

AGENDA
SPECIAL MEETING OF THE
CITY OF KING CITY COUNCIL
AND
Sitting as SUCCESSOR AGENCY OF
THE RDA FOR THE CITY OF KING

TUESDAY NOVEMBER 15, 2016
6:00 P.M.

CITY HALL
212 S. VANDERHURST AVENUE
KING CITY, CALIFORNIA 93930

**Spanish interpretation services will be available at meeting*

In compliance with the Americans with Disabilities Act, if you need special assistance to participate in a City meeting, Please contact the City Clerk's Office (831-386-5925) at least 48 hours prior to the Meeting to ensure that reasonable arrangements can be made to provide accessibility to the meeting.

** Please submit all correspondence for City Council PRIOR to the meeting with a copy to the City Clerk.*

- 1. CALL TO ORDER**
- 2. ROLL CALL:** Council Members Darlene Acosta, Belinda Hendrickson, Mike LeBarre, Mayor Pro Temp. Karen Jernigan, and Mayor Robert Cullen
- 3. FLAG SALUTE**
- 4. CLOSED SESSION ANNOUNCEMENTS**
- 5. SPECIAL PRESENTATIONS**
 - A. Camerino Sanchez, Monterey County Parks Department
- 6. PUBLIC COMMENT**

Any member of the public may address the Council for a period not to exceed *three minutes'* total on any item of interest within the jurisdiction of this Council that is not on the agenda. The Council will listen to all communications; however, in compliance with the Brown Act, the Council cannot act on items not on the agenda. Comments should be directed to the Council as a whole and not to any individual Council Member. Slanderous, profane or personal remarks against any Council Member, staff member or member of the audience is not permitted.
- 7. COUNCIL COMMUNICATIONS & COMMITTEE REPORTS**

Individual Council Members may comment on Council business, his or her Council activities, City operations, projects or other items of community interest. Council Members may also request staff to report back at a subsequent meeting on any matter or take action to direct staff to prepare a staff report for a future agenda.
- 8. STAFF COMMUNICATIONS**

Comments presented by the City Manager, City Attorney or other staff on City business and/or announcements.

9. CONSENT AGENDA

The following items listed below are scheduled for consideration as a group. The recommendations for each item are noted. Members of the audience may speak on any item(s) listed on the Consent Agenda. Any Council Member, the City Manager, or the City Attorney may request that an item be withdrawn from the Consent Agenda to allow for full discussion. The Council may approve the remainder of the Consent Agenda on one motion. Items withdrawn from the Consent Agenda may be considered by separate motions at the conclusion of the discussion of each item.

- A. Meeting Minutes of October 25, 2016 Council Meeting
Recommendation: approve and file.
- B. Consideration: City Check Register – Current
Recommendation: receive and file.
- C. Consideration: Successor Agency Check Register – Current
Recommendation: receive and file.
- D. Consideration: Public Financing Authority Check Register – Current
Recommendation: receive and file.
- E. Consideration: Bid for Dive Pool Resurfacing
Recommendation: 1) deny the one bid received for the King City Dive Pool Fiberglass Resurfacing and Crack Repair Project; and 2) direct staff to solicit bids to perform a fiberglass spot repair of the creak in the dive pool and replace the perimeter tile in all pools.
- F. Consideration: City Computer Server Room Temperature Control and Emergency Operations Center Improvements
Recommendation: appropriate \$15,000 from the General Facilities, Vehicles and Equipment Development Impact Fee Fund to construct temperature control improvements to the City's computer server room and to equip the City's Emergency Operations Center (EOC) in the Police Station.
- G. Consideration: Creation of Two Temporary Part-Time Evidence Clerk Positions
Recommendation: approve the creation of two temporary part-time Evidence Clerk positions to assist with a comprehensive audit of all Police Department evidence.
- H. Consideration: Encroachment Agreement with Smith Monterey, Inc. For A Portion of the Existing Clock Tower on First Street in City Right of Way
Recommendation: 1) grant permission for existing Clock Tower to encroach the First Street right-of-way; and 2) direct City manager to execute Encroachment Agreement.

10. PUBLIC HEARINGS

None

11. REGULAR BUSINESS

- A. Consideration: Revised and Restated Franchise Agreement with USA Waste of California (DBA Waste Management) for Solid Waste, Recycling and Organics Collection and Processing Services, and Approving New Customer Rates
Recommendation: direct staff to finalize the Revised and Restated Franchise Agreement with an increase of 23.28% rate increase for effective January 1, 2017 to include provision of street sweeping services for consideration by the City Council at a public hearing at the November 22, 2016 meeting.
- B. Consideration: Sale of City Parcel Number 026-381-001 and a Portion of City Parcel Numbers 245-111-035 and 245-111-036
Recommendation: 1) declare City Parcel Number 026-381-001 and a Portion of City Parcel Numbers 245-111-035 and 245-111-036 as surplus property; 2) approve and authorize the City Manager to execute a Listing Agreement with Cushman and Wakefield U.S., Inc. for the sale of the City Parcel Number 026-381-001 at a listing price of \$322,000; 3) approve a listing Agreement with Cushman and Wakefield U.S., Inc. for the sale of a portion of City Parcel Numbers 245-111-035 and 245-111-036 at a listing price of \$2,046,000; and 4) direct staff to allow the current lessee of the property to match or exceed any offer prior to a sale.

12. CITY COUNCIL CLOSED SESSION

Announcement(s) of any reportable action(s) taken in Closed Session will be made in open session, and repeated at the beginning of the next Regular City Council meeting as this portion of the meeting is not recorded.

1. Public Employee Performance Evaluation
pursuant to Government Code Section 54957:
Title: City Manager
2. CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION
(Pursuant to Government Code, § 54956.9(d)(4)
A closed session will be held to discuss the initiation of litigation in two cases.
3. CONFERENCE WITH LABOR NEGOTIATOR
(Pursuant to Government Code Section §54957.6)
Position: City Manager
City Designated Representatives: Shannon Chaffin and Roy Santos

13. ADJOURNMENT

**Minutes
City Council Meeting
October 25, 2016**

1. CALL TO ORDER:

Meeting was called to order at 6:01 PM by Mayor Cullen.

2. FLAG SALUTE:

The flag salute was led by Mayor Cullen.

3. ROLL CALL:

City Manager Adams conducted roll call.

City Council: Darlene Acosta, Mike LeBarre, Belinda Hendrickson, Mayor Pro Tem Jernigan, Mayor Cullen.

City Staff: City Manager Steven Adams, Assistant Attorney Dave Hale

4. CLOSED SESSION ANNOUNCEMENTS:**5. PRESENTATIONS:**

Maura Twomey, AMBAG, presented a power point on What is AMBAG?

- What is AMBAG?
- AMBAG Board of Directors
- Benefits of AMBAG
- AMBAG Programs
- Established in 1968
- Metropolitan Planning Organization and Council of Governments
- AMBAG provides a wide range of services to member agencies
- Regional organization that develops studies, plans and policy recommendations
- Regional collaboration and coordination on a number of issues: economic, ecological, sustainability, transportation, etc.

AMBAG Board of Directors

- Three counties and 18 cities
- Voting Members:
- 24 Directors
 - 1 elected official from each jurisdiction
 - 2 supervisors from each county
- Ex-Officio Members
- Caltrans
- Air District
- Regional Transportation Planning Agencies (SBtCOG, SCCRTC and TAMC)
- Transit Operators (MST and SC METRO)

Benefits of AMBAG

- Leveraging needs of jurisdictions for effective grant funding and projects including:

- Sustainable Communities Strategy
- Regional Land Use and Transportation Planning
- Regional Housing Needs Allocation
- Air Quality Conformity
- Regional Travel Demand Model
- Technical Assistance – GIS & other data services
- Energy Efficiency Programs
- Climate Action Planning Programs
- FY2015/16 Budget = \$4.3 million

AMBAG Programs

- Air Quality
- Transportation
- Sustainable Communities Strategy
- Housing
- Regional Clearinghouse
- Energy Programs/Energy Watch
- Data Services
- Transportation Demand Management
- Regional Analysis and Planning Services, Inc. (RAPS)

Air Quality Planning

- Promotes Federal Clean Air Act and amendments
- MOU with Monterey Bay Air Resources District

Transportation Planning

- Promotes Federal Transportation Act
- Develops MOUs with region's planning partners
- Maintains regional travel demand model
- Produces short-range transportation improvement programs (programming funds)
- Develops long-range plans, such as the MTP/SCS and other special studies (US 101 Freight Study)
- Passes through grant funds to partner agencies

Land Use and Housing Planning

- Develops and coordinates implementation of the Sustainable Communities Strategy
- Produces *Regional Housing Needs Plan* for Monterey and Santa Cruz counties and updates 8 years
- Last update was in 2014; next update in 2022
- Mandated by State Housing Element Law (1969)

Regional Clearinghouse

- Forum for identifying significant environmental impacts in tri-county region
- Circulates proposed federal actions and state/federal environmental documents
- Established by Federal Executive Order 12372 (1983)

Energy Programs

- Administers the Energy Watch Program
 - Energy assessments and audits
 - Direct installation of energy efficient equipment
 - Technical assistance and financial incentives for energy efficient retrofits in municipal buildings

- Energy efficiency seminars & training courses in the region
- Developing Energy Action Strategies for jurisdictions
- Compiling greenhouse gas inventories for jurisdictions
- *Monterey Bay Regional Energy Plan (2008)*

AMBAG Energy Watch: 2006 – 2016

- Service to our AMBAG Community
 - 81.7 million annual kWh of energy savings from 2006 – 2015
 - 8 million annual kWh of annual energy savings projected for 2016
 - \$71 million saved from being spent on energy to be used other ways in the community
 - Provided technical assistance to acquire \$31 million in grants or loans for the jurisdictions, school districts and special districts.

2015 Local Govt Efficiency Projects

2015 Completed Complex Energy Projects					
Jurisdiction	Project	Annual kWh Electric Energy Savings	Annual Therm Natural Gas Energy Savings	AMBAG Energy Watch Rebate Amount	Expected Annual Energy Cost Savings
Hollister	Industrial Wastewater Control System & Pump Upgrades	604,294	-	\$ 88,792	\$ 178,362
Marina	*Airport Facilities - Exterior LED Lighting Upgrades (6 Sites)	101,873	-	\$ 20,150	\$ 15,281
Monterey County	*County Facilities - Exterior LED Lighting Upgrades (6 Sites)	217,032	-	\$ 45,548	\$ 32,555
Monterey (Presidio)	Energy Management Control System - B611 & B660	16,448	3,888	\$ 5,368	\$ 6,355
Monterey (Presidio)	Interior LED Lighting Upgrades - B4389	10,715	-	\$ 1,232	\$ 9,493
Santa Cruz	LED Street Lights - Phase 6	33,661	-	\$ 10,025	\$ 5,049
Santa Rita School District	La Joya Elementary - Classroom Furnace Upgrades	-	299	\$ 2,250	\$ 2,250
Salinas	*City-Wide Interior & Exterior Facility Lighting Upgrades (31 Sites)	1,140,000	-	\$ 195,895	\$ 171,000
Salinas	LED Street Lights	1,418,581	-	\$ 543,575	\$ 405,396
Soledad	Wastewater Treatment Plant - Basin Mixer Replacement	349,962	-	\$ 31,992	\$ 52,494
Scotts Valley	Wastewater Treatment Plant - Blower Upgrade Project	62,284	-	\$ 5,694	\$ 9,343
TOTAL		3,954,830	4,186	\$ 950,521	\$ 885,577

*These projects were rebated through the AMBAG Energy Watch Direct Install Program.

- Completed 11 complex energy efficiency projects across 50 facility locations totaling 3.95 Million kWh and 4,186 therms in energy savings
- All together will reduce energy costs by \$885,577 each year
- AMBAG Energy Watch contributed \$950,521 in rebates

AMBAG Energy Watch: School District Prop 39 Work Summary

- The California Energy Commission has made available **\$31.7 Million** in Prop 39 funding for the AMBAG region's 69 school districts
- AMBAG Energy Watch is actively assisting local schools with **\$22.4 Million** of this Prop 39 allocation

Data Services

- Forecasts regional population, employment and housing trends
- Regional transportation data and modeling
- Serves as regional data center for the U.S. Census
- In house Geographic Information Systems (GIS)
 - Regional GIS data warehouse
 - GIS services
 - Regional Data Viewer

- Central Coast Joint Data Committee (CCJDC)
- Regional aerial photography and LIDAR data

Regional Analysis and Planning Services (RAPS), Inc.

- RAPS is the 501(c)(3) nonprofit arm of AMBAG
- Provides technical assistance and a variety of services to local jurisdictions and other government agencies

6. PUBLIC COMMUNICATIONS:

None

7. COUNCIL COMMUNICATIONS:

Mayor Cullen stated that Coffee with and Cop was a great turn out. Chamber Lunch Thursday November 3rd topic is schools. Rotary crab feed November 18th. This Thursday Salinas Valley Fair Board Meeting.

Council Member LeBarre attended TAMC ground breaking in Greenfield for Vista Verde Middle School, active transportation funding for safe routes to school. Attended Congressman Farr's last citizenship swearing in ceremony at the Pinnacles. TAMC meeting tomorrow. November 2nd Council member LeBarre will receive a presentation from the Seaside middle school, where the class project is on connecting local history to our tourism and residence of those communities. He would like to take a Certificate of Appreciation to give to them. November 2nd evening Bicycle and Pedestrian committee. November 3rd participating in Salinas Farm day. November 7th Rail Policy Committee, November 14th MST meeting, November 16th-18th attending California Transit Association conference in Oakland.

Council Member Acosta nothing to report.

Council Member Hendrickson ask about the clean-up of the Salinas River.

Mayor Pro Tem Jernigan stated October 13th she attended a Rotary Club meeting where candidates spoke and again on October 20th candidates spoke to Girls Inc. She is encouraging people on thinking about and serving their community. She visited Cambria and saw trash cans with succulent gardens in the top of them. Banners are also on their light posts. She attended a church in Paso Robles and they announced that the church is partnering with the City on putting street numbers on curbs. This shows how churches can be involved in partnering with the City. She walked down town and saw that the Olive trees are so dirty. At night, she drove down Broadway and the trees obscured the street lights and the business names. On November 9th attending last AMBAG meeting she would like to go with the new Council representative to introduce them. Saturday November 12th there is a free Monterey County Pops concert at the High School Auditorium and a progressive dinner at 3 houses across the street beforehand. November 15th Pinnacles Gateway Partners meeting will be held; they are looking for more ways to promote tourism.

8. CITY STAFF REPORTS AND COMMENTS:

City Manager Adams stated next week hours' change here at City Hall and the Police station we will be open 9-5 Monday through Friday. Reminder of second Street Scape plan workshop on November 3rd at 6p.m. City Manager asked the City Engineer Octavio Hurtado spoke to the Salinas River bottom clean-up. Mr. Hurtado stated that the permits are issued however the window to get the work done is June through November 15th and we are coming up on the end of the time line, so we will start next year depending on funding.

Assistant City Attorney David Hale stated that this is his last meeting and he expressed his appreciation in the City allowing them to serve the City.

9. CONSENT AGENDA

- A. Meeting Minutes of October 11, 2016 Council Meeting
- B. Consideration: City Check Register – Current
- C. Consideration: Successor Agency Check Register – Current
- D. City Monthly Treasurer’s Report- October 2016
- E. Successor Agency Monthly Treasurer’s Report- October 2016
- F. Public Financing Authority Monthly Treasurer’s Report- October 2016
- G. Consideration: First Street – Lonoak Road Shoulder Safety Improvements -Proposed Project Award Recommendation
- H. Consideration: Contract Services Agreement for Interim City Attorney Services
- I. Consideration: Cancellation of November 8, 2016 Regular Meeting and Scheduling of November 15, 2016 Special Meeting
- J. Consideration: Appointment of New Airport Commissioner
- K. Consideration: Approval for Funding for King City In Bloom

Action: Motion to approve consent agenda by LeBarre and seconded by Acosta.

AYES: Council Members: Mayor Cullen, Acosta, LeBarre, Hendrickson and Mayor Pro Tem Jernigan

NOES: Council Members:

ABSENT: Council Members:

ABSTAIN: Council Members:

Mayor Cullen introduced the Interim City Attorney Shannon Chaffin.

Mayor Pro Tem Jernigan would like to review the checks in City Check Register.

10. PUBLIC HEARINGS:

None

11. REGULAR BUSINESS:

None

12. CLOSED SESSION:

None

ADJOURNMENT:

There being no further business to come before the City Council, Mayor Cullen adjourned the meeting at 6:52pm to closed session with the Mayor stating what would be discussed in closed session.

Approved Signatures:

Mayor, Robert Cullen
City of King

City Clerk, Steven Adams
City of King



Item No 9 (B)

REPORT TO THE CITY COUNCIL

DATE: NOVEMBER 15, 2016
TO: HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL
FROM: STEVEN ADAMS, CITY MANAGER
BY: PATRICIA GRAINGER, ACCOUNTANT
RE: CITY CHECK REGISTER

RECOMMENDATION:

It is recommended City Council receive and file.

BACKGROUND:

At least once a month, the City Treasurer shall submit to the City Council, a copy of the check register.

DISCUSSION:

The purpose of this item is to provide the Council an opportunity to review and monitor ongoing expenditures. These documents are attached.

COST ANALYSIS:

There is no fiscal impact as a result of this action.

ALTERNATIVES:

The following alternatives are provided for Council consideration:

1. Receive and file the report; or
2. Provide other direction to staff regarding requests for additional information.

**CITY COUNCIL/CITY
CITY CHECK REGISTER
NOVEMBER 15, 2016
PAGE 2 OF 2**

Exhibit(S)

1. Check Register Report

Submitted by: Patricia Grainger
Patricia Grainger, Accountant

Approved by: Steven Adams
Steven Adams, City Manager

Check Register Report

Date: 11/08/2016
 Time: 8:41 am
 Page: 1

KING CITY CITY HALL

BANK: WELLS FARGO BANK

Check Number	Check Date	Status	Void/Stop Date	Vendor Number	Vendor Name	Check Description	Amount
WELLS FARGO BANK Checks							
58237	10/21/2016	Printed		AT T	AT & T	Monthly Internet -	154.00
58238	10/21/2016	Printed		ACEHIGH	ACE HIGH DESIGNS INC	Soccer Uniforms	524.89
58239	10/21/2016	Printed		ADAMS	ADAMS ASHBY GROUP, LLC	Consulting Services: Program	680.00
58240	10/21/2016	Printed		ASI	ADMINISTRATIVE SOLUTIONS, INC	City Self Funded Medical	5,000.00
58241	10/21/2016	Printed		AGUILARF	FRANCISCA AGUILAR	Commuter Meals (Ex. Assist	150.00
58242	10/21/2016	Printed		ALVAREZ	ALVAREZ TECHNOLOGY GROUP INC	Monthly Fee for Remote User.	2,585.00
58243	10/21/2016	Printed		AT & T	AT & T	Monthly Service -	6,371.39
58244	10/21/2016	Printed		AT&T - C	AT&T	KC Fire Dept -	104.10
58245	10/21/2016	Printed		CA POLICE	CALIFORNIA POLICE CHIEFS ASSOC	Tuition - Aguilar Ex. Assist.	525.00
58246	10/21/2016	Printed		CAL WATER	CALIFORNIA WATER SERVICE CO.	Water Service -	20,111.89
58247	10/21/2016	Printed		CASEY PRIN	CASEY PRINTING, INC.	Postage to Mail Flyers.	1,311.70
58248	10/21/2016	Printed		CEJAJM	JUAN MANUEL CEJA	Soccer Official -	45.00
58249	10/21/2016	Printed		CRESC	CRESCENT WORK & OUTDOOR	Uniform - New Hire	1,560.62
58250	10/21/2016	Printed		DENT	DENTPRO	Unit #101 Dents Removed.	410.00
58251	10/21/2016	Printed		DEPT ACCNT	DEPARTMENT OF JUSTICE	Fingerprints - (147868)	324.00
58252	10/21/2016	Printed		DIVISION	DIVISION OF STATE ARCHITECT	Disability Access & Education	9.30
58253	10/21/2016	Printed		DOUTREE	DOUBLE TREE BY HILTON HOTEL	Lodging - Aguilar -	403.64
58254	10/21/2016	Printed		POTTER	ELIZABETH S. CURBELO	Camera Replaced	911.88
58255	10/21/2016	Printed		FAIL	FAILSAFE TESTING	Ladder Test - All Passed	519.55
58256	10/21/2016	Printed		FIRST AL	FIRST ALARM, INC	Services for 11/16 -1/17	354.00
58257	10/21/2016	Printed		GARCIAM	MANUEL GARCIA	Soccer Official -	50.00
58258	10/21/2016	Printed		HALE	DAVID P HALE	Legal Service - Sept 2016	2,448.00
58259	10/21/2016	Printed		HANNA	HANNA & BRUNETTI	City Admin	7,473.38
58260	10/21/2016	Printed		IDCON	ID CONCEPTS, LLC	ID Cards - Officer Wood	20.44
58261	10/21/2016	Printed		HERNJ	JOSE HERNANDEZ	Soccer Official -	50.00
58262	10/21/2016	Printed		KC CHAMBER	KING CITY CHAMBER OF COMMERCE	Chamber of Commerce Fund	5,000.00
58263	10/21/2016	Printed		KCRUS	KING CITY RUSTLER	Annual Subscription -	49.70
58264	10/21/2016	Printed		KC TRUE	KING CITY TRUE VALUE	Chief's Office Remodel	98.60
58265	10/21/2016	Printed		L. C. ACTI	L. C. ACTION POLICE SUPPLY LTD	Emp Purchase Program.	575.30
58266	10/21/2016	Printed		LEYVA'S TO	LEYVA'S TOWING & ROAD SERVICE	Tow for Unit #109	80.00
58267	10/21/2016	Printed		LCAH	LOS COCHES ANIMAL HOSPITAL	Anlamal Services.	260.00
58268	10/21/2016	Printed		LUX	BRENNAN LUX	Commuter Meals - FTO Update	150.00
58269	10/21/2016	Printed		M BASIA	MBASIA	Claim - Foster MBA12-1231A	464.16
58270	10/21/2016	Printed		MO BAY SYS	MONTEREY BAY OFFICE PRODUCTS	Copier Contract - 22319-04	1,701.89
58271	10/21/2016	Printed		OCHOAFR	FRANCISCO OCHOA	Soccer Official -	50.00
58272	10/21/2016	Printed		OFFICE DEP	OFFICE DEPOT	Printer Toner	487.61
58273	10/21/2016	Printed		PARTS & SE	PARTS & SERVICE CTR- NAPA, INC	Oil Filter - Coolent Filter,	160.08
58274	10/21/2016	Printed		PURE WATER	PENINSULA PURE WATER INC.	Monthly Water Service	27.45
58275	10/21/2016	Printed		PAC	PG&E	Gas & Electric Service -	34,739.34
58276	10/21/2016	Printed		PINEDA	BRYAN PINEDA	Soccer Official -	50.00
58277	10/21/2016	Printed		POLYG	POLYGRAPH PROFESSIONALS	Poly - Santos, Cleby	200.00
58278	10/21/2016	Printed		PURCHASE P	PURCHASE POWER*PITNEY BOWES	Postage Refill -	201.00
58279	10/21/2016	Printed		QUILL CORP	QUILL CORPORATION	Office Supplies	161.46
58280	10/21/2016	Printed		RED SHIFT	RED SHIFT INTERNET SERVICES	City Hall Internet	30.90
58281	10/21/2016	Printed		S.B.R.P.S.	S.B.R.P.S.T.	FTO Update Course - 12/19 -	85.00
58282	10/21/2016	Printed		SO CO NEWS	SO CO NEWSPAPERS	Specific Plan Amendment.	1,280.00
58283	10/21/2016	Printed		SPRINT	SPRINT	Monthly Long Distance Phone	156.74
58284	10/21/2016	Printed		SUDDEN	SUDDEN IMPACT	Repair of Windshield Chips.	250.00
58285	10/21/2016	Printed		TAVERNETTI	TAVERNETTI, LAYOUS & CLARK	Agribusiness Div. Installment	5,352.10
58286	10/21/2016	Printed		THE SALINA	THE SALINAS CALIFORNIAN	Planning Public Hearing -	415.25
58287	10/21/2016	Printed		SPCA	THE SPCA FOR MONTEREY COUNTY	Services for Sept 2016	4,000.00

Check Register Report

Date: 11/08/2016
 Time: 8:41 am
 Page: 2

KING CITY CITY HALL

BANK: WELLS FARGO BANK

Check Number	Check Date	Status	Void/Stop Date	Vendor Number	Vendor Name	Check Description	Amount
WELLS FARGO BANK Checks							
58288	10/21/2016	Printed		ZAPPIA	THE ZAPPIA LAW FIRM, APC	Craig - POBR Writ	9,644.67
58289	10/21/2016	Printed		TIRE KING	TIRE KING & AUTO EXPRESS	Car Washes - Sept 2016	139.00
58290	10/21/2016	Printed		TORO	TORO PETROLEUM CORP.	City Monthly Gas - Acct 1679	3,035.73
58291	10/21/2016	Printed		TYLER TECH	TYLER TECHNOLOGIES, INC.	IT Pervasive - Workgroup	550.00
58292	10/21/2016	Printed		U.S. BANCO	U.S. BANCORP EQUIPMENT FINANCE	Copier Contract Service -	608.74
58293	10/21/2016	Printed		U.S. BAN	U.S. BANK CORP PAYMENT SYSTEM	Various Charges -	3,423.83
58294	10/21/2016	Printed		VERIZON WI	VERIZON WIRELESS	Monthly Cell Phone -	158.22
58295	11/01/2016	Printed		EARTH DESI	EARTH DESIGN, INC.	T-Mobile Zoning Project	19,188.60
58296	11/01/2016	Printed		OFFICE DEP	OFFICE DEPOT	Office Supplies	35.90
58297	11/01/2016	Printed		U.S. BAN	U.S. BANK CORP PAYMENT SYSTEM	BOLA Program Installment	625.00
58298	11/01/2016	Printed		VERIZON WI	VERIZON WIRELESS	Monthly Cell Phone -	156.19
58299	11/04/2016	Printed		A T T	A T T	Monthly Internet -	154.00
58300	11/04/2016	Printed		ADAMSS	STEVEN ADAMS	C M Travel Reimbursement	75.60
58301	11/04/2016	Printed		ALVAREZ	ALVAREZ TECHNOLOGY GROUP INC	Computer Support - Dec 2016	3,775.54
58302	11/04/2016	Printed		AM SUPPLY	AMERICAN SUPPLY CO.	Janitorial Supplies -	517.49
58303	11/04/2016	Printed		AT & T	AT & T	Sentry Alarm Monthly	107.38
58304	11/04/2016	Printed		AT&T - C	AT&T	KCPD Line 9/24 - 10/23/16	2,046.64
58305	11/04/2016	Printed		CNAUTO	C & N AUTOMOTIVE ELECTRIC	Trimmer Head	43.24
58306	11/04/2016	Printed		CASEY PRIN	CASEY PRINTING, INC.	Youth Basketball Fliers	979.75
58307	11/04/2016	Printed		EDEMPLOY	CENTER FOR EDUCATION & CERNEY	Law Book - #A26675440	254.95
58308	11/04/2016	Printed		CERNEY	JOHN CERNEY	Pocket Park Mural - #3	6,000.00
58309	11/04/2016	Printed		SALINAS	CITY OF SALINAS	Contract Services for Project	3,975.00
58310	11/04/2016	Printed		COACHD	COACHDECK LLC	Coach Supplies	128.20
58311	11/04/2016	Printed		COASTL	COASTLINE MARKETING GROUP INC	Web Monthly Membership	125.00
58312	11/04/2016	Printed		CONATSER	CONATSER WELDING & MACHINE,LLC	1 Sprocket for Sweeper.	74.61
58313	11/04/2016	Printed		COMINFO	COUNTY OF MONTEREY	Network Access - Sept 2016	1,886.00
58314	11/04/2016	Printed		DAVE'S REP	DAVE'S REPAIR SERVICE	Monthly Site Inspection	80.00
58315	11/04/2016	Printed		EVEH	EMERGENCY VEHICLE SPECIALISTS	Unit #104 Repairs -	2,810.68
58316	11/04/2016	Printed		FED EXP	FEDEX	Mailing -	105.79
58317	11/04/2016	Printed		FLORESE	EDUARDO FLORES	Rec Rental Refund of Deposit.	200.00
58318	11/04/2016	Printed		GARCIA M	MANUEL GARCIA	Soccer Official -	60.00
58319	11/04/2016	Printed		GOMEAL	ALEJANDRO GOMEZ	Soccer Official -	55.00
58320	11/04/2016	Printed		GIS	GONZALES IRRIGATION SYSTEMS,	PVC Fittings	52.80
58321	11/04/2016	Printed		HYDRO TURF	HYDRO TURF, INC.	Recoil Starter - #10012	256.10
58322	11/04/2016	Printed		INTTIRE	INTERNATIONAL TIRES	Flat Repair	38.00
58323	11/04/2016	Printed		KC IND	KING CITY INDUSTRIAL SUPPLY	Sweeper Parts	1,072.62
58324	11/04/2016	Printed		KC TRUE	KING CITY TRUE VALUE	PVC Fitting	157.39
58325	11/04/2016	Printed		MBAS	MBAS, INC.	Lab Work WWTP	560.00
58326	11/04/2016	Printed		MOCO SHERI	MO CO SHERIFF'S OFFICE	CJIS - QE 9/30/16 -	6,508.97
58327	11/04/2016	Printed		MBLOVED	MONTEREY BAY LOVEDPET, INC	Freezer Clean Out - 26	200.00
58328	11/04/2016	Printed		NUCKT	TOM NUCK	Fire Dept Drinking Water.	90.67
58329	11/04/2016	Printed		O'REILLY A	O'REILLY AUTOMOTIVE, INC.	Sweeper Parts	124.52
58330	11/04/2016	Printed		OCHOAFR	FRANCISCO OCHOA	Soccer Official -	55.00
58331	11/04/2016	Printed		OFFICE DEP	OFFICE DEPOT	Office Supplies	435.19
58332	11/04/2016	Printed		OWENE	OWEN EQUIPMENT COMPANY	Sweeper Parts -	842.64
58333	11/04/2016	Printed		PACIFIC CR	PACIFIC CREST ENGINEERING INC.	Semi-Annual Ground Water	4,950.00
58334	11/04/2016	Printed		PARTS & SE	PARTS & SERVICE CTR- NAPA, INC	D Earth	144.99
58335	11/04/2016	Printed		PETE'S AUT	PETE'S AUTOMOTIVE REPAIR	2000 GMC Sonoma SL.	542.87
58336	11/04/2016	Printed		PINEDA	BRYAN PINEDA	Soccer Official -	115.00
58337	11/04/2016	Printed		PNC	PNC EQUIPMENT FINANCE, LLC	1 St Pmt for Lease Vehicle.	20,247.81
58338	11/04/2016	Printed		QUALITY CO	QUALITY CODE PUBLISHING LLC	Municipal Code Update	1,419.14
58339	11/04/2016	Printed		QUILL CORP	QUILL CORPORATION	Office Supplies	163.53

Check Register Report

Date: 11/08/2016
Time: 8:41 am
Page: 3

KING CITY CITY HALL

BANK: WELLS FARGO BANK

Check Number	Check Date	Status	Void/Stop Date	Vendor Number	Vendor Name	Check Description	Amount
WELLS FARGO BANK Checks							
58340	11/04/2016	Printed		QUIROZ	RAUL QUIROZ	Soccer Official -	115.00
58341	11/04/2016	Printed		RAINBOW	RAINBOW PRINTING	F.I. Cards (2000)	533.60
58342	11/04/2016	Printed		RED SHIFT	RED SHIFT INTERNET SERVICES	City Hall Internet - #25464	30.90
58343	11/04/2016	Printed		CAOCC	RICHARD A. LIND JR. MD INC	Pre-Emp Physical -	135.00
58344	11/04/2016	Printed		ROWE	ALLEN ROWE	Maint on 2014 Ford Escape.	30.36
58345	11/04/2016	Printed		SIEMENS	SIEMENS INDUSTRY INC.	Signal Light Maint.	1,116.57
58346	11/04/2016	Printed		SILJO	JOSE SILVA	Loss Claim	330.77
58347	11/04/2016	Printed		SO CO NEWS	SO CO NEWSPAPERS	HR Coordinator Newspaper.	247.00
58348	11/04/2016	Printed		SO CO AUTO	SOUTH COUNTY AUTO*BODY	Unit #106, Unit #109.	712.46
58349	11/04/2016	Printed		SPEAK	SPEAKWRITE BILLING DEPT	October Services - GrpLEKCPD1	43.16
58350	11/04/2016	Printed		SPECIALTY	SPECIALTY CONSTRUCTION INC.	Progress Pmt #11 -	807,682.15
58351	11/04/2016	Printed		SPRINT	SPRINT	Long Distance Monthly -	135.60
58352	11/04/2016	Printed		BROWNS	STEPHEN BROWN ASSOCIATES, INC	Mesa DelRey Airport Invoice	3,250.00
58353	11/04/2016	Printed		SUAREZ/FER	FERNANDO SUAREZ	PaPa Seminar	80.00
58354	11/04/2016	Printed		THE SALINA	THE SALINAS CALIFORNIAN	Public Notice -	542.96
58355	11/04/2016	Printed		SAL CAL	THE SALINAS CALIFORNIAN #1078	Annual Subscription -	123.75
58356	11/04/2016	Printed		DUNKIN	TIMOTHY L. DUNKIN	Consulting Workshop &	1,850.33
58357	11/04/2016	Printed		TORO	TORO PETROLEUM CORP.	Hyd Oil	2,070.71
58358	11/04/2016	Printed		U.S. BANCO	U.S. BANCORP EQUIPMENT FINANCE	Copier Contract - Nov 2016	330.32
58359	11/04/2016	Printed		U.S. BAN	U.S. BANK CORP PAYMENT SYSTEM	Various Charges -	604.25
58360	11/04/2016	Printed		UMPQUA	UMPQUA BANK	Retention Payment Sewer Proj.	42,509.59
58361	11/04/2016	Printed		UMSTEAD EL	UMSTEAD ELECTRIC	Replace Pump - Pool	808.65
58362	11/04/2016	Printed		VALSA	VALLEY SAW AND GARDEN EQUIP.	Repair Weed Eater.	466.71
58363	11/04/2016	Printed		VERIZON WI	VERIZON WIRELESS	Cell Phone Service.	818.32

Total Checks: 127

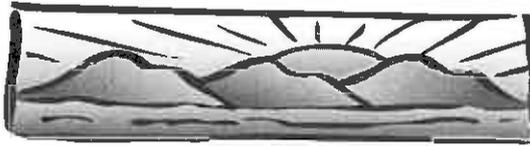
Checks Total (excluding void checks): 1,071,690.51

Total Payments: 127

Bank Total (excluding void checks): 1,071,690.51

Total Payments: 127

Grand Total (excluding void checks): 1,071,690.51



KING CITY
C A L I F O R N I A

Item No 9 (C)

REPORT TO THE CITY COUNCIL

DATE: NOVEMBER 15, 2016
TO: HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL
FROM: STEVEN ADAMS, CITY MANAGER
BY: PATRICIA GRAINGER, ACCOUNTANT
RE: SUCCESSOR AGENCY CHECK REGISTER

RECOMMENDATION:

It is recommended City Council receive and file.

BACKGROUND:

At least once a month, the City Treasurer shall submit to the City Council, a copy of the check register and invoice approval fund list.

DISCUSSION:

The purpose of this item is to provide the Council an opportunity to review and monitor ongoing expenditures. These documents for the Successor Agency are attached.

COST ANALYSIS:

There is no fiscal impact as a result of this action.

ALTERNATIVES:

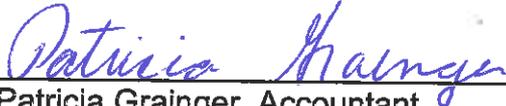
The following alternatives are provided for Council consideration:

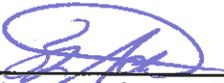
1. Receive and file the report; or
2. Provide other direction to staff regarding requests for additional information.

**CITY COUNCIL/SUCCESSOR AGENCY
SUCCESSOR AGENCY CHECK REGISTER
NOVEMBER 15, 2016
PAGE 2 OF 2**

Exhibit(S)

1. Check Register Report

Submitted by: 
Patricia Grainger, Accountant

Approved by: 
Steven Adams, City Manager

Check Register Report

Date: 11/08/2016
Time: 8:47 am
Page: 1

KING CITY CITY HALL

BANK: SUCCESSOR AGENCY OF

Check Number	Check Date	Status	Void/Stop Date	Vendor Number	Vendor Name	Check Description	Amount
SUCCESSOR AGENCY OF Checks							
197	10/21/2016	Printed			KOCZANOWIK LAW OFFICE OF	City Attorney Contract	689.00
198	10/21/2016	Printed			USBANK US BANK	Tax Allocations Refunding	1,815.00
Total Checks: 2						Checks Total (excluding void checks):	2,504.00
Total Payments: 2						Bank Total (excluding void checks):	2,504.00
Total Payments: 2						Grand Total (excluding void checks):	2,504.00



Item No 9 (D)

REPORT TO THE PUBLIC FINANCING AUTHORITY

DATE: NOVEMBER 15, 2016
TO: HONORABLE CHAIR AND MEMBERS OF THE AUTHORITY
FROM: STEVEN ADAMS, SECRETARY
BY: PATRICIA GRAINGER, ACCOUNTANT
RE: PUBLIC FINANCING AUTHORITY CHECK REGISTER

RECOMMENDATION:

It is recommended City Council receive and file.

BACKGROUND:

At least once a month, the City Treasurer shall submit to the City Council, a copy of the check register.

DISCUSSION:

The purpose of this item is to provide the Council an opportunity to review and monitor ongoing expenditures. These documents for the Public Financing Authority are attached.

COST ANALYSIS:

There is no fiscal impact as a result of this action.

ALTERNATIVES:

The following alternatives are provided for Council consideration:

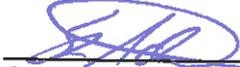
1. Receive and file the report; or
2. Provide other direction to staff regarding requests for additional information.

**CITY COUNCIL/PUBLIC FINANCING AUTHORITY
PUBLIC FINANCING AUTHORITY CHECK REGISTER
NOVEMBER 15, 2016
PAGE 2 OF 2**

Exhibit (s)

1. Check Register Report

Submitted by: 
Patricia Grainger, Accountant

Approved by: 
Steven Adams, Secretary

Check Register Report

Date: 11/08/2016
Time: 8:53 am
Page: 1

KING CITY CITY HALL

BANK: KING CITY FINANCE AUTHORITY

Check Number	Check Date	Status	Void/Stop Date	Vendor Number	Vendor Name	Check Description	Amount
KING CITY FINANCE AUTHORITY Checks							
310	10/21/2016	Printed		HANNA	HANNA & BRUNETTI	infrastructure - 1st St, So of	45,484.93
Total Checks: 1						Checks Total (excluding void checks):	45,484.93
Total Payments: 1						Bank Total (excluding void checks):	45,484.93
Total Payments: 1						Grand Total (excluding void checks):	45,484.93



Item No. 9 (E)

REPORT TO THE CITY COUNCIL

DATE: NOVEMBER 15, 2016

TO: HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL

FROM: OCTAVIO HURTADO, HANNA & BRUNETTI, CITY ENGINEER

RE: CONSIDERATION OF DENIAL OF BIDS FOR THE KING CITY DIVE POOL FIBERGLASS RESURFACING AND CRACK REPAIR PROJECT

RECOMMENDATION:

It is recommended that Council: 1) deny the one bid received for the King City Dive Pool Fiberglass Resurfacing and Crack Repair Project; and 2) direct staff to solicit bids to perform a fiberglass spot repair of the crack in the dive pool and replace the perimeter tile in all pools.

BACKGROUND:

Staff has been monitoring a crack that has appeared on the floor of the Dive Pool. An invitation to bid was advertised for the Dive Pool Fiberglass Resurfacing and Crack Repair project. A budget for this work was set at \$30,000.00.

DISCUSSION:

The City received one bid from the following Contractors in the following amounts:

Advanced Pool Coatings	\$74,850.00
------------------------	-------------

The bid received came in above the budget amount. After reviewing the bid, staff concluded to deny the bid and instead solicit bids to; 1) perform a spot repair of the fiberglass crack; and 2) replace the perimeter tile in all pools.

Staff has determined the original scope of work exceeded what is necessary since the condition of the remainder of the pool is satisfactory. Utilizing available funding to repair the crack area only and tiles on the perimeter of the pools will actually result in improvements more noticeable and beneficial to users of the facility.

**CITY COUNCIL
DENY DIVE POOL FIBERGLASS RESURFACING AND CRACK REPAIR
PROJECT
NOVEMBER 15, 2016
PAGE 2 of 2**

COST ANALYSIS:

Funding for this project will come from the General fund

ALTERNATIVES:

The following alternatives are provided for Council consideration:

- 1) Approve staff's recommendation:
- 2) Award the bid received for the King City Dive Pool Fiberglass Resurfacing and Crack Repair project:
- 3) Direct staff to rebid the project:
- 4) Provide other direction.

Exhibits:

1. Advanced Pool Coatings Bid

Submitted by: _____


Octavio Hurtado, Hanna & Brunetti, City Engineer

Approved by: _____


Steven Adams, City Manager



6141 Angelo Court - Loomis, CA 95650
Ca. Lic. # 684147 Nv. Lic. # 47067
Tel (916) 773-1883 Fax (916) 773-8422

October 10, 2016

PROJECT: King City Dive Pool Fiberglass Resurfacing and Crack Repair

OWNER: King City City Manager Department 212 South Vanderhurst Avenue King City, CA 93930 Attn: Steve Adams	CONTACT: Public Works Department 212 South Vanderhurst Avenue King City, CA 93930 Attn: Octavio Hurtado, Project Manager
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QUOTATION/BID:
Dive Pool Resurfacing with Advanced-Glass fiberglass finish, as specified: **Price: \$74,850.00**

Notes:

Price does not include the cost of obtaining any permits that may be required, or any additional work that the County or City may require. Such permit costs or additional required work will be extra. This proposal assumes pool is currently VGB compliant. Any additional required VGB repairs, additional drain cover splits or replacement covers will be extra. Depth markers, No Diving tiles, other tile work or replacement of grab rails would be extra.

We take pride in our work and are pleased that we are one of a very few companies that do this kind of work who have a "No Blemish Status" with the California and Nevada State Contractor's Board. You will find that we are properly licensed to perform work on Swimming Pools (C53 Classification) with Synthetic Materials (D12 Classification). We consider it an honor to be asked to provide this quote and look forward to working with you on this project.

Sincerely,
Dave Walter
Advanced Pool Coatings

Acceptance Signed _____ Date: _____

St. Helena High School	St. Helena, CA	2011	Bob Beane	707-363-3397
Highlands Recreation District	San Mateo, CA	2010	Margaret Glomstad	650-341-4251
Napa Unified School District	Napa, CA	2010	Walt Blevins	707-253-3538
Burnt Cedar Pool-Incline Village Rec District	Incline Village, NV	2010	Hal Paris	775-720-8128
Golden Haven Hot Springs Resort	Calistoga, CA	2010	Ray Simone	707-942-6793
San Francisco Hilton	San Francisco, CA	2010	Christopher Lacy	415-889-5657
Lake Wildwood HOA	Penn Valley, CA	2010	Dan Watson	530-432-1170
Durham Swim Center	Durham, CA	2010	Jim Brinson	530-345-1921
City of Merced – McNamara Pool	Merced, CA	2009	Mark Norman	209-385-6852
Dunsmuir City Pool	Mt. Shasta City, CA	Various	Mike Rodriguez	530-926-2494
BRE Properties (many pools)	Throughout CA	Various	Vincent Principe	510-597-5340
Woodbridge Village Assoc.	Irvine, CA	Various pools, spas, waders	John Salinas	949-786-1800
Knott's Berry Farm / Soak City	Southern California	Various	Glenn Miyoshi	714-220-5223
Costa Mesa High School	Costa Mesa, CA	2008	Jeff Amende	714-936-0244
Paradise Recreation District	Paradise, CA	2006	Jim Murphy	530-872-6393
Sausal Winery	Healdsburg, CA	2006	Cindy Martin	707.433.2285
Duffy's Alcohol Retreat Ctr	Calistoga, CA	2006	Debbie Duffy	707-942-6888
Napa High School	Napa, CA	2005	Walt Blevins	707-253-3538
Bellevue Aquatic Center	Bellevue, WA	2002	Tad Eversole	425-452-6855
Ohlone College (Olympic Size)	Fremont, CA	2001	Simon Barros	510-659-6105
Benicia Park Pool	Rohnert Park, CA	1996	Greg Pilgrim	707-588-3309

References

Attached are several reference letters from clients with large, commercial pools. Also attached is a reference letter from Kent Williams, a world-renowned pool consultant, and Executive Director of the Professional Pool Owners Association (PPOA).

While these reference letters speak for themselves, we feel that access to all completed jobs is the best way to evaluate a company's reputation, workmanship and reliability. A pre-screened reference list would, of course, include only selected jobs that the contractor feels certain would reflect favorably on their company. Because of this, we provide access to all the previous jobs we have completed. To access this, simply visit <http://www.advancedpoolcoatings.com/map-of-our-completed-jobs/>. We know of no other swimming pool contractor that is confident enough in their work quality and reputation to provide this type of information.

Durham Swim Center (Before)



Durham Swim Center (After) – March 2010



State Contractor's License Board Information

We encourage you to research the California State Contractor's License Board (CSLB) at <http://www.cslb.ca.gov/> to find out more information contained in the public record regarding those companies holding themselves out as swimming pool resurfacing contractors. We encourage you to verify this information with the CSLB at <https://www2.cslb.ca.gov/OnlineServices/CheckLicense/LicenseRequest.asp>

ADVANCED POOL COATINGS

Associated Companies	License #	Representative	Issues
Advanced Pool Coatings	# 684147 Active	Dwight Johnson Paul Walter Natalie Feller Dave Walter	• Licensed and qualified to perform work on <u>Swimming Pools (C53 Classification)</u> with <u>Synthetic Materials (D12 Classification)</u> – including fiberglass.

Classifications from the Contractor's License Board:

C53 – Swimming Pool Contractor: California Code of Regulations - Title 16, Division 8, Article 3. Classifications
A swimming pool contractor constructs swimming pools, spas or hot tubs, including installation of solar heating equipment using those trades or skills necessary for such construction.
Authority cited: Sections 7008 and 7059, Reference: Sections 7058 and 7059 (Business and Professions Code)

D12 - Synthetic Products Contractor: California Code of Regulations - Division 8, Title 16, Article 3. Classification
A synthetic products contractor installs:

- (a) Synthetic counter tops and wall coverings; fiberglass, plastic, vinyl and epoxy products; plastic tile board and decorative art work; and synthetic turf.
- (b) Bathtub and enamel refinishing, resin and epoxy application, and synthetic caulking and sealants.
- (c) Reservoir liners, vinyl swimming pool relining, pier piling wrap, and rodent guards.
- (d) PVC piping systems for irrigation and drainage; subsurface irrigation drip systems.

Experience & Qualifications of Crew

Advanced Pool Coatings is proud to be a family owned and operated business. From our office staff to our field crews, we are a family owned company that takes great pride in our work and our reputation. We have two field crews, each led by a Supervisor. It is likely that both crews will work on your job. Our crews work exclusively on fiberglass pool resurfacing, so their experience and quality is unmatched. No sub-contractors will be used on the swimming pool resurfacing work. Here is a bit more information about our crew:

Dwight Johnson – Dwight began his career resurfacing swimming pools with fiberglass over 30 years ago. Dwight started Advanced Pool Coatings in 1993 knowing he could provide a better service by focusing on Quality work. His #1 priority is providing top quality results. Dwight truly sets the tone at the top of our company – personally training and instilling his passion for quality in every crew member.

Roman Llamas – Roman is a long-term APC employee. He was personally trained for many years by Dwight and has led jobs both big and small. He leads by example, cuts no corners, and is truly a great asset to our company.

Crew Members – each of our crew members has been with the company for at least 7 years, and has worked on a wide variety of clients – both commercial and residential. Our crew members have been mentored both Dwight and Roman, and each of them shares their same commitment to quality. Recently a client emailed me: "Your guys were terrific. They don't waste any time and work very hard. They are also professional." (Mrs. Hunter, in Rancho Murietta). We continually receive these types of unsolicited comments from our clients – they always mention how impressed they are with the level of commitment and the work ethic demonstrated by the crew.

Highlands Recreation District Pool (before)



Highlands Recreation District Pool (after)





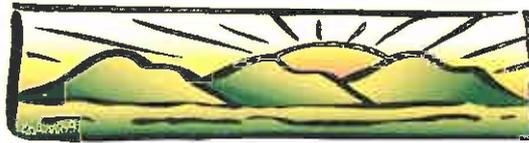
6141 Angelo Court, Loomis, CA 95650
 Ca. Lic. # 684147 Nv. Lic. # 47067
 Tel (916) 773-1883 Fax (916) 773-8422

Company Experience

Advanced Pool Coatings was founded in 1993, when two veterans of fiberglass pool resurfacing combined their expertise to form a company that provided quality work, a guaranteed finish, honest salesmanship and prompt, professional customer service. We are licensed in 3 states (California, Nevada and Washington). With our relentless focus on quality, our reputation is unmatched in the industry, and we have become the trusted contractor for commercial and residential fiberglass swimming pool resurfacing throughout California, Nevada and Washington with our **Advanced-Glass** formula for swimming pool coating.

Advanced Pool Coatings is properly licensed, bonded and insured. We are prepared to tackle jobs of any size. With our excellent reputation, we are able to secure Performance Bonds, Payment Bonds and any other requirement you have for your project. Please see the attached letters of recommendations to get an idea of our customers' impressions of our company. In addition, below is a partial list of other **Advanced-Glass** fiberglass commercial jobs, along with contact information.

Job Name	City/Region	Year Completed	Contact Name	Contact Phone
City of San Jose: Fair Swim Center & Alviso Pool	San Jose, CA	2016	Bill Fall	408-425-4034
Sierra College	Rocklin, CA	2016 & 2015	Mark Tucker	916-660-7655
City of Palmdale: McAdam Park Pool	Palmdale, CA	2016	Ryan Jackson	626-833-7494
Hotel Nikko	San Francisco, CA	2015	Bob Goike	650-393-5341
King County: Mary Wayte Pool	Seattle, WA	2015	Brandy Fox	206-949-4135
Foothills of Windsor	Windsor, CA	2015	Heather Clark	707-687-2580
Diamond Glen HOA	Folsom, CA	2015	Andrew Kimbrough	916-917-6618
Sonoma Aquatic Center	Sonoma, CA	2014	Jane Hansen	707-939-8833
College Greens Swim & Racquet Club	Sacramento, CA	2014	Won Chang	916-605-9065
California Family Fitness	Sacramento, CA	Various	Howard Tyre	877-564-6233
Bellevue Aquatic Center	Bellevue, WA	2014	Tad Eversol	425-452-6855
The Montage	Reno, NV	2014	Ed Hartney	775-813-0913
Harrah's Reno	Reno, NV	2014	Ron Jaramillo	775-788-2548
El Camino High School	Sacramento, CA	2013	Shaun Schondelmayer	916-333-5701
Del Campo High School	Sacramento, CA	2013	Shaun Schondelmayer	916-333-5701
Sonoma Development Center	Eldridge, CA	2013	Mario Pasquini	707-938-6401
Roman Spa Hot Springs Resort	Calistoga, CA	2013	Michael Quast	707-737-5042
Ives Pool – City Pool	Sebastopol, CA	2013	Rich Emig	707-823-5331
City of Red Bluff – McGlynn Pool (13,000 sq ft pool)	Red Bluff, CA	2012	Scot Timboe	530-527-2605 x 3059
Crow Canyon Country Club Estates HOA – Silver Lake, Cambrian & St. George Pools	Danville, CA	2012, 2011	Channa Alperin	925-866-8900
California State University, Sacramento (Student Housing Pools)	Sacramento, CA	2012	Todd McComb	916-278-5183
Ann Curtis School of Swimming	San Rafael, CA	2011	Carrie Cuneo	415-686-9068
Calistoga Spa Hot Springs Resort	Calistoga, CA	2011	Brad Barrett	707-942-4381
Mammoth Mountain RV Park	Mammoth Lakes, CA	2011	Mike Anderson	760-914-1110
Belle Haven Pool	Menlo Park, CA	2011	Kent Smead	530-305-7707
Gridley Pool	Gridley, CA	2011	Sean Early	530-846-3626
City of Sacramento–George Sim Pool	Sacramento, CA	2011	Greg Narramore	916-825-5917
Vista del Lago HOA	Santa Rosa, CA	2011	Claire Townsend	707-291-6921



KING CITY
C A L I F O R N I A

Item No. **9 (F)**

REPORT TO THE CITY COUNCIL

DATE: NOVEMBER 15, 2016

TO: HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL

FROM: STEVEN ADAMS, CITY MANAGER

RE: CONSIDERATION OF CITY COMPUTER SERVER ROOM TEMPERATURE CONTROL AND EMERGENCY OPERATIONS CENTER IMPROVEMENTS

RECOMMENDATION:

It is recommended the City Council appropriate \$15,000 from the General Facilities, Vehicles and Equipment Development Impact Fee Fund to construct temperature control improvements to the City's computer server room and to equip the City's Emergency Operations Center (EOC) in the Police Station.

BACKGROUND:

The City recently upgraded its computer network server in order to address expanding City information technology needs. In addition, staff recently prepared a new Emergency Operations Plan, which provides procedures staff will use during response to a disaster. Under the Emergency Operations Plan, the Police Station Briefing Room has been designated as the primary EOC location.

DISCUSSION:

The City's computer network servers are housed in a dedicated room in the Police Station. However, the room does not currently have appropriate climate control capabilities to protect the system from overheating. During the recent rebuild of the system, this was identified as an important need given the expansion of equipment in the room. Since the equipment is both critical to the City's operations and a large investment, it is important to be protected.

Meanwhile, staff has also recently begun training and exercises to prepare for disaster response activities. A number of outside agencies are also participating. This will be extremely important to the City in the event of a disaster because the

**CITY COUNCIL
CONSIDERATION OF CITY COMPUTER SERVER ROOM TEMPERATURE
CONTROL AND EMERGENCY OPERATIONS CENTER IMPROVEMENTS
NOVEMBER 15, 2016
PAGE 2 OF 2**

City's resources will be quickly depleted. However, equipping the EOC has been identified as an urgent action item. Computers, communication equipment, information boards and equipment, and supplies have all been identified as necessary.

The server upgrade was funded by the General Facilities, Vehicles and Equipment Development Impact Fee Fund. Therefore, staff has determined this expenditure would also be eligible to utilize the same funding source. However, a City Council appropriation is necessary.

COST ANALYSIS:

The estimated cost of the improvements to the server room is approximately \$4,000. The remaining \$11,000 will be used to equip the EOC. There is currently approximately \$260,000 in the General Facilities, Vehicles and Equipment Development Impact Fee Fund.

ALTERNATIVES:

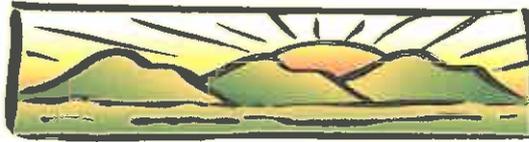
The following alternatives are provided for Council consideration:

1. Approve staff's recommendation;
2. Approve funding the improvements from the General Fund;
3. Approve the server room improvements, but not the EOC improvements;
4. Do not approve the expenditure; or
5. Provide other direction to staff.

Approved by: _____



Steven Adams, City Manager



KING CITY
C A L I F O R N I A

Item No. 9 (G)

REPORT TO THE CITY COUNCIL

DATE: NOVEMBER 15, 2016

TO: HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL

FROM: ROBERT MASTERSON, CHIEF OF POLICE

BY: DARIUS ENGLER, INTERIM POLICE CAPTAIN

RE: CREATION OF TWO TEMPORARY PART-TIME EVIDENCE CLERK POSITIONS

RECOMMENDATION:

Approve the creation of two temporary part-time Evidence Clerk positions to assist with a comprehensive audit of all Police Department evidence.

BACKGROUND:

In the ordinary course of business the King City Police Department collects and preserves evidence. The evidence is held in a secure and restricted location in the Police Department. It is not unusual for criminal cases involving physical evidence to take months or years before being adjudicated. Evidence in capital cases may reside in evidence indefinitely.

DISCUSSION:

The Police Department desires to have a qualified expert perform an audit of the Department's evidence room. Staff is currently in the review and bid process for that service. Prior to the audit, it is desirable to evaluate the current status of evidence in the evidence room.

Because of the intermittent and delayed disposition of evidence, it is not uncommon for evidence that is no longer needed to accumulate. Coupled with the meticulous nature in which evidence must be addressed, the purging of evidence is often held at abeyance until such time when police personnel can provide their undivided attention to the task. Over time, evidence that is no longer needed can accumulate and take up valuable space in the evidence room.

**CITY COUNCIL
POLICE DEPARTMENT PART-TIME EVIDENCE CLERK POSITIONS
NOVEMBER 15, 2016
PAGE 2 OF 2**

The present state of the Police Department evidence room and associated storage areas is overcrowded. Current staffing levels do not allow for the time consuming nature and singleness of focus that is required to review and purge evidence that is no longer needed. Dealing with evidence requires experienced personnel familiar with the laws regarding evidence. In addition, it takes personnel who can make knowledgeable inquiry with the District Attorney's Office and the courts as to what evidence must be retained and what can be destroyed.

Staff therefore recommends the of hiring two part-time Evidence Clerks on a temporary basis, under the direction of the Chief of Police, to review and purge evidence that is no longer needed. Because of the time consuming nature of this work, it is anticipated that approximately 900 hours (450 per each part-time person) will be needed to review the nearly 6,000 items currently logged as evidence at the Police Department. Staff has identified retired public safety personnel that are available and qualified to perform this work.

COST ANALYSIS:

It is recommended that the temporary part-time Evidence Clerk(s) would be hired per the Police Clerk Supervisor, step F, at the hourly (unbenefited) rate of \$23.66. Total cost of step F at 900 hours is \$28,000. The cost would be paid from existing salary savings from vacant positions.

ALTERNATIVES:

The following alternatives are provided for Council consideration:

1. Approve staff's recommendations;
2. Direct staff to contract for the work, which will likely increase cost;
3. Don't approve staff's recommendation;
2. Provide staff other direction.

Submitted by:



Robert Masterson, Chief of Police

Approved by:



Steven Adams, City Manager



Item No. 9 (H)

REPORT TO THE CITY COUNCIL

DATE: NOVEMBER 15, 2016

TO: HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL

FROM: OCTAVIO HURTADO, HANNA & BRUNETTI, CITY ENGINEER

RE: GRANT ENCROACHMENT AGREEMENT WITH SMITH MONTEREY INC. FOR A PORTION OF THE EXISTING CLOCK TOWER ON FIRST STREET IN CITY RIGHT OF WAY

RECOMMENDATION:

It is recommended that Council: 1) grant permission for existing Clock Tower to encroach the First Street right-of-way; and 2) direct City Manager to execute Encroachment Agreement.

BACKGROUND:

The property located at 218 N. First Street is currently in the process of being subdivided. One of the objectives is to provide the right-of-way necessary for the future extension of Broadway street. During this process, it was determined a portion of the existing Clock Tower encroaches upon First Street right-of-way. No agreement was found for this encroachment. A Tentative Parcel Map has been approved by the City and a Parcel Map has been prepared and plan checked.

DISCUSSION:

An encroachment permit will benefit both the Smith's and the City. It allows the building to remain in place until the developer of the Downtown Addition Specific Plan is ready to proceed with the street extension. The term of the encroachment shall remain in place as long as the Clock Tower remains in existence. The Agreement will automatically terminate upon removal of the Clock Tower.

COST ANALYSIS:

There is no financial impact

**CITY COUNCIL
ENCROACHMENT AGREEMENT FOR CLOCK TOWER ON FIRST STREET
NOVEMBER 15, 2016
PAGE 2 of 2**

ALTERNATIVES:

The following alternatives are provided for Council consideration:

- 1) Approve staff's recommendation;
- 2) Not approve the encroachment agreement;
- 3) Provide other direction.

Exhibits:

1. Encroachment Agreement

Submitted by: _____
Octavio Hurtado, Hanna & Brunetti, City Engineer

Approved by:  _____
Steven Adams, City Manager

ENCROACHMENT AGREEMENT

THIS ENCROACHMENT AGREEMENT ("Agreement") is made and entered into effective as of _____, 2016, by and between the **CITY OF KING CITY**, a California municipal corporation (the "City"), and **SMITH-MONTEREY, LLC**, a California limited liability company (the "Grantee").

RECITALS

A. Grantee is the owner of certain real property located at 218 N. First Street, King City, California (the "Grantee Property"). A clock tower is located on the Grantee Property (the "Clock Tower"). A portion of the Clock Tower encroaches upon the First Street right-of-way within the City.

B. City desires to grant and Grantee wishes to receive permission for the Clock Tower to encroach upon a certain strip of land which is forty-four feet long and six feet wide and which is located within the First Street right-of-way (the "Encroachment Area"). The Encroachment Area is legally described in Exhibit A hereto, and depicted in Exhibit B hereto, both of which are incorporated herein.

NOW, THEREFORE, City and Grantee, for good and valuable consideration, hereby agree as follows:

1. Encroachment. The Clock Tower is permitted to encroach upon the Encroachment Area. Grantee, its agents and employees, may enter onto the Encroachment Area under the terms and conditions set forth in this Agreement for the purpose of the maintenance of the Clock Tower, provided that Grantee shall not be permitted to enlarge the portion of the Clock Tower which currently encroaches upon the Encroachment Area without the approval of the City.

2. Term. The term of this Agreement shall be for as long as the Clock Tower remains in existence. This Agreement shall automatically terminate upon the Grantee's demolition and removal of the Clock Tower. Grantee may demolish and remove the Clock Tower at any time, in Grantee's sole discretion.

3. Maintenance of Clock Tower. During the term of this Agreement Grantee agrees to maintain the Clock Tower in good condition at all times, at Grantee's sole cost and expense. Grantee agrees that any and all maintenance work performed in association with the purposes of this Agreement shall be done in a good, safe, workmanlike manner, and in accordance with applicable federal, state and local laws. If Grantee fails to perform its obligation to maintain the Clock Tower as set forth herein, the City may enter the Grantee's Property after ten (10) day's written notice to Grantee (except in case of an emergency, in which case no notice shall be required), perform such maintenance obligations on Grantee's behalf, and

put the Clock Tower in good order, condition and repair, all at Grantee's cost and expense. The costs and expenses of any such performance shall be due and payable within 30 days upon presentation of an invoice therefore.

4. Insurance. Grantee shall obtain and keep in force during the term of this Agreement a Commercial General Liability policy of insurance protecting Grantee and City (as an additional insured) against claims for bodily injury, personal injury and property damage based upon, involving or arising out of the use or maintenance of the Clock Tower. Such insurance shall be on an occurrence basis providing single limit coverage in an amount not less than \$1,000,000.00 per occurrence. The limits of said insurance required by this Agreement, or as carried by Grantee, shall not, however, limit the liability of Grantee or relieve Grantee of any obligation hereunder.

5. Indemnification. Grantee shall defend, indemnify and hold harmless City from all claims, suits, actions, damages, costs or expenses of any kind or nature, including without limitation costs of court and reasonable attorneys' fees, resulting from or in connection with loss of life, bodily or personal injury or property damage arising directly out of or from the use of the Encroachment Area by Grantee or its agents, employees, contractors or subcontractors, except to the extent such loss or damage is caused by the gross negligence or willful misconduct of City.

6. Compliance with Law. Grantee shall use the Clock Tower and the Encroachment Area in accordance with applicable laws. Grantee shall not use or permit the use of the Clock Tower or the Encroachment Area in a manner that is unlawful, creates waste or a nuisance, or that disturbs owners and/or occupants of, or causes damage to the Encroachment Area or neighboring premises or properties.

7. Default. In the event of a default under the terms of this Agreement, the other party shall notify the party in default in writing of the alleged default or breach. Such party shall have thirty (30) days to cure the breach or default, or such longer time as is reasonably necessary to cure the default if it cannot be cured within thirty (30) days. In the event such breach or default is not cured, in addition to any other remedies, including specific performance, the Agreement may be terminated upon written notice, and Grantee shall remove the Clock Tower from the Encroachment Area within a reasonable time thereafter at Grantee's sole cost and expense.

8. Successors and Assigns. The terms and conditions of this Agreement shall be binding upon and shall inure to the benefit of the heirs, successors and assigns of the Parties.

9. Notices. Any notice required or intended to be given to either party under the terms of this Agreement shall be in writing and shall be deemed to be duly given if delivered personally, transmitted by facsimile followed by telephone confirmation or receipt, or sent by United States registered or certified mail, with postage prepaid, return receipt requested, addressed to the party to which notice is to be given at the party's address set forth on the

signature page of this Agreement or at such other address as the parties may from time to time designate by written notice. Notices served by United States mail in the manner above described shall be deemed sufficiently served or given at the time of the mailing thereof.

10. **Waiver.** The waiver by either party of a breach by the other of any provisions of this Agreement shall not constitute a continuing waiver or a waiver of any subsequent breach of either the same or a different provision of this Agreement. No provisions of this Agreement may be waived unless in writing and signed by all Parties to this Agreement. Waiver of any one provision herein shall not be deemed to be a waiver of any other provision herein.

11. **Governing Law and Venue.** This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of California, excluding, however, any conflict of laws rule which would apply the law of another jurisdiction. Venue for purposes of the filing of any action regarding the enforcement or interpretation of this Agreement and any rights and duties hereunder shall be Monterey County, California.

12. **Heading.** The section headings in this Agreement are for convenience and reference only and shall not be construed or held in any way to explain, modify or add to the interpretation of meaning of the provisions of this Agreement.

13. **Severability.** The provisions of this Agreement are severable. The invalidity or unenforceability of any one provision in this Agreement shall not affect the other provisions.

14. **Interpretation.** The Parties acknowledge that this Agreement in its final form is the result of the combined efforts of the Parties and that, should any provision of this Agreement be found to be ambiguous in any way, such ambiguity shall not be resolved by construing this Agreement in favor of or against any Party, but rather by construing the terms in accordance with their general accepted meaning.

15. **Attorney's Fees.** If any Party is required to commence any proceeding or legal action to enforce or interpret any term, covenant, or condition of this Agreement, the prevailing Party in such proceeding or action shall be entitled to recover from the losing Party its reasonable attorney's fees and legal expenses.

16. **Exhibits.** Each exhibit and attachment reference in this Agreement is, by the reference, incorporated into and made a part of this Agreement.

17. **Precedence of Documents.** In the event of any conflict between the body of this Agreement and any Exhibit hereto, the terms and conditions of the body of this Agreement shall control and take precedence over the terms and conditions expressed within the Exhibit or Attachment. Furthermore, any terms or conditions contained within any Exhibit hereto which purport to modify the allocation of risk between the Parties, provided for within the body of this Agreement, shall be null and void.

18. **Cumulative Remedies.** No remedy or election hereunder shall be deemed exclusive but shall, wherever possible, be cumulative with all other remedies at law or in equity.

19. **No Third Party Beneficiaries.** The rights, interests, duties and obligations defined within this Agreement are intended for the specific Parties hereto as identified in the preamble of this Agreement. Notwithstanding anything stated to the contrary in this Agreement, it is not intended that any rights or interests in this Agreement benefit or flow to the interest of any third parties.

20. **Extent of Agreement.** Each Party acknowledges that it has read and fully understand the contents of this Agreement. This Agreement represents the entire and integrated agreement among the Parties with respect to the subject matter hereof and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be modified only by written instrument duly authorized and executed by all Parties herein.

21. **Recitals.** All provisions and Recitals within this Agreement shall be considered part of this contract and carry the same weight, force and effect as any other terms and conditions herein.

22. **Entire Agreement.** This Agreement contains the entire agreement between City and Grantee with respect to the subject matter hereof. All previous proposals and communications relative to this Agreement, whether oral or written, are hereby superseded except to the extent that they have been incorporated into this Agreement. No future waiver of, or exception to any of the terms, conditions, and provisions of this Agreement shall be considered valid unless specifically agreed to in writing by all the parties.

IN WITNESS WHEREFORE, the parties hereto have executed this Agreement as of the date set forth in the first paragraph hereof.

CITY:

CITY OF KING, a California municipal corporation

By: _____

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney

GRANTEE:

SMITH-MONTEREY, LLC, a California limited liability company

By: _____
Jeffrey P. Smith, Member

By: _____
Gregory H. Smith, Member

EXHIBIT A
LEGAL DESCRIPTION OF ENCROACHMENT AREA
[To Be Attached]

EXHIBIT B
DEPICTION OF ENCROACHMENT AREA
[To Be Attached]



Item No. 11 (A)

REPORT TO THE CITY COUNCIL

DATE: NOVEMBER 15, 2016

TO: HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL

FROM: STEVEN ADAMS, CITY MANAGER

BY: PATRICK MATHEWS, GENERAL MANAGER, SALINAS VALLEY RECYCLES

RE: CONSIDERATION OF REVISED AND RESTATED FRANCHISE AGREEMENT WITH USA WASTE OF CALIFORNIA (DBA WASTE MANAGEMENT) FOR SOLID WASTE, RECYCLING AND ORGANICS COLLECTION AND PROCESSING SERVICES, AND APPROVING NEW RATES

RECOMMENDATION:

It is recommended the City Council direct staff to finalize the Revised and Restated Franchise Agreement with a 23.28% rate increase effective January 1, 2017 to include provision of street sweeping services for consideration by the City Council at a public hearing at the November 22, 2016 meeting.

BACKGROUND:

The City's current franchise agreement for the subject services was originally approved in January 1996. Since that time there have been several minor amendments to this agreement. However, it has not been substantially revised to address current State and local law or industry objectives to improve services and recycling of waste materials to higher and better use.

At the April 28, 2015 annual hearing to increase rates for the subject services, a local rate comparison was provided to the Council as background for the proposed rate increase. This rate comparison showed that residential rates for King City were at parity or below as compared to all the other rates for Salinas Valley cities and the County. Commercial rates in King City remained substantially lower than all the other cities and the County.

CITY COUNCIL

CONSIDERATION OF REVISED AND RESTATED FRANCHISE AGREEMENT WITH USA WASTE OF CALIFORNIA (DBA WASTE MANAGEMENT) FOR SOLID WASTE, RECYCLING AND ORGANICS COLLECTION AND PROCESSING SERVICES, AND APPROVING NEW RATES

NOVEMBER 15, 2016

PAGE 2 OF 5

At that meeting, Council had a brief discussion around the future options for services once the agreement expires at the end of 2016. Patrick Mathews, General Manager with Salinas Valley Recycles (SVR), provided an overview of the options:

1. Renegotiate and extend the current agreement with Waste Management, which was the preferred option.
2. Procure services through a competitive process. The City Council would need to consider the cost of solo-procurement and potential for limited interest due to the small size of the contract and distance from other major haulers operating in the area.
3. Join with one or more of the three South Salinas Valley cities in a joint agreement. Greenfield initially expressed interest in working with King City, but later decided to renew its existing Tri-Cities agreement with Gonzales and Greenfield. This option is no longer available to King City.
4. Added option, but not discussed at this meeting: Seek consideration from the other south valley cities to on-ramp into their agreement with Tri-Cities Disposal that was recently extended to June 30, 2025. However, many of the King City rates proposed by Waste Management still remain at or below those currently in effect in the Tri-cities agreement, particularly the commercial rates, which are substantially lower, even with the proposed rate increases.

DISCUSSION:

This proposed agreement would commence on January 1, 2017 and would replace the current 1996 agreement that expires on December 31, 2016. The agreement will include several enhancements, such as increased services for collection of refuse and recycling at City facilities and in City parks, increased commercial recycling and organics collection services to comply with new State mandates, added community clean-up support services, inclusion of a food-waste collection pilot program, street sweeping, and improved rate itemization and annual adjustment methodology.

Street sweeping would include a minimum of 2 sweepings per week for the downtown areas and one block on either side of Broadway. In addition, the entire residential and commercial areas of the City would receive a minimum of one full sweeping per month. This would be consistent with the City's current schedule. Staff believes street sweeping falls within the scope of the waste collection franchise because a tremendous amount of litter is blown out of the bins and creates a condition of refuse throughout the City's streets. A basic sweeping schedule will address this problem. The City may elect to contract directly with Waste Management for additional sweeping services beyond the baseline services provided above. Therefore, services could be enhanced in the future as funding becomes available to address other City goals of beautification and leaf removal.

**CITY COUNCIL
CONSIDERATION OF REVISED AND RESTATED FRANCHISE AGREEMENT
WITH USA WASTE OF CALIFORNIA (DBA WASTE MANAGEMENT) FOR
SOLID WASTE, RECYCLING AND ORGANICS COLLECTION AND
PROCESSING SERVICES, AND APPROVING NEW RATES
NOVEMBER 15, 2016
PAGE 3 OF 5**

The City's current sweepers are well beyond their useful life and are experiencing frequent breakdowns and repairs. As a result, street sweeping has been inconsistent during the past year and will be difficult for the City to continue this level of service. The cost to the City to purchase a new sweeper would be approximately \$209,000.

The rate setting process under this agreement will have some modifications over the prior agreement to improve accuracy and public transparency. There are a number of different components to that make up the customer's rate such as costs for collections services, fuel, landfill disposal and greenwaste processing. Each of these components can be adjusted differently in any given year based on unique factors. The collection services are typically adjusted based on an annual cost of living index, while disposal and greenwaste processing costs are adjusted based on the budgeting decisions of the SVR Board of Directors. By separating the various components, we are more accurately reflecting the actual cost of service over time and providing a more detailed breakdown for the customer on where their money is being spent.

WM has provided supporting information for the proposed rate increase of 23.28% for the renewed and restated franchise agreement. The increase is broken down as follows:

- Due to this pending contract extension, Waste Management has not yet requested its normal annual cost-of-living adjustment previously due on July 1, 2016. Their calculated cost-of living adjustment of 2.80% for the prior year from January 1, 2015 through January 1, 2017 start date of this agreement extension.
- Renegotiation and extension of the WM corporation yard lease at the Jolon Road Transfer Station has an impact on customer rates of 1.79%, for the portion of that yard dedicated to the King City operations (remainder is used for and funded by WM's County franchise).
- Due to the existing age of its fleet, Waste Management will need to refurbish, re-build or replace most of their aging collection fleet to provide for service through the full length of this extension. WM has proposed a cost adjustment of 3.35% to cover the additional cost of fleet upgrades for the eight-year term that are not currently covered under the existing rates.
- Addition of a 3.35% increase to partially cover the cost of waste transportation to the Johnson Canyon Landfill, with an additional 3.35% increase in years 2 and 3 to fully compensate WM for this cost. This is a new cost that had previously been subsidized by the Salinas Valley Solid Waste Authority under the prior operating agreement that expired on September 1, 2016.

CITY COUNCIL

CONSIDERATION OF REVISED AND RESTATED FRANCHISE AGREEMENT WITH USA WASTE OF CALIFORNIA (DBA WASTE MANAGEMENT) FOR SOLID WASTE, RECYCLING AND ORGANICS COLLECTION AND PROCESSING SERVICES, AND APPROVING NEW RATES

NOVEMBER 15, 2016

PAGE 4 OF 5

- City's proposed increase in its franchise fees will add approximately 4.79% to the overall customer rates.
- Addition of 7.20% for provision of supplemental street sweeping services.

This agreement is proposed to be extended to June 30, 2025 to coincide with the termination of the City of Salinas and Tri-Cities agreements. In establishing a co-termination date for all the Salinas Valley Cities, the opportunity to collectively bid all services under one universal agreement can be considered. There are many advantages to collectively bidding with all five cities, including, but not limited to:

1. Economies of scale can provide for the most competitive rates, particularly for smaller cities.
2. More vendors may be interested in the larger collective agreement, further improving competitiveness and increasing new ideas to improve future services.
3. Uniformity of services across the entire Salinas Valley will stabilize costs, and improve customer understanding and education efforts by creating one unified service standard and message.
4. Franchise agreement management will be simplified.

Waste Management has continued to provide excellent service to the City of King and has over time implemented a variety of service improvements and recycling service enhancements that are not adequately memorialized under the current 20-year old franchise agreement. The attached agreement presented for City Council consideration is in a restated format that is currently in use with all the other Salinas Valley Cities and establishes more consistency in service standards and requirements for all cities.

The new franchise agreement includes the increase of the franchise fee from 12.5% to 16.5% as recommended during the City's budget process. The new fee will take place on January 1, 2017. The majority of customer rates will remain at or below those of the other South Salinas Valley cities and unincorporated Monterey County (see Exhibit 2 for area rate comparison).

The item will be presented for formal consideration at a public hearing at the meeting on November 22, 2016. Given the impending expiration of the agreement, the intent of this item is to review the draft with the City Council to identify any immediate concerns so changes can be addressed prior to the final public input and Council action.

**CITY COUNCIL
CONSIDERATION OF REVISED AND RESTATED FRANCHISE AGREEMENT
WITH USA WASTE OF CALIFORNIA (DBA WASTE MANAGEMENT) FOR
SOLID WASTE, RECYCLING AND ORGANICS COLLECTION AND
PROCESSING SERVICES, AND APPROVING NEW RATES
NOVEMBER 15, 2016
PAGE 5 OF 5**

COST ANALYSIS:

The estimated increase in revenue in FY 2016-17 is approximately \$45,000 from the proposed franchise fee adjustment.

ALTERNATIVES:

The following alternatives are presented for City Council consideration:

1. Approve staff's recommendations;
2. Reduce the fee increase by 7.20% by eliminating or delaying the provision for street sweeping services;
3. Provide a short term extension of the current agreement and place the services out to competitive procurement;
4. Request consideration by the Cities of Gonzales, Soledad and Greenfield to "on-ramp" into their franchise agreement which is currently being negotiated for extension to the same termination date as the proposed King City agreement; or
5. Provide staff other direction.

Exhibits:

1. Revised and Restated Franchise Agreement with USA Waste of California (aka. Waste Management) for Solid Waste, Recycling and Organics Collection and Processing Services
2. Salinas Valley Cities/County Franchise Rate Comparison, with and without Street sweeping

Submitted by: _____

Patrick Mathews, General Manager/CAO, Salinas Valley Recycles

Approved by: _____


Steven Adams, City Manager

**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

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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 collection of solid waste can contribute to the accumulation of litter on City streets and therefore, should be promptly removed by the waste hauler, subsequent to solid waste collection, as a means to provide waste collection services 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.

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 Rates or Rates means those rates or charges to 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 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, e-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 specified in this Franchise. 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 approved surcharges and fees, and the applicable Franchise Fee on the entire bill. The Franchise Fee shall be paid by the Franchisee to the City. 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 the applicable Franchise Fee 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 approved surcharges, and the applicable Franchise Fee on the entire bill. The Franchise Fee shall be paid by the Franchisee to the City. 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.

5. **Street Sweeping:** Upon establishment of a Service Fee adjustment mutually agreeable to both parties for post-collection Street Sweeping services, the City Council may, at their discretion, instruct the Franchisee to provide Street Sweeping, in accordance with the provisions of this section and Appendix L. If the City determines that Street Sweeping is necessary to address litter abatement associated with the collection of solid waste, the franchisee shall provide street sweeping services on a mutually agreed upon schedule in accordance with Appendix L. If additional street sweeping services are required by the City for purposes other than post-collection clean-up, the City may negotiate an independent contract to compensate the Franchisee.

It is further agreed that upon request for Street Sweeping services, the City, shall provide the Franchisee 120 days' written notice to allow the Franchisee adequate time to procure additional staffing and/or equipment, if necessary.

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 curbside 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/Overfilled 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 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 rates, 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 RATES

SECTION 7.1 SERVICE FEES

Franchisee shall be responsible for billing and collecting funds from Customers in accordance with the service fees 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 Rates are comprised of seven (7) "Rate Components": WM Franchise Service Fee, Fuel Fee – Diesel, Disposal Fee, AB939 Program Fee, Organic Waste Processing Fee, Franchise Waste Transfer Fee, and City Franchise 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.
 - vii. **City Franchise Fee:** The Franchise Fee paid by Franchisee to the City pursuant to Section 7.6 of the Agreement.
- c. **Service Fee Adjustment.** Commencing on July 1, 2017, and on each Adjustment Date thereafter, the Service Rates 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%.
- 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; for the first Annual Service Fee Adjustment, since the Agreement year will only be a partial year, Franchisee will determine Disposal Tip Fees as if it were a full 12 months by going back to July 1, 2016). 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; for the first Annual Service Fee Adjustment, since the Agreement year will only be a partial year, Franchisee will determine Governmental Fees as if it were a full 12 months by going back to July 1, 2016). 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; for the first Annual Service Fee Adjustment, since the Agreement year will only be a partial year, Franchisee will determine Organics Tip Fees as if it were a full 12 months by going back to July 1, 2016). 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 Waste Transfer fees (“Transfer Fees”) and other applicable surcharges and fees at the Designated Transfer Station Facilities to consolidate, load and transfer Franchise Solid Waste to the Designated Disposal and Processing Facility. Therefore, by April of each year, Franchisee will determine its projected waste Transfer Fees for the Agreement year ending the upcoming June 30 as well as the projected Waste Transfer Fees for the Agreement year ending the next upcoming June 30; for the first Annual Service Fee Adjustment, since the Agreement year will only be a partial year, Franchisee will determine Waste Transfer Fees as if it were a full 12 months by going back to July 1, 2016). The year over year increase from the current year to the next will be the Annual Percent Change.
- vii. **City Franchise Fee.** The Cost Indicator for this Rate Component is the Franchise Fee percentage paid to the City pursuant to Section 7.6 of this Agreement. By April of each year, City will notify Franchisee of the Franchisee Fee percentage for the upcoming Agreement year (effective the upcoming July 1). The year over year increase from the current year to the next (effective the upcoming July 1) will be the Annual Percent Change.

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 rates.

SECTION 7.6 FRANCHISE FEE

The Franchisee shall pay the City a Franchise fee equal to 16.5% 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 and absolute discretion, modify the franchise fee at any time.

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 foregoing 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
147 Fourth Street
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: _____ By: _____

City Clerk: _____ By: _____

APPROVED AS TO FORM:

City Attorney: _____ Dated: _____

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

SERVICE FEE SCHEDULE

DESCRIPTION OF SERVICES	WM							Total Customer Rate
	Franchise Service Fee	Fuel Fee	Landfill Disposal Fee	AB 939 Program Fee	Green Waste Processing Fee	Franchise Waste Transfer Fee	City Franchise Fee	
Component Percentage of Total Rate	49.7%	3.1%	23.8%	5.0%	1.8%	0.0%	16.5%	100.0%
RESIDENTIAL WEEKLY SERVICE - MSW								
1-20 GAL CART/WEEK	\$10.84	\$0.68	\$5.19	\$1.10	\$0.39	\$0.00	\$3.60	\$21.81
1-35 GAL CART/WEEK	\$14.31	\$0.90	\$6.86	\$1.45	\$0.52	\$0.00	\$4.75	\$28.80
1-64 GAL CART/WEEK	\$17.95	\$1.13	\$8.60	\$1.82	\$0.65	\$0.00	\$5.96	\$36.11
1-96 GAL CART/WEEK	\$21.23	\$1.33	\$10.17	\$2.15	\$0.77	\$0.00	\$7.05	\$42.72
1-20 GAL EXTRA PICK-UP ON SVC DAY (EACH)	\$1.86	\$0.12	\$0.89	\$0.19	\$0.07	\$0.00	\$0.62	\$3.75
1-35 GAL EXTRA PICK-UP ON SVC DAY (EACH)	\$1.86	\$0.12	\$0.89	\$0.19	\$0.07	\$0.00	\$0.62	\$3.75
1-64 GAL EXTRA PICK-UP ON SVC DAY (EACH)	\$3.73	\$0.23	\$1.79	\$0.38	\$0.13	\$0.00	\$1.24	\$7.51
1-96 GAL EXTRA PICK-UP ON SVC DAY (EACH)	\$5.62	\$0.35	\$2.69	\$0.57	\$0.20	\$0.00	\$1.86	\$11.30
1-64 GAL CONTAMINATION (RECYCLE/GREEN WASTE)	\$6.22	\$0.39	\$2.98	\$0.63	\$0.22	\$0.00	\$2.06	\$12.51
1-96 GAL CONTAMINATION (RECYCLE/GREEN WASTE)	\$7.35	\$0.46	\$3.52	\$0.75	\$0.27	\$0.00	\$2.44	\$14.79

COMMERCIAL AND MULTIPLE DWELLING CART

SERVICE - MSW

1-35 GAL CART 1X PER WEEK	\$15.80	\$0.99	\$7.57	\$1.60	\$0.57	\$0.00	\$5.25	\$31.79
1-35 GAL CART 2X PER WEEK	\$31.28	\$1.97	\$14.99	\$3.17	\$1.13	\$0.00	\$10.39	\$62.94
1-35 GAL CART 3X PER WEEK	\$47.08	\$2.96	\$22.56	\$4.77	\$1.70	\$0.00	\$15.63	\$94.73
1-35 GAL CART 4X PER WEEK	\$62.88	\$3.95	\$30.13	\$6.38	\$2.27	\$0.00	\$20.88	\$126.52
1-35 GAL CART 5X PER WEEK	\$78.68	\$4.95	\$37.70	\$7.98	\$2.84	\$0.00	\$26.12	\$158.31
1-64 GAL CART 1X PER WEEK	\$19.06	\$1.20	\$9.13	\$1.93	\$0.69	\$0.00	\$6.33	\$38.35
1-64 GAL CART 2X PER WEEK	\$37.74	\$2.37	\$18.08	\$3.83	\$1.36	\$0.00	\$12.53	\$75.94
1-64 GAL CART 3X PER WEEK	\$56.81	\$3.57	\$27.22	\$5.76	\$2.05	\$0.00	\$18.86	\$114.30
1-64 GAL CART 4X PER WEEK	\$75.87	\$4.77	\$36.35	\$7.69	\$2.74	\$0.00	\$25.19	\$152.65
1-64 GAL CART 5X PER WEEK	\$94.93	\$5.97	\$45.49	\$9.63	\$3.43	\$0.00	\$31.52	\$191.00
1-96 GAL CART 1X PER WEEK	\$22.71	\$1.43	\$10.88	\$2.30	\$0.82	\$0.00	\$7.54	\$45.69
1-96 GAL CART 2X PER WEEK	\$44.97	\$2.83	\$21.55	\$4.56	\$1.62	\$0.00	\$14.93	\$90.48
1-96 GAL CART 3X PER WEEK	\$67.68	\$4.25	\$32.43	\$6.86	\$2.44	\$0.00	\$22.47	\$136.17
1-96 GAL CART 4X PER WEEK	\$90.39	\$5.68	\$43.31	\$9.17	\$3.26	\$0.00	\$30.01	\$181.86
1-96 GAL CART 5X PER WEEK	\$113.10	\$7.11	\$54.19	\$11.47	\$4.08	\$0.00	\$37.55	\$227.56

COMMERCIAL AND MULTIPLE DWELLING BIN

SERVICE - MSW

1 CY BINS

1 PICK-UP PER WEEK	\$60.17	\$3.78	\$28.83	\$6.10	\$2.17	\$0.00	\$19.97	\$121.05
2 PICK-UPS PER WEEK	\$119.34	\$7.50	\$57.18	\$12.10	\$4.31	\$0.00	\$39.62	\$240.10
3 PICK-UPS PER WEEK	\$178.52	\$11.22	\$85.54	\$18.10	\$6.44	\$0.00	\$59.26	\$359.18
4 PICK-UPS PER WEEK	\$238.68	\$15.00	\$114.36	\$24.20	\$8.62	\$0.00	\$79.24	\$480.22
5 PICK-UPS PER WEEK	\$297.87	\$18.72	\$142.72	\$30.20	\$10.75	\$0.00	\$98.88	\$599.29

2 CY BINS

1 PICK-UP PER WEEK	\$96.13	\$6.04	\$46.06	\$9.75	\$3.47	\$0.00	\$31.91	\$193.41
2 PICK-UPS PER WEEK	\$184.22	\$11.58	\$88.27	\$18.68	\$6.65	\$0.00	\$61.16	\$370.64

3 PICK-UPS PER WEEK	\$276.12	\$17.35	\$132.30	\$28.00	\$9.97	\$0.00	\$91.66	\$555.53
4 PICK-UPS PER WEEK	\$371.47	\$23.35	\$177.98	\$37.67	\$13.41	\$0.00	\$123.32	\$747.37
5 PICK-UPS PER WEEK	\$467.62	\$29.39	\$224.05	\$47.42	\$16.88	\$0.00	\$155.24	\$940.82
<u>3 CY BINS</u>								
1 PICK-UP PER WEEK	\$136.06	\$8.55	\$65.19	\$13.80	\$4.91	\$0.00	\$45.17	\$273.75
2 PICK-UPS PER WEEK	\$224.32	\$14.10	\$107.48	\$22.75	\$8.10	\$0.00	\$74.47	\$451.31
3 PICK-UPS PER WEEK	\$288.28	\$18.12	\$138.13	\$29.23	\$10.41	\$0.00	\$95.70	\$580.01
4 PICK-UPS PER WEEK	\$376.54	\$23.66	\$180.42	\$38.18	\$13.59	\$0.00	\$125.00	\$757.58
5 PICK-UPS PER WEEK	\$435.41	\$27.36	\$208.62	\$44.15	\$15.72	\$0.00	\$144.54	\$876.03
<u>4 CY BINS</u>								
1 PICK-UP PER WEEK	\$179.68	\$11.29	\$86.09	\$18.22	\$6.49	\$0.00	\$59.65	\$361.50
2 PICK-UPS PER WEEK	\$280.32	\$17.62	\$134.31	\$28.42	\$10.12	\$0.00	\$93.06	\$563.98
3 PICK-UPS PER WEEK	\$380.74	\$23.93	\$182.43	\$38.61	\$13.74	\$0.00	\$126.39	\$766.02
4 PICK-UPS PER WEEK	\$480.73	\$30.21	\$230.34	\$48.75	\$17.35	\$0.00	\$159.59	\$967.21
5 PICK-UPS PER WEEK	\$580.91	\$36.51	\$278.34	\$58.90	\$20.97	\$0.00	\$192.85	\$1,168.77
<u>6 CY BINS</u>								
1 PICK-UP PER WEEK	\$224.38	\$14.10	\$107.51	\$22.75	\$8.10	\$0.00	\$74.49	\$451.45
2 PICK-UPS PER WEEK	\$448.69	\$28.20	\$214.99	\$45.50	\$16.20	\$0.00	\$148.95	\$902.74
3 PICK-UPS PER WEEK	\$528.73	\$33.23	\$253.33	\$53.61	\$19.08	\$0.00	\$175.52	\$1,063.77
4 PICK-UPS PER WEEK	\$753.10	\$47.33	\$360.84	\$76.36	\$27.18	\$0.00	\$250.01	\$1,515.19
5 PICK-UPS PER WEEK	\$1,000.28	\$62.87	\$479.27	\$101.43	\$36.10	\$0.00	\$332.06	\$2,012.51
<u>8 CY BINS</u>								
1 PICK-UP PER WEEK	\$271.91	\$17.09	\$130.28	\$27.57	\$9.81	\$0.00	\$90.27	\$547.07
2 PICK-UPS PER WEEK	\$549.33	\$34.52	\$263.21	\$55.70	\$19.83	\$0.00	\$182.36	\$1,105.23
3 PICK-UPS PER WEEK	\$629.14	\$39.54	\$301.45	\$63.79	\$22.71	\$0.00	\$208.86	\$1,265.80
4 PICK-UPS PER WEEK	\$853.09	\$53.62	\$408.75	\$86.50	\$30.79	\$0.00	\$283.20	\$1,716.38
5 PICK-UPS PER WEEK	\$1,100.46	\$69.16	\$527.28	\$111.58	\$39.72	\$0.00	\$365.32	\$2,214.07

COMMERCIAL BIN SERVICE – ADDITIONAL

CHARGES

1-35 GAL EXTRA PICK-UP ON SVC DAY (EACH)	\$29.12	\$1.83	\$13.95	\$2.95	\$1.05	\$0.00	\$9.67	\$58.59
1-64 GAL EXTRA PICK-UP ON SVC DAY (EACH)	\$30.24	\$1.90	\$14.49	\$3.07	\$1.09	\$0.00	\$10.04	\$60.84
1-96 GAL EXTRA PICK-UP ON SVC DAY (EACH)	\$31.43	\$1.98	\$15.06	\$3.19	\$1.13	\$0.00	\$10.43	\$63.23
1 CU BIN EXTRA PICK-UP ON SVC DAY (EACH)	\$34.92	\$2.19	\$16.73	\$3.54	\$1.26	\$0.00	\$11.59	\$70.26
2 CU BIN EXTRA PICK-UP ON SVC DAY (EACH)	\$41.90	\$2.63	\$20.08	\$4.25	\$1.51	\$0.00	\$13.91	\$84.31
3 CU BIN EXTRA PICK-UP ON SVC DAY (EACH)	\$48.89	\$3.07	\$23.42	\$4.96	\$1.76	\$0.00	\$16.23	\$98.36
4 CU BIN EXTRA PICK-UP ON SVC DAY (EACH)	\$55.87	\$3.51	\$26.77	\$5.67	\$2.02	\$0.00	\$18.55	\$112.41
6 CU BIN EXTRA PICK-UP ON SVC DAY (EACH)	\$69.84	\$4.39	\$33.46	\$7.08	\$2.52	\$0.00	\$23.18	\$140.51
8 CU BIN EXTRA PICK-UP ON SVC DAY (EACH)	\$83.81	\$5.27	\$40.16	\$8.50	\$3.03	\$0.00	\$27.82	\$168.62

CONTAMINATION CHARGES (BASED ON

CONTAINER SIZE)

64 GALLON GREEN WASTE CART (EACH)	\$4.40	\$0.28	\$2.11	\$0.45	\$0.16	\$0.00	\$1.46	\$8.86
96 GALLON GREEN WASTE CART (EACH)	\$5.24	\$0.33	\$2.51	\$0.53	\$0.19	\$0.00	\$1.74	\$10.55
64 GALLON RECYCLE CART (EACH)	\$4.95	\$0.31	\$2.37	\$0.50	\$0.18	\$0.00	\$1.64	\$9.96
96 GALLON RECYCLE CART (EACH)	\$5.24	\$0.33	\$2.51	\$0.53	\$0.19	\$0.00	\$1.74	\$10.55
1 CUBIC RECYCLE YARD CONTAINER (EACH)	\$13.90	\$0.87	\$6.66	\$1.41	\$0.50	\$0.00	\$4.61	\$27.96
2 CUBIC RECYCLE YARD CONTAINER (EACH)	\$22.20	\$1.40	\$10.64	\$2.25	\$0.80	\$0.00	\$7.37	\$44.67
3 CUBIC RECYCLE YARD CONTAINER (EACH)	\$31.42	\$1.97	\$15.06	\$3.19	\$1.13	\$0.00	\$10.43	\$63.22
4 CUBIC RECYCLE YARD CONTAINER (EACH)	\$41.50	\$2.61	\$19.88	\$4.21	\$1.50	\$0.00	\$13.78	\$83.49
6 CUBIC RECYCLE YARD CONTAINER (EACH)	\$51.82	\$3.26	\$24.83	\$5.25	\$1.87	\$0.00	\$17.20	\$104.26
8 CUBIC RECYCLE YARD CONTAINER (EACH)	\$62.79	\$3.95	\$30.09	\$6.37	\$2.27	\$0.00	\$20.85	\$126.34

COMPACTOR SERVICE - MSW (Customer

Owned)

Per CUBIC YARD COMPACTOR	\$16.38	\$1.03	\$7.85	\$1.66	\$0.59	\$0.00	\$5.44	\$32.96
10 CUBIC YARD COMPACTOR	\$163.82	\$10.30	\$78.49	\$16.61	\$5.91	\$0.00	\$54.38	\$329.60
15 CUBIC YARD COMPACTOR	\$245.73	\$15.44	\$117.74	\$24.92	\$8.87	\$0.00	\$81.58	\$494.40
20 CUBIC YARD COMPACTOR	\$327.64	\$20.59	\$156.99	\$33.22	\$11.83	\$0.00	\$108.77	\$659.20
30 CUBIC YARD COMPACTOR	\$491.46	\$30.89	\$235.48	\$49.83	\$17.74	\$0.00	\$163.15	\$988.80

40 CUBIC YARD COMPACTOR	\$655.29	\$41.18	\$313.97	\$66.44	\$23.65	\$0.00	\$217.54	\$1,318.40
<u>DROP BOX/ROLL OFF SERVICE - MSW</u>								
15 CUBIC YARD CONTAINER	\$186.59	\$11.73	\$89.40	\$18.92	\$6.73	\$0.00	\$61.94	\$375.40
20 CUBIC YARD CONTAINER	\$248.76	\$15.63	\$119.19	\$25.22	\$8.98	\$0.00	\$82.58	\$500.49
30 CUBIC YARD CONTAINER	\$359.04	\$22.56	\$172.03	\$36.41	\$12.96	\$0.00	\$119.19	\$722.36
40 CUBIC YARD CONTAINER	\$593.13	\$37.28	\$284.19	\$60.14	\$21.41	\$0.00	\$196.90	\$1,193.34

NOTES TO SERVICE FEE SCHEDULE

* Ancillary, green waste and recycling charges that are not in this schedule will be increased on an annual basis per the Service Fee calculation mechanism.

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 X 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	185.33												185.33
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 FEE ADJUSTMENT CALCULATION EXAMPLE

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	City Franchise Fee	Total Customer Rate
Year 1: November 1 - June 30, 2017	Weighted Avg	49.7%	3.1%	23.8%	5.0%	1.8%	TBD	16.5%	100.0%
1-35 gal Rate	Year 1 Rate	\$14.31	\$0.90	\$6.86	\$1.45	\$0.52	TBD	\$4.76	\$28.80
Year 2: July 1 - June 30, 2018	Weighted Avg	2.00%	0.12%	1.35%	0.00%	0.00%	0.00%	0.79%	4.27%
1-35 gal Rate	Year 2 Rate	\$14.60	\$0.90	\$6.95	\$1.45	\$0.52		\$4.80	\$30.03
Year 3: July 1 - June 30, 2019	Weighted Avg	2.00%	0.70%	0.74%	0.00%	0.00%	0.00%	0.00%	3.44%
1-35 gal Rate	Year 3 Rate	\$14.89	\$0.91	\$7.00	\$1.45	\$0.52		\$4.80	\$31.66

Note 1: Example of Landfill Disposal Fee Change for Year 1.

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 Franchise Fee Change for Year 1.

Calculation for Change in Franchise Fee	Current Franchise Fee	New Franchise Fee	Pct. Change	Applied Change in Rates	Formula for Calculated Change in Rate
	12.50%	16.50%	4.00%	4.79%	$4.00\% / (100\% - 16.50\%) = 4.79\%$

Note 3: Example of WM Franchise Service Fee Change for Year 1.

	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:

- Percentage Weight of Rate Component based upon costs for the previous calendar year.
- 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.)
- Disposal, Fee, AB939 Program Fee, Organics Waste Processing Fee and City Franchise Fee are 100% pass through to rate payers.
- WM Franchise Service Fee Weighted % Change subject to a Minimum 2% and a Maximum 6% annual increase.

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 3)	Consumer Price Index for All Urban Consumers: Water and sewer and trash collection services (BLS Series ID CUUR0000SEHG)	3.04%	33.5%	1.02%	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%	3.1%	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%	40.0%	1.35%	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%	5.0%	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%	1.8%	0.00%	Assumed no increase in this example. Any increase is a 100% pass through to rate payers.
Franchise Waste Transfer Fee	TBD	0.00%	0.0%	0.00%	TBD
City Franchise Fee (Note 2)	Franchise Fee percentage paid to the City	4.79%	16.5%	0.79%	Franchise Fee is a 100% pass through to rate payers.
		Total	100.0%	3.29%	Annual Rate Adjustment
Franchise Service Fee (Note 3)				-1.02%	WM Franchise Service Fee subject to a minimum of 2% and a maximum 6% increase.
Franchise Service Fee (Note 3)				2.00%	WM Franchise Service Fee subject to a minimum of 2% and a maximum 6% increase.
		Service Fee Rate Adjustment		4.27%	Combined Rate 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 3)	Consumer Price Index for All Urban Consumers: Water and sewer and trash collection services (BLS Series ID CUUR0000SEHG)	3.04%	45.7%	1.39%	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%	10.0%	0.70%	Assumed a 7% increase as an example.
Disposal Fee (Note 1)	SWSWA Change in Disposal	3.38%	22.0%	0.74%	Index of 3.38% is an example and is a 100% pass through to rate payers.
AB939 Program Fee	SWSWA Change in Government Fees	0.00%	4.5%	0.00%	Assumed no increase in this example. Any increase is a 100% pass through to rate payers
Organic Waste Processing Fee	SWSWA Change in Green Waste Processing	0.00%	1.8%	0.00%	Assumed no increase in this example. Any increase is a 100% pass through to rate payers.
Franchise Waste Transfer Fee	TBD	0.00%	0.0%	0.00%	TBD
City Franchise Fee (Note 2)	Change in King City Franchise Fees	0.00%	16.0%	0.00%	Franchise Fee is a 100% pass through to rate payers.
		Total	100.0%	2.8%	Annual Rate Adjustment
Franchise Service Fee (Note 3)				-1.39%	All Other Costs subject to a minimum of 2% and a maximum 6% increase.
Franchise Service Fee (Note 3)				2.00%	All Other Costs subject to a minimum of 2% and a maximum 6%
		Service Fee Rate Adjustment	100.0%	3.44%	Combined Rate Increase

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.

APPENDIX L

STREET SWEEPING

In accordance with Section 4.1.D.5, it is the responsibility of the Franchisee to provide street sweeping services to the City upon request. If street sweeping is provided to the City by the Franchisee, the City will provide a dedicated water supply and sufficient space for drop-box storage. Accordingly, the following minimum requirements must be met by the Franchisee:

1. Equipment:

- a. Street Sweeping service shall be provided by Franchisee with Franchisee equipment and personnel. The Franchisee shall have the right to subcontract this service with the approval by the City Manager or their designee.
- b. Water from the sweeper's water system shall be used during all sweeping to provide dust suppression and prevent unnecessary wear to moving parts or vacuum apparatus.
- c. Street Sweepers used as part of this Franchise must meet California Air Resources Board requirements, as well as compliance with Article V of this Franchise.

2. Operations:

- a. Establish and maintain a continuous level of cleanliness of City streets in order to assure protection of the health, safety and welfare of the community.
- b. Clean City streets in a systematic and coordinated manner that compliments solid waste collection and other City services, by use of a routing system that provides high-level street cleaning practices while maintaining acceptable costs. Routes shall be agreed upon and change as growth occurs. All parties agree to work in good faith on changes to routes.
- c. All streets shall be swept along paved surfaces for the full length and width of the shoulder where there is either a raised curb or gutter, median or median barrier to the end of the pavement.
- d. Streets shall be maintained clean and free of debris commensurate with the number of parked cars and access to the curb and gutter for cleaning. This may require two passes of an area at the discretion of the operator if sufficient time is available for completion of the sweeping route.
- e. When feasible, leave routes to sweep around schools and neighborhood areas where sweeping cannot be accomplished after school begins.
- f. Emergency response (accidents/spills).
- g. Additional limited sweeping support of facility parking lots upon request for Parks/Community Centers/Libraries.
- h. Disposal of debris from street sweeping shall be the responsibility of the Franchisee. Franchisee agrees to work with City for sampling the material removed from streets if required or desired.

- i. City may determine that some areas in their community should be swept more frequently in exchange for less frequently in another area. If the areas are approximately equal in, there shall be no changes for this exchange of frequency.
- j. The City may order the suspension of sweeping/cleaning operations whenever, in their judgment, current or impending weather conditions are such that sweeping/cleaning cannot be carried out in a safe and/or effective manner.

3. Schedule:

- a. Schedule of sweeping shall be by mutual agreement to be updated prior to the January 1, 2017 commencement of this agreement.

4. Records:

- a. Records shall be maintained recording the daily cubic yards or tons of debris collected from each street sweeper.
- b. Records shall be maintained recording the number of curb miles swept.

5. Customer Service:

- a. The Franchisee maintains a 24-hour phone number to accept residential concerns or complaints regarding the street sweeping program.
- b. Response to resident complaints or concerns shall, whenever possible, occur the same day, or within one working-day.

6. Fees

The Franchisee shall be provided an adjustment to its Service Fee, mutually agreeable to both parties, as compensation for Street Sweeping services and shall provide weekly street sweeping services to the City on the first working day following each residential collection route and once per week along the commercial collection routes. If additional street sweeping services are required by the City for purpose other than post-collection clean-up, the City may negotiate an independent contract to compensate the Franchisee.

2017 REGIONAL GARBAGE/RECYCLING RATE COMPARISON

EXHIBIT 2

	2015 King City	King City	Increase w/Street Sweeping	King City	Increase w/o Street Sweeping	Greenfield - Soledad - Gonzales*	Salinas	Monterey County
	Rates	Proposed 2017 Rates w/Street Sweeping		Proposed 2017 Rates w/o Street Sweeping				
20-Gallon Residential Service	\$19.40	\$23.92	23.28%	\$22.52	16.08%	n/a	\$21.04	\$25.32
32/35-Gallon Residential Service	\$25.62	\$31.58	23.28%	\$29.74	16.08%	n/a	\$24.44	\$30.78
48-Gallon Residential Service	n/a	n/a		n/a		n/a	n/a	n/a
64-Gallon Residential Service	\$32.12	\$39.60	23.28%	\$37.28	16.08%	\$28.10	\$33.88	\$48.26
96-Gallon Residential Service	\$38.00	\$46.85	23.28%	\$44.11	16.08%	\$44.69	\$44.77	\$60.32
1 Cubic Yard Commercial Service	\$107.69	\$132.76	23.28%	\$125.01	16.08%	\$170.26	\$281.58	\$175.17
2 Cubic Yard Commercial Service	\$172.06	\$212.12	23.28%	\$199.73	16.08%	\$329.05	\$339.27	\$280.26
3 Cubic Yard Commercial Service	\$243.53	\$300.22	23.28%	\$282.69	16.08%	\$477.91	\$402.11	\$404.64

* Approved rates for Tri-Cities Disposal Franchise extension (Gonzales, Greenfield and Soledad) effective January 1, 2017
 ** Estimated 3% rate increase for Monterey County (SVR unincorporated), pending County Board of Supervisors approval in early 2017



Item No. 11 (B)

REPORT TO THE CITY COUNCIL

DATE: NOVEMBER 15, 2016

TO: HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL

FROM: STEVEN ADAMS, CITY MANAGER

RE: CONSIDERATION OF SALE OF CITY PARCEL NUMBER 026-381-001 AND A PORTION OF CITY PARCEL NUMBERS 245-111-035 AND 245-111-036

RECOMMENDATION:

It is recommended the City Council: declare City Parcel Number 026-381-001 and a Portion of City Parcel Numbers 245-111-035 and 245-111-036 as surplus property; 2) approve and authorize the City Manager to execute a Listing Agreement with Cushman and Wakefield U.S., Inc. for the sale of the City Parcel Number 026-381-001 at a listing price of \$322,000; 3) approve a listing Agreement with Cushman and Wakefield U.S., Inc. for the sale of a portion of City Parcel Numbers 245-111-035 and 245-111-036 at a listing price of \$2,046,000; and 4) direct staff to allow the current lessee of the property to match or exceed any offer prior to a sale.

BACKGROUND:

During the budget process, the City Council approved the revenue strategy of selling properties with no identified proposed use by the City. Three properties were identified, which includes the two proposed to be listed for sale at this time. Both properties are zoned for agricultural use.

The first is a roughly 23-acre parcel located in the eastern portion of the City, which can be accessed off of Jayne Street. It was owned by the City because it was formerly a spray field for a prior wastewater treatment facility. It has been maintained by the City because a proposed future road traverses across the property. However, since construction of the road is indefinite and at least many years away, it is instead proposed to maintain an easement on the property for the potential future road and proceed to sell it.

CITY COUNCIL

**CONSIDERATION OF SALE OF CITY PARCEL NUMBER 026-381-001 AND
THE CITY PARCEL NEAR PARCEL NUMBERS 245-111-035 AND 245-111-
036**

NOVEMBER 15, 2016

PAGE 2 OF 3

The second property consists of 170.5 acres adjacent to the City's wastewater treatment plant. The property is part of two parcels. Therefore, a new parcel would need to be created as part of the sale. However, only approximately 93 acres are suitable for and currently leased for farming. The remaining portion consists of land adjacent to the Salinas River. The property has been maintained for expansion of the wastewater treatment plan. However, since it is now proposed to upgrade the plant to tertiary treatment, the land is no longer needed. There is a second parcel owned by the City on the other side of the wastewater treatment plant, which is recommended to be retained until the City's master plan for the wastewater treatment upgrade project is completed in case any need for additional land is identified.

DISCUSSION:

Both properties are proposed to be sold as part of the City's strategy to pay down the General Fund negative fund balance. A Request for Proposal was distributed last year for real estate services in order to sell other properties owned by the Successor Agency. Cushman Wakefield U.S., Inc. was selected from that process to list the City's property on Industrial Way, which was sold in July. The City was satisfied with their services. As a result, it is recommended they be utilized again for the sale of these properties. It is proposed that an impartial outside professional represent the City in these sales to ensure the best price possible is received and to avoid any perception of impropriety in the process.

The listing prices are recommended based upon consultation with the Cushman Wakefield, Inc. representative. The listing price for the first property is based on 23 acres at a cost of \$14,000 per acre. The second property is based on 97 acres at a cost of \$22,000 per acre. Both properties have constraints and characteristics that reduce the proposed sale price from current maximum agricultural land values.

Both properties have adjacent farm owners that provide the most logical and feasible buyers, who will be approached directly in addition to the listing. As a result, the listing agreements include a proposed varied commission amount. The fee will be reduced to 3% if a sales agreement is reached with the neighboring property owner and 4% if the property owner utilizes their own agent. However, if the City's agent is able to identify another buyer willing to pay a higher price, the fee will then be the standard 6%.

The current lessee of the property adjacent to the wastewater treatment plant requested to renegotiate the lease to provide a first right of refusal. Since the City intends to sell the property, it is instead recommended that Council direct

**CITY COUNCIL
CONSIDERATION OF SALE OF CITY PARCEL NUMBER 026-381-001 AND
THE CITY PARCEL NEAR PARCEL NUMBERS 245-111-035 AND 245-111-
036
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staff to ensure the lessee is provided an opportunity to match any other offers before the property is sold.

COST ANALYSIS:

Funding from the sales will be used to reduce the General Fund negative fund balance and are included as estimated revenue in the FY 2016-17 Annual Budget.

ALTERNATIVES:

The following alternatives are provided for City Council consideration:

1. Approve staff's recommendation;
2. Approve the listing agreements, but identify a different listing price;
3. Do not approve selling the properties at this time; or
4. Provide staff other direction.

Exhibits:

1. Listing Agreement with Cushman and Wakefield U.S., Inc. for the sale of parcel number 026-381-001
2. Listing Agreement with Cushman and Wakefield U.S., Inc. for the sale of a portion of City parcel numbers 245-111-035 and 245-111-036

Prepared and Approved by:



Steven Adams, City Manager

LISTING AGREEMENT FOR SALE

LISTING AGREEMENT
FOR SALE

City of King ("Owner") appoints **Cushman & Wakefield U.S, Inc.** ("C&W") as its sole agent and grants to C&W the exclusive right to sell the real property located at **King City, CA- APN # 026-381-001** (the "Property") as shown in Exhibit A, as provided below.

1. Term. The term of this Agreement will commence on **November 1, 2016** and will expire on **April 30, 2017**.
2. Services. C&W will use its efforts to obtain a satisfactory purchaser for the Property at a sale price to be determined by Owner and on such other terms as are acceptable to Owner. C&W will negotiate the business terms of any purchase and sale agreement on behalf of Owner and in Owner's best interest, subject to Owner's review and final approval, except as otherwise directed by Owner. C&W will cooperate with other licensed real estate brokers.
3. Marketing. Owner authorizes C&W to advertise and place signage on the Property, subject to Owner's approval of any advertisements and signage. C&W, at its own expense, will place its standard sign on the Property and will prepare and distribute a standard brokerage flyer. All advertising whether prepared or issued by C&W or by Owner will identify C&W as Owner's exclusive agent for the Property.
4. Referrals. During the term of this Agreement, Owner will refer to C&W all inquiries and offers received by Owner with respect to the Property, regardless of the source of such inquiries or offers.
5. Commission. If, during the term hereof, Owner sells any interest in the Property, Owner will pay to C&W a commission in accordance within the attached Schedule of Commissions. Within 10 days after the end of the term, C&W will provide to Owner a list of prospective purchasers to whom the Property was submitted by any party during the term. If a prospective purchaser, appearing on the list, enters into a purchase and sale agreement during the term or within 90 days after the end of the term, and thereafter the sale is closed, Owner will pay a commission to C&W as provided above. Owner agrees that such 90-day period will be extended for so long as negotiations with a prospective purchaser are continuing.
6. Outside brokers. If C&W recognizes an outside broker authorized to represent the purchaser in a transaction for which a commission is payable hereunder, C&W will request such broker to agree to accept the outside broker portion of the commission computed and payable in accordance with the annexed Schedule, and if such other broker agrees, Owner will pay C&W the commission computed and payable in accordance with the Schedule out of which C&W will pay to such other broker its agreed upon commission and retain the balance of the commission as C&W's compensation. If the other broker does not so agree, then negotiations will be suspended until such agreement is obtained. The term "outside broker" means a broker other than **Michael Bassetti of C&W and Leticia Bugarin of C&W**. Notwithstanding the foregoing, if a gross receipts tax will be imposed on the commission payable to both C&W and the outside broker, then and in that event Owner agrees to pay the outside broker directly its agreed upon share of the commission.
7. Representation of Purchasers. Owner acknowledges and agrees that C&W may represent potential purchasers and consents to such dual representation, provided C&W timely discloses any such dual representation to Owner.

8. Fees and Expenses. If either party commences litigation against the other party to enforce its rights under this Agreement, the prevailing party will be entitled to recover from the other party the costs and expenses (including reasonable attorneys' fees) incurred.

9. Authority. Owner represents that it is in fact the owner of the Property and has the right to sell the Property. The individuals signing below represent that they are authorized to sign this Agreement on behalf of the entity indicated.

10. Professional Advice. C&W recommends that Owner obtain legal, tax or other professional advice relating to this Agreement and the proposed sale of the Property as well as the condition and/or legality of the Property, including, but not limited to, the Property's improvements, equipment, soil, tenancies, title, environmental aspects and compliance with the Americans with Disabilities Act. C&W will have no obligation to investigate any such matters unless expressly otherwise agreed to in writing by Owner and C&W. Owner further agrees that in determining the financial soundness of any prospective purchaser, Owner will rely solely upon Owner's own investigation and evaluation, notwithstanding C&W's assistance in gathering any financial information.

11. OFAC. Each party represents and warrants to the other party that it, and all persons and entities owning (directly or indirectly) an ownership interest in it: (a) are not, and will not become, a person or entity with whom a party is restricted from doing business with under regulations of the Office of Foreign Asset Control ("OFAC") of the Department of the Treasury (including, but not limited to, those named on OFAC's Specially Designated and Blocked Persons list) or under any statute, executive order (including, but not limited to, the September 24, 2001, Executive Order 13224 Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism), or other governmental action; and (b) are not knowingly engaged in, and will not knowingly engage in, any dealings or transactions or be otherwise associated with such persons or entities described in clause (a) above.

12. Miscellaneous. This Agreement shall be governed by the laws of the State of California. This Agreement constitutes the entire agreement between the parties regarding the subject matter herein, and no amendments, changes or modifications may be made to this Agreement without the express written consent of each of the parties. If any term or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the terms and provisions of the Agreement shall remain in full force and effect and shall in no way be affected, impaired or invalidated. No failure or delay by a party in exercising any right hereunder or any partial exercise thereof shall operate as a waiver thereof or prohibit any other or further exercise of any right hereunder. This Agreement shall benefit and be binding upon the parties and their respective successors and assigns. This Agreement may be executed and delivered (including by facsimile, "pdf" or other electronic transmission) in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same Agreement.

13. Agency Disclosure. Owner acknowledges that it has received a copy of C&W's Disclosure Regarding Real Estate Agency Relationship and that Owner has returned a signed copy thereof to C&W.

LISTING AGREEMENT FOR SALE

CITY OF KING

By: _____
Name: _____
Title: _____
Date: _____

CUSHMAN & WAKEFIELD U.S., INC.

By: _____
Name: _____
Title: _____
Date: _____

By: _____
Name: _____
Title: _____
Date: _____

By: _____
Name: _____
Title: _____
Date: _____

[Schedule of Commissions Follows]

SCHEDULE OF COMMISSIONS FOR SALE

The total commission shall not exceed 4%, 2% to the Buyer's agent and 2% to the Seller's agent, if Jerry Rava is represented by a Broker other than Michael Bassetti and Leticia Bugarin, or

C&W shall receive no more than 3% of total sales price if Jerry Rava, or any of his business entities purchases the Property, or

For any other purchasers, the total commission shall not exceed 6% of the total sales price.

Time of Payment: The commission shall be paid in full at the time of the closing or transfer of title to the Property, except in the case of an installment purchase contract, in which case the commission shall be paid in full at the time of the execution and delivery of the installment purchase contract between Owner and purchaser.

Computation of Sales Price: The commission shall be computed in accordance with the above rate(s) based upon the total sales price, which shall include any mortgages, loans or other obligations of Owner which may be assumed by the purchaser or which the purchaser takes title "subject to," any purchase money loans or mortgages taken back by Owner, the sales price of any fixtures or other personal property sold by separate agreement between Owner and purchaser as part of the overall sales of the real property, and the current market value of any other real or personal property transferred from the purchaser to Owner.

Purchase Option: If Owner grants a purchase option, C&W will be paid a commission at the above rate(s) as and when amounts are payable for the option (and for extensions thereof). Upon closing of the sale, C&W will be paid a commission at the above rate on the total sales price (excluding any amount paid for the option and applied to the sales price).

Deposit: In the event title does not close and the deposit is retained by Owner, the commission to be paid C&W shall be either 1/2 of the amount of the deposit, or the regular commission computed as set forth above, whichever is less.

**NOTICE TO OWNERS, BUYERS AND TENANTS REGARDING
ENVIRONMENTAL MATTERS,
AMERICANS WITH DISABILITIES ACT AND RELATED LAWS,
FLOOD DISCLOSURE, ZONING/USE DISCLOSURE AND
ALQUIST-PRIOLO SPECIAL EARTHQUAKE FAULT ZONING ACT**

ENVIRONMENTAL MATTERS

It is essential that all parties to real estate transactions be aware of the health, liability and economic impact of environmental factors on real estate. Cushman & Wakefield does not conduct investigations or analyses of environmental matters and, accordingly, urges the parties to a real estate transaction to retain qualified environmental professionals to determine whether hazardous or toxic wastes or substances (such as asbestos, PCBs and other contaminants or petro-chemical products stored in underground tanks) or other undesirable materials or conditions are present at the property and, if so, whether any health danger or other liability exists. Such substances may have been used in the construction or operation of buildings or may be present as a result of previous activities at the property.

Various laws and regulations have been enacted at the federal, state and local levels dealing with the use, storage, handling, removal, transport and disposal of toxic or hazardous wastes and substances. Depending upon past, current and proposed uses of the property, it may be prudent to retain an environmental expert to conduct a site investigation and/or building inspection. If hazardous or toxic substances exist or are contemplated to be used at the property, special governmental approvals or permits may be required. In addition, the cost of removal and disposal of such materials may be substantial. Consequently, legal counsel and technical experts should be consulted where these substances are or may be present.

AMERICANS WITH DISABILITIES ACT AND RELATED LAWS

As an owner or tenant of real property, you may be subject to the Americans with Disabilities Act (the ADA), a Federal law codified at 42 USC Section 12101 et seq. Among other requirements of the ADA that could apply to your property, Title III of the ADA requires owners and tenants of "public accommodations" to remove barriers to access by disabled persons and provide auxiliary aids and services for hearing, vision or speech impaired persons by January 26, 1992. The regulations under Title III of the ADA are codified at 28 CFR Part 36.

We recommend that you and your attorney review the ADA and the regulations, and, if appropriate, your proposed lease or purchase agreement, to determine if this law would apply to you, and the nature of the requirements. These are legal issues. Cushman & Wakefield cannot give you legal advice on these issues.

Furthermore, all California commercial leases regardless of size executed on or after July 1, 2013 must contain a provision disclosing whether the premises have been inspected by a government-approved Certified Access Specialist (CASp) and if so, whether the premises have been determined

to be in compliance with all applicable construction-related disability accessibility standards. The law (California *Civil Code* §1938) does not require a landlord to conduct a CASp inspection of the property; however, it does require that the landlord disclose whether or not an inspection has been completed and if so, whether the property meets the applicable accessibility standards.

FLOOD DISCLOSURE

If the premises is located in a Federally Designated Flood Zone, the Tenant's real and personal property situated on or in the premises is not protected by the hazard insurance policy for the property carried by the Landlord. The Tenant is responsible for investigating the Flood Zone status of the premises and obtaining insurance to cover the Tenant's property if it so desires.

ZONING/USE DISCLOSURE

Prior to executing a lease, the Tenant is responsible for determining that the zoning applicable to the property allows the Tenant to use the premises for the Tenant's intended use, and that all building codes, parking requirements, and other governmental requirements, improvements required, and permits necessary have been met or are available to Tenant. Cushman & Wakefield has made no representations, except in writing, if any, concerning the zoning and allowable use of the premises and any requirements that may be imposed upon the Tenant by any governmental agency. If the Tenant's use of the premises requires a Use Permit or other permits from a governmental authority it could take several months to obtain same, and Tenant may still be responsible for the payment of rent and other charges whether or not such permits are ultimately obtained.

ALQUIST-PRIOLO SPECIAL EARTHQUAKE FAULT ZONING ACT

The property may be situated in an Earthquake Fault Zone as designated under the Alquist-Priolo Earthquake Fault Zoning Act, Sections 2621-2630 inclusive, of the California *Public Resources Code*; and, as such the construction of development on the property of any structure for human occupancy may be subject to the findings of a geologic report prepared by a geologist registered with the State of California, unless such report is waived by the city or county under the terms of that Act. No representations on this subject are made by Cushman & Wakefield or its agents or employees, and the Tenant/Purchaser is advised to make its own inquiry into this situation prior to entering into a lease or sale agreement.

By your signature below, you acknowledge that you have read and understand this disclosure and have received a copy:

Received on _____, 20__

Signature: _____

LISTING AGREEMENT FOR SALE

Printed Name: _____

LISTING AGREEMENT FOR SALE

LISTING AGREEMENT
FOR SALE

City of King ("Owner") appoints **Cushman & Wakefield U.S, Inc.** ("C&W") as its sole agent and grants to C&W the exclusive right to sell the real property located at **Near King City, CA-APN #'s 245-111-035 and 245-111-036** (the "Property") as shown in Exhibit A, as provided below.

1. Term. The term of this Agreement will commence on **November 1, 2016** and will expire on **April 30, 2017**.
2. Services. C&W will use its efforts to obtain a satisfactory purchaser for the Property at a sale price to be determined by Owner and on such other terms as are acceptable to Owner. C&W will negotiate the business terms of any purchase and sale agreement on behalf of Owner and in Owner's best interest, subject to Owner's review and final approval, except as otherwise directed by Owner. C&W will cooperate with other licensed real estate brokers.
3. Marketing. Owner authorizes C&W to advertise and place signage on the Property, subject to Owner's approval of any advertisements and signage. C&W, at its own expense, will place its standard sign on the Property and will prepare and distribute a standard brokerage flyer. All advertising whether prepared or issued by C&W or by Owner will identify C&W as Owner's exclusive agent for the Property.
4. Referrals. During the term of this Agreement, Owner will refer to C&W all inquiries and offers received by Owner with respect to the Property, regardless of the source of such inquiries or offers.
5. Commission. If, during the term hereof, Owner sells any interest in the Property, Owner will pay to C&W a commission in accordance within the attached Schedule of Commissions. Within 10 days after the end of the term, C&W will provide to Owner a list of prospective purchasers to whom the Property was submitted by any party during the term. If a prospective purchaser, appearing on the list, enters into a purchase and sale agreement during the term or within 90 days after the end of the term, and thereafter the sale is closed, Owner will pay a commission to C&W as provided above. Owner agrees that such 90-day period will be extended for so long as negotiations with a prospective purchaser are continuing.
6. Outside brokers. If C&W recognizes an outside broker authorized to represent the purchaser in a transaction for which a commission is payable hereunder, C&W will request such broker to agree to accept the outside broker portion of the commission computed and payable in accordance with the annexed Schedule, and if such other broker agrees, Owner will pay C&W the commission computed and payable in accordance with the Schedule out of which C&W will pay to such other broker its agreed upon commission and retain the balance of the commission as C&W's compensation. If the other broker does not so agree, then negotiations will be suspended until such agreement is obtained. The term "outside broker" means a broker other than **Michael Bassetti of C&W and Leticia Bugarin of C&W**. Notwithstanding the foregoing, if a gross receipts tax will be imposed on the commission payable to both C&W and the outside broker, then and in that event Owner agrees to pay the outside broker directly its agreed upon share of the commission.
7. Representation of Purchasers. Owner acknowledges and agrees that C&W may represent potential purchasers and consents to such dual representation, provided C&W timely discloses any such dual representation to Owner.

8. Fees and Expenses. If either party commences litigation against the other party to enforce its rights under this Agreement, the prevailing party will be entitled to recover from the other party the costs and expenses (including reasonable attorneys' fees) incurred.

9. Authority. Owner represents that it is in fact the owner of the Property and has the right to sell the Property. The individuals signing below represent that they are authorized to sign this Agreement on behalf of the entity indicated.

10. Professional Advice. C&W recommends that Owner obtain legal, tax or other professional advice relating to this Agreement and the proposed sale of the Property as well as the condition and/or legality of the Property, including, but not limited to, the Property's improvements, equipment, soil, tenancies, title, environmental aspects and compliance with the Americans with Disabilities Act. C&W will have no obligation to investigate any such matters unless expressly otherwise agreed to in writing by Owner and C&W. Owner further agrees that in determining the financial soundness of any prospective purchaser, Owner will rely solely upon Owner's own investigation and evaluation, notwithstanding C&W's assistance in gathering any financial information.

11. OFAC. Each party represents and warrants to the other party that it, and all persons and entities owning (directly or indirectly) an ownership interest in it: (a) are not, and will not become, a person or entity with whom a party is restricted from doing business with under regulations of the Office of Foreign Asset Control ("OFAC") of the Department of the Treasury (including, but not limited to, those named on OFAC's Specially Designated and Blocked Persons list) or under any statute, executive order (including, but not limited to, the September 24, 2001, Executive Order 13224 Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism), or other governmental action; and (b) are not knowingly engaged in, and will not knowingly engage in, any dealings or transactions or be otherwise associated with such persons or entities described in clause (a) above.

12. Miscellaneous. This Agreement shall be governed by the laws of the State of California. This Agreement constitutes the entire agreement between the parties regarding the subject matter herein, and no amendments, changes or modifications may be made to this Agreement without the express written consent of each of the parties. If any term or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the terms and provisions of the Agreement shall remain in full force and effect and shall in no way be affected, impaired or invalidated. No failure or delay by a party in exercising any right hereunder or any partial exercise thereof shall operate as a waiver thereof or prohibit any other or further exercise of any right hereunder. This Agreement shall benefit and be binding upon the parties and their respective successors and assigns. This Agreement may be executed and delivered (including by facsimile, "pdf" or other electronic transmission) in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same Agreement.

13. Agency Disclosure. Owner acknowledges that it has received a copy of C&W's Disclosure Regarding Real Estate Agency Relationship and that Owner has returned a signed copy thereof to C&W.

LISTING AGREEMENT FOR SALE

CITY OF KING

By: _____
Name: _____
Title: _____
Date: _____

CUSHMAN & WAKEFIELD U.S., INC.

By: _____
Name: _____
Title: _____
Date: _____

By: _____
Name: _____
Title: _____
Date: _____

By: _____
Name: _____
Title: _____
Date: _____

[Schedule of Commissions Follows]

SCHEDULE OF COMMISSIONS FOR SALE

The total commission shall not exceed 4%, 2% to the Buyer's agent and 2% to the Seller's agent, if John Romans is represented by a Broker other than Michael Bassetti and Leticia Bugarin, or

C&W shall receive no more than 3% of total sales price if John Romans, or any of his business entities purchases the Property, or

For any other purchasers, the total commission shall not exceed 6% of the total sales price.

Time of Payment: The commission shall be paid in full at the time of the closing or transfer of title to the Property, except in the case of an installment purchase contract, in which case the commission shall be paid in full at the time of the execution and delivery of the installment purchase contract between Owner and purchaser.

Computation of Sales Price: The commission shall be computed in accordance with the above rate(s) based upon the total sales price, which shall include any mortgages, loans or other obligations of Owner which may be assumed by the purchaser or which the purchaser takes title "subject to," any purchase money loans or mortgages taken back by Owner, the sales price of any fixtures or other personal property sold by separate agreement between Owner and purchaser as part of the overall sales of the real property, and the current market value of any other real or personal property transferred from the purchaser to Owner.

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Exhibit A

