee accepts the franchise, license and privilege so granted by the City on and subject to the terms and conditions contained herein and agrees to perform all of the duties and obligations of a franchisee thereunder. Specifically, the Franchisee agrees to provide Franchise Services to any person within the Franchise Area requesting such service, subject to the payment by such person of the Customer Rates no greater than those specified in this Franchise, Appendix B. The Franchisee shall provide residential and commercial service, as requested by the Customer, per the service specified in this Franchise.

B. Franchise Area: The area with respect to which this Franchise is granted is the Franchise Area.

C. Exceptions to Franchise: The franchise, license, and privilege granted in subsection 3.1.A hereof shall not give the Franchisee any right or responsibility with respect to Excluded Materials or to the materials described below. The granting of this Franchise shall not preclude the categories of materials described below from being delivered to and collected and transported by others, provided that nothing in this Franchise is intended to or shall be construed to excuse any person from any authorization from the City which is otherwise required by law:

1. Materials (Materials described in this clause shall constitute "Excluded Recyclable Materials") which would otherwise constitute Franchise Recyclable Materials, but which are not deposited in Containers provided by the Franchisee, and are (i) collected by youth, civic, or charitable organizations, and private recyclers (without payment or compensation of any type by the generator of such materials to such collectors) and (ii) comprised of loads at least 90% of each load of which are actually recycled, and are not deposited in landfills for disposal;
2. Materials which would otherwise constitute Franchise Materials removed from a premises by a contractor as an incidental part of a gardening, landscaping, tree trimming, cleaning, maintenance, construction or similar service offered by that contractor rather than as a hauling service;
3. Dead animals and animal waste and remains from slaughterhouses or butcher shops;
4. By-products of sewage treatment, including sludge, grit, and screenings.

Further, the provisions of this Franchise shall not preclude or prohibit Cities, or any officer or employee thereof, or any employee of the State of California, or any governmental subdivision thereof, from collecting, removing, and disposing of Solid Waste from City or State facilities. In addition, the provisions of this Franchise shall not preclude or prohibit the owner or occupant of any Premises from collecting, removing, and disposing of Solid Waste, Recyclables, C&D materials or Organic Waste generated on such Premises.

D. Haulage by Third Parties: This Franchise shall not prohibit haulers of Solid Waste other than Franchise Materials from hauling such waste over city streets in accordance with Applicable Law.

SECTION 3.2 ASSIGNMENT AND TRANSFER OF FRANCHISE

A. Consent of City Required: This Franchise shall not be transferred, sold, pledged, hypothecated, leased, or assigned, nor shall any of the rights or privileges herein be transferred, sold, pledged, hypothecated, leased or assigned, either in whole or in part, nor shall title hereto or thereto, either legal or equitable, or any right, interest, or property herein or therein, pass to or vest in any person, except the Franchisee, either by action or inaction of the Franchisee or by operation of law, without the prior written consent of the City, which may be withheld or delayed in its sole and absolute discretion with or without cause. Any attempt by the Franchisee to effectuate any of the foregoing without the consent of the City shall be null and void. The restrictions in this section shall not apply to transactions between Franchisee and a Franchisee affiliate.

B. Imposition of Conditions: The City may impose conditions and restrictions on any approval it may elect to give of any transaction described in Sections 3.2 A and 3.3 hereof, including without limitation conditions relating to payment of all costs relating to such transfer and an additional fee of \$10,000 and requiring acceptance of amendments of this Franchise.

SECTION 3.3 CHANGE IN FRANCHISEE OWNERSHIP OR CONTROL

A. Current Ownership and Control: The Franchisee represents that, as of the Franchise Date, the voting stock of the Franchisee is owned solely by Waste Management Holdings, Inc.

B. Maintenance of Corporate Existence: The Franchisee covenants that during the Term of this Franchise it will maintain its corporate existence, will not dissolve or otherwise dispose of all or substantially all of its assets, and will not take any other action which would materially impair the ability of the Franchisee to perform the Franchise Service.

C. Consolidation, Merger, Sale, Transfer and Change in Control: The Franchisee shall not, without the prior written consent of the City which may be withheld or delayed in its sole and absolute discretion, acquire any entity, consolidate with or merge with another entity, or permit one or more other entities to consolidate with or merge into it, which results in loss by the Franchisee of operational or voting control of Franchisee.

D. Transfer of Voting Stock: The City's prior written consent, which may be withheld or delayed in its sole and absolute discretion, shall be required for the sale or transfer by any means, whether by agreement or by operation of law (including transfers resulting from death, bankruptcy or divorce) of any of the voting stock of the Franchisee, which results in loss by the Franchisee of operational or voting control of Franchisee. The restrictions in this section, as well as subsection (C) above shall not apply to transactions between Franchisee and a Franchisee affiliate.

SECTION 3.4 PAYMENT OF CERTAIN COSTS BY FRANCHISEE

If the Franchisee requests the consent of the City for any transaction described in Section 3.2 or Section 3.3 hereof, the Franchisee shall reimburse the City for all costs and expenses incurred by the City in reviewing, examining, analyzing and acting on the request, including all direct and indirect administrative expenses of the City and consultants and attorney's fees and expenses. In addition, the Franchisee shall pay a transfer fee in the amount of \$10,000 as described in Section 3.2.B. Bills shall be supported with evidence of the expense or cost incurred. The Franchisee shall pay such bills within thirty (30) days of receipt.

SECTION 3.5 EFFECT ON PRIOR AGREEMENTS

The parties acknowledge that, as of the Franchise Date, the following agreement is in effect between the City and the Franchisee:

- Amended Exclusive Franchise Agreement for the Collection, Transportation, Recycling and Disposal, dated January 9, 1996, as amended;

Such agreement will continue in full force and effect through December 31, 2016. On January 1, 2017, which is the date on which the Franchisee is required to commence services pursuant to this Franchise, all such agreements will be superseded by this Franchise, and will be terminated except for the Contractor's indemnity provisions for any cause or event occurring in whole or in part prior to the termination date, the Contractor's payment obligations to the City and any other obligations of Contractor to City that have accrued under such agreements prior to the termination date, or any other provisions that the agreements state shall survive termination, all of which together shall survive such termination.

ARTICLE IV

SERVICES

SECTION 4.1 COLLECTION AND PROCESSING SERVICES

A. Commencement of Service: Commencing January 1, 2017, the Franchisee shall provide the Franchise Services, as more particularly described below.

B. Residential Services:

1. **Franchise Solid Waste Collection:** The Franchisee shall collect and deliver to the Designated Disposal Facility, all Franchise Solid Waste generated by Residential Customers and placed curbside for collection not less than once per week. Collection will be performed with collection vehicles (as described in Appendix C). The Franchisee shall provide industry standard Containers (as described in Appendix A) based on size and service level requested by such Residential Customer. The Franchisee shall be responsible for paying the direct disposal costs for Solid Waste at the Designated Disposal Facility, and any other applicable surcharges and fees.
2. **Franchise Recyclable Materials Collection:** The Franchisee shall collect, process and market all Franchise Recyclables generated by Residential Customers and delivered for collection not less than weekly. Collection will be performed with dedicated compaction Recycling collection vehicles or other vehicles as described in Appendix A. The Franchisee shall provide, industry standard Containers (as described in Appendix A). Additional Containers for Franchise Recyclable Materials are to be made available to Residential Customers upon request at the rates specified in Appendix B. The Franchisee shall be responsible for the cost of processing Recyclables at the Designated Processing Facility, and any other applicable surcharges and fees.
3. **Franchise Yard Waste Collection Program:** The Franchisee shall collect and deliver to the Designated Processing Facility, all Franchise Yard Waste generated by Residential Customers at the Residential Customer's curbside at least once per week. Collection will be performed with fully automated collection vehicles (as described in Appendix A). The Franchisee shall provide, industry standard Containers (as described in Appendix A). The Franchisee shall be responsible for paying the processing costs for Yard Waste at the Designated Processing Facility, and any other applicable surcharges and fees.
4. **Special Services:** The Franchisee shall provide, without charge or comparison, special manual carry-out services for those Residential Customers who provide proof of long term or permanent disability and all other persons over 12 years old residing the unit are also disabled.
5. **Overages:** When Customers have more Solid Waste or Yard Waste than can fit in the Containers, Franchisee shall collect bags of Solid Waste or Yard Waste placed alongside or on top of the Containers. Yard Waste placed in bags will be taken as Solid Waste since bags cannot be taken into Yard Waste stream. The Franchisee shall be paid the per bag charge indicated in Appendix B for the

collection of bagged overages. Customer Containers with overages shall be tagged per Section 4.5 and a summary of overages shall be provided to the City in accordance with Appendix H.

C. Commercial Services:

1. **Franchise Solid Waste Collection:** The Franchisee shall provide the number and kind of industry standard Containers, collect and deliver to the Designated Disposal Facility all Franchise Solid Waste generated by Commercial Customers, as scheduled with such Commercial Customers, but not less, than once per week or as required by Applicable Law. The collection will be performed with collection vehicles using Containers provided by the Franchisee (as described in Appendix A). The Franchisee shall be responsible for paying the direct disposal costs for Solid Waste at the Designated Disposal Facility, and any other applicable surcharges and fees.
2. **Franchise Recyclable Collection:** The Franchisee shall provide the number and kind of industry standard Containers and collect, process and market Recyclables generated by Commercial Customers, as scheduled with such Commercial Customers, but not less than once per week. Franchisee shall provide Container capacity up to one (1) cubic yard, and once per week collection services, at no cost to Commercial Customers; additional Container capacity (i.e., the amount exceeding one (1) cubic yard) and more than once per week collection services will be provided according to the rates in Appendix B. Therefore, if a Commercial Customer has one four (4) cubic yard Container for Recyclables collected once per week, it will be charged the rate for a three (3) yard container collected once per week. The collection will be performed with collection vehicles using Containers provided by the Franchisee (as described in Appendix A). Commercial Recycling Container capacity(s) shall be at least 96 gallons. The Franchisee shall be responsible for the cost of processing Recyclables at the Designated Processing Facility, and any other applicable surcharges and fees.

The City Manager or his/her designated representative may waive the minimum Commercial Recycling Container provision on a case-by-case basis due to unique Customer space limitations for Containers, and proof provided by the Customer that it is recycling or diverting from landfilling a minimum of 50% of generated waste through other allowable means.

3. **Drop-Box/Roll-Off:** If requested by a Residential or Commercial Customer, the Franchisee shall provide drop-box/roll-off service according to the fees specified in Appendix B. The collection will be performed with collection vehicles using Containers provided by the Franchisee (as described in Appendix A). The Franchisee shall bill the Customer directly for this service and shall include both the direct disposal costs and applicable surcharges and fees on the entire bill. The Franchisee shall be responsible for paying the direct disposal costs and surcharges for drop-box/roll-off service at the Designated Disposal Facility. The Franchisee shall be responsible for the cost of processing Recyclables at the Designated Processing Facility, and any other applicable surcharges and fees.

If Drop-Box/Roll-Off service is requested for regular weekly collection of Solid Waste by a Customer, Commercial Recycling Collection Services shall be provided at a weekly in accordance with Section 4.1.C.2 above. The collection

will be performed with collection vehicles using Containers provided by the Franchisee (as described in Appendix A). The Franchisee shall bill the Customer directly for this service and shall include both the direct disposal costs and applicable surcharges and fees on the entire bill. The Franchisee shall be responsible for paying the direct disposal costs and surcharges for drop-box/roll-off service at the Designated Disposal Facility, and any other applicable surcharges and fees.

4. **Commercial Organics Collection Program:** In accordance with AB 1826, the Franchisee shall provide Commercial Organics Collection services to any Customers requesting such service to comply and in accordance with AB 1826. The Franchisee shall collect and deliver to the Designated Processing Facility, all Commercial Organics generated by Commercial Customer at least once per week. The collection will be performed with collection vehicles using Containers provided by the Franchisee (as described in Appendix A). The Franchisee shall be responsible for paying the processing costs for Processing Organics at the Designated Processing Facility, and any other applicable surcharges and fees.
5. **Construction and Demolition (C&D) Collection Program:** If requested by a Residential or Commercial Customer, the Franchisee shall provide appropriate sized and designed Containers for collection of C&D according to the fees specified in Appendix B. Wherever feasible, the Franchisee shall provide collection services for source separated collection of C&D materials including but not limited to asphalt, concrete, masonry, woodwaste and scrap metal. The collection will be performed with collection vehicles using Containers provided by the Franchisee (as described in Appendix A). The Franchisee shall bill the Customer directly for this service and shall include both the direct disposal and or processing costs and applicable surcharges and fees on the entire bill. The Franchisee shall be responsible for paying the direct disposal costs and surcharges for drop-box/roll-off service at the Designated Disposal Facility. The Franchisee shall be responsible for the cost of processing Recyclables at the Designated Processing Facility, and any other applicable surcharges and fees.
6. **Push, Enclosure, and Long Walk Services:** Upon receipt of a customer request for a roll-out bin, the Franchisee shall provide push service (up to 15 feet on smooth level surface) for all commercial customers, who are required to roll out containers (up to four (4) cubic yards) to a designated location for collection, such as but not limited to alley ways, narrow streets, etc. The Franchisee shall dismount vehicle, roll out containers for collection and then return containers to secure enclosure location. The Franchisee shall provide enclosure service for those customers, whose containers must be removed and replaced in an enclosure not meeting the requirements of Section 4.4 B of this agreement, in order to be serviced. The Franchisee shall provide long walk services, as determined by the Franchisee, where the Franchisee must travel in excess of 15 feet from the centerline of the road used by the collection vehicle in order to service the container. The Franchisee shall be entitled to charge additional fees in accordance with Appendix B for providing these services.

D. City Services:

1. **City Facilities:** The Franchisee shall, without charge or compensation, collect Franchise Solid Waste and Franchise Recyclable Materials from all City Facilities located within the boundaries of the City and identified in Appendix C.
2. **Public Solid Waste and Recycling Containers:** The Franchisee shall, without charge or compensation, collect Solid Waste and Recyclables from Public Solid Waste Containers and Public Recycling Containers located at city centers, parks and other City Facilities at locations and schedule identified in Appendix C and as such locations and schedule may be modified from time to time by the City Manager, provided that Franchisee is compensated for its additional costs.
3. **Special Events:** Each year, the Franchisee shall provide, without charge or additional fees, six 30 yard Containers for the disposal of Solid Waste, six 30 yard Containers for the collection of Recyclables, and six 30 yard Containers for the collection of Food Waste (if applicable), for use at up to six (6) special events in the City. The Franchisee shall empty such Containers, as needed, during such special events. The Franchisee shall deliver drop boxes to specified sites and then dispose of the Solid Waste at the Designated Disposal Facility and process and market the Franchise Recyclable and Organic Materials. The Franchisee shall not be responsible for paying for the disposal costs relating to the Franchise Solid Waste collected pursuant to this provision; provided, however, the Franchisee will bear the costs of processing and marketing the Franchise Recyclable and Organic Materials. The Franchisee shall also make available for City Staff or event promoters a supply of individual recycling and food waste bins (after food waste program has been established) to be paired with solid waste bins for placement throughout the event area.
4. **Illegal Dumping Abatement:** Upon request of the City Manager, the Franchisee shall within two normal business days collect and remove from City streets, alleys, parks and other public areas which are located within the boundaries of the City, Bulky Goods and Solid Waste identified by the City Manager in any volume which has been unlawfully abandoned or discarded. This service shall be limited to (a) one event per month of up to 4 cubic yards in volume per event, (b) locations which are along a normal Franchisee route (any material off the normal route will be charged in accordance with Appendix B), and (c) locations and material which is safe for the driver to access and collect. For any such collection the Franchisee shall receive compensation from the City on the basis of time and materials at rates as approved by the City Manager. The Franchisee shall create a specific work order in response to each call received by the City Manager with a monthly "Summary of Unlawfully Discarded Solid Waste Work Order Completed." The summary shall include, but not be limited to, the date, time, hours spent, and type of unlawfully discarded Solid Waste Collected and disposed of.

E. Bulky Goods: The Franchisee shall collect Bulky Goods and excess amounts of Franchise Materials from Residential Customers and Commercial Customers in accordance with this Section at the rates specified in Appendix B. To arrange for a Bulky Goods pickup, a Customer must call the Franchisee Monday through Friday between the hours of 8:00 a.m. and 5:00 p.m. to arrange for a mutually acceptable time and day for the collection of said

material. The Franchisee shall then pick up the material at the agreed upon day and time. Unless otherwise agreed by the Customer, this day and time shall be within the week following the date when the Customer first called for this service.

F. Annual City Cleanups:

1. Once each Franchise year, on a week designated by the City Manager, the Franchisee shall, without charge or additional fees, undertake an "Annual City Cleanup" program, pursuant to which the Franchisee shall provide up-to five (5) 40-cubic yard collection containers to be placed at a location or locations designated by the City Manager and agreed upon by Franchisee, for the collection of all Franchise Materials and Bulky Goods by any Residential or Multifamily Premises Customer during a one week period. The Franchisee will work with the City Manager to coordinate the cleanup week at least one month in advance, and will be responsible for advertising the events at least two weeks in advance, and will notify all Customers regarding the specific date for collection and allowable materials in accordance with Appendix D. The location will be monitored by City Staff and each Container will be dumped once per day Monday through Saturday. All materials will be delivered to the Designated Disposal/Processing Facility.
2. In addition to the foregoing, the Franchisee shall work with the City Manager to assist in coordinating volunteers, provide collection containers and establish a time and coordinated community volunteer effort for the removal of litter and debris from designated public right-of-ways listed in Appendix C. This is to be done twice annually for a maximum of two (2) miles of roadway.

G. Processing Services:

1. **Recyclables Processing and Marketing:** The Franchisee shall be responsible for the following activities:
 - a) the receipt, storage, and processing of all Franchise Recyclable Materials collected by the Franchisee;
 - b) the marketing of products recovered from the processing of Franchise Recyclable Materials.
2. **Payment of Recyclables Processing Marketing and Residue Disposal Costs:** The Franchisee shall be responsible for the payment of all costs and expenses associated with the transportation, processing and marketing of Franchise Recyclable Materials and other Recyclables collected or delivered under this Franchise, including any costs incurred by the Franchisee for processing. In addition, the Franchisee will bear the costs of, and is solely responsible for, the proper and lawful disposal of all processing Residues at the Designated Disposal Facility.
3. **City Designation of Facility in Certain Circumstances:** The City may designate an alternative processing facility for the temporary or permanent receipt, storage, and/or processing of Recyclables collected or delivered under this Franchise in the event that the Franchisee is unable, or otherwise fails, to receive and process such Recyclables in accordance to this Franchise. The

Franchisee shall be responsible for all costs associated with the use of such alternate facility, including the cost of transportation and the payment of any tipping or processing fees or other costs payable to the owner or operator of any such alternate facility designated by the City due to the unavailability of the Franchisee's processing facility.

4. **Franchisee Responsibility for Marketing:** Subject to Section 7.3, the City shall have no responsibility for the availability of markets for recycled-products, nor shall it have any liability associated with or resulting from the markets for, or end-uses of, Recycled products.

H. Public Outreach and Education: The Franchisee shall provide, without charge or compensation, a public outreach and education program to properly utilize the Franchise Services, enhance program participation and maximize diversion of Recyclables and Organic Waste. The Franchisee shall submit a public outreach and education plan for review and approval of the City 60 days prior to the commencement of services under this Franchise. The public outreach and education plan shall address the requirements of AB 341 and AB 1826 relating to the Franchisee's obligations and services for providing diversion, recycling and recovery of commercial Recyclables and Organics as defined in Sections 4.1.B & C. The Franchisee shall work with an appropriate contractor or designated staff approved by the City Manager trained in public relations to provide focused, quality public education and awareness efforts. At a minimum, the public outreach and education plan will include: research and planning, media relations and advertising, video and radio programming, publications, special events, displays and programs, community presentations, school activities, newsletters, and consumer surveys as further defined in Appendix F. All public outreach and education materials produced by the Franchisee shall be bi-lingual in both English and Spanish and must be reviewed by the City in advance of distribution. The plans and budgets for each Franchise Year shall be submitted to the City Manager for approval prior to implementation of such plans, as further defined in Appendix K, Reporting Requirements. However, Franchisee's annual budget will not exceed \$20,000. Franchisee will regularly participate in Central Coast Recycling Media Coalition (CCRMC) activities, including the following: attending meetings, helping develop media campaigns, contributing to subcommittee activities, and making an annual financial contribution of at least One Thousand Dollars (\$1,000).

I. Customer Service Level Determination: The Franchisee shall provide subscription data to the City as directed by the City Manager and in accordance with Appendix H. The service fee shall constitute the exclusive compensation to the Franchisee for the Franchise Services provided to Residential and Commercial Customers.

J. Changes in Classification: The Franchisee may make any change in the classification of service requested by any Residential Customer or any Commercial Customer upon written notice by the Franchisee to, but without the approval of, the City Manager. Any such change shall become effective on the first day of the week following the date of the request.

K. Christmas Trees: The Franchisee shall collect all Christmas trees discarded by all Residential Customers. Trees to be placed curbside will be collected on the regularly scheduled collection day the week after New Year's Day, free of additional charge to the City or such Customer. Christmas Trees placed for collection after the collection period will be collected in the Yard Waste Container. Customers will be required to cut the trees, if necessary, to fit in their yard waste carts or to place trees on the curb for collection. All Christmas Trees (unflocked) will be delivered by Franchisee to the Designated Processing Facility to divert the trees from landfill

disposal. The Franchisee shall be responsible for individual customer notification and newspaper advertisement prior to the collection program informing residents of the dates of collection.

L. Additional Services: The Franchisee shall provide special services identified in the Service Fee Schedule identified in Appendix B. Franchisee shall also have the right, but not the obligation, to provide additional special services requested by any Customer which are directly related and ancillary to any of the other Franchise Services authorized hereunder. Such special services may include, without limitation, steam cleaning of Containers, providing roll-off Containers to Customers for special events or other special collection needs, and compactor maintenance services.

M. Service Coordinator: The City and the Franchisee each shall designate in writing on or immediately following the Franchise Date a person to transmit instructions, receive information and otherwise coordinate service matters arising pursuant to this Franchise. The City Service Coordinators shall be the City Manager or designee. Either party may designate a successor or substitute Service Coordinator at any time by written notice to the other party.

N. Used Motor Oil and Filter Collection: Franchisee shall, without charge or additional fees, collect used motor oil and filters in a sealed container set out curb-side by Residential Customers on their normal collection day. Franchisee shall use the containers and filter bags provided by the Monterey County Health Department's Used Motor Oil and Filter Recycling Program (Program). Franchisee shall use reasonable business efforts to recycle used oil and filters collected with State-authorized recyclers. Franchisee shall not collect used oil and filters that are contaminated as they constitute Hazardous Waste. Franchisee shall tag any oil and/or filters that are determined to be contaminated, provide an explanation as to why the material(s) are considered contaminated, and provide Residential Customers with directions for the proper disposal of such material(s). In the event existing State and County grant funding for this program is eliminated, both parties agree to negotiate in good faith an adjustment to the Franchisee's Service Fees solely for the loss of this funding source.

O. Home Composting Bin Distribution: Franchisee shall notify Residential Customers at least once each Franchise Year, in accordance with Appendix D, that Franchisee is offering composting bins for sale to Customers at a specified cost and location within the City. Franchisee shall charge no more than its direct costs of purchasing the bins and the surcharge, if any, for handling, storage, and/or delivery as specified in Appendix B. Franchisee shall purchase bins approved by City or its designee. Franchisee shall maintain records of number of bins purchased, sold, and inventoried in accordance with Appendix H.

P. Collection of Food Waste for Composting: Pursuant to Section 6.8, the parties may evaluate a possible food waste collection and composting program.

SECTION 4.2 COLLECTION SERVICE OPERATING REQUIREMENTS

A. Collection Routes: The Franchisee shall establish and maintain collection routes in such manner to provide for the uniform and efficient collection of Franchise Materials from all Residential Customers on a Monday through-Friday basis and Commercial Customers on a Monday-through-Saturday basis. The Franchisee shall not schedule Franchise Materials collection on Sundays, except as authorized by the City Manager. For all Residential Customers and Commercial Customers who require more than one (1) collection per week, the Franchisee shall schedule collections at appropriately spaced intervals throughout the work week, or as requested by the Customer and approved by the City Manager.

B. Collection Schedule Revisions: The Franchisee may request the City to approve any revision to the collection schedule which the Franchisee may propose. City approval of any such request will not be unreasonably withheld or delayed. Upon such direction or approval by the City, the Franchisee shall notify all affected Customers at least seven (7) days prior to implementing the revision.

C. Route Books and Maps: The Franchisee shall prepare route books and maps for each route, which outline specific routing information regarding the daily collection of Franchise Materials. The route books shall be kept current and made available to the City Manager or his/her designee for inspection and copying. A copy of the route maps shall be provided to the City Manager a minimum of two (2) weeks prior to implementation of each new route. Revised copies shall also be provided whenever the routes are revised.

D. Hours of Service: Except for special pickups, collecting missed pickups, or due to emergencies, the Franchisee shall schedule no collections from any Customer earlier than 5:00 a.m., or later than 5:00 p.m. Monday through Friday and earlier than 8 a.m. or later than 5 p.m. on Saturdays (except during Holiday Collection Schedule, Clean-up Weeks, or Special Events). In addition, the Franchisee shall use reasonable efforts to revise collection routes to address noise complaints.

E. Holidays: Collection of Franchise Materials shall not be required on the following legal holidays: New Year's Day, Thanksgiving Day and Christmas Day, except in case of emergency or as otherwise required by the City Manager. (The Franchisee acknowledges that the Designated Disposal/Processing Facility is not open on those days.) Whenever a regular collection falls on such a holiday, the collection shall be made on the following working day, and collections shall become current within one (1) week thereafter.

F. Non-Collection of Contaminated Recyclable Materials or Organic Materials or Over-loaded/Over-filled Solid Waste Container: The Franchisee shall use reasonable efforts to avoid collecting Franchise Recyclable Materials or Franchise Organic Materials from Containers which also contain significant, visible amounts of materials not specifically designated for Franchise Recyclable Materials or Franchise Organic Materials, or over-loaded/over-filled Solid Waste Containers, as applicable.

In the event the Franchisee observes Customers with contaminated recyclables, green waste and/or food waste (i.e., estimated more than 10% unacceptable materials, based on visual inspection), or over-loaded/over-filled Solid Waste Containers, the following action shall be taken:

1st Offense: Customer's container will be tagged (including notice as to the type of violation, and that the next offense may result in the financial penalty described in the "Subsequent Offenses" section below) and the contents not collected by Franchisee. There will be no financial penalty to the Customer. Customer will be responsible for removing the violating material from the container. Franchisee will attempt to service the container on the next scheduled collection day.

2nd Offense: Customer's container will be tagged (including notice as to the type of violation, and that the next offense may result in the Franchisee actions described in the "3rd Offense" section below) and the contents not collected by Franchisee. A financial penalty equal to the cost of an unscheduled extra pick-up as defined in Appendix B, may be charged to the Customer. Customer will be responsible for removing the violating

material from the container. Franchisee will attempt to service the container on the following week.

3rd Offense: Should a 3rd Offense occur during a twelve-month period; the Customer is considered a Habitual Contaminator. In such event, the Franchisee is authorized to replace the Customer's Franchise Solid Waste Container with the next larger sized Container available and charge the Customer the authorized rate for the larger Container. The Customer designated as a Habitual Contaminator may not apply for downsized of Franchise Solid Waste collection service capacity for a minimum of 12 months, and only if they have received no additional Habitual Contamination violations. Customer will be charged delivery fees for Container after the 12 months expires.

SECTION 4.3 CONTAINERS

A. City Regulations: The type, size and other specific physical requirements for Company supplied Containers are specified in Appendix A hereto and may not be changed without the prior written approval of the City Manager. The Franchisee shall not be required to collect Franchise Materials from Containers which do not conform to the requirements of Appendix C.

B. General Requirements: After emptying any Container, the Franchisee shall replace the Container in an upright position at the place where such Container was placed for collection. The Franchisee shall repair or replace at its own expense, any container provided by the Franchisee which becomes unusable by any reason of normal wear and tear or is damaged by the collection operations. The Franchisee shall be responsible for replacement or repair of containers which are stolen or damaged by any event not caused by the Franchisee and shall charge Customer the Container replacement charge designated in Appendix B. Such repair or replacement must occur by the end of the next business day following notification to the Franchisee of the need therefore.

C. Franchisee Provision of Containers to Residential Customers and

Commercial Customers:

- 1. Provision of Containers:** The Franchisee shall supply each Residential Customer for Franchise Solid Waste and Franchise Yard Waste with separate, industry standard Containers for Franchise Solid Waste and Franchise Yard Waste collection as described in Appendix A. The Franchisee shall continue to supply Residential Customers with Recycling Containers as described in Appendix C. Containers provided by Franchisee under the previous contract may continue to be used.
- 2. Provision of Containers:** The Franchisee shall supply each Commercial Customer with separate Containers for Franchise Solid Waste, Recyclable Materials and Organic Waste (if requested by the Customer). The Commercial Customer may choose the size of the Container(s) for Franchise Solid Waste based on the options listed in Appendices A and B. All such Bins and Carts shall remain the property of the Franchisee.

3. **Minimum Container Requirements:** All Containers shall meet the requirements of Appendix A. Each such Container which is used primarily for the disposal of Franchise Solid Waste containing liquids shall be watertight.
4. **Franchisee Responsible for Cost of Containers:** The Franchisee shall provide all Containers at the Franchisee's cost and expense without any compensation in addition to the Service Fee and all such Containers shall constitute the property of the Franchisee.
5. **Assembly and Distribution of Containers:** The Franchisee shall assemble and distribute all Containers required pursuant to this Franchisee at the Franchisee's cost and expense without any compensation in addition to the Service Fee.
6. **Maintenance and Repair of Containers:** The Franchisee shall be responsible for the general maintenance and repair of Containers so provided to Customers. Franchisee shall repair or replace damaged Containers at no cost to the Customer if such damage is caused by normal wear and tear or Franchisee mishandling; otherwise, Customers will be responsible for the repair or replacement. Franchisee shall provide free bin steam cleaning once per year for Containers needing such cleaning. Container-related fees are set forth in Appendix B.
7. **At the end of the term or earlier termination of the Franchise, the City shall have the right, but not the obligation, to purchase from the Franchisee all or a portion of the Containers owned by the Franchisee and utilized by the Franchisee to provide Franchise Services. In the event that the City elects to exercise such option to purchase, the purchase price payable by the City with respect to each Container that it elects to purchase shall be the then-current book value of such Container, plus Franchisee's removal and delivery fees. The Franchisee shall be responsible, at its own cost and expense, for the removal of any Containers which the City does not elect to purchase.**

SECTION 4.4 COLLECTION LOCATIONS

A. General: The Franchisee is responsible for the collection of all Franchise Materials placed for collection in a legal manner at the roadside, or in the event that physical conditions prohibit roadside placement, at a location within a reasonable distance of roadside, visible to the Franchisee. The Franchisee shall immediately notify the Service Coordinator of any condition at or near any collection location which creates a safety hazard or accessibility problem. In such circumstances, upon authorization by the City Manager, the Franchisee shall arrange with the Customer for a temporary collection location until the safety hazard or accessibility problem is corrected. The Franchisee shall, where necessary, traverse private roads in order to collect Containers deposited by Customers for collection; provided, however, that the Franchisee shall not be required to utilize private roads if the owner of such road prohibits the use of such road by the Franchisee or if the owner does not execute a Franchisee-provided release form. The Franchisee shall also provide any other special services reasonably requested by a Customer; provided, however, that the Franchisee shall be entitled to reasonable compensation for providing such services, as specified in Appendix B.

B. Enclosures: Where the collection location is within an enclosure constructed pursuant to the requirements of the City and the Franchisee, the Franchisee shall be responsible for the

removal and replacement of all Containers placed therein. The Franchisee shall use sufficient care in the handling of such Containers so as to prevent any damage to the enclosure, the enclosure doors, and adjacent facilities or improvements. The Franchisee shall repair at its own expense and within thirty (30) working days after notification from the Service Coordinator any such enclosure or adjacent facilities or improvements damaged by it. Franchisee fees would apply to such enclosure services.

SECTION 4.5 GENERAL REQUIREMENTS RELATING TO COLLECTION

A. Clean Up: The Franchisee shall cause all spills of Franchise Materials occurring during the collection process to be cleaned up immediately upon the occurrence of the spill. Franchisee shall close all gates after making collections and shall avoid crossing private or public planting areas and grounds or jumping over hedges and fences.

B. Employees; Uniform: The Franchisee shall take all steps necessary to ensure that its employees performing collection services conduct themselves in a workmanlike manner, and as quietly as possible. All such employees shall at all times of employment be dressed in clean uniforms with suitable identification. No employee may remove any portion of his or her uniform while working. The style and appearance of employee uniforms shall be subject to the approval of the City Manager.

C. Improper Loading and Placement of Containers: All Containers are to be collected at the curbside and dumped with a fully automated lifting mechanism. The Franchisee shall collect any Franchise Material that is properly loaded into the correct container. When Franchisee encounters Containers that are over-loaded/over-filled (too heavy to safely lift or lid does not sit flush with Container body) that could result in spillage or damages, or any Container where Franchise Materials will, of its own weight, fall out when emptied, it may empty the container and charge an overage fee as set forth in Appendix B, or it may choose not to empty the Container and to tag the same per Sections 4.2.F and 4.5 E. The Franchisee shall clean up any spillage as a result of emptying overloaded Containers and shall also report the overage charges to the City Per Appendix H.

D. Authorized Non-Collection of Certain Waste: The Franchisee shall not be required to collect Excluded Materials.

E. Record of Non-Collection: When any Franchise Material deposited for collection is not collected by the Franchisee, the Franchisee shall leave a tag indicating the reasons for such non-collection and the toll-free phone number of the Franchisee at which the Customer can inquire as to the circumstances relating to the non-collection. This information shall either be in writing or by means of a checkmark on a form tag. The Franchisee shall maintain, at its place of business, a log book listing all such circumstances in which collection is denied. The log book shall contain the names of the Premises involved, the date of such tagging, the reason for non-collection, and the date and manner of disposition of each case. The log shall be kept so that it may be conveniently inspected by the Service Coordinator upon request. The log relating to any particular tagging shall be retained for a period of two years following such tagging.

F. Fees and Gratuities: The Franchisee shall not, nor shall it permit any agent, employee or subcontractor employed by it, to request, solicit, demand or accept, either directly or indirectly, any compensation or gratuity for the collection of Franchise Materials or other Franchise Services, except such compensation as is specifically provided for herein.

SECTION 4.6 OTHER WASTES

The City acknowledges that this Franchise is granted only with respect to those services described in Section 3.1 A hereof and does not include the collection, transportation, processing or disposal of Excluded Waste. This Franchise does not, however, limit the right of the Franchisee to provide any such other services. If the Franchisee elects to provide any such other services, it shall not be governed by the terms of this Franchise, but shall be subject to Applicable Law.

SECTION 4.7 DISPOSAL AND ORGANIC MATERIALS PROCESSING

A. Disposal Location: The City shall have the right during the Term hereof to designate the Designated Transfer, Processing or Disposal Facility, or multiple concurrent Designated Transfer, Processing or Disposal Facilities, in their sole and absolute discretion. The initial Designated Disposal/ (Organics) Processing Facility shall be the Johnson Canyon Landfill or the Jolon Road Transfer Station owned by the Authority. The initial Designated Processing Facility for Recyclables is the Green Waste Recovery MRF in San Jose, CA, and Franchisee may transload such materials from other facilities (e.g., Monterey Regional Waste Management District's Marina Landfill). The City shall notify the Franchisee in writing of any changes in or additions to the Designated Disposal and/or Processing Facilities. The Franchisee shall transport and dispose of all Franchise Materials which it collects but does not divert from landfill disposal at the Designated Disposal Facility and shall transport and deliver all Franchise Organic Waste which it collects to the Designated Processing Facility in accordance with the requirements of Applicable Law, and shall comply with the requirements, rules and regulations of the owner or operator of the Designated Disposal and Processing Facilities. The Franchisee agrees that it shall not dispose of Franchise Recyclable Materials or Franchise Yard Waste and/or Food Waste at any Disposal Facility, through any other type of disposal or, in the case of Recyclable Materials, through incineration, except as may be required in emergencies resulting from Uncontrollable Circumstances with the prior written approval of the City Manager.

If a City-imposed change to the Disposal Location results in longer travel time and/or fuel usage by Franchisee, service fees shall be adjusted such that Franchisee will recover all of its additional Franchisee expenses.

B. Disposal Records: The Franchisee shall keep and maintain such logs, records, manifest, bills of lading or other documents as the City Manager may deem to be necessary or appropriate to confirm compliance by the Franchisee with this Franchise and shall retain all weight slips or other call information provided to the Franchisee's drivers by the owner or operator of the Designated Disposal Facility.

C. Payment of Disposal, and Organic Waste Processing Fees, Transfer and AB 939 Fees: The Franchisee shall pay, or make arrangements for the payment of, all tipping fees and other transfer, processing, AB 939 or disposal charges imposed by the owner or operator of the Designated Disposal/Processing Facility for the disposal or processing of Franchise Solid Waste and Franchise Organic Waste.

D. Solid Waste Origin and Weight Tracking: The Franchisee shall submit monthly tonnage reports which track both disposal and diversion generator type. The Franchisee shall work cooperatively with the owner or operator of the Designated Disposal Facility to assure all incoming Solid Waste is recorded and assigned to the Franchise Area or other jurisdiction. The Franchisee shall keep, maintain, and provide the City Manager with a list of all collection

vehicles operating within the Franchise Area including each vehicle's license number, Designated Disposal/Processing Facility, tare number, and general geographic areas of operation and collection. The Franchisee shall immediately notify the Service Coordinator and owner or operator of the Designated Disposal/Processing Facility in writing when new collection vehicles are added to the Franchise Area, collection vehicles are utilized in a different geographic location with the Franchise Area, tare weights are altered due to equipment modifications, collection vehicles are removed from the Franchise Area, collection vehicles are used both inside and outside the Franchise Area and collection vehicles integrate both Franchise and non-franchise materials in a single load.

SECTION 4.8 DIVERSION

It will be a goal of Franchisee to divert materials collected hereunder as follows (by weight or volume): (i) fifty percent (50%) of Franchise Materials collected under this Agreement, (ii) ninety (90) percent of all source separated asphalt and concrete collected under this Agreement, and (iii) fifty (50) percent of all other Construction and Demolition Debris collected under this Agreement, the annual diversion rate will be calculated as "the tons of Franchise Recyclables collected by Franchisee from the provision of services under this Franchise that are sold or delivered to a recycler or re-user, or delivered to the appropriate processing facility as required by the Franchise, divided by the total tons of Franchise Materials collected by Franchisee in each full or partial Calendar Year." Such diversion shall be reported in accordance with Appendix H. If Franchisee fails to meet the diversion goals above in any given year, Franchisee shall submit a plan to the City no later than February 28th of the following year outlining additional steps and/or programs the Franchisee will implement to achieve the diversion goal, as well as the increased costs for which the Franchisee would be reimbursed pursuant to Section 7.4(a). The plan shall include:

1. A summary of additional diversion improvement activities that the Franchisee can implement within its current programs without additional cost to the Customers (i.e, changes to public outreach messages, City Code changes, improved enforcement of Habitual Contaminators).
2. A summary of new or enhanced infrastructure or other diversion improving activities or programs that could achieve the goal but would potentially require an increase to customer rate caps, and estimated rate impacts to Customers for each option.

Franchisee, City Manager and the City's contract administrator shall meet to discuss the plan and the City Manager shall decide the most appropriate option to implement to increase Customer diversion levels.

ARTICLE V

FRANCHISEE OPERATING ASSETS

SECTION 5.1 FRANCHISEE OPERATING ASSETS

A. Obligation to Provide: The Franchisee shall acquire and maintain at its own cost and expense Franchisee Operating Assets which in number, nature and capacity, shall be sufficient to enable the Franchisee to provide the Franchise Services in accordance with the terms hereof.

B. Vehicle and Equipment Identification: The Franchisee's name, local, toll-free phone number, and vehicle or equipment number shall be visibly displayed on both sides of its vehicles or other collection equipment used by the Franchisee. No other signs or markings shall be placed on the Franchisee's vehicles or other collection equipment without the prior approval of the City Manager except signs or markings relative to use of such equipment including traffic safety signs or markings or instructions regarding filling or placement of collection bins.

C. Vehicle Specifications, Maintenance and Appearance: All vehicles used by the Franchisee in providing the Franchise Services shall be registered with the Department of Motor Vehicles of the State of California, shall be approved by the City Manager, shall be kept clean and in good repair, and shall be uniformly painted. Vehicles used to collect or transport Franchise Materials shall be kept covered at all times except when such material is actually being loaded or unloaded or when the vehicles are moving along a collection route in the course of collection. Any cover or screen shall be so constructed and used that Solid Waste shall not blow, fall or leak out of the vehicle onto the street. Franchise Materials collection vehicles shall be washed at least once every month in the Summer and twice every month in the Winter and cleaned and painted as required to maintain a like-new appearance. No advertisement or other display shall be carried on any Franchise Materials collection vehicle without the written approval of the City Manager. All Franchisee vehicles used in connection with this Franchise may be required to be inspected and approved by the City on a yearly basis. The Franchisee shall have such inspection conducted by the California Highway Patrol, or other designated agency, and shall provide the results of such inspection to the City Manager within ten (10) days of receipt.

Franchisee shall plan to transition to compressed Natural Gas (CNG) collection vehicles within a reasonable time after a public fueling station in the area is available.

D. Inventory of Franchisee Operating Assets: The Franchisee shall furnish the City Manager with an inventory of collection vehicles used by the Franchisee to provide Franchise Services under this Franchise, and shall update the inventory so provided at least annually. Such inventory shall indicate the type, capacity, and location of each vehicle, and the date of acquisition and disposition.

SECTION 5.2 OPERATION AND MAINTENANCE OF THE FRANCHISEE OPERATING ASSETS

The Franchisee, at its sole cost and expense, shall at all times: operate, or cause to be operated, the Operating Assets properly and in a sound and economical manner; maintain, preserve, and keep the Operating Assets or cause the Operating Assets to be maintained, preserved and kept in good repair, working order and condition; staff the Operating Assets with the appropriate number of hourly and salaried employees consistent with good management practice; and from

time to time make, or cause to be made, all necessary and proper repairs, replacements and renewals so that at all times the operation of the Operating Assets may be properly and advantageously conducted. The Franchisee shall maintain the safety of the Operating Assets at a level consistent with Applicable Law, Insurance Requirements, and prudent Solid Waste management practices.

SECTION 5.3 COMPLIANCE WITH APPLICABLE LAW

The Franchisee shall comply with the rules and regulations governing the operation, use and services of the Designated Disposal Facility, and shall observe and perform all of the terms and conditions contained in the Act, the Municipal Code and all other Applicable Law, shall obtain and maintain all Legal Entitlements required for the Operating Assets and the Franchise Services, and shall comply with all valid acts, rules, regulations, order and directions of any Governmental Body applicable to the Operating Assets and the Franchise Services provided hereunder.

SECTION 5.4 TAXES, FEES AND UTILITY CHARGES

The Franchisee shall pay all Taxes and Fees lawfully levied or assessed upon or in respect of the Operating Assets or the Franchise Services, or upon any part thereof or upon any revenues of the Franchisee there from, and provide and pay the cost of all Utilities necessary for the operation of the Operating Assets and the provision of the Franchise Services, when the same shall become due.

SECTION 5.5 INSURANCE

The Franchisee shall at all times during the Term of this Franchise, at its own cost and expense, obtain and maintain insurance on all the Operating Assets in a form and amount to be approved by the City and name City as additional insured in accordance with Appendix F. If any useful part of the Operating Assets shall be damaged or destroyed, the Franchisee shall, as expeditiously as may be possible, commence, and diligently prosecute the repair or replacement of the damaged property so as to restore the same to use, to the extent required to perform the Franchise Services in accordance with this Franchise.

ARTICLE VI

GENERAL REQUIREMENTS

SECTION 6.1 PUBLIC ACCESS TO THE FRANCHISEE

A. Office Facilities: The Franchisee shall establish and maintain at all times during the Term hereof an office within the County of Monterey. The Franchisee shall establish a local toll-free customer service number that shall be identified on all publications, bills, and correspondence.

B. Office Hours: The Franchisee's customer service hours shall be, at a minimum, from 8:00 a.m. to 5:00 p.m. daily, except Saturdays, Sundays and holidays.

C. Availability of Representatives: A representative of the Franchisee shall be available at the Franchisee's office during office hours for communication with the City Manager or the public.

D. Emergency Telephone Number: The Franchisee shall maintain an emergency telephone number for use during other than normal business hours. The Franchisee shall have a representative, or an answering service to contact such representative, available at the emergency telephone number during all hours other than normal office hours. The Franchisee shall provide the City Manager with night and weekend telephone numbers for senior officials of the Franchisee for use by the City Manager in emergencies.

SECTION 6.2 SERVICE COMPLAINTS AND DEFICIENCIES

A. Complaints to Franchisee: The Franchisee shall maintain during office hours a complaint service and a telephone answering system having an answering capacity satisfactory to the City Manager. All service complaints will be directed to the Franchisee. The Franchisee shall provide bilingual, Spanish speaking customer service representatives. Copies of all complaints shall be given to the City Manager as required by the reporting requirements established in Appendix H. The Franchisee shall record all complaints, including date and time, complainant name and address, and nature and date and time of resolution of complaint, in a computer-based log. This log shall be available to the City as described in Section 6.3 E below.

B. Required Response to Complaints: The Franchisee has until 4:00 p.m. of the next business day after its receipt of notice from a Customer, or the City Manager, to respond to a reported failure to provide Franchise service as required by the terms of this Franchise Agreement. Missed pick-ups shall be picked up no later than 4:00 pm the following normal business day, provided materials are placed in appropriate containers and left in approved collection locations. Drivers shall call in to the Dispatch before completing their daily route to receive and act on missed pick-ups. Customer services representatives shall call customers after complaint resolution to confirm that the results are satisfactory.

C. Annual Review of Performance and Quality of Service: At the City's sole option, with thirty (30) days written notification to the contractor, it may conduct a public hearing at which the Franchisee will be present and will participate, to review the Franchisee's performance and quality of service and provide for evaluation of technological and regulatory changes. The reports required by the Franchise regarding Customer complaints may be utilized as a basis for review. Performance and service quality review hearings may be scheduled by the

City at its discretion throughout the Term of this Franchise. Within thirty (30) days after the conclusion of the public hearing, the City will issue a report on the adequacy of performance and quality of service. If any noncompliance with the Franchise is found, the City may direct the Franchisee to correct the inadequacies in accordance with the terms of the Franchise.

D. Damages for Failure to Meet Requirements of Franchise: The City Manager may levy a charge in the amounts listed below for Franchisee's failure to meet the requirements of this Franchise. The City Manager's decision to levy any such charge shall not be deemed an election of remedies but shall be cumulative with any other remedies provided for in this Franchise or in Applicable Law. The City Manager's decision to not levy any such charge shall not be deemed a waiver of any breach by the Franchisee under this Franchise. Specifically, without limitation, the City Manager may impose the fines listed below for the corresponding deficiency in performance by the Franchisee:

1. Failure to correct a missed service by 4:00 p.m. of the next business day of notice of the missed service: \$100 per occurrence; each additional 48-hour period (excluding weekend hours): \$100;
2. Failure to provide Yard Waste Containers to Residential Customers within ten (10) days of request for service: \$100 per occurrence;
3. Failure to provide Automated Solid Waste Containers to Residential Customers within ten (10) days of request for service: \$50 per occurrence;
4. Failure to repair or replace any Container by 4:00 p.m. of the seventh (7th) day after notification of the necessity thereof: \$50 per occurrence;
5. Undertaking collection operations earlier than 5:00 a.m. or later than 5:00 p.m.¹: \$100 per day;
6. Failure to maintain collection vehicles in neat and orderly manner, after notice by the City Manager and reasonable time to cure: \$100 per day;
7. Failure to record a response to a customer complaint or request within 48 hours of resolution: \$100 per occurrence;
8. Franchisee imposes a special service not in accordance with Agreement or not requested by the Customer: \$100 per occurrence;
9. Failure to clean up spillage or litter during collection activity created by driver or truck: \$100 per occurrence;
10. Failure to remit City fees by the 22nd of the month: \$100 per occurrence;
11. Penalty assessed for each day past due date Franchisee does not provide required reports: \$100 per occurrence;
12. Failure to resolve a billing complaint within 30 working days from the complaint: \$50 per occurrence; each additional day problem not resolved: \$50;

¹ If a collection vehicle experiences a breakdown, it may run until 7:00 p.m. to finish a route.

13. Assessment when Franchisee receives more than 25 service-related complaints in one month: \$500;
14. Failure to tag materials not collected due to contamination or inappropriately prepared: \$100 per occurrence.

Any damages due under this section shall be compensated to the City in accordance with Section 7.1 B).

SECTION 6.3 ACCOUNTING AND RECORDS

A. Maintenance and Audit of Records: The Franchisee shall maintain in its principal office full and complete financial and accounting records prepared on an accrual basis in accordance with generally accepted accounting principles. Such records shall be subject to audit and inspection by the City and its authorized officers, agents or employees, at any reasonable time at the Franchisee's principal office. The gross receipts derived from the Franchise Services under this Franchise, whether such services are performed by the Franchisee or by a subcontractor or subcontractors, shall be recorded as revenues in the accounts of the Franchisee. The Franchisee shall maintain and preserve all disposal records for a period of not less than three (3) years following the expiration or termination of the Franchise.

B. Inspection of Franchisee's Accounts and Records: The Franchisee's service levels and disposal records shall be available at the Franchisee's local office at any time during regular business hours for inspection and audit by any or all of the City during the Term of this Franchise and for a period of three (3) years following the expiration or termination of the Franchise.

C. Delivery of Financial Reports to City: At the request of the City Manager, the Franchisee shall furnish, by April 15 of each year, at its sole cost and expense, complete annual financial statements of the Franchisee's corporate parent to the City Manager.

D. Omitted.

E. Computer System: The Franchisee shall maintain a computer database which specifies the service address of each Customer within the Franchise Area, the service classification applicable to each Premise, and any special services provided to such Premises. The Franchisee computer system shall allow the City to review for each Customer:

1. The complaint/resolution log required to be maintained by the Franchisee,
2. Record of missed pickups,
3. Records of daily Container (Solid Waste, Recycling, Yard Waste, home composting) delivery,
4. Route identification,
5. Container servicing, and
6. Tagging for contamination, placement, or other reasons. The Franchisee shall provide the City convenient access to this information.

SECTION 6.4 RULES AND REGULATIONS OF THE CITY MANAGER

The City Manager shall have the power to establish rules and regulations relating to the accumulation, collection, Recycling and disposal of Franchise Materials not inconsistent with the provisions of this Franchise, providing such rules and regulations are found to be reasonably necessary by the City Manager for enforcement of the provisions of this Franchise, or any and all Applicable Laws, and for the preservation of the public peace, health and safety.

SECTION 6.5 PERFORMANCE BOND

The Franchisee shall furnish to the City and maintain and file with the City a corporate surety bond, or other acceptable surety, approved as to form by the City Attorney executed by the Franchisee as principal and by a corporate surety, in the sum of \$1,000,000.00. Such bond shall permit the City to draw upon it in the event the Franchisee fails to perform its obligations hereunder and fails to pay any liquidated damages required to be paid as a result of such non-performance. The surety bond shall serve to secure the performance of the Franchise Services, and the amount thereof shall in no way limit the damages which may be payable hereunder upon any breach hereof by the Franchisee. The form of the Performance Bond is included as Appendix G.

SECTION 6.6 SUBCONTRACTOR

The Franchisee shall not utilize any subcontractors for the performance of the Franchise Services except with the consent of the City, which may be withheld or delayed in its sole and absolute discretion.

SECTION 6.7 MONITORING AND REPORTING

A. Records: The Franchisee shall maintain in its local office records for the City of the quantities of:

1. Solid Waste collected and disposed under the terms of this Franchise,
2. Recyclable materials collected, purchased, processed, sold, donated or given for no compensation, and residue disposed, and
3. Yard Waste, Wood Waste and/or Food Waste materials collected, received, purchased, processed, sold, donated, or given for no compensation, and residue disposed. Quantities by type of Recyclable Materials collected by Franchisee may be determined by estimates based on load sampling to characterize the contents of each commingled material load, using a sample protocol established by mutual agreement of City and Franchisee. Said records shall be subject to the inspection provisions described in Section 6.3 B, above.

B. Waste Disposal and Characterization Studies: The Franchisee shall cooperate with and assist the City in the performance of annual waste disposal and characterization studies.

C. Collection Monitoring: The Franchisee shall monitor its collection of Solid Waste, Recyclable Materials, and Organic Waste as provided in Section 4.2 F to assist in identifying occurrences of and reducing contamination of Recyclable Materials and Organic Waste, the

latter in particular for plastic and other inorganics. Up to twice per year, the Franchisee shall allow a person designated by the City Manager to ride with the Franchisee collection vehicles on any route or routes. The City Manager will inform the Franchisee at least one (1) week in advance prior to date of route monitoring.

D. Reporting: The Franchisee shall submit all reports to the City Manager in accordance with Appendix H, Reporting Requirements;

1. **Monthly Report Submittals:** Monthly reports shall be submitted no later than the 25th of the month following the reporting period.
2. **Annual Report Submittals:** Annual reports shall be submitted no later than 90 days following the end of the Franchise Year.
3. **Additional Reports:** The Franchisee shall furnish the City with financial reports pursuant to Section 6.3 and any additional monthly or annual reports as may be required to set forth all information required under the Act. Said reports shall be in the form required by the City and shall categorize Recycling and diversion activity in the manner required by the City.

SECTION 6.8 RESEARCH AND DEVELOPMENT

Franchisee agrees to take a proactive approach on its own initiative and, in addition, to cooperate with the City and Salinas Valley Solid Waste Authority in pursuing new technologies, management techniques and markets through pilot programs or other similar activities to improve cost efficiencies and product quality and to increase material recovery from the collection and processing services described herein. The Franchisee and the City, by mutual agreement, will determine the scope of work, timing, costs, and reimbursement, if any, due Franchisee to accomplish the purposes of this paragraph. The Franchisee shall provide the City, on request, with a written summary report identifying the results and conclusions of such research or pilot programs; if Franchisee deems such information proprietary or containing trade secret information, the City shall keep it confidential. In the context of the objectives of this paragraph, the Franchisee will meet with the City, as requested, to evaluate the performance of the Franchise Services and to examine new market opportunities for the processed materials produced by the Franchise Services.

SECTION 6.9 CONTRACT ADMINISTRATION

The City, at its sole discretion may elect to have all or a portion of the administration of this Franchise performed by the designated Service Coordinator. The Franchisee shall pay to the City an administration fee of \$20,000 annually (the "Administration Fee") for the Term of the Franchise. The Administration Fee will be made in monthly payments, due on or before the same date that monthly Franchise Fee payments are due. Commencing on July 1, 2017, and on the same date annually thereafter (the "Adjustment Date"), the Administration Fee shall be automatically increased. The initial adjustment commencing on July 1, 2017 shall be prorated for the previous 8 months using the February index.

ARTICLE VII

SERVICE FEES AND CUSTOMER RATE CAPS

SECTION 7.1 SERVICE FEES

Franchisee shall be responsible for billing and collecting funds from Customers in accordance with the service fee caps set forth in Appendix B (the "Service Fees"). Franchisee may reduce or waive at its option, but shall not exceed, the Service Fees, as they may be adjusted hereunder. Residential Customers shall be billed at least quarterly, and Multi-Dwelling and Commercial Customers shall be billed monthly. Customers may be billed prior to receiving service, but the due date shall be no sooner than 30 days from the invoice date.

SECTION 7.2 ANNUAL SERVICE FEE ADJUSTMENTS

On July 1, 2017, and on the same date annually thereafter (the "Adjustment Date"), the Service Fees shall be adjusted as provided below (the "Annual Service Fee Adjustment"). Examples of the Annual Service Fee Adjustment methodology are included in Appendix J

- a. **Rate Components.** The Service Rate caps are comprised of six (6) "Rate Components": WM Franchise Service Fee, Fuel Fee – Diesel, Disposal Fee, AB939 Program Fee, Organic Waste Processing Fee, and Franchise Waste Transfer Fee. The initial amount of each Rate Component for each Service Fee is set forth in below.
- b. **Rate Component Costs.** Franchisee has designated certain costs that are closely related to the Rate Components. Such "Rate Component Costs" for the Rate Components are provided below:
 - i. **WM Franchise Service Fee:**
 - All Labor and Labor Related Costs
 - All Primary and Secondary Fixed Equipment Costs
 - All Primary and Secondary Variable Costs
 - Operations Support Costs
 - Sales, General & Administrative Costs
 - Allocation of costs charged from other WM entities for work related to this Agreement.
 - Profit

Additional detail regarding the above costs are provided in Exhibit J.

- ii. **Fuel Fee – Diesel:** Fuel costs and any fuel tax credits received
- iii. **Disposal Fee:** Tip fees and other applicable surcharges and fees at the Designated Transfer and Disposal Facilities for the disposal Franchise Solid Waste
- iv. **AB939 Program Fee:** Fees imposed by Salinas Valley Solid Waste Authority and other governmental authorities, other than the Disposal Fees and Organic Waste Processing Fee
- v. **Organic Waste Processing Fee:** Tip fees and other applicable surcharges and fees at the Designated Transfer and Processing Facilities for Franchise Organic Waste

- vi. **Franchise Waste Transfer Fee:** Costs associated with transferring material from the Jolon Road Transfer Station to the Designated Transfer, Processing and Disposal Facilities.
- c. **Service Fee Adjustment.** Commencing on July 1, 2017, and on each Adjustment Date thereafter, the Service Fees shall be automatically increased by an Annual Service Fee Adjustment. The Annual Service Fee Adjustment will be calculated as follows:
- i. Calculate the Percentage Weight of each Rate Component's Costs (See subsection (d) below),
 - ii. Calculate the Annual Percentage Change for each Rate Component's Cost Indicator (See subsection (e) below),
 - iii. Multiply (i) by (ii) above to determine each Rate Component's Weighted Percentage change.
 - iv. For each Service Rate
 - multiply each Rate Component's Weighted Percentage change by the then-current Rate Component (See Appendix B for Rate Components July 1, 2017) to determine each Rate Component Adjustment,
 - Add all Rate Components to determine the new Service Rate.
 - v. An example of the Annual Service Fee Adjustment is provided in Appendix J.
- d. **Percentage Weight of Rate Component Costs.** Franchisee will calculate the total of all Rate Component Costs (as described in subsection (b) above) for each Rate Component based upon the Franchisee's financial results for the period January 1 through December 31 of the previous year (e.g., 1/1/17 – 12/31/17 for the 7/1/18 Service Fee Adjustment). Each Rate Component will then be assigned a "percentage weight" based on the proportionate share of its Rate Component Costs to the total costs for all Rate Components. For example, if the Rate Component Costs for the Fuel Fee - Diesel Rate Component totals \$100 and the Rate Component Costs for all Rate Components is \$2,000, then the Fuel Fee – Diesel Rate Component's item weight will be 5%. For the July 1, 2017, Annual Service Fee Adjustment, the percentage weight of the Rate Component Costs will be based on such similar costs under the franchise agreement between Franchisee and City for July 1 – December 31, 2016.
- e. **Annual Percent Change of Cost Indicators.** Each Rate Component has a "Cost Indicator", as provided below:
- i. **WM Franchise Service Fee.** The Cost Indicator of this Rate Component is the average annual Consumer Price Index for All Urban Consumers: Water and Sewer and Trash Collection Services ("CPI"), as published by the Bureau of Labor Statistics, multiplied by $(100 - (\text{Consumer Price Index for All Urban Consumers (CPI-U): U.S. city average, by detailed expenditure category, Relative Importance factor for the All Motor fuels component for the same period}))$. For example, for the July 1, 2019 WM Franchise Service Fee adjustment, the Annual Percent Change in this Cost Indicator would be: $(\text{Average CPI change for the 12-month period ending December 31, 2018 divided by the same for the 12-month period ending December 31, 2017} - 1) * (100 - \text{Consumer Price Index for All Urban Consumers (CPI-U): U.S. city average, by detailed expenditure category, Relative Importance factor for the$

All Motor fuels component for the 12-month period ending December 31, 2018). This percentage will then be multiplied by the current year's customer Rate Component for the WM Franchise Service Fee for each level of service.

The annual Weighted Percentage Change of the WM Franchise Service Fee Rate Component, for purposes of calculating the adjustment, may not be lower than 2% or greater than 6%. In any year that the Weighted Percentage Change of the WM Franchise Service Fee Rate Component exceeds 6%, the amount above 6% shall be carried forward to successive Annual Service Fee Adjustments until the Agreement terminates

- ii. **Fuel Fee – Diesel.** The Cost Indicator of this Rate Component is the Producer Price Index – Commodities, Series ID WPU057303, Fuels and related products and power, No. 2 diesel fuel, base date 198200, as published by the U. S. Department of Labor, Bureau of Labor Statistics. The Annual Percentage Change for this Cost Indicator will be based upon the annual average change for the 12-month period ending December 31 versus the same period a year ago. For example, the Cost Indicator change for July 1, 2019 will be based upon the average annual change for the 12-month period ending December 31, 2018 compared to the same ending December 31, 2017, minus 1. This percentage will then be multiplied by the current year's customer Rate Component for the Fuel Fee-Diesel for each level of service.
- iii. **Disposal Fee.** The Cost Indicator for this Rate Component are the actual tip fees and other applicable surcharges and fees at the Designated Transfer and Disposal Facilities to dispose of Franchise Solid Waste ("Disposal Tip Fees"). Therefore, by April of each year, Franchisee will determine its projected Disposal Tip Fees for the Agreement year ending the upcoming June 30 as well as the projected Disposal Tip Fees for the Agreement year ending the next upcoming June 30. The year over year increase from the current year to the next will be the Annual Percent Change.
- iv. **AB939 Program Fee.** The Cost Indicator for this Rate Component are the actual fees imposed by Salinas Valley Solid Waste Authority and other governmental authorities, other than the Disposal Tip Fees and Organic Waste Processing Fees, regarding the Franchise Services (the "Governmental Fees"). Therefore, by April of each year, Franchisee will determine its projected Governmental Fees for the Agreement year ending the upcoming June 30 as well as the projected Governmental Fees for the Agreement year ending the next upcoming June 30. The year over year increase from the current year to the next will be the Annual Percent Change.
- v. **Organic Waste Processing Fee.** The Cost Indicator for this Rate Component are the actual tip fees and other applicable surcharges and fees at the Designated Transfer and Processing Facilities to receive and process of Franchise Organic Waste ("Organics Tip Fees"). Therefore, by April of each year, Franchisee will determine its projected Organics Tip Fees for the Agreement year ending the upcoming June 30 as well as the projected Organics Tip Fees for the Agreement year ending the next upcoming June 30. The year over year increase from the current year to the next will be the Annual Percent Change.

vi. **Franchise Waste Transfer Fee.** The Cost Indicator for this Rate Component are the actual waste transfer fees and other applicable surcharges and fees at the Designated Transfer Station Facilities to receive, consolidate, load and transfer Franchise Solid Waste to the Designated Disposal and Processing Facility (“Transfer Fees”). Therefore, by April of each year, Franchisee will determine its projected Transfer Fees for the Agreement year ending the upcoming June 30 as well as the projected Transfer Fees for the Agreement year ending the next upcoming June 30. The year over year increase from the current year to the next will be the Annual Percent Change.

- On September 1, 2016, Salinas Valley Recycles assumed responsibility for the operation of the Jolon Road Transfer Station and began charging its published rate of \$17.00 per ton for transportation of franchised waste to the designated Disposal Facility. The fees will total an additional \$152,000 in cost per year to WM. WM agreed to spread the total cost over three years rather than one large increase in year one of the franchise agreement. At the inception of the agreement 3.35% is included, and an additional 3.35% plus CPI to cover the cost of the Transportation fee will be applied as follows to provide for full funding of this cost.

July 1, 2017: 3.35%

July 1, 2018: 3.35%

vii. **Special Rate Adjustments.** The purpose of the special rate adjustment is to cover the retroactive component on transportation fee that has been assessed starting September 1, 2016. The second component included is the deferring of the annual adjustment that would have normally occurred July, 1 2016. At the inception of the agreement 1.15% is included and an additional 1.15% will be applied as listed below. On July 1, 2019, this fee will be the reversal by -3.45% which is the point the full retro amount has been recovered by WM. The following will be added to the Annual Service Fee Adjustments:

July 1, 2017: 1.15%

July 1, 2018: 1.15%

July 1, 2019: -3.45%

Therefore, if the Annual Service Fee Adjustment for July 1, 2017 is 2.5%, 1.15% shall be added to such amount and the increase will be 3.65%. If the July 1, 2019 negative adjustment would bring the Annual Service Fee Adjustment negative, then the Annual Service Fee Adjustment will be zero percent (0%) and the amount which would have been the negative Annual Service Fee Adjustment will be applied to the following Annual Service Fee Adjustment.

SECTION 7.3 CHANGES IN RECYCLABLE MATERIALS COMPOSITION, MARKETS, COSTS

In the event a Composition Audits reflect a contamination greater than 9%, or a significant and material change in the percentage composition of the components in the Franchise Recyclable Materials, whether from one Composition Audit to the immediately subsequent, or over the Term of the Agreement, Franchisee shall be entitled to increase the Service Fees to cover WM’s

additional costs, including, but not limited to, processing, recycling, marketing, transportation, or disposal costs, as the case may be. "Composition Audit" means the process described in Appendix K.

In the event that a change in Applicable Law or a material change in market conditions occurs, including but not limited to lack of commercially reasonable market availability for a type of processed Franchise Recyclable Material, changes in market specifications affecting the salability of a type of processed Franchise Recyclable Material, or changes affecting the recyclability or marketability of a type of processed Franchised Recyclable Material (each a "Material Change"), and such Material Change has the effect of materially altering the terms of this Agreement, or preventing or precluding compliance with one or more provisions of this Agreement, or preventing, precluding or substantially affecting the benefit(s) bargained for under this Agreement, including profits of Franchisee, this Agreement shall be modified or suspended as may be necessary to comply with, ameliorate, or prevent the detrimental effects on the Agreement of, such Material Change. A party detrimentally affected by a Material Change shall so notify the other party and request amendment to this Agreement accordingly, and the parties shall engage in good faith negotiations regarding such amendments of this Agreement that reflect the extent to which the provisions hereof have been, or should be, so modified or suspended. If a Material Change precludes or reduces any of the Service Fees or other revenues, then the parties shall modify this Agreement in accordance with this provision in order that Franchisee can achieve, on an ongoing basis, profits that existed immediately prior to the Material Change.

SECTION 7.4 OTHER SERVICE FEE ADJUSTMENTS

The Service Fees shall, upon written request of Franchisee, be further adjusted on an interim basis for increased expenses or reduced revenue associated with performance of the services hereunder due to any one or more of the following causes:

- (a) Franchisee determines in good faith that the new or modified programs or processes are necessary to achieve a diversion percentage required in this Agreement; or
- (b) material changes in Franchisee's costs resulting from an Uncontrollable Circumstance (excluding Labor Disturbances); or
- (c) changes in the scope or method of services provided by Franchisee or changes in other fees required, initiated, or approved by the City; or
- (d) any change in Applicable Law that becomes effective after the date this Agreement is signed by a party.

If Franchisee requests an adjustment due to a circumstance set forth above, Franchisee shall prepare a Service Fee adjustment request setting forth its calculation of the increased costs or reduced revenue and accompanying Service Fee adjustment necessary to offset such increased costs or reduced revenue. The City may request any and all documentation and data reasonably necessary to evaluate such request by Franchisee, and may retain, at its own expense, an independent third party to audit and review such documentation and such request. If such third party is retained, the City shall take reasonable steps, consistent with state law, to protect the confidential or proprietary nature of any data or information supplied by Franchisee. The City shall act within ninety (90) days of receipt of the request from Franchisee, but shall approve the request if reasonably sufficient supporting information is provided.

SECTION 7.5 DELINQUENT CUSTOMERS

(a) Franchisee may bill to Customers a late payment fee, interest, returned check charges, as well as all costs associated with bad debt collection. In accordance with City Code requiring the City to provide for garbage collection services for all residents and businesses, the Franchisee may not suspend or terminate service to Customers that become delinquent. The City intends to adopt new City Code to provide for the transfer of Franchisee delinquent charges to the property taxes as a special assessment or property lien. Upon adoption of such Code and on a date, no more than once every 12 months and on a date to be mutually agreed upon by the City and the Monterey County Tax Assessor, Franchisee may request the City place all charges from accounts more than 180 days delinquent on the property tax roles as a special assessment or property lien. If such service is reactivated, Franchisee may charge a reactivation fee and/or may require a deposit from the Customer. If the City fail to adopt the special assessment/property lien process outlined herein by September 1, 2017, then Franchisee shall have the option to recover losses due to delinquent Customer accounts through adjustments to the customer rate caps.

SECTION 7.6 FRANCHISE FEE

The Franchisee shall pay the City a Franchise Fee equal to 18.0% of the following:

- Gross amount billed to Customers of the Franchisee for all Franchise Services described herein and in accordance with Appendix B, Service Fee Schedule;
- Less total of all Customer balances which became 180 days delinquent (“Charged Off Accounts”);
- Plus previously Charged Off Account amounts subsequently collected in the previous month.

Franchise Fees will be paid monthly, by the end of the month following. The City may, at its sole discretion, seek to modify the Franchise Fee; however, the Franchise Fee shall only be increased upon written agreement of the Parties. The Franchise Fee shall not be subject to and/or included within any Annual Service Fee Adjustments pursuant to Section 7.2 above.

ARTICLE VIII

DEFAULT, TERMINATION FOR CAUSE AND DISPUTE RESOLUTION

SECTION 8.1 REMEDIES FOR BREACH

The parties agree that, in the event that either party breached any other obligation under this Franchise or any representation made by either party hereunder is untrue in any material respect, the other party shall have the right to take any action and seek any remedy at law or in equity it may have to enforce the payment of any damages for the performance of such other obligation hereunder. The Franchisee acknowledges that the City intend to rely on the Franchisee to provide Franchise Materials collection, transportation to the Designated Disposal Facility and/or Designated Processing Facility, Recycling and other services hereunder for the protection of the public health, safety and welfare, and that therefore the City may enforce any action for specific performance of the Franchisee's obligations hereunder to provide the Franchise Services on the terms and conditions provided herein. Neither party shall have the right to terminate this Franchise for cause except after an Event of Default determined in accordance with the provisions of this Article VIII shall have occurred and be continuing or unremedied.

SECTION 8.2 RIGHT OF THE CITY TO PERFORM SERVICES IN CERTAIN CIRCUMSTANCES

A. Franchisee Failure to Collect for any Reason: Should the Franchisee, for any reason whatsoever except an Uncontrollable Circumstance, fail, refuse or be unable to collect, transport and dispose of any or all Franchise Materials which it is herein obligated to collect, transport and dispose of in the time and manner and as herein in this Franchise provided, for a period of more than seventy-two (72) hours, or if in any lesser time period Franchise Materials should accumulate in the City to such an extent, in such manner, or for such time that the City Manager or City Council should find that such accumulation endangers or menaces the public health, safety or welfare, then, in any of those events, the City shall have the right, upon notice to the Franchisee, during such period, to take possession of any or all of the Operating Assets necessary in the collection, transportation, processing and disposal of the Franchise Materials produced, kept or accumulated in the City, and to use such property to collect, transport and dispose of any or all Franchise Materials which the Franchisee would otherwise be obligated to collect, transport and dispose of pursuant to this Franchise. The Franchisee agrees that in such event it will fully cooperate with City to affect such a transfer of possession of the Operating Assets for City use of the same for the collection, transportation and disposal of Franchise Materials. The Franchisee agrees that in such event, the City may take possession of and use all of the Operating Assets for the above-mentioned purposes except those which Franchisee utilizes for customers outside the City without paying the Franchisee or any other person any rental or any other charges or compensation whatsoever for such possession and use. The City may in such circumstances operate the Operating Assets with its employees, or cause the Operating Assets to be operated by subcontractors to the City.

B. Franchisee Repair: The Franchisee further agrees that, in the circumstances described in subsection (A) above, the Franchisee shall, if the City so request, keep in good repair and condition all of the Operating Assets, service all motor vehicles necessary for continued operations with gasoline, oil and other necessary service, and provide such other service as may be necessary to render the Operating Assets operational and ready for use in collecting and transporting and disposing of Franchise Materials, all free of any and all costs or expenses to the City.

C. Franchisee Resumption of Service: It is further agreed that the City, upon seven (7) days written notice, may at any time, at their discretion, relinquish possession of any or all of the Operating Assets to the Franchisee and thereupon demand that the Franchisee resume the collection, transportation and disposal of Franchise Materials as provided in this Franchise, whereupon the Franchisee shall be bound to resume the same.

D. City Performance Not a Taking: It is specifically understood and agreed that the City's exercise of its rights under this Section:

1. Does not constitute a taking of private property for which payment must be made;
2. Shall not create any liability on the part of the City to the Franchisee; and
3. That the indemnity provisions of Section 10.1 of this Franchise are meant to include circumstances arising under this Section.

E. Duration of City's Rights: The City's right under Section 8.2 hereof to retain temporary possession of the Operating Assets and to render collection, transportation and disposal services shall terminate at the earlier of:

1. The time when such services can, in the reasonable judgment of the City, be resumed by the Franchisee, or (if earlier),
2. The time when the City no longer reasonably requires such Operating Assets, as determined by the City, or
3. The expiration of twelve (12) months from the date the City took possession, or
4. The Franchise can be re-let if, in the sole determination of the City, the Franchisee is no longer able to perform.

F. Security for City's Rights: Franchisee is required to provide a performance bond, in accordance with the provisions of Section 6.5, in order to secure the City's rights under this Section. The City may (but shall not be required to) cure any default of Franchise in the manner described in subsections A) and B) above, and may then look to Franchisee or Franchisee's performance bond for repayment.

SECTION 8.3 EVENTS OF DEFAULT OF FRANCHISEE

A. Event of Default Defined: Each of the following shall constitute an Event of Default on the part of the Franchisee:

1. **Certain Events of Non-Compliance:** Any transaction, without any requirement of notice or cure opportunity, not complying with the requirements of Section 3.2 or Section 3.3 hereof.
2. **Other Failure to Perform:** Failure or refusal of the Franchisee to perform any term, covenant, obligation or condition contained in this Franchise other than a failure or refusal described in item 1) above, except that no such failure or refusal shall give the City the right to terminate this Franchise under this Section unless:

a) The City has given prior written notice to the Franchisee, stating that a specific failure or refusal to perform exists which will, unless corrected, constitute a material breach of this Franchise on the part of the Franchisee and which will, in its opinion, give the City a right to terminate this Franchise for cause under this Section unless such default is corrected within fifteen (15) days, and

b) The Franchisee has neither challenged in an appropriate forum the City's conclusion that such failure or refusal to perform has occurred or constitutes a material breach of this Franchise nor corrected or diligently taken steps to correct such default within such fifteen (15) day period from receipt of the notice given pursuant to the clause (a) of this subsection (but if the Franchisee shall have diligently taken steps to correct such default within a reasonable period of time, the same shall not constitute an Event of Default for as long as the Franchisee is continuing to take such steps to correct such default).

3. **Voluntary Bankruptcy:** The written admission by either the Franchisee or Guarantor that it is bankrupt, or the filing by the Franchisee or either Guarantor of a voluntary petition under the Federal Bankruptcy Code, or the consent by the Franchisee or either Guarantor to the appointment by a court of a receiver or trustee for all or a substantial portion of its property or business, or the making by the Franchisee or either Guarantor of any arrangement with or for the benefit of its creditors involving an assignment to a trustee, receiver or similar fiduciary, regardless of how designated, of all or a substantial portion of the Franchisee's or either Guarantor's property or business.
4. **Involuntary Bankruptcy:** The final adjudication of the Franchisee or either Guarantor as a bankrupt after the filing of an involuntary petition under the Bankruptcy Act, but no such adjudication shall be regarded as final unless and until the same is no longer being contested by the Franchisee nor until the order of the adjudication shall be regarded as final unless and until the same is no longer being contested by the Franchisee nor until the order of the adjudication is no longer appealable.
5. **Failure to Provide Performance Bond:** The failure of the Franchisee to provide or maintain the performance bond required pursuant to Section 6.5 hereof, without any requirement of notice or cure opportunity.
6. **Failure to Provide Insurance:** The failure of the Franchisee to provide or maintain insurance required pursuant to Section 5.5 hereof, without any requirement of notice or cure opportunity.

B. Termination Liquidated Damages Payable to the City: If this Franchise is terminated by the City for cause as a result of an Event of Default by the Franchisee hereunder, the Franchisee immediately upon receipt of the City's termination notice shall pay to the City as liquidated damages:

1. All amounts payable to the City by the Franchisee as liquidated damages up to such date of termination,

2. An amount equal to the sum of all increased payments, damages, penalties incurred by or on behalf of the City under or Applicable Law as a result of the termination of this Franchise.

C. Adequacy of Termination Liquidation Damages:

The parties agree that the City's actual damages upon the Franchisee's breach of any of the below described requirements of this Franchise would be difficult or impossible to ascertain, and that the liquidated damages provided for below represent the reasonable endeavor of the parties to agree on the amount of such damages, and such liquidated damages are intended to place the City in an economic position equivalent to that which it would have been if the described breach had not occurred, and that such liquidated damages are not a penalty, and shall constitute the only damages payable by the Franchisee to the City for each such singular breach event. The obligation to pay such liquidated damages shall not impair or limit the obligation of the Franchisee to the City under any other provision of this Franchise, nor shall it limit the ability of the City to elect to terminate this Franchise in the event of any such breach. Now, therefore, the parties have agreed that in the event that Franchisee commits any breach of the Franchise described below, the Franchisee shall pay the City the following liquidated damages within thirty days' of the receipt of notice from the City of the City's imposition of such liquidated damages.

The parties agree that the City's actual damages upon termination of the Franchisee for cause under this Section would be difficult or impossible to ascertain, that the termination liquidated damages provided for in subsection (B) hereof are intended to place the City in an economic position equivalent to that which it would have been in the Event of Default or material breach permitting termination for cause not occurred, and that such termination liquidated damages shall constitute the only damages payable by the Franchisee upon such termination for cause, regardless of legal theory. The obligation to pay such termination liquidated damages shall not impair or limit the obligation of the Franchisee to the City under any other provision of this Franchise which expressly survives termination hereunder.

D. Enforcement Costs: The Franchisee agrees to pay to the City all fees and expenses incurred by or on behalf of the City and the Service Coordinator in enforcing payment or performance of the Franchisee's obligations hereunder if such non-performance results in a judicially determined Event of Default by the Franchisee.

SECTION 8.4 EVENT OF DEFAULT BY THE CITY

A. Event of City Default Defined: Each of the following shall constitute an Event of Default on the part of the City:

1. **Failure to Pay:** The failure of the City to pay undisputed amounts due and owing to the Franchisee under this Franchise within ninety (90) days following receipt of a Franchisee invoice therefore.
2. **Other Failure to Perform:** Failure or refusal of the City to perform any term, covenant, obligation or condition contained in this Franchise other than a failure or refusal described in items 1) above, except that no such failure or refusal shall give the Franchisee the right to terminate this Franchise under this Section unless:

a) The Franchisee has given prior written notice to the City, stating that a specific failure or refusal to perform exists which will, unless corrected, constitute a material breach of this Franchise on the part of the City and which will, in its opinion, give the Franchisee a right to terminate this Franchise for cause under this Section unless such default is corrected within fifteen (15) days, and

b) The City has neither challenged in an appropriate forum the Franchisee's conclusion that such failure or refusal to perform has occurred or constitutes a material breach of this Franchise nor corrected or diligently taken steps to correct such default within such fifteen (15) day period from receipt of the notice given pursuant to the clause (a) of this subsection (but if the City shall have diligently taken steps to correct such default within a reasonable period of time, the same shall not constitute an Event of Default for as long as the City is continuing to take such steps to correct such default).

B. Enforcement Costs: The City agrees to pay to the Franchisee all fees and expenses incurred by or on behalf of the Franchisee in enforcing payment or performance of the City's obligations hereunder if such non-performance results in a judicially determined Event of Default by the Franchisee.

SECTION 8.5 NO WAIVERS

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

SECTION 8.6 NO CONSEQUENTIAL OR PUNITIVE DAMAGES

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

SECTION 8.7 FORUM FOR DISPUTE RESOLUTION

It is the express intention of the parties that all legal actions and proceedings related to this Franchise or to the Franchise Services or to any rights or any relationship between the parties arising there from shall be solely and exclusively initiated and maintained in courts of the State of California in Monterey County or the United States of America having appropriate jurisdiction.

SECTION 8.8 ADMINISTRATIVE REVIEW OF DISPUTES

Either party hereto may give the other party written notice of any dispute with respect to this Franchise. Such notice shall specify a date and location for a meeting of the parties hereto at which such parties shall attempt to resolve such dispute. The Service Coordinator shall keep a record of the proceedings conducted and information presented during such meeting. In the event that such dispute cannot be resolved by the parties hereto within 30 days or seven (7) days if it involves a dispute under Section 8.2 above, the matter may be referred by either party to Legal Proceedings. In the event either party has referred a dispute to any such proceeding, the City may not act to terminate this Franchise for cause except at the conclusion of the meeting of the parties held pursuant to this Section.

SECTION 8.9 CRIMINAL ACTIVITY OF THE FRANCHISEE

Should the Franchisee or any of its officers or directors be "found guilty" of felonious conduct relating to the Franchise Services, or other felonious conduct involving:

1. A price fixing conspiracy in connection with Franchise Services,
2. Intentional and illegal transport or disposal of hazardous or toxic materials generated within the City, or
3. Bribery of public officials, the City reserve the right:
 - a) to unilaterally terminate this Franchise; or
 - b) exercise all other remedies available to the City as if Franchisee default had occurred; or
 - c) to impose such other sanctions (which may include financial sanctions or any other condition deemed appropriate short of termination) as the City and Franchisee shall mutually agree. Such action shall be taken after the Franchisee has been given notice and an opportunity to present evidence in mitigation. The term "found guilty" shall be deemed to include any judicial determination that the Franchisee or any of its officers, directors or employees is guilty, and any admission of guilt by the Franchisee, or any of its officers, directors, or employees including, but not limited to, the pleas of "guilty", "nolo contendere", "no contest" or "guilty of a lesser felony" entered as part of any plea bargain. Notwithstanding the foregoing, if such officers, directors or employees are acting in their own behalf in their individual capacities as officers, directors or employees, the Franchisee shall dismiss or remove such officers, directors or employees and take all action necessary, and appropriate; in such event, the Franchisee will not be deemed in breach of this Agreement.

ARTICLE IX

TERM

SECTION 9.1 TERM

The term of this Franchise shall commence on the date of execution hereof and shall end on June 30, 2025. The parties may agree in writing to extend the term for up to two (2) additional 5-year (5) periods.

ARTICLE X

MISCELLANEOUS PROVISIONS

SECTION 10.1 INDEMNIFICATION & INSURANCE

A. Indemnification of the City:

Franchisee agrees to and shall indemnify, defend, with counsel acceptable to the City, and hold harmless City, their officers, officials, employees, volunteers, agents and assigns (indemnitees) from and against any and all damages (whether special, general or punitive), loss, liability, fines, penalties, forfeitures, claims, demands, actions, proceedings or suits (whether administrative or judicial), in law or in equity, of every kind and description, (including, but not limited to, injury to and death of any person and damage to property, strict liability, product liability, or for contribution or indemnity claimed by third parties) (collectively, "Claims") arising or resulting from or in any way connected with: (i) the operation of the Franchise, its agents, employees, contractors, and/or subcontractors, in performing or failing to perform this Agreement; (ii) the failure of the Franchisee, its agents, employees, contractors and/or subcontractors to comply in all respects with applicable laws, ordinances and regulations, and/or applicable permits and licenses; (iii) the acts of Franchisee, its officers, employees, agents, contractors and/or subcontractors in performing services under this Agreement for which strict liability is imposed by law; (iv) any action taken by the City pursuant to Section 8.2 upon a failure to collect, transport, process or dispose of Franchise Materials, and (v) the processing, marketing, and end use of Recyclable Materials and Food Waste.

The foregoing indemnity shall apply regardless of whether such loss, liability, penalty, forfeiture, claim, demand, action, proceeding, suit, injury, death, or damage is also caused in part by any of the indemnitees' negligence. However, the foregoing Franchisee obligations shall not apply to the extent Claims arise or are the result from an indemnitee's negligence, willful misconduct or breach of this Agreement.

B. AB 939 Indemnification of the City:

Franchisee agrees to and shall indemnify to the extent permissible by law, defend, with counsel acceptable to the City, and hold harmless City, their officers, officials, employees, volunteers, agents and assigns (indemnitees) from and against any and all damage (whether special, general or punitive), loss, liability, fines, penalties, forfeitures, claims, demands, actions, proceedings or suits (whether administrative or judicial), in law or in equity, of every kind and description, (including, but not limited to, injury to and death of any person and damage to property, strict liability, or for contribution or indemnity claimed by third parties) arising or resulting from the failure of City to comply with the California Integrated Waste Management Act of 1989

(Division 30 of the California Public Resources Code), as amended, supplemented, superseded and replaced from time to time (AB 939); provided, however, the foregoing obligations shall only apply to the extent the City's failure to comply with AB939 was caused by a Franchisee breach of this Agreement.

C. Hazardous Substances Indemnification:

Franchisee shall indemnify, defend with counsel acceptable to the City, protect and hold harmless the City, their officers, officials, employees, agents, assigns and any successor or successors to the City's interest from and against all claims, damages (including but not limited to special, consequential, natural resources and punitive damages) injuries, response mediation and removal costs, losses, demands, debts, liens, liabilities, causes of action, suits, legal or administrative proceedings, interest, fines, charges, penalties attorney's fees for the adverse party and expenses (including but not limited to attorney's and expert witness fees and costs incurred in connection with defending against any of the forgoing or in enforcing this indemnity) of any kind whatsoever paid, incurred or suffered by, or asserted against, the City or their officers, officials, employees, agents, assigns, or contractors arising from or attributable to acts or omissions including but not limited to any repair, cleanup, disposal or detoxification, or preparation and implementation of any removal, remedial, response, closure or other plan (regardless of whether undertaken due to governmental action) concerning any hazardous substance or hazardous wastes at any place where the Franchisee transports, stores or disposes of Solid Waste pursuant to this Agreement. The foregoing indemnity is also intended to operate as an agreement pursuant to Section 107(e) of CERCLA, 42 U.S.C. Section 9607(c) and California Health and Safety Code Section 25364, to defend, insure, protect, hold harmless and indemnify the City from liability. The foregoing indemnity shall not apply with respect to: (1) any Hazardous Waste or hazardous substance generated by the City or its agents and delivered by the City or its agents; (2) any materials delivered by Franchisee to a disposal facility or processing facility designated by the City that is not owned or operated by Franchisee, or (3) the disposal or release of hazardous substances or Hazardous Waste, which disposal or release has resulted from the negligence or willful misconduct of the City or its agents.

D. Insurance:

The Franchisee shall at all times during the Term of this Franchise, at its own cost and expense, obtain and maintain liability insurance meeting the requirements set forth in Appendix H hereto.

SECTION 10.2 UNCONTROLLABLE CIRCUMSTANCES GENERALLY

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

B. Notice. Mitigation: The party experiencing an Uncontrollable Circumstance shall notify the other party by telecommunication or telephone and in writing, within twenty (24) hours after the party experiencing such Uncontrollable Circumstance first knew of the commencement thereof, followed within two (2) days by a written description of:

1. The Uncontrollable Circumstance and the cause thereof (to the extent known),

2. The date the Uncontrollable Circumstance began and the cause thereof, its estimated duration, the estimated time during which the performance of such party's obligations hereunder will be delayed, and
3. Potential mitigating actions which might be taken by the Franchisee or City. Each party shall provide written notice of the cessation of such Uncontrollable Circumstance within twenty (24) hours thereof. Whenever such act, event or condition shall occur, the party claiming to be adversely affected thereby shall, as promptly as reasonably possible, use its best efforts to eliminate the cause therefore and resume performance under this Franchise. While the delay continues, the Franchisee or City shall give daily notice to the other party updating the information previously submitted.

SECTION 10.3 Omitted

SECTION 10.4 RELATIONSHIP OF THE PARTIES

Neither party to this Franchise shall have any responsibility whatsoever with respect to services provided or contractual obligations or liabilities assumed by the other party hereto, whether accrued, absolute; contingent or otherwise, or whether due or to become due. The Franchisee is an independent contractor and Franchise holder and nothing in this Franchise shall be deemed to constitute either party a partner, agent or legal representative of the other party or to create any fiduciary relationship between the parties.

SECTION 10.5 NO DISCRIMINATION

The Franchisee shall not discriminate nor permit discrimination by any of its officers, employees, agents and representatives against any person because of age, race, color, religion, national origin, sex, sexual orientation or physical or mental disability. The Franchisee will take all actions reasonably necessary to ensure that applicants are employed, and that employees are treated during employment, without regard to their age, race, color, religion, national origin, sex, sexual orientation or physical or mental disability. Such action shall include, without limitation, recruitment and recruitment advertising; layoff or termination; upgrading, demotion, transfer, rates of pay or other form of compensation; and selection for training, including apprenticeship. The Franchisee shall impose the non-discrimination provisions of this Section by contract on all subcontractors hired with the City's consent to perform work related to performance of its obligations hereunder and shall take all reasonable actions necessary to enforce such provisions. The Franchisee will post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this non-discrimination clause.

SECTION 10.6 ACTIONS OF THE CITY IN ITS GOVERNMENTAL CAPACITY

Nothing in this Franchise shall be interpreted as limiting the rights and obligations of the City in its governmental or regulatory capacity, or as limiting the right of the Franchisee to bring any legal action against the City, not based on this Franchise, arising out of any act or omission of the City in its governmental or regulatory capacity.

SECTION 10.7 BINDING EFFECT

This Franchise shall bind and inure to the benefit of the parties hereto and any successor or assignee acquiring an interest hereunder consistent with the provisions hereof.

SECTION 10.8 AMENDMENTS

Neither this Franchise nor any provision hereof may be changed, modified, amended or waived except by written agreement duly executed by both parties.

SECTION 10.9 NOTICE OF LITIGATION

Each party shall deliver written notice to the other of any Legal Proceeding to which it is a party and which questions the validity or enforceability of this Franchise or any other related agreement executed by the City or the Franchisee or any Legal Entitlement issued in connection herewith.

SECTION 10.10 NOTICES

Any notices or communications required or permitted hereunder to be given to the City or City Representative shall be in writing and shall be sufficiently given only if delivered in person to:

City Manager
City of King City
212 S. Vanderhurst Avenue
King City, California 93926

Any notices or communications required or permitted hereunder to be given to the Franchisee shall be in writing and shall be sufficiently given if delivered in person to the Franchisee at:

Felipe Melchor
District Manager
Waste Management
Carmel Marina Corporation
11240 Commercial Parkway
Castroville, CA 95012

Changes in the respective addresses to *which* such notices may be directed may be made from time to time by any party by written notice to the other party. Notices and communications given by mail hereunder shall be deemed to have been given five (5) days after the date of dispatch; all other notices shall be deemed to have been given upon receipt.

SECTION 10.11 FURTHER ASSURANCES

Each party agrees to execute and deliver any instruments and to perform any acts as may be necessary or reasonably requested by the other in order to give full effect to this Franchise.

SECTION 10.12 APPENDICES

Each of the appendices identified is attached hereto and incorporated herein and made a part hereof by this reference.

IN WITNESS WHEREOF, the parties hereto have executed this agreement on the dates indicated below.

CITY OF KING CITY

Dated: 6-27-2017 By: [Signature]

City Clerk: STEVE ADAMS By: Chris R. Naska for Steve Adams

APPROVED AS TO FORM:

City Attorney: [Signature] Dated: 6/27/17

ACCEPTED:

USA Waste of California, Inc. DBA Carmel Marina Corporation

Dated: 9/8/2017 By: [Signature]
Barry SKOLNICK, President

IN WITNESS WHEREOF, the parties hereto have executed this agreement on the dates indicated below.

CITY OF KING CITY

Dated: 6-27-2017 By: [Signature]

City Clerk: Steve Adams By: Chris R. Masler for Steve Adams

APPROVED AS TO FORM:

City Attorney: [Signature] Dated: 6/27/17

ACCEPTED:

USA Waste of California, Inc. DBA Carmel Marina Corporation

Dated: _____ By: _____

APPENDIX A

SPECIFICATIONS FOR CONTAINERS AND VEHICLES

A.1 COLLECTION CONTAINERS

- 1) The Franchisee shall provide industry standard bins for the storage of material from Commercial Customers, which shall be designated and constructed to be watertight and shall have fitted plastic lids. Bins shall meet all applicable federal regulations on solid waste generation safety. Bins shall be provided in sizes 1, 2, 3, 4, and 6 cubic yard capacity.
- 2) The Franchisee shall provide industry standard debris boxes to Commercial Customers, in 20, 30, and 40 cubic yard capacity. Debris boxes shall meet all applicable federal regulations.
- 3) The Franchisee shall provide wheeled containers (carts) to each Residential Customer. All containers shall be made of industry standard materials, have permanent wheels, attached lids, and a handle for easy movement. The Franchisee shall provide carts at no additional charge in the following sizes.
 - Solid Waste – 35, 64, and 96 gallon
 - Recycling – 64 and 96 gallon
 - Yard Waste – 96 gallon
 - Food Waste – 64 gallon
- 4) At the direction of the City, the Franchisee shall continue to provide, a 64 or 96 gallon wheeled container (cart) to each resident, without additional charge, for Recycling per Appendix C. The containers (carts) shall be made of industry standard material, have permanent wheels, attached lids, and a handle for easy movement.
- 5) Carts shall be clearly labeled to instruct the acceptable material to be placed in the container in accordance with Appendix F. Carts shall be of a different color for each type of usage.
- 6) The Franchisee shall distribute the containers on a schedule determined by the City and the Franchisee.

A.2 COLLECTION VEHICLES

1) General

Franchisee shall provide a fleet of industry-standard collection vehicles sufficient in number and capacity to efficiently perform the work required by the Agreement in strict accordance with its terms. The Franchisee agrees to maintain each piece of equipment used by it in the performance of this Agreement in good order and repair. Franchisee shall have available on service days sufficient backup vehicles and qualified operators to respond to complaints and emergencies.

2) Vehicle Identification

The Franchisee's name, phone number, and vehicle identification number must be visibly displayed on its vehicles in letters and figures no less than three inches high.

3) Cleaning and Maintenance

- A. **General:** Franchisee shall maintain all of its properties, facilities, and equipment used in providing service under this Agreement in a safe, neat, clean and operable condition at all times, and shall keep its equipment well and uniformly painted, to the satisfaction of the City. Vehicles shall be maintained in such a manner that no leakage of fluids from the collected materials occurs.
- B. **Cleaning:** Vehicles used in the collection shall be thoroughly washed as provided in this Agreement, and thoroughly steam cleaned on a regular basis so as to present a clean appearance and minimize odors. All vehicles shall be painted on a regular schedule to maintain a clean, professional appearance. The vehicles shall be painted in a uniform manner; although refuse, recycling, and green waste vehicles may have different painting schemes. All graffiti shall be removed immediately. The City may inspect vehicles during normal business hours to determine compliance with sanitation requirements. Franchisee shall make vehicles available to the County Health Department for inspection at any frequency it requests.
- C. **Maintenance:** Franchisee shall (i) inspect each vehicle daily to ensure that all equipment is operating properly. Vehicles which are not operating properly shall be taken out of service until they are repaired and do operate properly; and (ii) perform all scheduled maintenance functions in accordance with the manufacturer's specifications and schedule. Franchisee shall keep accurate records of all vehicle maintenance, recorded according to date and mileage, and shall make such records available to the City upon request.
- D. **Repairs:** Franchisee shall repair, or arrange for the repair of, all of its vehicles and equipment, including major dents, leaks, and other body damage, for which repairs are needed because of accident, breakdown or any other cause so as to maintain all equipment in a neat, safe and operable conditions. If an item of repair is covered by a warranty, Franchisee shall obtain warranty performance. Franchisee shall maintain accurate records of repair, which shall include date/mileage, nature of repair and the signature of a maintenance supervisor that the repair has been properly performed.
- E. **Inventory:** Franchisee shall furnish sufficient equipment to provide all service required under this Agreement, including backup collection vehicles. Franchisee shall furnish the City a written inventory of all vehicles, including collection vehicles, used in providing service, upon request. The inventory shall list all vehicles by manufacturer, Franchisee ID number, Authority ID number, date of acquisition, depreciated life, type, capacity, and decibel rating.
- F. **Storage:** Franchisee shall arrange to store all vehicles and other equipment in safe and secure location(s) in accordance with City applicable zoning regulations.

4) Operation

All vehicles must be registered with the Department of Motor Vehicles of the State of California and inspected by the California Highway Patrol at the frequency required by

the state. Vehicles shall be operated in compliance with the California Vehicle Code and all applicable safety and local ordinances.

Franchisee shall not load collection vehicles in excess of the manufacturer's recommendations or limitations imposed by state or local weight restrictions on vehicles.

Franchisee shall use all reasonable means to minimize any backing of collection vehicles.

APPENDIX B CUSTOMER RATE CAP SCHEDULE

DESCRIPTION OF SERVICES	Year 1		RRI Adjustment	Year 2	
	Total Customer Rate			Total Customer Rate	Eff 7/1/17
RESIDENTIAL	100.0%		6.32%	100.0%	
1-20 GAL CART/WEEK MSW	\$22.52		\$1.42	\$23.94	
1-35 GAL CART/WEEK MSW	\$29.74		\$1.88	\$31.62	
1-64 GAL CART/WEEK MSW	\$37.28		\$2.36	\$39.64	
1-96 GAL CART/WEEK MSW	\$44.11		\$2.79	\$46.90	
1-64 GAL CART/WEEK Recycle (additional per cart)	\$29.83		\$1.89	\$31.72	
1-96 GAL CART/WEEK Recycle (additional per cart)	\$35.29		\$2.23	\$37.52	
1-64 GAL CART/WEEK Yard Waste (additional per cart)	\$33.56		\$2.12	\$35.68	
1-96 GAL CART/WEEK Yard Waste (additional per cart)	\$39.70		\$2.51	\$42.21	
BULKY COLLECTION PER YARD (Doesn't include trip charge)	\$24.31		\$1.54	\$25.85	
BULKY COLLECTION TRIP PER STOP	\$28.10		\$1.78	\$29.88	
OVERAGE - MATERIAL EXCEEDS CONTAINER CAPACITY - PER BAG	\$9.01		\$0.57	\$9.58	
1-20 GAL EXTRA PICK-UP ON SVC DAY (EACH)	\$3.88		\$0.25	\$4.13	
1-35 GAL EXTRA PICK-UP ON SVC DAY (EACH)	\$3.88		\$0.25	\$4.13	
1-64 GAL EXTRA PICK-UP ON SVC DAY (EACH)	\$7.75		\$0.49	\$8.24	
1-96 GAL EXTRA PICK-UP ON SVC DAY (EACH)	\$11.67		\$0.74	\$12.41	
TRIP CHARGE PER STOP	\$28.10		\$1.78	\$29.88	
Reactivation Charge (from bad pay) with delivery	\$98.67		\$6.24	\$104.91	
Reactivation Charge (from bad pay) without delivery	\$52.24		\$3.30	\$55.54	
Home Composting Unit	\$62.68		\$3.96	\$66.64	

Home Composting Unit - Delivery Charge	\$28.10	\$1.78	\$29.88
Backyard service. (Cannot exceed 100 ft)	\$25.55	\$1.62	\$27.17
Replace lost, stolen, or damaged cart - 20 gallon	\$86.43	\$5.46	\$91.89
Replace lost, stolen, or damaged cart - 35 gallon	\$86.43	\$5.46	\$91.89
Replace lost, stolen, or damaged cart - 64 gallon	\$92.09	\$5.82	\$97.91
Replace lost, stolen, or damaged cart - 96 gallon	\$100.45	\$6.35	\$106.80
CSR process payment over the phone	\$9.29	\$0.59	\$9.88
Bad/Return Check	\$25.00	\$25.00	\$25.00
Late Payment charge	2.5% of balance (\$5.00 min.)		2.5% of balance (\$5.00 min.)
	Chg.)		Chg.)
1-20 GAL EXTRA PICK-UP ON NON-SVC DAY (EACH)	\$36.50	\$2.31	\$38.81
1-35 GAL EXTRA PICK-UP ON NON-SVC DAY (EACH)	\$36.50	\$2.31	\$38.81
1-64 GAL EXTRA PICK-UP ON NON-SVC DAY (EACH)	\$40.37	\$2.55	\$42.92
1-96 GAL EXTRA PICK-UP ON NON-SVC DAY (EACH)	\$44.28	\$2.80	\$47.08
1-64 GAL CONTAMINATION (RECYCLE/GREEN WASTE)	\$12.92	\$0.82	\$13.74
1-96 GAL CONTAMINATION (RECYCLE/GREEN WASTE)	\$15.28	\$0.97	\$16.25

COMMERCIAL AND MULTIPLE DWELLING CART SERVICE - MSW

1-35 GAL CART 1X PER WEEK	\$32.83	\$2.08	\$34.91
1-35 GAL CART 2X PER WEEK	\$65.00	\$4.11	\$69.11
1-35 GAL CART 3X PER WEEK	\$97.83	\$6.18	\$104.01
1-35 GAL CART 4X PER WEEK	\$130.65	\$8.26	\$138.91
1-35 GAL CART 5X PER WEEK	\$163.48	\$10.33	\$173.81
1-64 GAL CART 1X PER WEEK	\$39.61	\$2.50	\$42.11
1-64 GAL CART 2X PER WEEK	\$78.42	\$4.96	\$83.38
1-64 GAL CART 3X PER WEEK	\$118.03	\$7.46	\$125.49
1-64 GAL CART 4X PER WEEK	\$157.63	\$9.96	\$167.59
1-64 GAL CART 5X PER WEEK	\$197.24	\$12.47	\$209.71
1-96 GAL CART 1X PER WEEK	\$47.19	\$2.98	\$50.17
1-96 GAL CART 2X PER WEEK	\$93.43	\$5.91	\$99.34

1-96 GAL CART 3X PER WEEK
 1-96 GAL CART 4X PER WEEK
 1-96 GAL CART 5X PER WEEK

\$140.62
 \$187.80
 \$234.99

\$8.89
 \$11.87
 \$14.85

\$149.51
 \$199.67
 \$249.84

COMMERCIAL AND MULTIPLE DWELLING BIN SERVICE - MSW

1 CY BINS

1 PICK-UP PER WEEK
 2 PICK-UPS PER WEEK
 3 PICK-UPS PER WEEK
 4 PICK-UPS PER WEEK
 5 PICK-UPS PER WEEK

\$125.01
 \$247.94
 \$370.91
 \$495.89
 \$618.86

\$7.90
 \$15.67
 \$23.45
 \$31.35
 \$39.12

\$132.91
 \$263.61
 \$394.36
 \$527.24
 \$657.98

2 CY BINS

1 PICK-UP PER WEEK
 2 PICK-UPS PER WEEK
 3 PICK-UPS PER WEEK
 4 PICK-UPS PER WEEK
 5 PICK-UPS PER WEEK

\$199.73
 \$382.74
 \$573.67
 \$771.77
 \$971.53

\$12.63
 \$24.19
 \$36.26
 \$48.79
 \$61.41

\$212.36
 \$406.93
 \$609.93
 \$820.56
 \$1,032.94

3 CY BINS

1 PICK-UP PER WEEK
 2 PICK-UPS PER WEEK
 3 PICK-UPS PER WEEK
 4 PICK-UPS PER WEEK
 5 PICK-UPS PER WEEK

\$282.69
 \$466.05
 \$598.95
 \$782.31
 \$904.63

\$17.87
 \$29.46
 \$37.86
 \$49.45
 \$57.18

\$300.56
 \$495.51
 \$636.81
 \$831.76
 \$961.81

4 CY BINS

1 PICK-UP PER WEEK
 2 PICK-UPS PER WEEK
 3 PICK-UPS PER WEEK
 4 PICK-UPS PER WEEK

\$373.30
 \$582.40
 \$791.03
 \$998.79

\$23.60
 \$36.81
 \$50.00
 \$63.14

\$396.90
 \$619.21
 \$841.03
 \$1,061.93

5 PICK-UPS PER WEEK	\$1,206.93	\$76.29	\$1,283.22
6 CY BINS			
1 PICK-UP PER WEEK	\$466.19	\$29.47	\$495.66
2 PICK-UPS PER WEEK	\$932.22	\$58.93	\$991.15
3 PICK-UPS PER WEEK	\$1,098.50	\$69.44	\$1,167.94
4 PICK-UPS PER WEEK	\$1,564.65	\$98.90	\$1,663.55
5 PICK-UPS PER WEEK	\$2,078.22	\$131.37	\$2,209.59

8 CY BINS			
1 PICK-UP PER WEEK	\$564.93	\$35.71	\$600.64
2 PICK-UPS PER WEEK	\$1,141.31	\$72.14	\$1,213.45
3 PICK-UPS PER WEEK	\$1,307.13	\$82.63	\$1,389.76
4 PICK-UPS PER WEEK	\$1,772.41	\$112.04	\$1,884.45
5 PICK-UPS PER WEEK	\$2,286.36	\$144.53	\$2,430.89

COMMERCIAL AND MULTIPLE DWELLING CART SERVICE - RECYCLE

1-96 GAL CART 1X PER WEEK	\$0.00	\$0.00	\$0.00
1-96 GAL CART 2X PER WEEK	\$0.00	\$0.00	\$0.00
1-96 GAL CART 3X PER WEEK	\$14.16	\$0.89	\$15.05
1-96 GAL CART 4X PER WEEK	\$28.03	\$1.77	\$29.80
1-96 GAL CART 5X PER WEEK	\$42.19	\$2.67	\$44.85

COMMERCIAL AND MULTIPLE DWELLING BIN SERVICE - RECYCLE

1 CY BINS			
1 PICK-UP PER WEEK	\$0.00	\$0.00	\$0.00
2 PICK-UPS PER WEEK	\$37.50	\$2.37	\$39.87
3 PICK-UPS PER WEEK	\$74.38	\$4.70	\$79.08
4 PICK-UPS PER WEEK	\$111.27	\$7.03	\$118.31
5 PICK-UPS PER WEEK	\$148.77	\$9.40	\$158.17

2 CY BINS

1 PICK-UP PER WEEK	\$37.50	\$2.37	\$39.87
2 PICK-UPS PER WEEK	\$74.38	\$4.70	\$79.08
3 PICK-UPS PER WEEK	\$111.27	\$7.03	\$118.31
4 PICK-UPS PER WEEK	\$148.77	\$9.40	\$158.17
5 PICK-UPS PER WEEK	\$185.66	\$11.74	\$197.39

3 CY BINS

1 PICK-UP PER WEEK	\$59.92	\$3.79	\$63.71
2 PICK-UPS PER WEEK	\$114.82	\$7.26	\$122.08
3 PICK-UPS PER WEEK	\$172.10	\$10.88	\$182.98
4 PICK-UPS PER WEEK	\$231.53	\$14.64	\$246.17
5 PICK-UPS PER WEEK	\$291.46	\$18.42	\$309.88

4 CY BINS

1 PICK-UP PER WEEK	\$84.81	\$5.36	\$90.17
2 PICK-UPS PER WEEK	\$139.82	\$8.84	\$148.65
3 PICK-UPS PER WEEK	\$179.69	\$11.36	\$191.04
4 PICK-UPS PER WEEK	\$234.69	\$14.84	\$249.53
5 PICK-UPS PER WEEK	\$271.39	\$17.16	\$288.54

6 CY BINS

1 PICK-UP PER WEEK	\$102.35	\$6.47	\$108.82
2 PICK-UPS PER WEEK	\$205.28	\$12.98	\$218.26
3 PICK-UPS PER WEEK	\$218.28	\$13.80	\$232.07
4 PICK-UPS PER WEEK	\$320.63	\$20.27	\$340.90
5 PICK-UPS PER WEEK	\$437.81	\$27.67	\$465.48

8 CY BINS

1 PICK-UP PER WEEK	\$131.98	\$8.34	\$140.32
2 PICK-UPS PER WEEK	\$268.01	\$16.94	\$284.95

3 PICK-UPS PER WEEK
 4 PICK-UPS PER WEEK
 5 PICK-UPS PER WEEK

\$280.87
 \$382.96
 \$500.25

\$17.75
 \$24.21
 \$31.62

\$298.62
 \$407.16
 \$531.87

Commercial: Additional Recycle Carts or Additional Cart Service per Week

1-96 GAL CART 1X PER WEEK
 1-96 GAL CART 2X PER WEEK
 1-96 GAL CART 3X PER WEEK
 1-96 GAL CART 4X PER WEEK
 1-96 GAL CART 5X PER WEEK

A 96 gallon cart has capacity of approximately .50 cubic yards. Service of 2 carts or 2 lifts is deemed to equal one cubic yard.
 96 gallon: After two 96 gallon services per week. Subsequent services per week will be charged at \$14.16 per cart per service day per week.
Example: To meet the One Cubic Yard at No Charge Criteria, 1-96 gallon cart serviced 2 times per week is no charge, or 2-96 gallon carts serviced one time per week is no charge.

Commercial: Additional Recycle Bins or Additional Bin Service per Week

1 CY BINS

1 PICK-UP PER WEEK
 2 PICK-UPS PER WEEK
 3 PICK-UPS PER WEEK
 4 PICK-UPS PER WEEK
 5 PICK-UPS PER WEEK

\$37.50
 \$74.38
 \$111.27
 \$148.77
 \$185.66

\$2.37
 \$4.70
 \$7.03
 \$9.40
 \$11.74

\$39.87
 \$79.08
 \$118.31
 \$158.17
 \$197.39

2 CY BINS

1 PICK-UP PER WEEK
 2 PICK-UPS PER WEEK
 3 PICK-UPS PER WEEK
 4 PICK-UPS PER WEEK
 5 PICK-UPS PER WEEK

\$59.92
 \$114.82
 \$172.10
 \$231.53
 \$291.46

\$3.79
 \$7.26
 \$10.88
 \$14.64
 \$18.42

\$63.71
 \$122.08
 \$182.98
 \$246.17
 \$309.88

3 CY BINS

1 PICK-UP PER WEEK
 2 PICK-UPS PER WEEK
 3 PICK-UPS PER WEEK
 4 PICK-UPS PER WEEK

\$84.81
 \$139.82
 \$179.69
 \$234.69

\$5.36
 \$8.84
 \$11.36
 \$14.84

\$90.17
 \$148.65
 \$191.04
 \$249.53

5 PICK-UPS PER WEEK \$271.39 \$17.16 \$288.54

4 CY BINS

1 PICK-UP PER WEEK \$111.99 \$7.08 \$119.07
2 PICK-UPS PER WEEK \$174.72 \$11.04 \$185.76
3 PICK-UPS PER WEEK \$237.31 \$15.00 \$252.31
4 PICK-UPS PER WEEK \$299.64 \$18.94 \$318.58
5 PICK-UPS PER WEEK \$362.08 \$22.89 \$384.97

6 CY BINS

1 PICK-UP PER WEEK \$139.86 \$8.84 \$148.70
2 PICK-UPS PER WEEK \$279.67 \$17.68 \$297.34
3 PICK-UPS PER WEEK \$329.55 \$20.83 \$350.38
4 PICK-UPS PER WEEK \$469.40 \$29.67 \$499.07
5 PICK-UPS PER WEEK \$623.47 \$39.41 \$662.88

8 CY BINS

1 PICK-UP PER WEEK \$169.48 \$10.71 \$180.19
2 PICK-UPS PER WEEK \$342.39 \$21.64 \$364.04
3 PICK-UPS PER WEEK \$392.14 \$24.79 \$416.93
4 PICK-UPS PER WEEK \$531.72 \$33.61 \$565.33
5 PICK-UPS PER WEEK \$685.91 \$43.36 \$729.27

COMMERCIAL AND MULTIPLE DWELLING CART SERVICE - GREEN WASTE

1-64 GAL CART 1X PER WEEK \$38.02 \$2.40 \$40.42
1-64 GAL CART 2X PER WEEK \$75.28 \$4.76 \$80.04
1-64 GAL CART 3X PER WEEK \$113.31 \$7.16 \$120.47
1-96 GAL CART 1X PER WEEK \$45.30 \$2.86 \$48.16
1-96 GAL CART 2X PER WEEK \$89.69 \$5.67 \$95.36
1-96 GAL CART 3X PER WEEK \$134.99 \$8.53 \$143.52

COMMERCIAL BIN SERVICE – ADDITIONAL CHARGES

1-35 GAL MSW EXTRA PICK-UP ON SVC DAY (EACH)	\$60.51	\$3.82	\$64.33
1-64 GAL MSW EXTRA PICK-UP ON SVC DAY (EACH)	\$62.83	\$3.97	\$66.80
1-96 GAL MSW EXTRA PICK-UP ON SVC DAY (EACH)	\$65.30	\$4.13	\$69.43
1 CU BIN MSW EXTRA PICK-UP ON SVC DAY (EACH)	\$72.55	\$4.59	\$77.14
2 CU BIN MSW EXTRA PICK-UP ON SVC DAY (EACH)	\$87.06	\$5.50	\$92.56
3 CU BIN MSW EXTRA PICK-UP ON SVC DAY (EACH)	\$101.57	\$6.42	\$107.99
4 CU BIN MSW EXTRA PICK-UP ON SVC DAY (EACH)	\$116.08	\$7.34	\$123.42
6 CU BIN MSW EXTRA PICK-UP ON SVC DAY (EACH)	\$145.10	\$9.17	\$154.27
8 CU BIN MSW EXTRA PICK-UP ON SVC DAY (EACH)	\$174.12	\$11.01	\$185.13
1-35 GAL MSW EXTRA PICK-UP ON NON-SVC DAY (EACH)	\$118.55	\$7.49	\$126.04
1-64 GAL MSW EXTRA PICK-UP ON NON-SVC DAY (EACH)	\$120.87	\$7.64	\$128.51
1-96 GAL MSW EXTRA PICK-UP ON NON-SVC DAY (EACH)	\$123.34	\$7.80	\$131.14
1 CU BIN MSW EXTRA PICK-UP ON NON-SVC DAY (EACH)	\$130.59	\$8.25	\$138.84
2 CU BIN MSW EXTRA PICK-UP ON NON-SVC DAY (EACH)	\$145.10	\$9.17	\$154.27
3 CU BIN MSW EXTRA PICK-UP ON NON-SVC DAY (EACH)	\$159.61	\$10.09	\$169.70
4 CU BIN MSW EXTRA PICK-UP ON NON-SVC DAY (EACH)	\$174.12	\$11.01	\$185.13
6 CU BIN MSW EXTRA PICK-UP ON NON-SVC DAY (EACH)	\$203.14	\$12.84	\$215.98
8 CU BIN MSW EXTRA PICK-UP ON NON-SVC DAY (EACH)	\$232.16	\$14.68	\$246.84
1-35 GAL RECY EXTRA PICK-UP ON SVC DAY (EACH)	\$58.82	\$3.72	\$62.54
1-64 GAL RECY EXTRA PICK-UP ON SVC DAY (EACH)	\$59.48	\$3.76	\$63.24
1-96 GAL RECY EXTRA PICK-UP ON SVC DAY (EACH)	\$60.22	\$3.81	\$64.03
1 CU BIN RECY EXTRA PICK-UP ON SVC DAY (EACH)	\$62.59	\$3.94	\$66.53
2 CU BIN RECY EXTRA PICK-UP ON SVC DAY (EACH)	\$66.74	\$4.22	\$70.96
3 CU BIN RECY EXTRA PICK-UP ON SVC DAY (EACH)	\$71.09	\$4.49	\$75.58
4 CU BIN RECY EXTRA PICK-UP ON SVC DAY (EACH)	\$75.44	\$4.77	\$80.21
6 CU BIN RECY EXTRA PICK-UP ON SVC DAY (EACH)	\$84.14	\$5.32	\$89.46
8 CU BIN RECY EXTRA PICK-UP ON SVC DAY (EACH)	\$92.84	\$5.87	\$98.71
1-35 GAL RECY EXTRA PICK-UP ON NON-SVC DAY (EACH)	\$116.86	\$7.39	\$124.25
1-64 GAL RECY EXTRA PICK-UP ON NON-SVC DAY (EACH)	\$117.52	\$7.43	\$124.95
1-96 GAL RECY EXTRA PICK-UP ON NON-SVC DAY (EACH)	\$118.26	\$7.48	\$125.74

1 CU BIN RECY EXTRA PICK-UP ON NON-SVC DAY (EACH)	\$120.43	\$7.61	\$128.04
2 CU BIN RECY EXTRA PICK-UP ON NON-SVC DAY (EACH)	\$124.78	\$7.89	\$132.67
3 CU BIN RECY EXTRA PICK-UP ON NON-SVC DAY (EACH)	\$129.13	\$8.16	\$137.29
4 CU BIN RECY EXTRA PICK-UP ON NON-SVC DAY (EACH)	\$133.48	\$8.44	\$141.92
6 CU BIN RECY EXTRA PICK-UP ON NON-SVC DAY (EACH)	\$142.18	\$8.99	\$151.17
8 CU BIN RECY EXTRA PICK-UP ON NON-SVC DAY (EACH)	\$150.88	\$9.54	\$160.42
1-35 GAL GW EXTRA PICK-UP ON SVC DAY (EACH)	\$60.48	\$3.82	\$64.30
1-64 GAL GW EXTRA PICK-UP ON SVC DAY (EACH)	\$65.21	\$4.12	\$69.33
1-96 GAL GW EXTRA PICK-UP ON SVC DAY (EACH)	\$65.21	\$4.12	\$69.33
1-35 GAL GW EXTRA PICK-UP ON NON-SVC DAY (EACH)	\$118.52	\$7.49	\$126.01
1-64 GAL GW EXTRA PICK-UP ON NON-SVC DAY (EACH)	\$120.81	\$7.64	\$128.45
1-96 GAL GW EXTRA PICK-UP ON NON-SVC DAY (EACH)	\$123.25	\$7.79	\$131.04
Trip Charge On Service Day	\$58.04	\$3.67	\$61.71
Trip Charge On Non-Service Day	\$116.08	\$7.34	\$123.42
Delivery or Removal	\$174.12	\$11.01	\$185.13
Exchange Bin	\$174.12	\$11.01	\$185.13
Reactivation Charge (from bad pay) with delivery	\$226.36	\$14.31	\$240.67
Reactivation Charge (from bad pay) without delivery	\$52.24	\$3.30	\$55.54
Container Push Pull: 15-25 feet, Total Distance	\$6.73	\$0.43	\$7.16
Container Push Pull: 26-50 feet, Total Distance	\$11.84	\$0.75	\$12.59
Container Push Pull: 51-75 feet, Total Distance	\$22.57	\$1.43	\$24.00
Container Push Pull: 76+ feet, Total Distance	\$30.91	\$1.95	\$32.86
Lock Service Charge	\$1.92	\$0.12	\$2.04
Lock Sale or Replacement (WM provided lock)	\$40.63	\$2.57	\$43.20
Replace lost, stolen, or damaged bin - 1 cu yrd	\$879.89	\$55.62	\$935.51
Replace lost, stolen, or damaged bin - 1.5 cu yrd	\$881.43	\$55.72	\$937.15
Replace lost, stolen, or damaged bin - 2 cu yrd	\$1,028.47	\$65.01	\$1,093.48
Replace lost, stolen, or damaged bin - 3 cu yrd	\$1,143.00	\$72.25	\$1,215.25
Replace lost, stolen, or damaged bin - 4 cu yrd	\$1,300.87	\$82.23	\$1,383.10
Replace lost, stolen, or damaged bin - 6 cu yrd	\$1,485.05	\$93.87	\$1,578.92

Replace lost, stolen, or damaged bin - 8 cu yrd	\$1,671.38	\$105.65	\$1,777.03
Replace lost, stolen, or damaged cart - 20 gal	\$86.43	\$5.46	\$91.89
Replace lost, stolen, or damaged cart - 35 gal	\$86.43	\$5.46	\$91.89
Replace lost, stolen, or damaged cart - 64 gal	\$92.09	\$5.82	\$97.91
Replace lost, stolen, or damaged cart - 96 gal	\$100.45	\$6.35	\$106.80
3 Cubic Yard Instabin	\$190.77	\$12.06	\$202.83
4 Cubic Yard Instabin	\$192.30	\$12.16	\$204.46
CSR process payment over the phone	\$9.29	\$0.59	\$9.88
Bad/Return Check	\$25.00		\$25.00
Late Payment charge	2.5% of balance or \$5.00 min		2.5% of balance or \$5.00 min
	chg.		chg.
Overage - Material in Cart exceeds container capacity (EACH)	\$13.13	\$0.83	\$13.96
Overage - Material in Bin exceeds container capacity (EACH)	\$50.00	\$3.16	\$53.16
<u>CONTAMINATION CHARGES (BASED ON CONTAINER SIZE)</u>			
64 GALLON GREEN WASTE CART (EACH)	\$9.15	\$0.58	\$9.73
96 GALLON GREEN WASTE CART (EACH)	\$10.90	\$0.69	\$11.59
64 GALLON RECYCLE CART (EACH)	\$9.15	\$0.58	\$9.73
96 GALLON RECYCLE CART (EACH)	\$10.90	\$0.69	\$11.59
1 CUBIC RECYCLE YARD CONTAINER (EACH)	\$28.87	\$1.82	\$30.69
2 CUBIC RECYCLE YARD CONTAINER (EACH)	\$46.13	\$2.92	\$49.05
3 CUBIC RECYCLE YARD CONTAINER (EACH)	\$65.29	\$4.13	\$69.42
4 CUBIC RECYCLE YARD CONTAINER (EACH)	\$86.21	\$5.45	\$91.66
6 CUBIC RECYCLE YARD CONTAINER (EACH)	\$107.66	\$6.81	\$114.47
8 CUBIC RECYCLE YARD CONTAINER (EACH)	\$130.47	\$8.25	\$138.72
<u>COMPACTOR SERVICE - Any Material (Customer Owned)</u>			
Per CUBIC YARD COMPACTOR	\$34.03	\$2.15	\$36.18
10 CUBIC YARD COMPACTOR (Includes 3 Tons)	\$340.30	\$21.51	\$361.81
15 CUBIC YARD COMPACTOR (Includes 3 Tons)	\$510.45	\$32.27	\$542.72
20 CUBIC YARD COMPACTOR (Includes 4 Tons)	\$680.60	\$43.02	\$723.62
30 CUBIC YARD COMPACTOR (Includes 5 Tons)	\$1,020.90	\$64.53	\$1,085.43

40 CUBIC YARD COMPACTOR (Includes 6 Tons)	\$1,361.20	\$86.04	\$1,447.24
<u>DROP BOX/ROLL OFF SERVICE - Any Material</u>			
15 CUBIC YARD CONTAINER (Includes 2 Tons)	\$387.66	\$0.00	\$0.00
20 CUBIC YARD CONTAINER (Includes 3 Tons)	\$516.83	\$24.50	\$412.16
30 CUBIC YARD CONTAINER (Includes 4 Tons)	\$745.94	\$32.67	\$549.50
40 CUBIC YARD CONTAINER (Includes 5 Tons)	\$1,232.31	\$47.15	\$793.09
		\$77.90	\$1,310.21
MSW Loads exceeding included tons will be charged per over ton:	\$120.46	\$7.61	\$128.07
C&D Loads exceeding included tons will be charged per over ton:	\$105.67	\$6.68	\$112.35
Wood Loads exceeding included tons will be charged per over ton:	\$71.15	\$4.50	\$75.65
Recycle Loads exceeding included tons will be charged per over ton:	\$0.00	\$0.00	\$0.00
Yard Waste Loads exceeding included tons will be charged per over ton:	\$71.15	\$4.50	\$75.65
Dirt/Concrete Loads exceeding included tons will be charged per over ton:	\$40.86	\$2.58	\$43.44
<u>DROP BOX/ROLL OFF SERVICE -- ADDITIONAL CHARGES</u>			
Relocate	\$140.55	\$8.88	\$149.43
Trip	\$140.55	\$8.88	\$149.43
Reactivation Charge (from bad pay) with delivery	\$226.36	\$14.31	\$240.67
Reactivation Charge (from bad pay) without delivery	\$52.24	\$3.30	\$55.54
Inactivity Per Day (after 7 days with no haul)	\$18.57	\$1.17	\$19.74
Dig Out	\$174.12	\$11.01	\$185.13
Credit Card/Debit process payment over the phone	\$9.29	\$0.59	\$9.88
Bad/Return Check	\$25.00		\$25.00
Late/Finance Payment	2.5% of balance or \$5.00 min		2.5% of balance or \$5.00 min
	chg.		chg.

APPENDIX C

CITY FACILITY LOCATIONS

LOCATION	SOLID WASTE CONTAINER SIZE	SOLID WASTE PICKUP DAYS	RECYCLING CONTAINER SIZE
City Hall	2, 3-CY Bin	W	2, 64-gal Carts
Public Works Yard	2, 30-CY Box	W	2, 64-gal Carts
Municipal Golf Course	1, 30-CY Box	W	2, 64-gal Carts
	1, 3-CY Bin	W	2, 64-gal Carts
Police Department	3 CY Bin	W	2, 64-gal Carts
Fire Department	3 Cy Bin	W	2, 64-gal Carts
Airport	1 CY Bin	W	2, 64-gal Carts
Library	2 CY Bin	W	2, 64-gal Carts
Recreation Facilities	4 CY Bin	W	4, 64-gal Carts
City Park	1, 3-CY Bin	W	2, 64-gal Carts
San Antonio Park	1, 3-CY Bin	M, Th	6, 32-gal Carts
	6, 32-gal Carts	M, Th	6, 32-gal Carts
Fornden Park	6, 32-gal Carts	M, Th	6, 32-gal Carts
Creek Bridge Baseball Park	6, 32-gal Carts	M, Th	6, 32-gal Carts
Creek Bridge Soccer Field	6, 32-gal Carts	M, Th	6, 32-gal Carts
King St Pocket Park	6, 32-gal Carts	M, Th	6, 32-gal Carts
King City Historic District	10, 32-gal Cans	M, Th	10, 32-gal Cans
King City Business District	6, 32-gal Cans	M, Th	6, 32-gal Cans

* City and Franchisee agree to discuss the size, type and location of solid waste and recycling containers. City Manager may increase size, quantities or change locations of all containers listed herein by up to 10% during the term of this Agreement at no additional cost.

APPENDIX D

PUBLIC OUTREACH AND EDUCATION INFORMATION AND REQUIREMENTS

Public Education Workplan: Franchisee shall provide the City with an initial Public Education Plan for the first year of service for City approval by January 1, 2017, in accordance with Section 4.1(H) designed to inform all current and potential Customers of new programs available under this agreement, implementation schedule and other related information necessary to assure a smooth transition to the services include hereunder.

Franchisee and the City shall meet annually prior to the Franchise Year to develop the public education workplan for the upcoming Franchise Year. The workplan shall detail interactions with public schools, multi-dwelling units, businesses, and special events, including identification of Additional Services, for that year. Information produced herein will be made available in both English and Spanish as appropriate to the target audience. Each of the resulting work products shall be subject to review and approval by the City. Each annual workplan shall not result in materially higher costs to Franchisee, as compared to the initial annual workplan.

Outreach Materials, Presentations and Tours: Franchisee shall produce a minimum of two (2) bilingual newsletters per year. Franchisee shall develop materials, articles, and graphics for the newsletters relating to services offered or new services added, including but not limited to; food waste collection program, announcements of Annual City Cleanups, Christmas tree recycling, sale of home composting bins, composting workshops, or used motor oil and filter collection. The Franchisee shall fund and arrange for a graphic designer to layout the newsletters, newsletter printing, and mailing services for distribution of the newsletter to all residents and businesses, for up to two (2) issues of each newsletter annually.

Franchisee shall provide out dial telephone messages (English and Spanish) to inform customers of Holiday Schedule and curbside Christmas Tree pickup, and food waste collection program and/or sale of home composting bins and used motor oil and filter collection, as well as locations for Annual City Cleanups and up to one (1) other cart hanger annually if requested by the City.

Franchisee shall fund and provide at least two (2) waste reduction and recycling presentations per franchise year at schools mutually agreed upon between Franchisee and the City. The presentations shall contain specific age appropriate curriculum similar to RecycleRama Presentations (or equivalent) or literature from a credible publisher such as CalRecycle, the California Resource Recovery Association, or similar agency approved by the City.

Franchisee shall continue to provide tours of Franchisee facilities to schools and civic groups. Franchisee shall provide recycling and other waste management services for schools, multiple-dwelling customers, businesses, and special event activities. Franchisee shall retain qualified, bi-lingual staff dedicated to public education. Franchisee staff shall work in conjunction with the City to perform and conduct waste assessments, outreach activities, and implement waste reduction and recycling programs in accordance with the public education workplan.

Franchisee shall fund and provide staff for community events, booths, and/or information tables at the City's annual Health and Safety Fair or similar events. Franchisee shall provide adequate quantities of educational materials for each event.

Franchisee shall produce separate service brochures for Cart and Bin customers, to be updated as needed, and distribute these to all new customers, and upon request by existing customers.

Franchisee shall make available instructional cart and bin labels indicating types of allowed materials. All labels shall be approved in advance by the City. Franchisee shall provide updated instructional labels on all carts and bins whenever there is a substantial change affecting items currently acceptable and/or not acceptable for recycling, yardwaste, food waste, and/or refuse collection.

The Franchisee shall conduct Parcel Data Analysis (PDA) visits to residents and businesses not using Franchise services, a minimum of once per year. PDA list and materials shall be submitted to the City for review in advance of audit.

The Franchisee shall sponsor a full Customer survey, a minimum of every two years, or less frequently as determined by the City, of residences and business regarding participation rates with waste diversion services and programs.

The content of all outreach and educational information referenced in this Franchise Agreement shall be submitted to the City for advanced approval prior to preparation of final copy-ready master documents.

Recycled Content: Franchisee shall provide all printed outreach and education materials on a minimum of 30% post-consumer recycled content paper when available. Franchisee shall provide all promotional items made out of recycled material including but not limited to recycled plastic, metal, paper, etc., when available.

APPENDIX E

ROUTING & COLLECTION SYSTEM

**[To be updated by mutual agreement of
Franchisee and the City by January 1, 2017]**

APPENDIX F

REQUIRED INSURANCE SCOPE AND LIMITS

Franchisee shall procure and maintain for the duration of the Agreement insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by Franchisee, its agents, representatives, employees, or subcontractors. With respect to General Liability, Errors & Omissions and Pollution and/or Environmental Impairment Liability coverage should be maintained for a minimum of five (5) years after contract completion. The maintenance of claims made against any insurance required of Franchisee shall not be considered a waiver by the City of any claim or liabilities it may have against Franchisee.

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

1. Insurance Services Office form number GO 0002 (Ed. 1/73) covering comprehensive General Liability and Insurance Services Office form number GO 0404 covering Broad Form Comprehensive General Liability; or Insurance Services Office Commercial General Liability coverage ("Occurrence" form CG 0001.).
2. Insurance Services Office form number CA 0001 (Ed. 1/78), covering Automobile Liability, code 1 (any auto) and endorsement CA 0025.
3. Worker's Compensation Insurance as required by the State of California and Employer's Liability Insurance.
4. Pollution and/or Environmental Impairment Liability.

B. Minimum Limits of Insurance: Franchisee shall maintain limits no less than:

1. General Liability: \$5,000,000 combined single limit per occurrence for bodily injury, personal injury, and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.
2. Automobile Liability: \$3,000,000 combined single limit per accident for bodily injury and property damage.
3. Worker's Compensation and Employer's Liability: \$1,000,000 each accident, \$1,000,000 policy limit bodily injury or disease, \$1,000,000 each employee bodily injury by disease.
4. Pollution and/or Environmental Impairment Liability: \$3,000,000 each occurrence/\$10,000,000 policy aggregate covering liability arising from the release of waste materials and/or irritants, contaminants or pollutants. Such coverage shall, if commercially available, without involvement of the City, automatically broaden in its form of coverage to include legislated changes in the definition of waste materials and/or irritants, contaminants or pollutants. The policy shall stipulate this insurance is primary and no other insurance carried by the City will be called upon to contribute to a loss suffered by Franchisee hereunder and waive subrogation against the City and other additional insureds.

C. Deductible and Self-Insured Retentions: Any deductibles or self-insured retentions shall be for the account of the Franchisee and paid entirely by Franchisee without contribution from the City.

D. Other Insurance Provisions:

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

- a. The City, their officers, officials, employees and volunteers are to be covered as additional insureds with respect to liability arising out of automobiles owned, leased, hired or borrowed by or on behalf of Franchisee; and with respect to liability arising out of work or operations performed by or on behalf of Franchisee including materials, parts or equipment furnished in connection with such work or operations; Pollution and/or Asbestos Pollution.
- b. Franchisee's insurance coverage shall be primary insurance as respects the City, their officers, officials, employees, agents, and volunteers. Any insurance or self-insurance maintained by the City, their officers, officials, employees, agents, or volunteers shall be excess of Franchisee's insurance and shall not contribute with it but only as respects the services provided by Franchisee under this Agreement.
- c. Each insurance policy required by this clause shall be occurrence-based, except for Pollution/Environmental Impairment which may be written on a claims made basis and shall be endorsed to state that coverage shall not be canceled by the Insurer except after thirty (30) days prior written notice has been given to the City.
- d. Franchisee's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
- e. The Automobile Liability policy shall be endorsed to delete the Pollution and/or the Asbestos exclusion and add the Motor Carrier Act endorsement (MCS-90), TL 1005, TL 1007, and/or other endorsements required by federal or state authorities.
- f. Worker's Compensation and Employers Liability Coverage. The insurer shall agree to waive all rights of subrogation against the City, their officers, officials, employees, and volunteers for losses arising from work performed by the Franchisee for the City.
- g. All Coverages. Each insurance policy required by this clause shall be occurrence-based except for Pollution/Environmental Impairment which may be written on a claims made basis and endorsed to state that coverage shall not be canceled except after thirty (30) days prior written notice has been given to the City.

E. Acceptability of Insurers: Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII, if admitted. If pollution and/or Environmental Impairment and/or errors and omissions coverages are not available from an "Admitted" insurer, a Non-Admitted insurance company may write the coverage. A Non-Admitted company should have an A.M. Best's rating of A:X or higher.

F. Verification of Coverage: As provided in Article 3.10.D and Exhibit I Franchisee shall furnish the City with certificate of insurance and the required endorsements evidencing coverage required by this clause. The certificates/endorsements are to be signed by a person authorized by that Insurer to evidence coverage on its behalf. All certificates/endorsements are to be received and approved by the City before work commences.

G. Subcontractors: Franchisee shall include all subcontractors as insureds under its policies or shall furnish separate certificate and endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein.

H. Other Provisions:

1. Franchisee shall comply with reporting and other provisions of the policies so that coverage afforded to the City, their officers, officials, agents, employees and volunteers are not affected.
2. The City, their officers, officials, agents, employees, and volunteers shall be named as additional insureds on all policies except Workers' Compensation/Employers Liability.

A copy of all relevant insurance certificates shall be attached hereto.

APPENDIX G

FORM OF PERFORMANCE BOND

COMPANY (Name and Address): SURETY (Name and Principal Place of Business)

CITY (Name and Address): City of King, California

OPERATION CONTRACT (Franchise Agreement)

Date:

Amount:

Description (Name and Location):

BOND

Date:

Expiration Date: June 30, 2025, renewed annually

Modifications to this Bond: None See Page 4

SURETY

Name: _____

(Corporate Seal)

Signature: _____

Name and Title:

(Any additional signatures and addresses appear on page 5)

(FOR INFORMATION ONLY - Name, Address and Telephone)

CITY'S REPRESENTATIVE

(Architect, Engineer or other party):

1. The Company and the Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to the City for the performance of the Operation Contract, which is incorporated herein by reference.
2. If the Company timely and completely performs the Operation Contract, the Surety and the Company shall have no obligation under this Bond, except to participate in conferences as provided in subparagraph 3.1.
3. If there is no City Default, the Surety's obligation under this Bond shall arise after:
 - 3.1. The City has notified the Company and the Surety at its address described in Paragraph 10 below that the City is considering declaring a Company Default and requested a conference with the Company and the Surety to discuss the performance of the Operation Contract; and
 - 3.2. The City has declared a Company Default and sent a notice to the Company and the Surety formally electing to terminate the Company's right to complete the performance of the work under the Operation Contract; and
 - 3.3. The City has agreed (subject to Paragraph 5 hereof) to pay the Balance of the Contract price to the Surety in accordance with the terms of the Operation Contract or to a contractor selected to perform the remaining work under the Operation Contract in accordance with the terms of the Operation Contract with the City.
4. When the City has satisfied the conditions of Paragraph 3, the Surety shall promptly and at the Surety's expense take one of the following actions:
 - 4.1. Arrange for the Company, with the consent of the City, to perform and complete the Operation Contract; or
 - 4.2. Undertake to perform and complete the Operation Contract itself, through its agents or through qualified independent contractors; or
 - 4.3. Obtain bids or negotiated proposals from qualified contractors acceptable to the City for a contract for performance and completion of the Operation Contract, arrange for a contract to be prepared for execution by the City and the contractor selected with the City's concurrence, to be secured with performance and payment bonds executed by a qualified surety equivalent to the bonds issued on the Operation Contract, and pay to the City the amount of damages as described in Paragraph 6 in excess of the Balance of the Contract Price incurred by the City resulting from the Company's default; or
 - 4.4. Waive the right to perform and complete, arrange for completion, or obtain a new contractor and with reasonable promptness under the circumstances:

- (1) After investigation, determine the amount for which it may be liable to the City and, as soon as practicable after the amount is determined, tender payment therefore to the City; or
 - (2) Deny liability in whole or in part and notify the City citing reasons therefore
5. If the Surety does not proceed as provided in Paragraph 4 with reasonable promptness (and in any event within the 45-day period commencing on the receipt by the Surety of the notice referred to in subparagraph 3.2 hereof), the Surety shall be deemed to be in default on this Bond and without further notice the City shall be entitled to enforce any remedy available to the City, including without limitation arranging for the work under the Operation Contract to be completed by a qualified contractor or contractors selected by the City and seeking compensatory damages from the Surety. If the Surety proceeds as provided in subparagraph 4.4, and the City refuses the payment tendered or the Surety has denied liability, in whole or in part, without further notice the City shall be entitled to enforce any remedy available to the City, including without limitation arranging for the work under the Operation Contract to be completed by a qualified contractor or contractors selected by the City and seeking compensatory damages from the Surety.
6. After the City has terminated the Company's right to complete the Operation Contract, and if the Surety elects to act under Subparagraph 4.1, 4.2, or 4.3 above, then the responsibilities of the Surety to the City shall not be greater than those of the Company under the Operation Contract, and the responsibilities of the City to the Surety shall not be greater than those of the City under the Operation Contract. To the limit of the amount of this Bond, but subject to commitment by the City of the Balance of the Contract Price to mitigation of costs and damages on the Operation Contract, the Surety is obligated without duplication for:
 - 6.1. The responsibilities of the Company for the collection of Franchise Materials in accordance with the Operation Contract;
 - 6.2. Additional legal, design, professional, and delay costs resulting from the Company Default, and resulting from the actions or failure to act of the Surety under Paragraph 4; and
 - 6.3. Liquidated damages, or if no liquidated damages are specified in the Operation Contract, actual damages caused by delayed performance or nonperformance of the Company.
7. The Surety shall not be liable to the Company or others for obligations of the Company that are unrelated to the Operation Contract, and the Balance of the Contract Price shall not be reduced or set off on account of any such unrelated obligations. No right of action shall accrue on this Bond to any person or entity other than the City or its heirs, executors, administrators or successors.
8. The Surety hereby waives notice of any change, including changes of time, to the operation Contract or to related subcontracts, purchase orders and other obligations.

9. Any proceeding, legal or equitable, under this Bond may be instituted in any court of competent jurisdiction in the location in which the work or part of the work is located and shall be instituted within two years after Company Default or within two years after the Company ceased working or within two years after the Surety refuses or fails to perform its obligations under this Bond, whichever occurs first. If the provisions of this Paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.

10. Notice to the Surety, the City, or the Company shall be mailed or delivered to the address shown on the signature page.

11. When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted here from and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein.

12. DEFINITIONS

12.1. **Balance of the Contract Price:** The total amount due and payable by the City to the Company under the Operation Contract after all proper adjustments have been made, including allowance to the Company of any amounts received or to be received by the City in settlement of insurance or other claims for damages to which the Company is entitled, reduced by all valid and proper payments made to or on behalf of the Company under the Operation Contract.

12.2. **Operation Contract:** The Franchise Services Agreement between the Company and the City, effective January 1, 2017.

12.3. **Company Default:** Failure of the Company, which has neither been remedied nor waived, to perform or otherwise to comply with the terms of the Operation Contract, including, without.

12.4. **City Default:** Failure of the City, which has neither been remedied nor waived, to pay the Company as required by the Operation Contract to perform and complete or comply with the other terms thereof, which failure must be sufficiently serious to justify a termination of the Operation Contract, including, without limitation, an Event of Default of the City, as defined in the Co-Operation Agreement.

MODIFICATIONS TO THIS BOND ARE AS FOLLOWS:

This Bond has been entered into to bind the Surety and the Company, as principal, unto City of King, its successors and assigns, in the penal sum of ONE MILLION DOLLARS(\$1,000,000), lawful money of the United States of America, for the payment of which said sum of money well and truly to be made, the Surety and the Company bind themselves, their successors and assigns in such sum "jointly and severally" and well as "severally only" for the purpose of allowing a joint action or actions against any or all of them and for all other purposes, each binds itself, its successors and assigns, jointly and severally to the City, its successors and assigns for the payment of such sums as to which the Company or the Surety may become obligated to pay under this Performance Bond.

(Space is provided below for additional signatures or added parties, other than those appearing on the cover page.)

COMPANY AS PRINCIPAL

Name: _____

(Corporate Seal)

Signature: _____

Name and Title:

SURETY

Name: _____

(Corporate Seal)

Signature: _____

Name and Title:

APPENDIX H

Reporting Requirements

The Franchisee shall comply with the following reporting requirements for the duration of the Franchise term.

- I. Prior to the initial preparation of the reports required by this Agreement Franchisee shall consult with the City to establish the format and data definitions for each report that best meets the City's needs.
- II. All reports shall be submitted electronically unless otherwise specified.
- III. Electronic reports shall be in a PC-based Excel, or Excel-compatible format or any other mutually agreed upon format.
- IV. Reports shall be submitted by the 25th of each month following the reporting period unless otherwise specified.
- V. Franchisee shall provide the City with on-request reports within 30 working days of request; provide such reports do not result in additional costs to Franchisee.
- VI. All reports shall be in Calendar Year (January 1 – December 31).

A. Solid Waste Data

1. Residential Collection Services

I. Monthly

- a. total tons collected and delivered to disposal facilities.

II. Quarterly

- a. total number of service accounts by service classification level.

III. Upon Request

- a. by route: number of daily set-outs,
- b. by route: tons collected and delivered to disposal facilities,
- c. truck identification number for each daily route,
- d. by route: number of service accounts by service classification level,
- e. by route: number of collection containers distributed by size,
- f. total number of collection containers distributed by size.

2. Commercial Collection Services

I. Monthly

- a. total tons collected and delivered to disposal facilities.

II. Quarterly

- a. total number of service accounts by service classification level.

III. Upon Request

- a. by route: tons collected and delivered to disposal facilities,
- b. truck identification number for each daily route,

- c. by route: number of service accounts by service classification level (size & frequency),
- d. by route: number of collection containers distributed by size,
- e. total number of collection containers distributed by size.

3. City Services (Cities Facilities / Public Containers / Cleanup Events)

I. Monthly

- a. by location: tons collected from roll-off bins and delivered to disposal facilities,
- b. number of collection containers serviced by size, location and route.

B. Organic Waste Data

1. Residential Collection Services

I. Monthly

- a. total tons collected and delivered to disposal facilities.

II. Quarterly

- a. total number of service accounts by service classification level.

III. Upon Request

- a. by route: number of daily set-outs,
- b. by route: gross tons collected daily,
- c. truck identification number for each daily route,
- d. by route: weekly participation rates in terms of weekly set out counts,
- e. monthly participation rates based on a methodology to be agreed upon by the City and Franchisee,
- f. total set-outs and tonnages, monthly by route and total monthly,
- g. by route: number of service accounts by service classification level,
- h. number of collection containers distributed by size and customer type (cart/bin), including home composting and worm bins.

2. Commercial Collection Services

I. Monthly

- a. total tons collected and delivered to disposal facilities.

II. Quarterly

- a. commercial cart customers (w/green waste) included with residential cart customer reporting.

III. Upon Request

- a. by route: number of service accounts by container size,
- b. by route: number of daily setouts (collected by cart collection vehicle - green waste not offered as part of franchise bin service),

- c. method for separate tracking of quantities from bin customers with green waste service to be determined.

C. Recycling Data

1. Residential Collection Services

I. Monthly

- a. total tons collected by material type and delivered to recycling facilities .

II. Quarterly

- a. total number of service accounts by container type.

III. Upon Request

- a. by route: number of daily set-outs,
- b. by route: gross tons collected daily,
- c. truck identification number for each daily route,
- d. by route: weekly participation rates in terms of weekly set out counts,
- e. monthly participation rates based on a methodology to be agreed upon by the City and Franchisee,
- f. total set-outs and tonnages, by material category, monthly by route and total monthly,
- g. by route: number of service accounts by container type (cart/crate),
- h. number of collection containers distributed by size and customer type (cart/bin).

2. Commercial Collection Services

I. Monthly

- a. total tons collected by material type and delivered to recycling facilities.

II. Quarterly

- a. total number of service accounts by service classification level service.
- b. AB 341 and AB 1826 Reporting shall include participation rates for all Commercial, Industrial and Multiple Dwelling accounts. See example below:

AB 341 Compliance Report	2016	2017	2018	2019
Total Number of Businesses Customers				
Businesses with 4CY+/Week				
With Recycling				
W/O Recycling				
Business Compliance Rate				
Multiple Dwelling 5+ Units				
With Recycling				
W/O Recycling				
Multiple Dwelling Compliance Rate				
Education and Outreach Report				
Number of waste assessments				
Number of phone calls and letters				
Number and type of other Ed & Outreach				

III. Upon Request

- a. by route: gross tons collected daily by material category/type (single stream and commingled),
- b. truck identification number for each daily route,
- c. total tonnages, by material type, monthly by route and total monthly,
- d. by route: number of service accounts by service classification level service,
- e. number of collection containers distributed by size and customer type (cart/bin).

3. City Services / Public Recycling Containers / Cleanup Events- Collection City

I. Quarterly (for each sector listed above)

- a. by location: tons collected by material category/type (single stream and commingled) and delivered to processing facility,
- b. number of recycling collection containers serviced by size, material type and location.

4. Processing and Marketing Services- Monthly

- a. by material type (and grade where appropriate): monthly totals of quantities processed,
- b. by material type (and grade where appropriate): monthly totals of quantities sold; specify purchaser name and location, price received per ton and total payment,
- c. by material type: quantities donated or otherwise disbursed without compensation,

Line of Business	January	February	March	April	May	June	July	August	September	October	November	December	TOTAL
Residential/Multi-Family													
MSW	844.84												844.84
Mixed Recyclables Collected	185.85												185.85
MRF Residue	9.82												
Mixed Recyclables Recovered	175.51												
% Residue	5%												
Green Waste	293.08												
Battery Collection	0.15												
Total Program Diverted	468.74												468.74
Total Program Tons	1,323.40												1,323.40
Program Diversion %	35.42%												35.42%
Commercial													
MSW	434.63												434.63
Mixed Recyclables Collected	38.06												38.06
MRF Residue	1.30												
Mixed Recyclables Recovered	36.76												
% Residue	3%												
Green Waste	15.40												15.40
Food Waste	25.23												
Total Program Diverted	77.39												77.39
Total Program Tons	513.32												513.32
Program Diversion %	15.08%												15.08%
Industrial/Roll Off													
MSW	290.99												290.99
Mixed Recyclables Collected	12.35												12.35
MRF Residue	0.21												
Mixed Recyclables Recovered	12.14												
% Residue	2%												
Green Waste	65.07												65.07
C&D	4.83												4.83
Concrete	64.12												64.12
Food Waste	23.20												
Other Recyclables	181.44												
Other Recyclables	-												-
Total Program Diverted	350.80												350.80
Total Program Tons	654.37												654.37
Program Diversion %	53.61%												53.61%
Summary Totals													
Additional Diversion	-												-
Net Residual	11.33												11.33
Total Diverted	896.93												896.93
Total Tons	2,491.09												2,491.09
Diversion %	36.01%												36.01%

- d. monthly quantity of processing residue and characterize (in manner defined by the City),
- e. describes and quantify any contamination problems, reject loads, etc.,
- f. method for tracking separately- by collection origin- quantities processed and sold, by material type.

5. Summary Report Format - Monthly

- a. Summary reports should be separated by line of business (residential, commercial, multi-family, industrial/drop box) and should include calculated recovery rates, including MRF residuals, and an overall recovery rate of services. See example below:

D. Praises, Complaints, Missed Pickups and Resolutions - Quarterly

- a. summarize any praises and complaints received in such month
- b. complaints which require the payment by the Franchisee of liquidated damages pursuant to this Article
- c. written record of all calls related to missed pickups and responses to such calls

E. Public Education and Information – Quarterly

- a. summary description of public education and information activities undertaken
- b. distribution of individual customer literature, collection notification tags, community information and events, tours and other activities as identified in Appendix F of this Franchise,
- c. describe any perceived needs for publicity or public education.

F. Problems and Actions Taken – Quarterly

- a. summary narrative of problems encountered with collection and processing activities and actions taken,
- b. type and number of notification tags left at Customer accounts,
- c. instances of and responses to property damage or injury, poaching or scavenging, significant changes in operation, market factors,
- d. description of processed material loads rejected for sale, reason for rejection and disposition of load after rejection.

G. Annual Report Submittals

Annual reports shall be submitted no later than 90 days following the end of the Franchise Year.

I. Annual Report Contents

- a. summarize the numerical information contained in the monthly and/or quarterly reports,
- b. complete inventory of collection and major processing equipment including stationary, and rolling stock, collection containers by type and size,
- c. discuss public awareness activities and their impact on recycling and green waste participation and recovered amounts,
- d. analysis of collection, processing and marketing problems or conditions (participation, set outs, contamination, market trends, etc.) and possible solutions,
- e. summarize customer complaints or comments to convey any trends or developing situations.

H. Additional Reports.

- a. **Monthly- Overage-fees** charged to all customer types for solid waste and green waste overage collection per Section 4.1 B.5,
- b. **Monthly- Drop Box Charges-** fees charged to all customer types for drop box services per Section 4.1 C.3,
- c. **Monthly- Bulky Goods Fees-** fees charged to all customer types for the collection of Bulky Goods and excess amounts of Franchise materials,
- d. **Financial reports** pursuant to Section 6.3 and any additional monthly or annual reports as may be required to set forth all information required under the Act or otherwise by the City pertaining to the recycling and diversion of Franchise Materials which is collected and/or processed by the Franchisee. Said reports shall be in the form required by the City and shall categorize recycling and diversion activity in the manner required by the City.

APPENDIX I

FOOD WASTE COMPOSTING PILOT PROJECT

In accordance with AB 1826, Local jurisdictions shall have an organic waste recycling program in place by January 1, 2016. As such, Jurisdictions shall conduct outreach and education to inform businesses how to recycle organic waste in the jurisdiction, as well as monitoring to identify those not recycling and to notify them of the law and how to comply. The law phases in the requirements for businesses, including multifamily residential dwellings that consist of five or more units, over time based on the amount and type of waste the business produces on a weekly basis, with full implementation realized in 2019. Thresholds and implementation dates are as follows:

1. January 1, 2016: Local jurisdictions shall have an organic waste recycling program in place.
2. April 1, 2016: Businesses that generate 8 cubic yards of organic waste per week shall arrange for organic waste recycling services.
3. January 1, 2017: Businesses that generate 4 cubic yards of organic waste per week shall arrange for organic waste recycling services.
4. August 1, 2017 and Ongoing: Jurisdictions shall provide information about their organic waste recycling program implementation in the annual report submitted to CalRecycle. (See above for description of information to be provided.)
5. Fall 2018: After receipt of the 2016 annual reports submitted on August 1, 2017, CalRecycle shall conduct its formal review of those jurisdictions that are on a two-year review cycle.
6. January 1, 2019: Businesses that generate 4 cubic yards or more of commercial solid waste per week shall arrange for organic waste recycling services.
7. Fall 2020: After receipt of the 2019 annual reports submitted on August 1, 2020, CalRecycle shall conduct its formal review of all jurisdictions.
8. Summer/Fall 2021: If CalRecycle determines that the statewide disposal of organic waste in 2020 has not been reduced by 50 percent of the level of disposal during 2014, the organic recycling requirements on businesses will expand to cover businesses that generate 2 cubic yards or more of commercial solid waste per week. Additionally, certain exemptions may no longer be available if this target is not met.

Franchisee shall participate in a City food waste pilot project (the "Food Waste Pilot"), subject to the following:

- Franchisee and the City will work in good faith to develop the Food Waste Pilot, with a target implementation by January 1, 2018. The City anticipates that the Food Waste Pilot may include some or all of the components set forth below.
- Franchisee and the City must agree upon compensation to Franchisee, which would be sufficient to pay all of Franchisee's costs associated with the Food Waste Pilot (e.g., collection, composting operations, disposal, etc.) Such compensation would be adjusted as Franchisee's costs increase.

- Proposed rate for processing of City Foodwaste at the Designated Transfer, Processing and Disposal Facility is \$45 per ton. The fees associated with Foodwaste processing may be adjusted at the time of implementation if the rate for processing is modified from the proposed rate of \$45 per ton.
1. The City will provide or arrange for the provision of:
 - a. land at the Johnson Canyon Landfill for the food waste operation or other appropriately permitted compost site designated by the Authority, Attachment C
 - b. improvements necessary for the conduct of the food waste operation including: drainage, pad surfacing, water, electrical power, k-rails
 - c. equipment and supplies for compost operation as required
 - d. special maintenance and repair for heavy equipment
 - e. overall project administration and reporting
 - f. all local, regional and state permits required for the compost operation
 - g. program evaluation after one year of operation
 - h. periodic testing of the finished compost product
 - i. compost Operations Plan for food waste composting
 - j. technical training and consultation to organics processing operator for compost operation
 - k. education and training to participating food waste generators
 - l. training to Franchisee driver in keeping of collection record book
 - m. internal storage containers and liners to participating food waste generators to the extent to be determined by the City
 - n. program market development and promotion
 - o. receipt of source separated food waste collected by Franchisee
 - p. cost of water and power for compost operation
 - q. landfill disposal of contaminants removed from compost food waste feedstock at no charge
 2. Franchisee shall provide:
 - a. a dedicated leak-proof collection vehicle for collection of food waste, which vehicle shall not be used for the collection of refuse or recycling
 - b. outside leak-proof containers for placement of source separated food waste of a size and type to be determined in consultation with the City, to include locks where necessary
 - c. a driver to do the collection routes
 - d. collection of food waste from generators identified by the City; the maximum number and location of generators and the frequency of collection for each shall be determined by the City in consultation with Franchisee, but shall not exceed 80 tons per month
 - e. driver shall assist with program monitoring and evaluation by keeping a record of collection which shall document for each collection day:
 - (1) name of generator serviced
 - (2) approximate volume of material collected from each generator: container % full
 - (3) any contaminants in material collected from each generator
 - (4) any issues with collection involving placement of container, contents of container, interaction with generators
 - (5) time in, time out; miles traveled
 - f. daily access to the collection record by the City
 - g. driver shall notify City and Vision prior to discharge of load at Johnson Canyon of any contamination found in material collected that day
 - h. driver, vehicle, containers, collection service and administration at no charge to the City, other than the subsidized discount collection rate outlined in 1.p., above
 - i. discounted collection rate charged to participating generators, amount to be determined in consultation with City

j. documentation of all costs incurred with providing this service including labor, equipment and administration, which information will be used in evaluating the overall effectiveness of the Project

4. The term of this Pilot Program shall run concurrent with the existing, and any future extensions of this Franchise.
5. The City reserves the right to terminate this foodwaste pilot with 60 days written notice to participating parties.
6. The City reserves the right to amend this agreement with written consent of participating parties.

APPENDIX J

ANNUAL SERVICE RATE CAP ADJUSTMENT CALCULATIONS

SERVICE FEE SCHEDULE - Calculation Examples

DESCRIPTION OF SERVICES		WM Franchise Service Fee	Fuel Fee	Disposal Fee	AB 939 Program Fee	Organic Waste Processing Fee	Franchise Waste Transfer Fee	Total Customer Rate Cap
Year 1: January 1 - June 30, 2017	Weighted Avg. Year 1 Rate	61.0%	3.0%	22.1%	4.9%	2.6%	6.4%	100%
1-35 gal Rate		\$18.15	\$0.89	\$6.56	\$1.44	\$0.77	\$1.91	\$29.74
Year 2: July 1 - June 30, 2018	Weighted Avg. Year 2 Rate	2.00%	0.12%	0.75%	0.00%	0.00%	3.38%	6.25%
1-35 gal Rate		\$18.41	\$0.90	\$6.61	\$1.44	\$0.77	\$1.98	\$31.60
Year 3: July 1 - June 30, 2019	Weighted Avg. Year 3 Rate	2.00%	0.21%	0.75%	0.00%	0.01%	3.38%	6.35%
1-35 gal Rate		\$18.68	\$0.90	\$6.66	\$1.44	\$0.77	\$2.05	\$33.60

Year 2 : (July 1 - June 30, 2018 Calculation Example) Percentage Weight of Rate Component will change each year based upon actual costs in the previous calendar year.

Rate Component	Cost Indicator	Annual % Change of Cost Indicator	Percentage Weight of Rate Component	Weighted % Change	Index Comments:
WM Franchise Service Fee (Note 2)	Consumer Price Index for All Urban Consumers: Water and sewer and trash collection services (BLS Series ID CUUR0000SEHG)	3.04%	61.0%	1.35%	Index change will be based on 12-month average ending each December
Fuel Fee - Diesel	Producer Price Index - Commodities, Series ID WPU057303, Fuels and related products and power, No. 2 diesel fuel, base date 198200	4.00%	3.0%	0.12%	Assumed a 4% increase as an example.
Disposal Fee (Note 1)	Actual tip fees and other applicable surcharges and fees at the Designated Transfer and Disposal Facilities to dispose of Franchise Solid Waste ("Disposal Tip Fees")	3.38%	22.1%	0.75%	Index of 3.38% is an example and is a 100% pass through to rate payers.

AB939 Program Fee	Actual fees imposed by SVSWA and other governmental authorities	0.00%	4.9%	0.00%	Assumed no increase in this example. Any increase is a 100% pass through to rate payers
Organic Waste Processing Fee	Actual tip fees and other applicable surcharges and fees at the Designated Transfer and Processing Facilities to receive and process of Franchise Organic Waste ("Organics Tip Fees")	0.00%	2.6%	0.00%	Assumed no increase in this example. Any increase is a 100% pass through to rate payers.
Franchise Waste Transfer Fee	Actual transportation fees from Jolon Road TS to Johnson Canyon LF	0.50%	6.4%	0.03%	Assume 0.50% increase in this example. Any increase is a 100% pass through to rate payers.
		Total		2.25%	Annual Rate Adjustment
Franchise Service Fee (Note 2)				-1.35%	WM Franchise Service Fee subject to a minimum of 2% and a maximum 6% increase.
Franchise Service Fee (Note 2)				2.00%	WM Franchise Service Fee subject to a minimum of 2% and a maximum 6% increase.
		Service Fee Rate Adjustment		2.90%	Subtotal Rate Increase
Franchise Waste Transfer Fee (Note 7)				3.35%	WM Franchise Waste Transfer fee initial impact deferred to Years 1, 2 & 3.

Retro Adjustment				1.15%	Retro adjustment for Jun-Dec 2016 deferred to Years 1, 2 & 3.
		Service Rate Cap Adjustment		7.40%	Total Combined Rate Cap Increase

Year 3: (July 1 - June 30, 2019 Calculation Example)		Percentage Weight of Rate Component will change each year based upon actual costs in the previous calendar year.			
Rate Component	Cost Indicator	Annual % Change of Cost Indicator	Percentage Weight of Rate Component	Weighted % Change	Index Comments:
WM Franchise Service Fee (Note 2)	Consumer Price Index for All Urban Consumers: Water and sewer and trash collection services (BLS Series ID CUUR0000SEHG)	3.04%	61.0%	1.35%	Index change will be based on 12-month average ending each December
Fuel Fee - Diesel	Producer Price Index – Commodities, Series ID WPU057303, Fuels and related products and power, No. 2 diesel fuel, base date 198200	7.00%	3.0%	0.21%	Assumed a 7% increase as an example.
Disposal Fee (Note 1)	SVSWA Change in Disposal	3.38%	22.1%	0.75%	Index of 3.38% is an example and is a 100% pass through to rate payers.
AB939 Program Fee	SVSWA Change in Government Fees	0.00%	4.9%	0.00%	Assumed no increase in this example. Any increase is a 100% pass through to rate payers
Organic Waste Processing Fee	SVSWA Change in Green Waste Processing	0.40%	2.6%	0.01%	Assumed no increase in this example. Any increase is a 100% pass through to rate payers.
Franchise Waste Transfer Fee	Actual transportation fees from Jolon Road TS to Johnson Canyon LF	0.50%	6.4%	0.03%	Assume 0.50% increase in this example. Any increase is a 100% pass through to rate payers.

		Total	100.0%	2.4%	Annual Rate Adjustment
Franchise Service Fee (Note 2)				-1.35%	All Other Costs subject to a minimum of 2% and a maximum 6% increase.
Franchise Service Fee (Note 2)				2.00%	All Other Costs subject to a minimum of 2% and a maximum 6%
		Service Fee Rate Adjustment		3.00%	Subtotal Rate Increase
Franchise Waste Transfer Fee (Note 7)				3.35%	WM Franchise Waste Transfer fee initial impact deferred to Years 1, 2 & 3.
Retro Adjustment				1.15%	Retro adjustment for Jun-Dec 2016 deferred to Years 1, 2 & 3.
		Service Rate Cap Adjustment		7.50%	Total Combined Rate Cap Increase

Note 1: Example of Landfill Disposal Fee Change for Year				
Proposed Disposal per Ton Index Example				
Disposal Component	Prior Year	Current Year	\$ Change	% Change
Tip Fee	\$65.00	\$67.00	\$2.00	
Gov't Fee 1 (describe)	\$1.75	\$2.00	\$0.25	
Gov't Fee 2 (describe)	\$0.50	\$0.50	\$0.00	
Gov't Fee 3 (describe)	\$0.25	\$0.28	\$0.03	
Totals	\$67.50	\$69.78	\$2.28	3.38%

Note 2: Example of WM Franchise Service Fee Change for Years 2 and 3.				
	Prior Year	Current Year	\$ Change	% Change
All Urban Consumers - All Items				100.00%
All Urban Consumers - Motor Fuel Component				3.05%
Percent Applied				96.95%
Water and Sewer and Trash Collection Services Index	255.0	263.0	8.00	3.14%
Change Applied				3.04%

Other Notes:

3. **Percentage Weight of Rate Component** based upon costs for the previous calendar year.
4. **Indices** based upon the year over year change for the previous 12-month average ending in December. (i.e. Average Indices for January to December 2017 / January to December 2016 for Year 2 for the period July 1, 2017 to June 30, 2018.).
5. **Disposal Fee, AB939 Program Fee, Organics Waste Processing and Transportation Fee** are 100% pass through to rate payers.
6. **WM Franchise Service Fee Weighted % Change** subject to a Minimum 2% and a Maximum 6% annual increase.
7. **Year 1 addition of the Franchise Waste Transfer Fee cost** was recovered over Years 1, 2 & 3 to minimize the rate impact to rate payers absorbing all cost in Year 1.

APPENDIX K

COMPOSITION AUDITS

Composition Audits of the Franchise Recyclable Materials will determine the percentage of each category of material found in the Franchise Recyclable Materials collected under the Agreement. The protocol for conducting audits will consist of the following standards:

- a) Franchisee will weigh each receptacle before the Composition Audit begins to establish an accurate tare weight for each receptacle before weighing each component sample. After the collection vehicle empties the entire load onto the tip floor, a random sample will be selected from the pile, from which a minimum one hundred (100) pound (approximately 1.5 cubic yards), random sample will be removed. Five (5), one hundred (100) pound, random samples of Franchise Recyclable Materials (from different routes, different times of day, and different days of the week) will be segregated, sorted, and weighed (each, an "audit"). The samples will then be transported to the sorting area and hand sorted. Components will be sorted into bins and/or carts based on the material type and size, and each material will be weighed to the nearest tenth of a pound. After all samples have been collected, weighed, and recorded, composition and quantity estimates of the Franchise Recyclable Materials are calculated and recorded. The results of the audits of such samples shall be averaged and used to calculate the inbound composition of the Franchise Recyclable Materials (the "Composition Audit").
- b) Franchisee shall conduct a Composition Audit during the first thirty (30) days of the Agreement to establish the initial inbound composition of the Franchise Recyclable Materials, the results of which shall be retroactive to the first date Franchise Recyclable Materials are collected.
- c) Additional Composition Audits will be undertaken as Franchisee reasonably deems necessary upon notice to the City. City may also request a Composition Audit not more than twice per twelve- (12-) month period during the Term.
- d) Franchisee will notify City in advance of all prospective Composition Audit dates and times at least one (1) week prior to undertaking a Composition Audit. City may have a representative present at the Composition Audit.