

**NON-EXCLUSIVE COMMERCIAL DISCARDED
MATERIALS FRANCHISE AGREEMENT
BETWEEN THE CITY OF EL SEGUNDO AND**

, 2025

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**NON-EXCLUSIVE COMMERCIAL
DISCARDED MATERIALS FRANCHISE AGREEMENT BETWEEN
THE CITY OF EL SEGUNDO AND _____**

THIS AGREEMENT is made and entered into on _____, 2025 (“Effective Date”), by and between CITY OF EL SEGUNDO, a general law city and municipal corporation (“City”) and _____ (“Franchisee”). City and Franchisee may sometimes below be referred to as the “Parties.” The Parties agree as follows:

ARTICLE I. RECITALS

Section 1.01 The Parties enter into this Agreement with reference to the following facts, objectives, and understandings:

- A. The City finds it advances the health, safety, and welfare of the Residents, business, and visitors to the City to have an orderly and effective Collection and Disposal of Commercial Discarded Materials and to that end to award a non-exclusive Franchise Agreement to a qualified hauler of Discarded Materials;
- B. The California Integrated Waste Management Act of 1989 (Public Resources Code §§ 40000, *et seq.*; the “Act”) establishes a Discarded Materials management process which requires cities and other local jurisdictions to implement plans for source reduction, reuse, and Recycling as integrated waste management practices and to meet the goals and objectives of the Act;
- C. The Act authorizes and requires local agencies to make adequate provisions for Discarded Materials Handling, within their respective jurisdictions;
- D. The Act provides that aspects of Discarded Materials Handling of local concern include, without limitation, frequency of Collection, means of Collection and transportation, level of services, charges and fees, and nature, location and extent of providing Discarded Materials services, and whether the services are to be provided by means of nonexclusive, partially exclusive, or wholly exclusive Franchise, contract, license, or otherwise which may be granted by local government under terms and conditions prescribed by the governing body of the local agency;

- E. City is obligated to protect the public health and safety of City's Residents and arrangements made by Discarded Materials enterprises and recyclers for the Collection of Discarded Materials should be made in a manner consistent with the exercise of City's police power for the protection of public health and safety;
- F. City and Franchisee are mindful of the provisions of the laws governing the safe Collection, transport, Recycling, and Disposal of Discarded Materials, including the Act, and including AB 341, AB 1826, AB 1594, SB 1383, the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. §§ 6901, *et seq.*, and the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. §§ 9601, *et seq.*;
- G. SB 1383 establishes regulatory requirements for jurisdictions, Generators, haulers, Solid Waste Facilities, and other entities to support achievement of State-wide Organic Waste Disposal reduction targets;
- H. SB 1383 regulations require jurisdictions to implement Collection programs, meet Processing Facility requirements, conduct contamination monitoring, provide education, maintain records, submit reports, monitor compliance, conduct enforcement, and fulfill other requirements; and, the City has chosen to delegate some of its responsibilities to Franchisee, acting as the City's designee, through this Agreement;
- I. City and Franchisee desire to leave no doubts as to their respective roles and to make it clear that by entering into this Agreement, City is not thereby becoming a "generator" or an "arranger" as those terms are used in the context of CERCLA § 107 (a) (3), and that it is Franchisee, an independent entity, not City, which is "arranging for" the collection from Premises in City's jurisdiction, the transport for disposal, the collection and recycling of Recyclable materials, and Discarded Materials which may contain hazardous substances, and processing of Organic Materials;
- J. There are no places within City's limits where active landfills are located, or which are suitable for the siting of a landfill and, therefore, Solid Waste must be exported from City;
- K. City and Franchisee agree that, subject to City's exercise of its right to require the use of

specific facilities as provided in Section 10.11 of this Agreement, it is Franchisee, and not City, that will select the landfill or Approved Disposal Facility destination of the non-recyclable Discarded Materials that Franchisee will arrange to Collect; that City has not and, by this Agreement, does not instruct Franchisee on its Collection methods, nor supervise Franchisee in the Collection of waste; and, nothing in this Agreement, or other action of City, must be construed to bar others from removing waste from Containers, nor to place title or right to possession to such waste in City or Franchisee (the Parties recognizing that whatever, if any, title Franchisee may gain to such waste is by operation of law, and is not the result of this Agreement);

- L. Franchisee represents and warrants to City that Franchisee has the experience, responsibility, qualifications, and knowledge of all Applicable Laws to conduct Recycling programs, provide City with information sufficient to meet City's reporting requirements under the Act, meet City's other requirements under the Act, and arrange with representatives of Premises in City for the Collection, safe transport, and Disposal of Discarded Materials which may contain small amounts of Hazardous Waste in compliance with California Health and Safety Code section 25143 in a safe manner which must minimize the adverse effects of Collection vehicles on air quality and traffic, and that Franchisee has the ability to indemnify City in accordance with this Agreement; and
- M. The City Council determines and finds pursuant to Public Resources Code § 40059(a) (1) that the public interest, health, safety, and well-being, including the minimization of adverse impacts on air quality and traffic from excessive numbers of Collection vehicles, the implementation of measures consistent with City's Source Reduction and Recycling Component, and the protection of City against potential CERCLA liability, would be served if Franchisee were to be awarded a Franchise for Collection, Recycling, and Disposal of Commercial Discarded Materials from Premises in City.

ARTICLE II. DEFINITIONS

Unless the contrary is stated or clearly appears from the context, the following definitions will govern the construction of the words and phrases used in this Agreement. Words and phrases not defined by this chapter have the meanings stated in the El Segundo Municipal Code (“ESMC”), the Public Resources Code, or other commonly used words found in federal, state, and local laws and regulations.

Section 2.01 “AB 939” or the “Act” means the California Integrated Waste Management Act of 1989, codified in part at Public Resources code §§ 40000 et. seq., as it may be amended from time to time, and as implemented by the regulations of the California Department of Resources Recycling and Recovery (CalRecycle), previously the California Integrated Waste Management Board.

Section 2.02 RESERVED.

Section 2.03 “Administrator” means the City’s City Manager or designee.

Section 2.04 “Advanced Clean Fleet (ACF) Regulation” means 13 California Code of Regulations Sections 2013, 2013.1, 2013.2, 2013.3, 2013.4, 2014, 2014.1, 2014.2, 2014.3, 2015, 2015.1, 2015.2, 2015.3, 2015.4, 2015.5, 2015.6, and Public Resources Code section 2016, as it may be amended from time to time, and as implemented by the regulations of the California Air Resources Board (“CARB”).

Section 2.05 “Agreement” or “Franchise Agreement” means this written agreement between City and Franchisee, and all Exhibits and documents incorporated by reference including (specifically) the Statement of Qualifications and Proposal submitted by Franchisee, governing provision of Discarded Materials Services, and any future amendments.

Section 2.06 “Applicable Law” means all federal, state, county, and local laws, regulations, rules, orders, judgments, degrees, permits, approvals, or other requirement of any governmental agency having jurisdiction over the Collection, transportation, and processing of Discarded Materials that are in force on the Effective Date and as may be enacted, issued, or amended during the Term of this Agreement. Applicable Law includes, without limitation, AB 939, AB 341, AB 1826, and SB 1383.

Section 2.07 “Approved Disposal Facility(ies)” means the Disposal Facility that was selected by Franchisee and approved by City as identified in Exhibit 14.

Section 2.08 “Approved Facility(ies)” means any one of or any combination of the: Approved Disposal Facility(ies); Approved Recyclable Materials Processing Facility(ies); Approved Organic Materials Processing Facility(ies); Approved Transfer Facility(ies); Approved High Diversion Organic Waste Processing Facility(ies) and/or Approved Reusable Materials Processing Facility(ies) that was selected by Franchisee and approved by City as identified in Exhibit 14.

Section 2.09 “Approved High Diversion Organic Waste Processing Facility(ies)” means the High Diversion Organic Waste processing facility(ies) that was selected by Franchisee and approved by City as identified in Exhibit 14.

Section 2.10 “Approved Organic Materials Processing Facility(ies)” means the Organic Materials processing facility(ies) that was selected by Franchisee and approved by City as identified in Exhibit 14.

Section 2.11 “Approved Processing Facility(ies)” means any one of or any combination of the: Approved Recyclable Materials Processing Facility; Approved Organic Materials Processing Facility; or, Approved Reusable Materials Processing Facility that was selected by Franchisee and approved by City as identified in Exhibit 14.

Section 2.12 “Approved Recyclable Materials Processing Facility(ies)” means the Recyclable Materials processing facility(ies) that was selected by Franchisee and approved by City as identified in Exhibit 14.

Section 2.13 “Approved Reusable Materials Processing Facility(ies)” means the Reusable Materials processing facility(ies) that was selected by Franchisee and approved by City as identified in Exhibit 14.

Section 2.14 “Approved Transfer Facility(ies)” means transfer facility(ies) that was selected by Franchisee and approved by City as identified in Exhibit 14.

Section 2.15 “Backyard Service” or “Roll Out Service” means the Collection of a Cart or

Bin that includes the movement by Franchisee’s employees of the Cart or Bin from the Customer’s backyard, side yard, driveway, garage, or other location approved by the Administrator, to the Franchisee’s Collection vehicle and return of the Cart or Bin to such location.

Section 2.16 “Bins” means those Containers referred to as dumpsters and are provided for commercial, industrial, construction, and Multi-Family uses. Bins meet the criteria set forth in Exhibit 3.

Section 2.17 “Bulky Items” means large and small household appliances, furniture, carpets, mattresses, White Goods, clothing, tires, and other similar Discarded Materials and oversized yard waste such as tree trunks and large branches if no larger than two feet in diameter and four feet in length and similar large items discarded from Commercial Premises. Bulky Items do not include Hazardous Waste.

Section 2.18 “CalRecycle” means the California Department of Resources Recovery and Recycling.

Section 2.19 “Carts” means the Containers provided by the Franchisee to Customers of Recycling, Organic Materials, and Solid Waste services with two wheels attached for ease of transport by an individual and meet the criteria set forth in Exhibit 3.

Section 2.20 “City” or “Grantor” means the City of El Segundo, a general law city and municipal corporation.

Section 2.21 “City Limits” means the boundaries of City together with all amendments and changes thereto, which boundaries are shown by maps incorporated herein by reference, identified in Exhibit 1, and which are on file in the office of the City Clerk.

Section 2.22 RESERVED.

Section 2.23 RESERVED.

Section 2.24 “Collect” or “Collection” means the act of taking possession of Discarded Materials, Bulky Items, and other material at the place of generation in City.

Section 2.25 “Co-collection” means the Collection of Solid Waste and Recyclables in a Container.

Section 2.26 “Commercial Account” means an account for Discarded Materials collection and Recycling services provided to any Commercial Premises.

Section 2.27 “Commercial Discarded Materials” means all types of Discarded Materials generated by stores, offices, governmental institutions (except City facilities and state-run school systems) commercial and industrial sources, institutional uses, Multi-Family Premises, and all other uses except Residential Units.

Section 2.28 “Commercial Discarded Materials Container” or “Discarded Materials Bin” means those Containers used to transfer Discarded Materials from the Customers to Franchisee.

Section 2.29 “Commercial Premises” or “Commercial” means and refers to any store, commercial, industrial, office, Multi-Family premises, governmental institution (except City facilities and state-run school systems) or enterprise which generates Discarded Materials. “Commercial Premises” does not include Residential Units.

Section 2.30 “Community Composting” means any activity that composts green material, agricultural material, food material, and vegetative food material, alone or in combination, and the total amount of feedstock and compost on-site at any one time does not exceed 100 cubic yards and 750 square feet, as specified in 14 Cal. Code Regs. Section 17855(a)(4); or as otherwise defined in 14 Cal. Code Regs. Section 18982(a)(8).

Section 2.31 “Compostable Food Waste” means fruits, meats, seafood, bones, beans, bread, eggshells, napkins, paper plates, coffee grounds, vegetables, poultry, shellfish, rice, pasta, cheese, Food Soiled Paper, paper towels, tea bags, and other similar items.

Section 2.32 RESERVED.

Section 2.33 “Construction and Demolition Waste” means the discarded building materials, packaging, wood, plaster, rock or brick, drywall, cement, and rubble resulting from construction, remodeling, repair, and demolition operations on pavements, and other similar materials from buildings and other structures (except asbestos-containing materials or other Hazardous

Materials).

Section 2.34 “Consumer Price Index” or “CPI” means the Consumer Price Index (“CPI”), All Urban Consumers, All Items, Los Angeles-Long Beach-Anaheim, CA (CUURS49ASA0).

Section 2.35 “Container(s)” means Bins, Carts, compactors, and roll-off boxes.

Section 2.36 “Customer(s)” or “customer(s)” means the person(s) who has the day-to-day responsibility for Discarded Materials for Commercial Premises. The Customer may be either the occupant or owner of the Premises.

Section 2.37 “Designated Waste” Designated Waste consists of those substances classified as Designated Waste by the State, in Water Code Section 13173, as may be amended from time to time, and is defined as either of the following:

- A. Hazardous Waste that has been granted a variance from Hazardous Waste management requirements pursuant to Health and Safety Code Section 25143.
- B. Nonhazardous waste that consists of, or contains, pollutants that, under ambient environmental conditions at a waste management unit, could be released in concentrations exceeding applicable water quality objectives or that could reasonably be expected to affect beneficial uses of the waters of the State as contained in the appropriate state water quality control plan.

Section 2.38 “Discarded Materials” means Recyclable Materials, Organic Materials, and Solid Waste placed by a Generator in a Container and/or at a location for the purposes of Collection by Franchisee, excluding Excluded Waste.

Section 2.39 “Discarded Materials Handling” or “Handling” means and includes the Collection, transportation, storage, transfer, disposal, or processing of Discarded Materials.

Section 2.40 “Disposal” or “Dispose” (or any variation thereof) means the final disposition of Discarded Materials or processing residue at a Disposal Facility.

Section 2.41 “Disposal Site” or “Disposal Facility” means any Solid Waste facility(ies)

used for the final disposal of Discarded Materials Collected by the Franchisee.

Section 2.42 “Diversion” and “Diverted from Disposal” (or any variation thereof) has the meaning set forth in Public Resources Code Section 40124 and means to prevent Disposal of Discarded Materials at landfill or transformation facilities (including facilities using incineration, pyrolysis, distillation, gasification, or biological conversion methods) through source reduction, reuse, Recycling, composting, anaerobic digestion, or other method of processing, pursuant to the provisions of AB 939. Diversion is a broad concept that is to be inclusive of material Handling and processing changes that may occur over the Term including, without limitation, changes in standard industry practice or implementation of innovative (but not necessarily fully proven) techniques or technology that reduce Disposal risk, decrease costs, and/or other reasons deemed desirable by City.

Section 2.43 RESERVED.

Section 2.44 “Environmental Laws” means all federal and state statutes and county and City ordinances concerning public health, safety, and the environment including, by way of example and not limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 USC §§ 9601, *et seq.*; the Resource Conservation and Recovery Act, 42 USC §§ 6902, *et seq.*; the Federal Clean Water Act, 33 USC §§ 1251, *et seq.*; the Toxic Substances Control Act, 15 USC §§ 1601, *et seq.*; the Occupational Safety and Health Act, 29 USC §§ 651, *et seq.*; the California Hazardous Waste Control Act, California Health and Safety Code §§ 25100, *et seq.*; the California Toxic Substances Control Act, California Health and Safety Code §§ 25300, *et seq.*; the Porter-Cologne Water Quality Control Act, California Water Code §§ 13000, *et seq.*; the Safe Drinking Water and Toxic Enforcement Act, California Health and Safety Code §§ 25249.5, *et seq.*; as currently in force or as later amended, and all rules and regulations promulgated thereunder.

Section 2.45 “E-waste” includes the wastes set forth in 22 California Code of Regulations § 66273.9 for consumer electronic devices, including CRT Devices, that exhibit characteristics of toxicity.

Section 2.46 “Excluded Waste” means hazardous substance, Hazardous Waste, infectious waste, Designated Waste, volatile, corrosive, biomedical, infectious, biohazardous, and toxic

substances or material, waste that Franchisee reasonably believes would, as a result of or upon Disposal, be a violation of local, state, or federal law, regulation, or ordinance, including land use restrictions or conditions, waste that cannot be Disposed of in Class III landfills, waste that in Franchisee's reasonable opinion would present a significant risk to human health or the environment, cause a nuisance, or otherwise create or expose Franchisee or City to potential liability; but not including de minimis volumes or concentrations of waste of a type and amount normally found in Residential Discarded Materials after implementation of programs for the safe Collection, Recycling, treatment, and Disposal of batteries and paint in compliance with Sections 41500 and 41802 of the California Public Resources Code. Excluded Waste does not include used motor oil and filters, or household batteries when properly placed for Collection by Franchisee as set forth in this Agreement.

Section 2.47 "Food Soiled Paper" means compostable paper material that has come in contact with food scraps or liquid, such as, without limitation, compostable paper plates, paper coffee cups, napkins, pizza boxes, and milk cartons.

Section 2.48 "Franchise" means the non-exclusive right and privilege granted pursuant to this Agreement, along with the other rights, obligations, and privileges set forth herein: (i) to arrange for the Collection of, and to Collect Discarded Materials, (ii) to transport Discarded Materials to landfill or other Approved Disposal Facilities as determined by Franchisee, and (iii) to recycle Discarded Materials generated and/or accumulated from Commercial Premises in the City Limits.

Section 2.49 "Franchise Area" means the area depicted on attached Exhibit 1, which is incorporated by reference and which may be changed in accordance with this Agreement as set forth below.

Section 2.50 "Franchisee" means [REDACTED] organized and existing under and by virtue of the laws of the State of California, with its principal place of business in Los Angeles County, and its lawful successors or assigns.

Section 2.51 "Fully Automated Collection" means a mechanized method of Collecting Solid Waste, Organic Materials, and Recyclables in which the operator of the Collection vehicle operates a mechanical device which secures a Container, such as a Bin, lifts the Container and

dumps the contents directly into the vehicle's collection area, and returns the Container to the curbside or other original position without leaving the vehicle.

Section 2.52 "Generator" means any person whose act or process produces Discarded Materials as defined herein, or whose act first causes Discarded Materials to become subject to regulation.

Section 2.53 "Gross Revenues" means any and all revenue or compensation in any form derived by Franchisee from services provided pursuant to this Agreement, except revenues received by Franchisee from the sale of Recyclables and any payments received from the State of California for Collecting or processing CRV materials.

Section 2.54 "Hazardous Waste" means any flammable, explosive, or radioactive materials or hazardous, toxic, or dangerous wastes, substances, or related materials or any other chemicals, materials, or substances, exposure to which is prohibited, limited or regulated by any federal, state, or local law or regulation, or which, even if not so regulated, may or could pose a hazard to public health and safety, including, without limitation, asbestos, PCBs, petroleum products and byproducts, substances defined or listed as "hazardous substances" or "toxic substances," or similarly identified in, pursuant to, or for purposes of, the California Discarded Materials Management, Resource Recovery and Recycling Act (Government. Code §§ 66700, *et seq.*); the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. §§ 9601 *et seq.*); the Hazardous Materials Transportation Act (49 U.S.C. §§ 1801 *et seq.*); the Resource Conservation and Recovery Act (42 U.S.C. §§ 6901 *et seq.*); Health and Safety Code §§ 25117 or 25316, including the regulations promulgated thereto (see 22 Cal. Code of Regs. § 66261.3); any substances or mixture regulated under the Toxic Substance Control Act of 1976 (15 U.S.C. §§ 2601 *et seq.*); any "toxic pollutant" under the Clean Water Act (33 U.S.C. §§ 1251 *et seq.*); any hazardous air pollutant under the Clean Air Act (42 U.S.C. §§ 7901 *et seq.*); any "hazardous waste" as defined by the Porter- Cologne Act, California Water Code, California Environmental Protection Agency or the California Integrated Waste Management Board, Federal Water Pollution Control Act, Hazardous Materials Transportation Act, by any Superfund or Superlien law, or any other federal, state, or local law or regulation. Where there is a conflict in the definitions employed by two or more agencies having jurisdiction over hazardous or Discarded Materials, the term "Hazardous Waste" has the broader, more encompassing definition.

Section 2.55 “High Diversion Organic Waste Processing Facility (HDOWPF)” has the meaning set forth in 14 CCR Section 18982(a)(33). Per SB 1383, the High Diversion Organic Waste Processing Facility is a facility that is in compliance with the reporting requirements of 14 CCR Section 18815.5(d) and meets or exceeds an annual average Mixed Waste organic content recovery rate of 50% between January 1, 2022 and December 31, 2024, and 75% after January 1, 2025 as calculated pursuant to 14 CCR Section 18815.5(e) for organic waste received from the Mixed Waste.

Section 2.56 “Holiday(s)” are defined as New Year’s Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day.

Section 2.57 “Materials Recovery Facility” means (i) A facility that separates secondary materials, such as mixed glass and metal containers, from the waste stream, and processes the materials for sale to end users; and (ii) a firm that purchases and markets Source Separated materials.

Section 2.58 “Mechanized Collection” refers to methods of Collecting Discarded Materials in which the operator of a Collection vehicle operates a mechanical device which secures a Bin or Cart which contains Discarded Materials and lifts the Bin or Cart and dumps the contents directly into the vehicle’s Collection area. “Mechanized Collection” includes Semi-Automated Collection and Fully Automated Collection.

Section 2.59 “Mixed Waste” means Mixed Waste Organic Collection Stream (as defined in 14 CCR 17402(a)(11.5)) and Solid Waste Collected in a Container that is required by 14 CCR Sections 18984.1, 18984.2, or 18984.3 to be transported to a High Diversion Organic Materials Processing Facility.

Section 2.60 “Multi-Family” or “Multi-Family Premises” means a building containing three or more dwelling units designed or arranged for occupancy by three or more households living independently in which they may or may not share common entrances and/or other spaces.

Section 2.61 “Organic Material(s)” or “Organics” means yard trimmings and Compostable Food Waste, individually or collectively. No Discarded Material may be considered to be Organic Materials, however, unless it is separated from Recyclable Material and Solid Waste.

Section 2.62 “Organic Materials Bins” means those Bins which are used for transferring Organic Materials from the Customers to the Franchisee.

Section 2.63 “Organic Materials Carts” means those Carts which are to be used for transferring Organic Materials from the customers to the Franchisee.

Section 2.64 “Organic Materials Recycling” and “Organic Materials Recycling Service” means to recycle Organic Materials in accordance with the requirements of Applicable Law.

Section 2.65 “Premises” means any land or building in the City where Discarded Materials are generated or accumulated.

Section 2.66 “Proposition 218” means Articles XIII C and XIII C of the California Constitution and any implementing legislation relating thereto, as may be amended from time to time.

Section 2.67 RESERVED.

Section 2.68 “Recyclables” or “Recyclable Materials” means a material that can be reused or processed into a form suitable for reuse through reprocessing and remanufacture. This includes, without limitation, the following materials generated in or emanating from Commercial Premises that are no longer useful or wanted: glass jars and bottles; steel, bi-metal, and tin cans; empty aerosol containers; PET plastic; HDPE plastic; plastics types 3 – 7; plastic bags, shrink wrap, plastic toys and tools, and other plastic materials (if readily identifiable as being recyclable and delivered to a drop-off center); juice boxes and milk cartons (aseptic packaging, Tetra Pak[®] and waxed cardboard); scrap metal, coat hangers, and metal foil; newspaper; mixed paper (e.g., ledger, computer, junk mail, magazines, paperback books, cereal boxes, envelopes, paper shopping bags, and non-metallic wrapping paper); and telephone books, and such other materials designated by City’s Administrator, or designated as Recyclables by the California Department of Resources Recycling and Recovery, or other agency with jurisdiction, and that are Collected by Franchisee pursuant to this Agreement, or such additional materials as the City Council may designate from time to time.

Section 2.69 “Recycling” means any process by which materials that would otherwise become Solid Waste are Collected (whether Source Separated, co-mingled, or as Mixed Waste),

separated or processed, and returned to the economic mainstream in the form of raw materials or products or materials that are salvaged or recovered for reuse.

Section 2.70 “Resident” or “Residential” means of, from, or pertaining to a Single-Family Premises or Multi-Family Premises including Single-Family homes, apartments, condominiums, townhouse complexes, mobile home parks, and cooperative apartments.

Section 2.71 RESERVED.

Section 2.72 RESERVED.

Section 2.73 RESERVED.

Section 2.74 “Residential Unit(s)” means and includes (1) single-family dwelling units, (2) two-family dwelling units, and (3) an accessory dwelling unit located on a single-family property, as those terms are defined in ESMC Section 15-1-6. Each dwelling unit in a two-family dwelling is a separate residential unit and each accessory dwelling unit is a separate residential unit.

Section 2.75 “SB 54” means Public Resources Code Section 41821.5, as may be amended from time to time.

Section 2.76 “SB 1383” means Senate Bill 1383 of 2016 signed by the Governor on September 19, 2016, which added Health and Safety Code Sections 39730.5, 39730.6, 39730.7, and 39730.8, establishing methane emissions reduction targets in a statewide effort to reduce emissions of short-lived climate pollutants. For the purposes of this Agreement, SB 1383 also refers to the Short-Lived Climate Pollutants (SLCP): Organic Materials Reductions regulations developed by CalRecycle (California Code of Regulations, Title 17, Division 7, Chapter 12).

Section 2.77 “Scavenging” means the unauthorized removal of Recyclable Material. Scavenging is prohibited by Public Resources Code § 41950.

Section 2.78 “Self-Haul” or “Self-Hauler” means person who hauls Discarded Materials, recovered material, or any other material, that such person generates at their own Premises, to another person, or as otherwise defined in 14 Cal. Code of Regs. Section 18982(a)(66). Self-Hauler also includes a person who back-hauls waste from Premises they own and operate using

their own vehicles, employees, and equipment, as defined in 14 Cal. Code of Regs. Section 18982(a)(66)(A).

Section 2.79 “Semi-Automated Collection” means a mechanized method of Collection in which the operator of the Collection vehicle must get out of the vehicle in order to connect the Container, such as a Discarded Materials Bin, to a device which lifts the Container and dumps the contents directly into the vehicle’s collection area and returns the Container to Street level for placement at curbside or other position by the operator.

Section 2.80 “Service Level” refers to the size of a Customer’s Container(s) and the frequency of Collection service.

Section 2.81 “Single-Family” or “Single-Family Dwelling” means a building containing no more than one dwelling unit designed for occupancy by not more than one household.

Section 2.82 “Solid Waste” is defined in Public Resources Code § 40191.

Section 2.83 “Source Separated” means the segregation, by the Generator, of materials designated for separate Collection for some form of Recycling, composting, recovery, or reuse.

Section 2.84 “Special Waste” means Discarded Materials that is a “designated waste” under Applicable Law, is required to be accompanied by a written manifest or shipping document describing the waste under Applicable Law, or that requires special Handling at any processing facility or Disposal Site.

Section 2.85 “Streets” means the public streets, ways, alleys, and places within City as the same now or may hereafter exist, and in which City has the authority to grant a Franchise.

Section 2.86 “Temporary Service” means Discarded Materials Handling Services provided by Franchisee on an as-needed and temporary basis to any Premises within City in conjunction with construction, demolition, cleanup, or other projects, and by use of temporary placed Bins or roll-off boxes, excluding Self-Hauled waste.

Section 2.87 “Term” means the Term of this Agreement, as provided for in Section 5.01.

Section 2.88 “Two-Family Dwelling” means a building containing two dwelling units designed or arranged for occupancy by two households living independently. Two-Family Dwelling includes duplexes.

Section 2.89 “Universal Waste” means waste materials that are conditionally exempt from classification as Hazardous Waste pursuant to 22 California Code of Regulations § 66261.9, including, without limitation, batteries, computers and peripherals, printers, CRT monitors, televisions, electronic equipment, and cathode ray tubes.

Section 2.90 “White Goods” means enameled household appliances, such as refrigerators, stoves, washers and dryers, water heaters, dishwashers, trash compactors, and similar items discarded from Premises covered by this Agreement.

Section 2.91 “Working Day(s)” means days on which Franchisee is required to provide regularly scheduled Collection services under this Agreement.

Section 2.92 “Yard Trimmings” means any wastes generated from the maintenance or alteration of public, commercial, industrial, or multi-family landscapes including, but not limited to, yard clippings, leaves, tree trimmings, prunings, brush, and weeds, or as otherwise defined in 14 Cal. Code of Regs. Section 117852(43).

ARTICLE III. GRANT OF FRANCHISE

Section 3.01 Grant. Subject to the terms of this Agreement and all Applicable Laws and regulations, the City Council grants to Franchisee the duty, right, and privilege to operate and conduct a non-exclusive Franchise to Collect, transfer, recycle, compost, and Dispose of Discarded Materials, including Recyclables and/or Organic Materials from Commercial Premises within City’s jurisdiction as set forth in the attached Exhibit 1, which is incorporated by reference. City grants Franchisee a non-exclusive license to make and enter into independent arrangements with Commercial Premises in the City in the area covered by the Franchise.

Section 3.02 Franchisee agrees to be bound by and comply with all the requirements of this Agreement and to comply with all federal, state, and local laws and regulations whether or not they are specifically addressed by the provisions in this Agreement.

Section 3.03 Franchisee waives any right it may have to challenge the terms of this Agreement under federal, state, or local law, or administrative regulation. Franchisee waives any right or claim to serve Commercial Premises in the City as its boundaries exist as of the date of the execution of this Agreement under any prior grant of franchise, contract, license, or permit issued or granted by any governmental entity including any right under the Public Resources Code. This Franchise is subject to all of the provisions of this Agreement, and to any rights, if any, which may be held by any other Discarded Materials enterprise holding rights pursuant to Public Resources Code Section 49520 or other laws.

Section 3.04 Warranties of Franchisee. Franchisee warrants and represents the following: Franchisee is a company duly organized, validly existing, and in good standing under the laws of California and is qualified and has the authority to carry out the business required by this Agreement. Franchisee has, through all actions required by law by its owners or Board, the authority to enter into this Agreement and the person(s) signing this Agreement have the authority to do so. Franchisee's officers, directors, or owners have not been found guilty of felonious conduct, bribery of public officials, fraud, deceit, false claims, racketeering, or illegal transport of Hazardous Materials. Franchisee must obtain and maintain all necessary federal, state, and local business licenses and permits.

Section 3.05 RESERVED.

Section 3.06 City's prior rights. All privileges set forth in this Agreement are subordinate to any prior lawful use and occupancy of City's Streets. However, City represents that there are and will be no material restrictions on Franchisee's ability to utilize City's Streets to carry out its obligations pursuant to this Agreement.

Section 3.07 Cost of operating Franchise. Any act permitted by this Agreement must be performed at Franchisee's own expense, unless expressly provided otherwise in this Franchise or Applicable Law.

Section 3.08 Annexation. Nothing in this Franchise extends Franchisee's rights under this Agreement to territory that may be annexed to City's jurisdiction after this Agreement becomes effective. The Parties may, but are not required to, negotiate for extending Franchisee's Franchise to any such annexed territory.

Section 3.09 The effectiveness of this Agreement, and the performance of the City's obligations, are subject to the satisfaction of all conditions set out below, any of which may be waived by the City in whole or in part:

- A. Accuracy of Representations. Representations and warranties made by the Franchisee in this Agreement are true and correct as of the operative date.
- B. Furnishing of Insurance and Bonds. Franchisee has furnished evidence satisfactory to the City Manager of the insurance and bonds required by the ESMC and this Agreement.

Section 3.10 Delegation of Authority. Administration of this Agreement by City will be under the supervision and direction of the City Manager. Any and all actions specified in this Agreement, unless otherwise stated, will be taken by the City Manager.

Section 3.11 General. City may direct Franchisee to perform additional services (including new Diversion programs, etc.), or to modify the manner in which it performs existing services or bills for services. Pilot programs and innovative services that may entail new Collection methods, different kinds of services or new requirements for customers, are included among the kinds of changes that City may direct.

Section 3.12 New Diversion Programs. In conjunction with the requirements of this Agreement, Franchisee must present, within 30 days of a request from City, a proposal to provide additional or expanded Diversion services. The proposal must contain a complete description of the following:

- A. Collection methodology to be employed (e.g., equipment and manpower);
- B. Equipment to be used (e.g., vehicle number, types, capacity, and age);
- C. Labor requirements (e.g., number of employees by classification);
- D. Type of Containers to be used;
- E. Program publicity, education, and marketing; and
- F. Three-year projection of the financial results of the program's operations in an operating statement format, including documentation of the key assumptions underlying the projections and the support for those assumptions.

Section 3.13 City's Right to Contract with Additional Service Providers. Franchisee acknowledges and understands that the franchise granted hereunder is non-exclusive and that City, in its sole discretion, may authorize and contract with other entities to provide the same or similar Commercial Discarded Materials Handling services, including, without limitation, additional Commercial Discarded Materials Handling services which are not otherwise provided for in this Agreement. There is no limit to the number of entities to which the City may award non-exclusive franchises for the provision of Commercial Discarded Materials Handling services.

ARTICLE IV. FRANCHISE EXCLUSIONS

Section 4.01 Gardeners and Landscapers. This Agreement does not prohibit gardeners and landscapers from Collecting, transporting, and composting or Disposing of green waste, as long as they transport such green waste to a Compostable Materials Handling Facility or a Composting Facility, as defined in 14 Cal. Code of Regs. § 17852, or other site permitted (or exempt from permitting) by CalRecycle in accordance with all governing laws and regulations.

Section 4.02 Sale or Gift of Recyclable Materials. This Agreement does not prohibit any person from selling Recyclable Materials or giving Recyclable Materials away to persons or entities other than Franchisee.

Section 4.03 See additional limitations on scope in Article XXVIII.

ARTICLE V. TERM

Section 5.01 **The Term of this Agreement is for a period of two years commencing on _____, 2025, and ending at midnight on _____, 2027.**

Section 5.02 Notwithstanding any other provision of this Agreement, Franchisee is authorized to distribute Containers to Customers who choose to contract with Franchisee or otherwise utilize Franchisee's services commencing **on or after April 1, 2025**. Franchisee must use its best efforts to avoid conflicts with the company currently providing services to Customers and avoid interfering with services currently being provided to such Customers. All

Customers serviced by the Franchisee must have Solid Waste, Recycling, and Organic Materials services in compliance with SB 1383, unless provided a waiver by City.

Section 5.03 Franchisee is required to cooperate with City and any successor operator (by providing, e.g., access to landfill destination information, insurance and indemnification, and an insurance policy repository) beyond the period during which Collection services are to be pursuant to this Agreement.

ARTICLE VI. LIABILITY AND INDEMNIFICATION

Section 6.01 Franchisee agrees to the following:

- A. Franchisee, upon demand of City, made by and through City, must defend (with counsel reasonably acceptable to City), indemnify and hold harmless City, its elected officials, officers, employees, volunteers, and agents from and against any and all losses, liabilities, fines, penalties, claims, damages, liabilities, or judgments, including City's or any prevailing party other than City, reasonable attorneys' fees and costs (collectively, "Claims") arising out of or resulting in any way from the awarding or execution of or Franchisee's exercise of the Franchise granted by this Agreement, including Franchisee's performance under this Agreement, unless such Claim is due to the sole negligence or willful acts of City, its elected officials, officers, employees, agents, or contractors. The duty of Franchisee to defend, indemnify, and hold City harmless pursuant to this Section includes, without limitation, the following:
 1. Claims by government agencies or other third parties, whether judicial, administrative, or otherwise, including, without limitation Claims over the definitions of "Discarded Materials" or "Solid Waste" or "Recyclable Material" or "Organic Materials" or the limits of City's authority with respect to the grant of licenses, or Agreements (including this Agreement), exclusive or otherwise, asserting Claims under the Dormant Commerce Clause, anti-tug laws, or any other federal or state law, including, without limitation, Proposition 218.
 2. Environmental Indemnification. Claims arising from or attributable to any repair, cleanup 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 Waste in any Discarded Materials Collected by Franchisee pursuant to this Agreement which is or has been transported, transferred, processed, stored, Disposed of, or which has otherwise come to be located by Franchisee or its activities pursuant to this Agreement result in a release of a Hazardous Waste into the environment.
3. Claims arising from or attributable to any repair, cleanup, 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 Waste in any Discarded Materials Collected by Franchisee pursuant to this Agreement which is or has been transported, transferred, processed, stored, Disposed of, or which has otherwise come to be located by Franchisee or its activities pursuant to this Agreement and result in a release of a Hazardous Waste into the environment.
 4. With respect to Discarded Materials Collected by Franchisee pursuant to this Agreement which has been Disposed of at places not owned or operated by Franchisee, Franchisee must (i) defend, indemnify, and hold City harmless, as provided above; (ii) at City's sole discretion, cause the owner or operator of the alternate facility to deliver a Hazardous Substances Indemnification in a form satisfactory to City, or (iii) provide any combination of indemnification by the alternate facility and Franchisee satisfactory to City.
 5. This Section is intended to operate as an Agreement pursuant to § 107(e) of the Comprehensive Environmental Response, Compensation and Liability Act, "CERCLA," 42 U.S.C. § 9607(e), and Health and Safety Code § 25364, to defend, protect, hold harmless and indemnify from all forms of liability under CERCLA, the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. §§ 6901 et seq., or other similar federal, state or local law or regulation for any and all matters addressed in this Section.
 6. CalRecycle Indemnification and Guarantee. Franchisee's duty to defend and indemnify herein includes all fines and/or penalties imposed by CalRecycle, if the requirements of AB 939, AB 341, AB 1826, and/or SB 1383 are not met by Franchisee with respect to Franchisee's obligations under this Agreement, and such

failure is: (i) due to the failure of Franchisee to meet its obligations under this Agreement; or, (ii) due to Franchisee's delay in providing information that prevents Franchisee or County from submitting reports to regulators in a timely manner.

- B. For purposes of this Section, "City" includes City's officers; elected and appointed officials; employees; agents; representatives; and volunteers.
- C. Franchisee expressly agrees that this release, waiver, and indemnity agreement is intended to be as broad and inclusive as is permitted by the law of the State of California and that if any portion is held invalid, it is agreed that the balance will, notwithstanding, continue in full legal force and effect.
- D. It is expressly understood and agreed that the foregoing provisions will survive termination of this Agreement.

Section 6.02 The requirements as to the types and limits of insurance coverage to be maintained by Franchisee as required by this Agreement, and any approval of said insurance by City, are not intended to and will not in any manner limit or qualify the liabilities and obligations otherwise assumed by Franchisee pursuant to this Agreement, including, without limitation, to the provisions concerning indemnification.

ARTICLE VII. INSURANCE

Section 7.01 Before commencing performance under this Agreement, and at all times this Agreement is effective, Franchisee must provide and maintain insurance acceptable to the City Attorney in full force and effect throughout the Term of this Agreement, against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by Franchisee, its agents, representatives, or employees. The following insurance requirements will survive the termination of this Agreement. Insurance must be placed with California-admitted insurers with a current A.M. Best's rating of not less than A:VII.

Section 7.02 Franchisee will furnish to City duly authenticated endorsements and such other evidence of insurance or copies of policies as may be reasonably required by City from time to time. Insurance must reflect that the insurer will provide 30 days' notice of any

cancellation of coverage, except Workers Compensation/Employer's Liability, to the City. Franchisee will require its insurer to modify such certificates to delete any exculpatory wording stating that failure of the insurer to mail written notice of cancellation imposes no obligation, and to delete the word "endeavor" with regard to any notice provisions.

Section 7.03 Insurance Coverage must meet City's insurance requirements in accordance with the limits in this Agreement.

Section 7.04 Other Insurance Provisions. Insurance policies required by this Agreement must contain the following provisions:

- A. All Policies. Each insurance policy, except Workers Compensation/Employer's Liability, must be endorsed and state the coverage may not be suspended, voided, cancelled by the insurer or either party to this Agreement, or reduced in coverage or in limits except after 30 days' prior written notice by Certified mail, return receipt requested, has been given to the City.

Section 7.05 Franchisee must maintain limits of insurance in not less than:

- A. General Liability: \$10,000,000 aggregate and \$10,000,000 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 applies separately to the activities related to this Agreement or the general aggregate limit must be twice the required occurrence limit;
- B. Automobile Liability: \$10,000,000 per accident for bodily injury and property damage;
- C. Workers' Compensation and Employer's Liability: Workers' Compensation as required by the Labor Code of the State of California and Employers Liability limits of \$1,000,000 per accident; and,
- D. Contractor's Pollution Liability Insurance: \$4,000,000 per occurrence.

Section 7.06 General Liability and Automobile Liability Coverages and Contractor's Pollution Liability Insurance. City, its officers, officials, employees, and volunteers are to be covered as additional insureds, via blanket-form endorsement, as respects: liability arising out of

activities Franchisee performs, products, and completed operations of Franchisee; Premises owned, occupied, or used by Franchisee; or automobiles owned, leased, or hired or borrowed by Franchisee. The coverage may not contain special limitations on the scope of protection afforded to City, its officers, officials, or employees such that any other insurance that may be carried by City will be excess thereto. Such insurance must be on an “occurrence,” not a “claims made,” basis and will not be cancelable, materially changed, or subject to reduction except upon 30 days’ prior written notice to City via blanket-form notice of cancellation endorsement.

- A. Franchisee’s insurance coverage must be primary insurance with respect to City, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by City, its officers, officials, employees, or volunteers must apply in excess of, and not contribute with, Franchisee’s insurance.
- B. Franchisee’s insurance applies separately to each insured against whom a claim is made or suit is brought except with respect to the limits of the insurer’s liability.
- C. Any failure to comply with the reporting or other provisions of the policies including breaches of warranties do not affect coverage provided to the City, its officers, officials, employees, or volunteers.
- D. Commercial general liability insurance coverage must be at least as broad as ISO-CGL Form No. CG 00 01. The amount of insurance set forth above will be a combined single limit per occurrence for bodily injury, personal injury, and property damage for the policy coverage. Such insurance must be on an “occurrence,” not a “claims made,” basis and will not be cancelable or subject to reduction except upon 30 days’ prior written notice to City. Automobile coverage must be at least as broad as ISO Business Auto Coverage Form CA 00 01, including symbol 1 (Any Auto). The Automobile Liability policy must be endorsed to add the Motor Carrier Act endorsement (MCS-90), TL 1005, TL 1007 and/or other endorsements required by federal or state authorities.

Section 7.07 Workers’ Compensation and Employer’s Liability Coverage. Unless the Administrator otherwise agrees in writing, the insurer must agree to waive all rights of subrogation against City, its officers, officials, employees, and agents for losses arising from work performed by Franchisee.

Section 7.08 Other Insurance Requirements. Franchisee agrees to deposit with City, at or before the Effective Date of this Agreement, certificates of insurance necessary to satisfy City that the insurance provisions of this contract have been complied with. The City Attorney may require that Franchisee furnish City with copies of original endorsements effecting coverage required by this Section. The certificates and endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf. City reserves the right to inspect complete, certified copies of all required insurance policies, at any time.

- A. Franchisee must furnish certificates and endorsements from each subcontractor which physically performs work in City identical to those Franchisee provides.
- B. Each insurance policy, except Workers Compensation/Employer's Liability, must be endorsed and state the coverage may not be suspended, voided, cancelled or non-renewed by the insurer or either party to this Agreement, reduced in coverage or in limits except after 30 days' prior written notice by Certified mail, return receipt requested, has been given to City.
- C. Any deductibles or self-insured retentions must be declared to and approved by City in its reasonable judgment. At City's option, either the insurer must reduce or eliminate such deductibles or self-insured retentions as respects City, its officers, officials, employees, and volunteers; or the Franchisee must procure a bond, in a form approved by the City Attorney, guaranteeing payment of losses and related investigations, claim administration, defense expenses and claims.
- D. Procuring such required policy or policies of insurance may not be construed to limit Franchisee's liability nor satisfy the indemnification provisions and requirements of this Agreement.

Section 7.09 Should Franchisee, for any reason, fail to obtain and maintain the insurance required by this Agreement, City may, at its option, obtain such coverage at Franchisee's expense or terminate this Agreement.

Section 7.10 Self-Insurance. To the extent provided by law, all or any part of any required insurance may be provided under a plan of self-insurance approved by the State of California.

ARTICLE VIII. DIVERSION STANDARDS

Section 8.01 This Agreement is part of City's efforts to comply with the provisions of the California Integrated Waste Management Act of 1989 (AB 939, the "Act"), AB 341, AB 1826, and SB 1383, as such from time to time may be amended and as implemented by the regulations of the California Department of Resources Recycling and Recovery ("Regulations"), as they from time to time may be amended, and City's Source Reduction and Recycling Element, as such may be amended from time to time. Franchisee must comply with both performance standards identified in Sections 8.01.A and 8.01.B with respect to the services provided under this Agreement.

- A. Franchisee agrees to work with City in order to facilitate compliance with the Act and subsequent California law including, without limitation, Public Resources Code § 41780. In the event of a determination by CalRecycle that City failed or will fail to meet its 50% Diversion rate because the waste stream under the control of Franchisee is found to be non-compliant with such goals, Franchisee and City agree to negotiate in good faith any additional Diversion programs or services that may be required to facilitate such compliance at no additional cost to the City or Customers.
- B. Franchisee agrees to maintain a minimum monthly Diversion rate of 50% of all Discarded Materials collected by the Franchisee. If Franchisee is in full programmatic compliance with the terms of this Agreement, qualifying diversion may include all Discarded Materials collected by the Franchisee and diverted from disposal, together with documented tonnage that Customers divert through self-hauling, backhauling, and/or the use of third-party recyclers. If this combination results in a 50% diversion rate, Franchisee would not be subject to Liquidated Damages pursuant to Section 8.02 or Exhibit 5, Section 1.1. To obtain credit for diversion accomplished by Customers through self-hauling, backhauling, or the use of third-party recyclers, Franchisee must provide proof satisfactory to the Administrator, which shall include a certified statement from the Franchisee, together with documentation from the Customer evidencing the type and quantity of Discarded Materials diverted from disposal and the destination thereof. Exhibit 11 sets forth how the 50% diversion rate must be calculated and reported. Diversion accomplished through self-hauling, backhauling, or third-party recyclers must be documented on a form approved by the Administrator.

- C. If Franchisee utilizes the services of a material recovery facility, composting facility, or other processing facility to divert or recycle Solid Waste, Recyclable Materials, or Organic Materials received from other jurisdictions, Franchisee must base its calculation of the quantities diverted from disposal at these facilities that is reported to the City, on the characteristics of the Solid Waste, Recyclable Materials, or Organic Materials Collected in the City. To satisfy this requirement, it may be necessary for Franchisee to conduct periodic characterization studies of the Solid Waste, Recyclable Materials and Organic Materials collected in the City by the Franchisee. City will determine if and when such studies are to be conducted. The method by which these studies are to be conducted is subject to approval by the Administrator.
- D. Upon request by the Administrator, Franchisee must provide details of the methods and calculations Franchisee uses to determine the quantities of Solid Waste, Recyclable Materials and/or Organic Materials Franchisee reported to City as being diverted from disposal. Franchisee must provide this information within 10 business days of being requested to do so by the Administrator.
- E. Franchisee must provide documentation to the City within thirty days of the end of each calendar year stating and supporting that calendar year's Diversion rate. Diversion from sources other than Franchisee's Collection and Diversion efforts (such as source reduction, reuse, or Recyclable Materials and Organic Materials Diverted by other enterprises, Collection of materials that are not the subject of this Agreement, or the efforts of Self-Haulers) is not to be counted as Diversion achieved by Franchisee.

Section 8.02 To the extent City receives AB 939 credit for any other Diversion within the City, such Diversion can, with City's consent which may be withheld by the City in its sole and absolute discretion, be used by Franchisee to achieve AB 939 compliance and the above performance standards. However, such cannot be relied upon by Franchisee for purposes of achieving AB 939 compliance or the performance standards. Any failure to attain AB 939 compliance or meet the minimum Diversion rate is a material breach of this Agreement and is subject to termination and/or liquidated damages. Additionally, any such breach will result in Franchisee being liable for any and all damages resulting from such breach.

Section 8.03 Construction and Demolition Debris Diversion. Franchisee must Divert from landfilling the State-mandated Construction and Demolition Debris Diversion percentage, currently at 65% of all Construction and Demolition Waste Franchisee Collects under this Agreement. Franchisee must maintain all records necessary for purposes of reporting and auditing this activity for each construction and demolition project with Collection services performed by Franchisee, at no additional charge. Any failure to Recycle such is a material breach of this Agreement.

Section 8.04 Franchisee must cooperate with City in Solid Waste, Recyclable Materials, and Organic Materials waste characterization studies and waste stream audits and implement measures adequate to achieve City's source reduction, Recycling and waste stream Diversion goals for the Discarded Materials stream covered by this Agreement. City established and maintained a Source Reduction and Recycling Element that was approved by the California Department of Resources Recycling and Recovery.

- A. Franchisee must provide City with a Waste Disposal and Diversion Plan as described in this Agreement by May 1, 2025, and whenever the plan is changed or updated. This Plan must identify the arrangements Franchisee made for the secure and cost-effective Disposal of Discarded Materials for the remainder of the Term of this Agreement and include a description of the Franchisee's plans for satisfying the waste Diversion requirements of this Agreement. City must provide Franchisee with a template for use in preparing this plan which must specify the minimum acceptable standards for this plan.
- B. When requested by City, Franchisee must furnish City with full access to its transfer, processing, composting, maintenance, and Disposal facilities for purposes of determining compliance with requirements of this Agreement.

Section 8.05 The parties desire that Franchisee achieve the greatest Diversion possible under this Agreement. In evaluating the Diversion programs and Diversion rates, City may consider, without limitation, actual tons of Diversion, program effectiveness, comparison to other jurisdictions programs and Diversion rates, exercise by City of rights to designate facilities to be used by Franchisee in this Agreement, third-party Diversion before Franchisee Collection of Discarded Materials, changes in the industry and/or state laws, and other reasonably relevant factors. The parties may execute an amendment to this Agreement reflecting any changes in the

Diversion rates hereunder.

ARTICLE IX. TYPES AND FREQUENCY OF SERVICE

Section 9.01 Public Health and Safety - General. In order to protect the public health and safety, arrangements made by Franchisee with its Commercial Premises Customers within City's jurisdiction for the Collection of Discarded Materials must provide for the Collection (using Fully Automated Collection wherever possible and using Semi-Automated Collection where Fully Automated Collection is not possible) of such waste generated or accumulated by Commercial Premises within the City as needed but at least once per week. All Discarded Materials that are not recycled must be Disposed at an Approved Disposal Facility. With respect to the Containers, Franchisee is responsible for providing Customers with an adequate number of Containers and to work with Customers to ensure that the total weekly Container capacity provided to Customer is adequate. The schedule and routes for Collection must be prepared by the Franchisee and provided to the Administrator before being implemented. The schedule and route must be designed to minimize the total vehicle miles and time required to service Customers. Franchisee must provide Customers with written notice of their scheduled day of Collection and provide at least 30 days' written notice of any change to such Collection date.

- A. Dedicated Routes. Franchisee must establish dedicated routes for Solid Waste, Recyclables, and Organic Materials. Unless authorized by the Administrator in writing, during its Collection process, Franchisee may not commingle Discarded Materials Collected within City with Discarded Materials Collected in other cities and is specifically prohibited from combining Collection routes related to services provided pursuant to this Agreement with Collection routes for other jurisdictions it may service. In the event that Franchisee demonstrates to the Administrator that it is unable to meet this requirement, the Franchisee shall use an allocation method as determined by the Administrator to properly allocate the tonnage within each multi-jurisdictional load to the appropriate jurisdiction. Additionally, the Franchisee shall provide to the Administrator with each monthly tonnage report information deemed necessary by the Administrator in order to validate the tonnages reported by the Franchisee including, without limitation, for each multi-jurisdictional load: (1) the number of collection points, Container size, and frequency of Collection, by jurisdiction, and (2) total tonnage of each multi-jurisdictional load.

- B. Container Overage. If a Customer selects a Service Level with a weekly Container capacity that is inadequate to meet its weekly generation of waste such that the Customer's Carts or Container(s) are regularly overfilled and spilling litter on Collection day, and the situation has been documented in photographs by Franchisee's employees on at least four Collection days in an eight week period, then Franchisee must report this situation to the Administrator and, if the Administrator approves, Franchisee must provide the Customer with Containers that match the Customer's weekly waste generation and bill the Customer for the new Service Level.

Section 9.02 Commercial Premises Discarded Materials Collection Services.

- A. Franchisee must provide all Customers with at least the following three types of Containers for separating Solid Waste: (i) Recyclable Material Container(s), (ii) Organic Material Container(s), and (iii) Solid Waste Container(s). Solid Waste, Organic Materials, and Recyclable Materials Collection must be provided in accordance with the requirements of all Applicable Law. Franchisee shall Collect Solid Waste and Organic Materials at least once per week from each Customer. Franchisee shall collect Recyclable Materials from each Customer at least once every other week. If more frequent collection of Solid Waste, Organic Materials, or Recyclable Materials is necessary to ensure the Customer's premises does not harbor vermin, become unsightly, a source of odors, or otherwise a nuisance, more frequent collection must be provided.
- B. Franchisee agrees to provide new Fully Automated Collection Carts or cleaned and newly painted Bins, as applicable, to all of its Commercial Premises Customers upon commencement of service. Carts must be new wheeled Carts with lids that meet the specifications in Exhibit 3. Franchisee must replace or repair before the Customer's next service date, at no expense to Customers or City, Containers that have been reported to have been stolen and/or damaged.

Section 9.03 In the case of a complaint of a missed Collection, Franchisee must make the Collection on the date of the call if the call is received before 3:00 p.m. If notified after 3:00 p.m., Franchisee must Collect the Discarded Materials no later than the next day.

Section 9.04 Reserved.

Section 9.05 Reserved.

Section 9.06 Reserved.

Section 9.07 Hours of Collection. Franchisee agrees that in order to protect the peace and quiet of the City's residents, its arrangements for the Collection of Discarded Materials for may not start before 7:00 a.m. or continue after 7:00 p.m., Monday through Sunday.

Section 9.08 Collection on Holidays. Franchisee informed City that Franchisee's arrangements with its Customers will provide that if the day of Collection on any given route falls on a legal Holiday, i.e., New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, or Christmas Day, observed by the Materials Recovery Facility, landfill, or other lawful Disposal site to which refuse Collected within the Franchise Area is taken for Disposal, Franchisee must provide Collection service for such route on the day following such Holiday (except Sundays) and not provide Collection service on such Holiday. Franchisee must inform City before the commencement of services under this Agreement of the Holidays that it will not be providing services.

Section 9.09 Identification of Commercial Edible Food Generators. Franchisee must assist the City with identifying Tier One and Tier Two Commercial Edible Food Generators for the purpose of the Food Recovery program. Not later than 30 days after the Effective Date of the Agreement, and annually thereafter, the Franchisee must identify and provide a list to the City of Commercial Customers that qualify, or appear to qualify, as Tier One or Tier Two Commercial Edible Food Generators, as defined by this Agreement. The list must include, at a minimum: the Customer name; service address; contact information; Tier One or Tier Two classification; and, type of business as it relates to the categories of entities specified under the definitions of Tier One and Tier Two Commercial Edible Food Generators. The Franchisee must update this information annually, maintain an up-to-date database, and include this information in the Franchisee's annual report, in accordance with Exhibit 13. Additionally, Franchisee must coordinate food rescue and donation efforts with each Tier One and Tier Two Customer. Franchisee must perform quarterly examinations of routes for food donation opportunities and report results to the City and food rescue organizations.

Section 9.10 Procurement of Recovered Organic Waste Products. Franchisee must procure

sufficient California derived compost, mulch, and/or renewable natural gas (RNG), or achieve compliance through other methods approved by CalRecycle, split proportionally amongst all Franchisees holding a Commercial Franchise in the City, of the City's requirement for recovered organic waste products of 0.08 tons per capita per year as specified in Applicable Law.

Franchisee must meet this obligation by one or a combination of the following activities:

- A. Bulk Compost and/or Mulch Reserved for Jurisdiction - Franchisee must make available for City compost or mulch in an amount requested by City for use at City's parks and facilities at no cost to City. Franchisee must be responsible for finding end-users for any remaining compost or mulch. The end users may be within the City or outside of the City.
- B. Use of RNG in Collection vehicles.
- C. Procurement of procurement compliance attributes from SB 1383 eligible products, including RNG or biomass-to-electricity. The procured amount of procurement compliance attributes cannot exceed the amount Franchisee uses for City-related operations for each year.
- D. Other methods approved by CalRecycle.

Section 9.11 SB 1383 Procurement. Franchisee agrees that any compost, mulch, or both, provided through this Agreement must comply with the municipal procurement requirements of SB 1383, including being generated from California organic waste products, as defined by SB 1383 for each applicable material type.

Section 9.12 Franchisee Warranty of Recovered Organic Waste Products. Franchisee must provide assurance through the execution of a liability waiver stating that all organic waste products provided by the Franchisee and used within the City are free from pathogens and inorganic waste material that may be harmful to the health and welfare of City and meet or exceed the physical contamination, maximum metal concentration, and pathogen density standards for land application specified in 14 Cal. Code of Regs. Section 17852(a)(24.5)(A)(1) through (3). The Franchisee must indemnify and hold harmless City against any claims arising from contaminated recovered organic waste products provided by the Franchisee as set forth in

this Section.

Section 9.13 Franchisee must Collect and remove all Discarded Materials placed in Containers from all Commercial Premises affected by this Agreement within City in conformance with the minimum frequency set forth in Applicable Law to prevent overflows and spillage from Bins.

Section 9.14 The work to be performed by Franchisee includes, without limitation, furnishing of all labor, supervision, equipment, materials, supplies, and other items necessary to perform the services required. The designation of, and specification of requirements for, particular items of labor or equipment does not relieve Franchisee of the duty to furnish all others, as may be required, whether or not identified elsewhere in this Agreement.

Section 9.15 The work to be performed by Franchisee will be performed in a thorough and professional manner so that customers within City are provided with reliable, courteous, and high-quality Discarded Materials Collection services at all times during the Term of this Agreement.

Section 9.16 Bulky Items Pick-Up. Franchisee must offer Bulky Items pick-ups to Customers. Bulky Items pickups must be “on call” and completed by the next regularly scheduled Collection day from the time a Customer makes a request for such service. There are no other size or weight restrictions with respect to Bulky Items except that Franchisee is not required to remove automobile bodies, or any other items which may not be safely handled by two persons. Bulky Items Collected by Franchisee may not be landfilled or Disposed of until the following hierarchy has been followed by Franchisee:

- A. Reuse as is
- B. Disassemble for reuse or Recycling
- C. Transport Bulky Items and reusable items to the appropriate Approved Facility for reuse, processing
- D. Transport yard waste to the Approved Organic Materials Processing Facility for processing

E. Transport paper products to the Approved Source Separated Recyclable Materials Processing Facility for processing

F. Disposal

Section 9.17 Franchisee agrees to develop and carry out a community relations program acceptable to City for information related to Bulky Items.

Section 9.18 Franchisee must comply with all applicable regulations governing the recovery of ozone-depleting refrigerants during the Disposal of air conditioning or refrigeration equipment, including, without limitation 40 C.F.R. Part 82.

Section 9.19 Reserved.

Section 9.20 Electronic Waste. This service is not included in the franchise.

Section 9.21 Temporary Service. Franchisee is authorized by this Agreement to provide temporary Bin services required by Customers due to unusually high volume of Customer needs for Solid Waste, Recycling, Organic Materials, or Construction and Demolition Waste pick-up. Franchisee does not have the exclusive right to provide temporary Bin service. Temporary Bin service may be provided by Franchisee, any other entity holding a Commercial Franchise in the City, or any entity granted a permit by City to provide Temporary Bin service. Franchisee may not represent that it has the exclusive right to provide temporary Bin service.

Section 9.22 Roll-Out Service. Franchisee must offer a roll-out service for Customers that wish for Franchisee move/roll their Container(s) to the curb or normal pick-up location at the time of collection. Franchisee may charge Customers for such service.

Section 9.23 Reserved.

Section 9.24 Reserved.

Section 9.25 Reserved.

Section 9.26 Reserved.

Section 9.27 Reserved.

Section 9.28 Warning Notice. Franchisee must notify customers who have non-Recyclable Materials in their Source Separated Recyclable Materials Container or non-Organic Materials in their Organic Materials Container in accordance with procedures to be agreed upon between City and Franchisee. If, after following this procedure, the Container continues to be contaminated, Franchisee may remove the Container from customers who fail to sort properly and who fail to segregate Recyclable Materials and Organic Materials in accordance with City-approved policy. Franchisee must report to City on all warning notices that have been issued of issuing the notice on a monthly basis. Sending a copy of the notice(s) with the monthly report will satisfy this requirement.

ARTICLE X. OPERATIONS

Section 10.01 Operations.

- A. Hours of Collection. Franchisee's arrangements for Collecting Discarded Materials must provide that Collections cannot start before 7 a.m. or continue after 7 p.m. on any day. This time may be extended occasionally in the event that Collection is delayed due to unanticipated mechanical breakdown of equipment, unanticipated illnesses of designated drivers, rain, flood, earthquake, or other forces majeure beyond the reasonable control of Franchisee.
- B. Collection on Holidays. Notwithstanding any other provision of this Agreement to the contrary, Collections need not occur if the regularly scheduled day of Collection on any route in City falls on a day on which a legal Holiday is observed by the landfill, transformation, Materials Recovery Facility, or Compostable Materials Handling Facility destination of the Discarded Materials to be Collected by Franchisee (presently New Year's Day, Memorial Day, Fourth of July, Labor Day, Thanksgiving Day and Christmas Day). Franchisee will provide Collection service on the day following the day on which the Holiday is observed. Regular Collection days falling later in the same week must be delayed one day, except that routes scheduled to be Collected on a Friday following the observation of a Holiday must be Collected on Saturday. Regular Collection schedules must be resumed the following week.
- C. Schedules. Franchisee must review annually with City its operation plan outlining the Collection routes, intervals of Collection, and Collection times for all materials Collected

under this Agreement, upon 30 days' written notice by City requesting such review. More frequent reviews may be required if operations are not satisfactory, based on documented observations or reports of complaints. If the plan is determined by City to be inadequate, Franchisee must modify its plan by incorporating changes into a revised plan and reviewing that revised plan with City within 30 calendar days.

Section 10.02 Container Ownership and Maintenance Responsibilities. Franchisee is responsible for Container repair and maintenance, graffiti removal, and replacing lost, stolen, or damaged Containers within five business days at no additional charge to Customers. Franchisee may, however, charge the Customer for repairing or replacing a Container if the damage is due to the user's willful negligence or abuse. In no event may this charge be greater than the Franchisee's actual cost for replacement parts or a new Container, or \$50. All Containers provided under this Agreement are Franchisee's property and City may direct Franchisee to remove the Containers at the end of the Agreement at no charge, should City so desire.

Section 10.03 Bins. Franchisee must maintain its Containers in a clean and sound condition, free from putrescible residue. Containers must be equipped with reflectors or reflective tape to enhance visibility. Containers must be constructed of heavy metal, or other durable material, and must be watertight and well painted. Wheels, forklift slots, and other appurtenances, which are designed for movement, loading, or unloading of the Container, must be maintained in good repair. Franchisee must inspect, and if necessary, clean or replace all Containers once each year at no charge. Franchisee must perform cleaning or replacement of Containers more frequently, if necessary, for an additional fee, to prevent a nuisance caused by odors or vector harborage. Franchisee must remove graffiti from any Container within five business days of request by City or users. Each Bin placed in City by Franchisee must have the name and phone number of Franchisee in letters not less than three inches high on the exterior of the Container so as to be visible when the Container is placed for use. Each Container must be labeled with a conspicuous warning: "Not to be used for the Disposal of hazardous, electronic or universal waste."

Section 10.04 Roll-off Boxes. Franchisee must provide clean roll-off boxes, free from graffiti and equipped with reflectors. Franchisee must properly cover all open roll-off boxes during transport to and from the Disposal Site.

Section 10.05 Litter Abatement.

- A. Minimization of Spills. Franchisee must use due care to prevent Discarded Materials or fluids from leaking or being spilled or scattered during the Collection or transportation process. If any Discarded Materials or fluids leak or are spilled during Collection, Franchisee must promptly clean up those materials. Each Collection vehicle must carry a broom, sand, and shovel at all times for this purpose. Franchisee may not, without City's prior written consent, transfer loads from one vehicle to another on any public Street, unless it is necessary to do so because of mechanical failure, accidental damage to a vehicle, or a pre-approved method of Discarded Materials transfer between vehicles.
- B. Clean Up. During the Collection or transportation process, Franchisee must clean up litter in the immediate vicinity of any Discarded Materials storage or Collection area under its control or as a result of Franchisee actions. If Franchisee arrives at a Collection area with existing litter, Franchisee must photo document the pre-existing condition and report the condition to the Administrator. Franchisee must identify instances of repeated spillage caused by users and must report those instances to the Administrator.

Section 10.06 Personnel.

- A. Franchisee must furnish qualified drivers, mechanical, supervisory, clerical, management, and other personnel as may be necessary to provide the services required by this Agreement in a satisfactory, safe, economical, and efficient manner. All drivers must be trained and qualified in the operation of vehicles they operate and must possess a valid license, of the appropriate class, issued by the California Department of Motor Vehicles.
- B. Franchisee must establish and vigorously enforce an educational program to train Franchisee's employees in the identification of Hazardous Waste. Franchisee's employees must not knowingly place any Hazardous Waste in the Collection vehicles, nor knowingly Dispose of any Hazardous Wastes at a processing facility or Disposal Site.
- C. Franchisee must train its employees in customer courtesy, prohibit the use of loud or profane language, and instruct Collection crews to perform all work quietly. Franchisee must use its best efforts to ensure that all employees present a neat appearance and

conduct themselves in a courteous manner. If any employee is found to be discourteous or not to be performing services in the manner required by this Agreement, Franchisee must take all necessary corrective measures including, without limitation, transfer, discipline, or termination. If City notified Franchisee of a complaint related to discourteous or improper behavior, Franchisee must consider reassigning the employee to duties not involving contact with the public in City of while Franchisee is pursuing its investigation and corrective actions.

- D. Franchisee must provide suitable operations, health, and safety training for all of its employees who use or operate equipment or who are otherwise directly involved in Collection or related operations.

Section 10.07 Identification Required. Franchisee must provide its employees, subsidiaries, and subcontractors with identification for all individuals who may have personal contact with Residents in City. Franchisee must provide a list of current employees, subsidiaries, and subcontractors to the Administrator upon request.

- A. City may, at its sole discretion, conduct through law enforcement agencies a security and identification check of Franchisee, and its present and future employees, in accordance with accepted procedures established by City.

Section 10.08 Non-Discrimination. Franchisee may not discriminate in the provision of service or the employment of persons engaged in the performance of this Agreement on account of race, color, religion, sex, age, or physical handicap or medical condition in violation of any applicable federal or state law, except to the extent that any physical handicap or medical condition directly affects the ability of an employee to carry out the essential functions of their employment as provided by applicable federal or state law.

Section 10.09 Change in Collection Schedule. Franchisee must notify City 45 days before, and Commercial Accounts not later than 14 days before, any change in Collection operations that results in a change in the day on which Discarded Materials Collection occurs. Franchisee cannot allow any customer to be without service for more than seven calendar days in connection with a Collection schedule change. Customer notification is required before such change. This approval cannot be unreasonably withheld.

Any changes in the route map or Collection schedule require the prior approval of the Administrator. City may request changes in the route map or Collection schedule to improve service, to resolve complaints, or for other reasons, and Franchisee agrees to implement such requests unless such requests unreasonably interfere with the orderly and economical provision of services as provided in this Agreement. In the event of any disagreements, City and Franchisee agree to meet and confer in good faith in an attempt to resolve such disagreements. Route maps to be submitted with the Annual Report.

Section 10.10 Report of Accumulation of Discarded Materials; Unauthorized Dumping. Franchisee must direct its drivers to note the addresses of any Premises at which they observe that Discarded Materials are accumulating and is not being delivered for Collection, and the address, or other location description, at which Discarded Materials have been dumped in an apparently unauthorized manner. Franchisee must deliver the address or description to City within five Working Days of such observation. Franchisee must cooperate with City in the investigation and prosecution of any violations of the ESMC.

Section 10.11 Transportation of Discarded Materials. Franchisee must transport all Discarded Materials Collected in City to an Approved Facility as required by this Agreement and/or Applicable Law. Franchisee agrees to make commercially reasonable efforts to divert single stream Recyclable Materials, Source Separated Recyclable Materials, and Organic Materials from landfill Disposal to such locations approved by City. Franchisee must maintain complete, accurate and up-to-date records of the quantities of Discarded Materials transported to each Approved Facility and must cooperate with City in any audits or investigations of those quantities.

Section 10.12 Disposal of Discarded Materials and Processing Facilities.

- A. Use of Approved Facilities. Franchisee, without constraint and as a free-market business decision in accepting this Agreement, agrees to use the Approved Facilities, included in Exhibit 14, for the purposes of transferring and processing and/or Disposing of all Discarded Materials Collected in City. Subject to events of Force Majeure or uncontrollable circumstances, use of a facility that is not included in Exhibit 14 must be approved, in writing, by City before use consistent with the requirements of Article 9.

- B. **Transfer.** Franchisee plans to transport Recyclable Materials and Organic Materials to the Approved Transfer Facility where the materials will be unloaded from Collection vehicles and loaded into large-capacity vehicles and transported to the Approved Processing Facilities. Franchisee must keep all existing permits and approvals necessary for use of the Approved Transfer Facility in full regulatory compliance. Upon request, Franchisee must provide copies of facility permits and/or notices of violations (obtained from its transfer facility subcontractor if necessary) to the Administrator. If Franchisee is unable to use the Approved Transfer Facility, then the Franchisee is responsible for making other transportation arrangements. In such event, Franchisee will not be compensated for any additional costs. If the Franchisee plans to change its transfer method, Franchisee must obtain written approval from the City before making the change.
- C. **Processing.** Franchisee must transport and deliver all Source Separated Recyclable Materials placed in Recyclable Material Containers to the Approved Recyclable Materials Processing Facility, Source Separated Organic Materials placed in Organic Material Containers within City to the Approved Organic Materials Processing Facility, and Mixed Waste Materials placed in Mixed Waste Containers to a High Diversion Organic Waste Processing Facility. All tipping fees and other costs associated with transporting to and processing of such Recyclable and Organic Materials at the Approved Processing Facilities and Disposing of the residue as required by this Agreement must be paid by Franchisee.
- D. **Marketing and Sale of Recyclable and Organic Materials.** Franchisee must be responsible for marketing Recyclable Materials and Organic Materials Collected in the City that are delivered for Processing at the Approved Processing Facilities. Franchisee's marketing strategy must promote the highest and best use of materials presented in the waste management hierarchy established by AB 939. Where practical, the marketing strategy should include use of local markets for Recyclable and Organic Materials.
- E. **Capacity Guarantee.** Subject to events of Force Majeure/Uncontrollable Circumstances, Franchisee guarantees sufficient capacity at the Approved Processing Facilities to process all Source Separated Recyclable and Organic Materials Collected by Franchisee under

this Agreement throughout the Term of the Agreement; provided, however, that Franchisee makes no guaranty with respect to the capacity of any county facilities to the extent Organic Materials are handled at county facilities.

- F. Compliance with regulatory requirements and Applicable Law. Franchisee must keep all existing permits and approvals necessary for use of the Approved Processing Facilities in full regulatory compliance. Upon request, Franchisee must provide copies of facility permits and/or notices of violations (obtained from its processing facility subcontractor if necessary) to Administrator.
- G. Notification of Emergency Conditions. Franchisee must notify City of any unforeseen operational restrictions that have been imposed upon the facility by a regulatory agency or any unforeseen equipment or operational failure that will temporarily prevent the facility from processing the Discarded Materials Collected under this Agreement.
- H. Approved Facility(ies) Unavailable/Use of Alternative Facility(ies). If Franchisee is unable to use the Approved Processing Facility due to an event that meets the requirements for excusing Franchisee from performance of this specific obligation, Franchisee must use an alternative processing facility provided that the Franchisee provides written notice to the Administrator. Within 48 hours of an emergency or sudden and unforeseen closure, Franchisee must provide a written description of the reasons the use of the Approved Processing Facility is not feasible, and the period of time Franchisee proposes to use the alternative processing facility. Such a change in processing facility must be temporarily permitted until such time as the Administrator is able to consider and respond to the use of the proposed alternative processing facility. If the use of the proposed alternative processing facility is anticipated to or actually does exceed 30 days in a consecutive 12-month period, the use of such processing facility is subject to approval by the Administrator. The Administrator may approve, conditionally approve, temporarily approve, or disapprove of the use of the proposed alternative processing facility. If City disapproves the use of the proposed alternative processing facility, the Parties must meet and confer to determine an acceptable processing facility.
 - 1. Except for the emergency conditions, Franchisee may not change its selection of the

Approved Processing Facilities without City written approval, which will not be unreasonably withheld in City's sole discretion. If Franchisee elects to use a processing facility that is different than the initial Approved Processing Facilities, it must request written approval from the Administrator 360 calendar days before use of the site and obtain City's written approval not later than 10 calendar days before use of the site. Failure to meet the requirements of this Section may result in liquidated damages.

2. Franchisee must observe and comply with all regulations in effect at the Approved Processing Facilities and cooperate with and take direction from the operator thereof with respect to delivery of Recyclable and Organic Materials. Franchisee must actively work with the Approved Processing Facility operators throughout the Term of this Agreement to ensure that contamination of the Recyclable and Organic Materials Collected under this Agreement and delivered to the processing facility remains below the limits established by Applicable Law.
 - I. Residue Disposal. Residue from the processing of Recyclable and Organic Materials Collected under this Agreement at the Approved Processing Facilities, which cannot be marketed, must be Disposed of by Franchisee, or the processing facility subcontractor. Residue delivered for Disposal may not include any Excluded Waste.
 - J. Compostable Plastics. If compostable plastics are accepted at the Approved Organic Materials Processing Facility, Customers may place compostable plastics in the Organic Materials Container for Collection, including compostable plastic bags used by Customers to contain Food Waste before placement in the Organic Materials Container for Collection. Franchisee may prohibit use of compostable plastics in Organic Material Containers. Franchisee may Collect and transport such materials for processing at the Approved Organic Materials Processing Facility. Prior to the commencement of the Agreement, and every August 1 annually thereafter, Franchisee must provide a written letter from each facility servicing the Franchisee stating that the facility accepts and recovers the material. If at any time during the Term of the Agreement the Approved Organic Materials Processing Facility can no longer accept and/or process compostable plastics, Franchisee must notify City within seven days of the facility's inability to accept the compostable plastics. The notification must, at a minimum, include: the date

and a description of the reasons that the facility is not able to process and recover the compostable plastics; the period of time the facility will not process and recover these materials; and the Franchisee's proposed plan to find an alternative facility or arrangement to process the compostable plastics, subject to City approval. City may prohibit or restrict the use of compostable plastics, with a six month notice to Franchisee, and this does not constitute a City-directed change in scope or change in law under this Agreement.

- K. Franchisee must use only the Approved Disposal Facility(ies) identified in Exhibit 14. Franchisee covenants that it will use its commercially reasonable best efforts to determine whether landfills to be utilized by Approved Disposal Facilities are properly permitted, are classified as a Class 3 landfill (permitted to receive only municipal Discarded Materials), are in compliance with all Applicable Law, and are not on or being considered for inclusion on a state or federal Superfund list, or CalRecycle list of Solid Waste facilities failing to meet State minimum standards. Except as otherwise set forth in this Agreement, Franchisee must Dispose of all Discarded Materials Collected in City at the Approved Disposal Sites, at Franchisee's expense and in accordance with all Applicable Law.
- L. Franchisee covenants that the Approved Recycling Facility in Exhibit 14 is properly permitted and in compliance with all Applicable Law. Franchisee must deliver all Recyclable Materials Collected in City to the Approved Recycling Facility for processing or transfer to a permitted processing facility, at Franchisee's expense and in accordance with all Applicable Law. Franchisee must ensure that, after processing, residue material cannot exceed the amount permitted by Applicable Law. Franchisee must ensure that Recyclable Materials are used in a manner that is classified as Diversion pursuant to applicable California law. Franchisee must contact City if changes in the Recycling facility designation are made.
- M. Franchisee must use only the Approved Organic Materials Processing Facility(ies) in Exhibit 14. Franchisee covenants that the Approved Organic Materials Processing Facility is properly permitted for the processing of Organic Materials and complies with all Applicable Law. Franchisee must deliver all Organic Materials Collected in City to the Approved Facilities for processing or transfer to a permitted facility. If any such delivery

to the Approved Facilities would not result in City receiving credit in calculating its Diversion Rate for having diverted the Organic Materials from Disposal in a landfill, another facility must be selected. Franchisee must ensure that Organic Materials are processed in accordance with Applicable Law, and used in a manner that is classified as Diversion.

- N. Franchisee must use its commercially reasonable best efforts to ensure that the Approved Facilities are properly permitted and in compliance with Applicable Law at all times during the Term. Franchisee must immediately inform the Administrator in writing in the event of any non-compliance, and City, in its sole discretion, has the right to require the use of a different Disposal or processing facility, to be selected by Franchisee. The City Council may also, in its sole discretion, require the use of a different site at any time during the Term if the Approved Facilities are found to not be in compliance with the provisions of this Section and City Council reasonably determines, after written notice to Franchisee and the opportunity for a hearing if requested, that Approved Facilities are not acceptable due to a failure to materially comply with the terms of this Agreement or a finding by state or federal regulatory agencies that it is not in material compliance with Applicable Law, including the Environmental Laws, and is unable to accept City's Solid Waste, Organic Materials, or Recyclable Materials (as the case may be).

Section 10.13 Annual Route Audit. At least once annually, Franchisee must conduct an internal audit of its Collection routes in City. The annual route audit must be prepared in form and content reasonably acceptable to the City Manager, or designee, and must include the truck identity, number and size of Containers, and the weight of the Discarded Materials delivered to the transfer station or Disposal Site. Results of the annual route audit will be available for review by City.

Section 10.14 Service Description. Franchisee must, within 15 days before the effective date of a service change, prepare and distribute, subject to the direction of City, a notice to each account setting forth the annual Holiday schedule, Recycling programs offered, and a general summary of services required to be provided under this Agreement and optional services that may be furnished by Franchisee. This notice must be in a form that is subject to the reasonable approval of the Administrator before its distribution. The notice may also be included as part of

Franchisee's public education plan.

Section 10.15 Scavenging - Discouragement. Franchisee will take whatever reasonable actions that are commercially practicable (e.g., actions seeking to enjoin organized scavengers) which may be appropriate and effective to discourage Scavenging of Recyclable Materials from Customer Containers.

Section 10.16 Public Awareness Programs. Franchisee will develop and implement a "Promotional Plan" for the Discarded Materials and recycling programs, with goals, strategies, and timetables (at no additional cost to City or Customers). At a minimum, the Promotional Plan must include the following:

- A. Information regarding the City's requirements under the Act, Bulky Items pick-ups, drop-off programs, and the importance of the safe Disposal of household Hazardous Waste and Holiday programs.
- B. Franchisee will provide and distribute literature in the form of newsletters, fliers, door hangers, cards, stickers, or otherwise as Franchisee determines to be most effective. All material to be reviewed by City in advance of publication and must be written in English.
- C. Newsletters must be published twice during the first year, and quarterly thereafter, with the information set forth above. Newsletter must be published in English. All material to be reviewed by City in advance of publication.
- D. Distribution of a newsletter within seven days to any new customer.
- E. Other promotional activities to achieve the goals of this Agreement, including participation in local activities and cleanup days.
- F. Upon City's request, Franchisee must provide materials in languages other than English in response to shifting demographics within the City; updates to State requirements or Applicable Law; or any other reasonably deemed appropriate by City. If additional languages are utilized in the future, Franchisee may use QR Codes to assist Customers with specific languages and for specific programs.

Section 10.17 Change in Size or Number of Containers. By written or telephonic request

Customers may request to exchange Recycling Containers without charge for different sizes, add extra Containers or reduce the number of their Containers. Franchisee must exchange, deliver and/or remove Container(s) in accordance with Customers' requests.

Section 10.18 Franchisee must repaint and relabel, to the extent necessary, any Container which is impacted by graffiti within two business days after Franchisee receives notice of any such graffiti.

ARTICLE XI. COLLECTION AND CONTAINER EQUIPMENT AND PERSONNEL

Section 11.01 Vehicle Requirements. Franchisee warrants that it must provide an adequate number of vehicles and all equipment for all of the services for which it is responsible for performing under this Agreement. At all times that Collection is occurring, Franchisee must maintain an emergency service vehicle and field supervisor to respond to complaints, service problems, or emergency calls. Franchisee warrants that it will comply with all measures and procedures promulgated by all agencies with jurisdiction over the safe, sanitary operation of all its equipment.

- A. Franchisee agrees to comply with ACF Regulation and Zero Emission Vehicle (ZEV) requirements at no additional charge.
- B. Franchisee must be able to operate only with collection vehicles that utilize SB 1383-compliant renewable fuel within one year after the Effective Date of this Agreement. This deadline may be temporarily extended by the City Manager if he/she finds and determines that (i) SB 1383-compliant fuel is not commercially available or is not consistently available in sufficient quantities, and (ii) Franchisee cannot reasonably be expected to operate all of its collection vehicles in the City using SB 1383-compliant fuel.

Section 11.02 Vehicles used for the Collection of Discarded Materials must not be more than seven years old; however, during the initial two-year term of this Agreement, vehicles that are up to ten years old may be used, provided those vehicles are operated exclusively on SB 1383-compliant fuel. If the Agreement is extended beyond the initial two-year term, all vehicles must be not more than seven years old. Vehicles must have a backup alarm and be maintained in "like new" condition during the Term of this Agreement. Franchisee must use Fully Automated Collection vehicles wherever possible, use Semi-Automated Collection vehicles where Fully

Automated Collection vehicles are not possible to use, and may use other vehicles only when Semi-Automated Collection Vehicles are not possible to use. All such vehicles must be watertight and leak-proof and comply with all federal, state, and local laws and regulations.

Section 11.03 Vehicles must be of uniform color and company markings; bear the Franchisee's name and telephone number and vehicle identification number in lettering of at least two inches in height; be kept in good repair; inspected daily and maintained in a clean appearance, including free of dirt and graffiti; and not be stored on any public Street or other property owned by City.

Section 11.04 Vehicle may not exceed the gross vehicle weight of the manufacturer's or the California Vehicle Code's limits; and be in compliance with AQMD Rule 1193.

Section 11.05 Any Discarded Materials dropped or spilled during Collection, transfer, or transportation must be immediately cleaned up or removed by Franchisee. Each vehicle must be equipped with a broom, absorbent, shovel, and bucket for purposes of cleaning up leaks and debris dripping from or falling from vehicles, or Containers.

Section 11.06 To protect peace and quiet in Residential areas, the noise level generated by compaction vehicles using compaction mechanisms during the stationary compaction process may not exceed the stricter of ESMC Section 7-2-4 noise standards or 75 decibels at a distance of 25 feet from the Collection vehicle measured at an elevation of five feet above ground level. Noise level testing must be undertaken when so ordered by the Administrator.

Section 11.07 Franchisee must prepare and keep current, a written contingency plan describing the arrangements and provisions Franchisee has made to provide vehicles and personnel to maintain uninterrupted service during mechanical breakdowns or other emergencies. This plan should be consistent with and coordinated with City's emergency plans. The schedule for submittal of this plan to City is described in Exhibit 10.

Section 11.08 Franchisee is responsible for noting the addresses of any Premises at which they observe that Discarded Materials are accumulating and not being delivered for Collection and the address, or other location description, at which such waste has been dumped in an apparently unauthorized manner. Franchisee must deliver this information to the Administrator within three business days of such observation.

Section 11.09 Should the Administrator at any time give notification in writing to Franchisee that any vehicle does not comply with the standards specified in this Agreement, that vehicle must be removed from service by Franchisee immediately and may not be used until inspected and approved in writing by the Administrator. Additionally, liquidated damages per Exhibit 5 of this Agreement may be assessed if deemed appropriate by Administrator.

Section 11.10 Containers Provided to Customers. Franchisee may provide Containers to new Customers requesting service initiation within three Working Days of Franchisee's first receipt of the Customer request. Franchisee-provided Containers must be new or fully refurbished in as- new condition and comply with the Container standards set forth in Exhibit 3. All Containers must display the Franchisee's name, logo, telephone number, website, capacity (yards or gallons), and some identifying inventory or serial number.

- A. Container Maintenance. Upon City request, Franchisee must remove or replace Customer Containers with graffiti and/or paint within three Working Days of notification from City at no charge.

Section 11.11 Franchisee warrants that it will comply with all measures and procedures promulgated by all agencies with jurisdiction over the safe and sanitary operation of all its equipment.

Section 11.12 Franchisee agrees to use its best efforts to prevent damage to private streets over which its Collection equipment may be operated, to obtain all required approvals for operation of its Collection vehicles on private streets.

ARTICLE XII. PRIVACY

Section 12.01 General. Franchisee must strictly observe and protect the rights of privacy of Customers. Information identifying individual Customers, or the composition or contents of a service recipient's Discarded Materials may not be revealed to any person, governmental unit, private agency, or company, unless upon the authority of a court of law, by statute, or upon valid authorization of the Customer. This provision does not preclude Franchisee from preparing, participating in, or assisting in the preparation of waste characterization studies or waste stream analyses which may be required by City, be required by the Act, or preparing and distributing public awareness materials to customers.

Section 12.02 Franchisee may not market or distribute mailing lists with the names and addresses of Customers except such lists and details on the services provided to the Customers must be provided to the Administrator.

Section 12.03 Privacy Rights Cumulative. The rights accorded Customers pursuant to this Section are in addition to any other privacy rights accorded Customers pursuant to federal or state law.

**ARTICLE XIII. SERVICE EXCEPTIONS; HAZARDOUS WASTE NOTIFICATIONS;
CONTAMINATION AND COMPLIANCE MONITORING.**

Section 13.01 Service Exceptions.

- A. Hazardous Waste. When service is not provided to any Customer, Franchisee must notify its Customer in writing why the Collection was not made by leaving a tag at least 3-1/2 inches by 6-3/4 inches stating the reasons why the Collection was not made. The tag must set forth the Franchisee's business's name and telephone number and be securely fastened to the Container(s) or article of Discarded Materials. Franchisee has represented to City that Franchisee will carry out its duties to notify all agencies with jurisdiction, including the California Department of Toxic Substances Control and Local Emergency Response Providers, and, if appropriate, the National Response Center, of reportable quantities of Hazardous Waste, found or observed in Discarded Materials anywhere within the City, including on, in, under, or about City property, including Streets, easements, rights of way, and City waste Containers. In addition to other required notifications, if Franchisee observes any substances which it or its employees reasonably believe or suspect to contain Hazardous Waste unlawfully Disposed of or released on City property, including Streets, storm drains, or public rights of way, Franchisee also will immediately notify the Administrator, or the Administrator's designee.

- B. Disaster Waivers. In the event of a disaster, the City may grant Franchisee a waiver of some or all Discarded Materials Collection requirements under this in the disaster-affected areas for the duration of the waiver, provided that such waiver is approved by CalRecycle. Any resulting changes in Collection requirements will be addressed as a

change in scope in accordance with this Agreement.

- C. Quarantined Waste. If approved by the City, the Franchisee may Dispose of, rather than process, specific types of Organic Materials and/or Recyclable Materials that are subject to quarantine and meet the requirements described in 14 Cal. Code of Regs. Section 18984.13(d) for a period of time specified by the City or until the City provides notice that the quarantine has been removed and directs Franchisee to transport the materials to the Approved Facilities for such material.
- D. Franchisee must maintain records and submit reports regarding compliance agreements for quarantined Organic Materials and Recyclable Materials that are Disposed of pursuant to this Agreement.
- E. Waivers. Upon Customer request, and with written approval from the Administrator, Franchisee must cease providing, and collecting payment for, Collection services to a Premises which is anticipated to be vacant for no less than 30 days. In addition, upon written direction from the Administrator, Franchisee must modify or otherwise cease providing Collection services to Customers requesting other service exemptions, provided that such Customers consistently demonstrate the ability to responsibly manage Discarded Materials generated at the Premises in question, in a manner consistent with Applicable Law. City may grant waivers described in this Section for Commercial Generators provided, the Generator must continue to subscribe with Franchisee for franchised Collection services to the extent such services are not waived by the City. Waivers issued are subject to compliance with Applicable Law, pursuant to 14 Cal. Code of Regs. Section 18984.11, or other requirements specified by the City in compliance with Applicable Law.

1. Types of Generator Waivers.

- a. De Minimis Waivers. City may waive a Generator's obligation to comply with some or all of the Recyclable Materials and Organic Materials requirements set forth in this Agreement if the Generator provides documentation or City has evidence demonstrating one of the following de minimis conditions:
 - i. The Generator's total Discarded Materials Collection service is two cubic yards

- or more per week, and Organic Materials subject to Collection in a Recyclable Materials Container or Organic Materials Container comprises less than 20 gallons per week, per applicable Container, of the Generator's total waste; or
- ii. The Generator's total Discarded Materials Collection service is less than two cubic yards per week, and Organic Materials subject to Collection in a Recyclable Materials Container or Organic Materials Container comprises less than 10 gallons per week, per applicable Container, of the Generator's total waste.
- b. Physical Space Waivers. City may waive a Generator's obligation to comply with some or all of the Recyclable Materials and Organic Materials requirements set forth in this Agreement if the Generator provides documentation, or City has evidence, the Franchisee, licensed architect, engineer, or similarly qualified source demonstrating that the Premises lacks adequate space for Recyclable Materials Containers and/or Organic Materials Containers. At City's option, it may authorize the Generator to request, and Franchisee to provide, split-Container service to the Generator.
2. Franchisee Review of Waiver Requests. Generators may submit requests for de minimis waivers and physical space waivers to the City or Franchisee. The City must notify Franchisee of the request, and Franchisee must within seven days after receiving City's request, inspect the Generator's Premises to verify the accuracy of the application. Franchisee must provide documentation of the inspection, including the date of the inspection, Customer name and address, a description of the Premises, evaluation of each criterion of the relevant waiver type, and photographic evidence. The Franchisee must send this information and documentation to the City in a timely manner, not to exceed three days after the date of inspection. City ultimately retains the right to approve or deny any application, regardless of the information provided by the Franchisee. Franchisee must report information regarding waivers reviewed within the month, if any, in accordance with this Section.
 3. Service Level Updates. When City grants a waiver to a Customer, or the Customer's waiver status changes after a re-verification determination, City must notify the

Franchisee within seven days of the waiver approval or status change with information on the Customer and any changes to Service Level or Collection service requirements for the Customer. Franchisee has seven days to modify the Customer's Service Level, Customer account data, and billing statement, as needed.

4. Waiver Re-verification. City is responsible for re-verification of waivers. Upon City's request, the Franchisee must support City in this re-verification process by providing requested Customer information. Should a waiver status change, Franchisee must update the Customer's information and Service Level in accordance with this Agreement.

Section 13.02 Contamination Monitoring.

A. Annual Route Reviews.

1. Methodology. Franchisee must conduct route reviews that include inspection of the contents of Customers' Collection Containers for prohibited Container contaminants in a manner such that a minimum of 2% of Containers on each and every hauler route are randomly inspected annually to meet the requirements of SB 1383. City representatives may join Franchisee on route reviews upon request. Franchisee must provide the City at least 30 days' notice of scheduled route audits.
2. Contamination Notification. Upon City or Franchisee identification of prohibited Container contaminants in a Customer's Container, Franchisee must provide the Customer with a notice of contamination in the form of either a courtesy pick-up notice or a non-Collection notice as determined by the Administrator.
3. Courtesy Pick-Up Notice. Upon City or Franchisee identification of prohibited Container contaminants in a Customer's Container, Franchisee must provide the Customer a courtesy pick-up notice at the Customers door or gate; or, subject to City's approval, may deliver the notice by mail, e-mail, or text message. The format of the courtesy pick-up notice must be approved by the Administrator and must be a distinct color from the non-Collection notices. Franchisee must also attach or adhere

- courtesy pick-up notice to Generators contaminated Containers. The courtesy pick-up notification must, at a minimum:
- a. Inform the Customer of the observed presence of Prohibited Container Contaminants;
 - b. Include the date and time the Prohibited Container Contaminants were observed;
 - c. Include information on the Customer's requirement to properly separate materials into the appropriate Containers, and the accepted and prohibited materials for Collection in each Container;
 - d. Inform the Customer of the courtesy pick-up of the contaminated materials on this occasion; and,
 - e. Include photographic evidence.
4. Franchisee must Collect the contaminated Recyclable Materials and/or Organic Materials Containers and either transport the material to the appropriate Approved Facility for processing; or, Franchisee may Collect the contaminated materials with the Solid Waste and transport the contaminated materials to the Designated Disposal Facility. A courtesy Collection of contaminated Recyclable Materials or Organic Materials where the materials are sent to the designated Disposal Facility may be made with a Solid Waste Collection vehicle, provided that the contaminants may safely and lawfully be Collected as Solid Waste.
5. Non-Collection Notices. Upon identification of prohibited Container contaminants in a Container in excess of 10% or more, by volume, or that contain Excluded Waste, Franchisee must provide a non-Collection notice to the Generator. The non-Collection notice must, at a minimum:
- a. Inform the Customer of the reasons(s) for non-Collection;
 - b. Include the date and time the notice was left or issued;
 - c. Describe the Special Pick-up free to Customer for Franchisee to return and

Collect the Container after Customer removes the contamination to the extent safe to do so;

- d. Provide a warning statement that a extra pick-up fee may be assessed; and,
- e. Document photographic evidence of the violation(s).

Section 13.03 Failure or Refusal to Collect. When Discarded Materials is not Collected from any Discarded Materials service recipient or Customer, Franchisee must contact the Customer on the scheduled Collection day or within 24 hours of the scheduled Collection day by telephone, email, text message, or other verbal or electronic message to explain why the Container was not Collected. Whenever a Container is not Collected because of prohibited Container contaminants, a Customer service representative must contact the Customer to discuss and encourage the Customer to adopt proper Discarded Materials preparation and separation procedures.

Section 13.04 Universal Enrollment Monitoring. Franchisee must assist the City in ensuring that the Customers that have made service arrangements with the Franchisee must have Solid Waste, Recycling, and Organics Collection services in compliance with SB 1383 unless provided a waiver by the City. Failure to establish Solid Waste, Recycling, and Organics Collection services in compliance with SB 1383 may result in liquidated damages.

Section 13.05 Commercial Customer Compliance Reviews. The Franchisee must complete a compliance review of all of its Commercial Customers that generate two cubic yards or more per week of Discarded Materials, including Organic Materials to determine their compliance with: (i) Customer requirements under the City's Collection program; and (ii) if applicable for the Customer, Self-Hauling requirements per 14 Cal. Code of Regs. Section 18988.3, including whether a Customer property is complying through Back-Hauling of Source Separated Organic Materials, Source Separated Container Organic Materials, and Organic Materials. The compliance review means a "desk" review of records to determine Customers' compliance with the above requirements and does not necessarily require on-site observation of service; however, Administrator may request that the Franchisee perform an on-site observation of service in addition to or in lieu of the desk review if needed to obtain the required information.

Section 13.06 Hazardous Waste Reporting. Franchisee may inspect Discarded Materials put

out for Collection and reject Discarded Materials observed to be contaminated with Hazardous Waste. Should Franchisee find or observe reportable quantities of Hazardous Waste put out for Collection with Discarded Materials, Franchisee must notify all agencies with jurisdiction, including the California Department of Toxic Substances Control and Local Emergency Response Providers and, if appropriate, the National Response Center, of reportable quantities of Hazardous Waste, found or observed in Discarded Materials observed or Collected anywhere within City's jurisdiction. In addition to other required notifications, if Franchisee observes any substances which it or its employees reasonably believe or suspect to contain Hazardous Wastes unlawfully Disposed of or released on City property, including storm drains, Streets, or other public rights of way, Franchisee must immediately notify the Administrator. City in cooperation with Franchisee will determine the method of Disposal in accordance with applicable including, without limitation, the Act.

Section 13.07 Hazardous Waste Diversion Records. Franchisee must maintain records showing the types and quantities, if any, of Hazardous Waste found in Discarded Materials and which was inadvertently Collected from customers within City but diverted from landfills.

ARTICLE XIV. CUSTOMER SERVICE

Section 14.01 Franchisee must maintain an office accessible by a local phone number for Customers between the hours of 8:00 a.m. and 5:00 p.m. daily, except Saturdays, Sundays, and Holidays. In addition, Franchisee employees are to be present in the office and reachable by telephone from 7 a.m. to 7 p.m. on all Collection days for purposes for being reachable by City employees. Franchisee employees must be able to communicate with Customers in English, Telecommunications Device for the Deaf Service, and other languages necessary for communication with Customers. In the event that there are Customers who are able to communicate only in other languages, City and Franchisee will work cooperatively together to attempt to identify reasonably available third-party resources; however, Franchisee is not obligated to incur any financial obligation to provide services in such other languages.

Section 14.02 Emergency Telephone Number. Franchisee must maintain an emergency telephone number for use outside normal business hours. Franchisee must have a representative, or an answering or call-forwarding service to enable customers to contact such representative, during all hours other than normal office hours. Franchisee must be able to respond to emergency

calls in English and Telecommunications Device for the Deaf Service necessary for emergency communication with customers. Franchisee must also provide City with an emergency contact list that need not be published but will allow City's representatives to contact Franchisee's representatives in an emergency including, without limitation, events such as fallen trees, flooding and vehicle accidents.

Section 14.03 Service Complaints and Requests for Service. City and Franchisee agree that the protection of public health, safety, and well-being require that service complaints be acted on promptly and that a record be maintained in order to permit City and Franchisee to identify potential public health and safety problems. Accordingly, Franchisee must inform all Discarded Materials Customers that all service recipient complaints be directed to Franchisee. During office hours, Franchisee must maintain a complaint service and a telephone answering system capable of accepting at least five incoming calls at one time. Franchisee must record all complaints, including date, time, complainant's name and address (if the complainant is willing to give this information), and the nature, date, and manner of resolution of complaint, in a computerized daily service complaint log. Any such calls received via Franchisee's answering service must be recorded in the log and responded to within 24 hours. All complaints and requests for service must be responded to within 24 hours or the next business day, whichever is sooner, unless specified otherwise elsewhere in this Agreement. The service complaint log must be available for review by City representatives during Franchisee's office hours and be available for transmission as an attachment to e-mail. Franchisee must also provide a copy of this service complaint log to City with the monthly reports. If Franchisee fails due to its own fault to provide services to a Customer on the Customer's regular Collection day, Franchisee will provide service within 24 hours of receiving notice of its failure to provide service.

- A. SB 1383 Non-Compliance Complaints. For complaints received directly by Franchisee in which the person alleges that an entity is in violation of SB 1383 requirements, Franchisee must document the information listed in Exhibit 13. Franchisee must provide this information in a brief complaint report to the City for each SB 1383 non-compliance complaint within seven days of receipt of such complaint, and a monthly summary report of SB 1383 non-compliance complaints in accordance with Exhibit 13. Upon City request, Franchisee must conduct follow-up inspections and/or outreach to the violating entity and document the information in the reports provided pursuant to Exhibit 13.

Section 14.04 Complaint Documentation. All service complaints must be directed to Franchisee. Daily logs of complaints concerning Collection of Discarded Materials must be retained for a minimum of 24 months and must be available to City at all times upon request.

Section 14.05 Franchisee must log all complaints received by telephone. This log must include the date and time the complaint was received, name, address, and telephone number of caller, description of complaint, employee recording complaint, and the action taken by Franchisee to respond to and remedy complaint. All written customer complaints and inquiries must be date-stamped when received. All complaints must be initially responded to within one business day of receipt. Franchisee must log action taken by Franchisee to respond to and remedy all complaints.

Section 14.06 All customer service records and logs kept by Franchisee will be available to City upon request and at no cost to City. City must, at any time during regular Franchisee business hours, have access to Franchisee's customer service department for purposes that may include monitoring the quality of customer service or researching customer complaints.

Section 14.07 Resolution of Customer Complaints

- A. Disputes between Franchisee and its customers regarding the services provided under this Agreement may, but is not required to, be resolved by the Administrator.
- B. Intervention by City is not a condition precedent to any rights or remedies third parties might otherwise have in any dispute with Franchisee. Nothing in this Section is intended to affect the remedies of third parties against Franchisee.

Section 14.08 Government Liaison. Franchisee must designate in writing a "Government Liaison" who is responsible for working with City's designated representatives to resolve customer complaints. City may approve Franchisee's choice of a liaison.

Section 14.09 The parties agree that failure of Franchisee to timely provide the services set forth in this Article constitutes a default. The parties agree that this default will result in damage and injury to City. The parties further agree, however, that actual damages incurred by City as result of such default is difficult if not impossible to ascertain with any degree of certainty or accuracy. Accordingly, the parties have negotiated and have agreed that for each calendar day

after written notice is delivered to Franchisee and Franchisee fails to cure such default, that Franchisee will pay City, as and for liquidated damages, and not as a penalty, the sum of \$500.

ARTICLE XV. EMERGENCY SERVICE

Section 15.01 Franchisee must assist City in the event of major disaster, such as an earthquake, storm, tidal wave (tsunami), riot or civil disturbance, or acts of terrorism, by providing Collection vehicles and drivers normally assigned to City (to the extent reasonably possible under the circumstances), at Franchisee's actual costs. Disputes with respect to Franchisee's emergency services or the costs of those services must be resolved according to the dispute resolution provisions in this Agreement. Franchisee must cooperate with City, county, state, and federal officials in filing information related to a regional, state, or federally-declared state of emergency or disaster as to which Franchisee has provided equipment and drivers pursuant to this Agreement.

ARTICLE XVI. OWNERSHIP OF DISCARDED MATERIALS AND RECYCLABLES

Section 16.01 Ownership and the right to possession of Discarded Materials placed in Containers or bundles for Collection at curbside must transfer directly from the Customers to Franchisee, by operation of law. Franchisee's arrangements with its Customers must provide that, subject to the right of the Customer to claim lost property, title and the right to possession, and liability for all Discarded Materials, whether or not recyclable, which is set out for Collection on the regularly scheduled Collection day must pass to Franchisee at the time it is set out. Subject to this Agreement, Franchisee may retain any benefit or profit resulting from its right to retain, recycle, compost, Dispose of or use the Discarded Materials which it Collects. Refuse which is Disposed of at a Disposal Site or sites (whether landfill, transfer station, or Materials Recovery Facility) becomes the property of the owner or operator of the Disposal Site or sites once deposited there by Franchisee. At no time does the City obtain any right of ownership or possession of Discarded Materials or any type of Hazardous Waste or waste whatsoever, placed for Collection, and nothing in this Agreement may be construed as giving rise to any inference that City has any such rights.

ARTICLE XVII. RATES AND BILLING

Section 17.01 Franchisee is responsible for setting the rates for its services. Franchisee is

responsible for billing its Customers for the services provided pursuant to this Franchise. Bills to Customers must be itemized, showing charges for all classifications of service. All payments for billings must be collected by the Franchisee. Franchisee must provide Customers the opportunity to pay their bills in person, via U.S. mail, or with a secure electronic bill payment service. Customer bills must provide that bills are payable upon receipt, include a payment due date, and note that bills paid that are not paid by the due date may subject the Customer to late fees and service suspension.

Section 17.02 Delinquent Accounts. Franchisee may discontinue service as set forth in this Section. Customers who have not remitted required payments within 45 days after the date of billing must be notified in writing by Franchisee. The notification must contain a statement that services may be discontinued 15 days from the date of notice if payment is not made before that time. Franchisee must provide the Administrator a copy of the notice at the time it is provided to the Customer. Franchisee may discontinue service beginning on the 16th day after notice is provided. If service is discontinued to any Customer, Franchisee must notify the Administrator of the discontinued service, including the name, address, and contact information of the Customer's account, within 24 hours of discontinuance of service. Upon Franchisee's receipt of the delinquent payment, Franchisee must resume Collection on the next regularly scheduled Collection day. Franchisee may assess a reinstatement fee of up to \$25.00 for any service recipient whose service is temporarily disconnected for nonpayment.

Section 17.03 Refunds. Franchisee must refund to Customer, on a pro rata basis, any advance service payments made by the Customer for service not yet provided when service is discontinued by the Customer.

Section 17.04 Franchisee Contracts with Customers. The term of any service contracts between Franchisee and its Customers do not, and may not, extend beyond the term of this Agreement. Franchisee may not include any automatic renewals or extensions, such as "evergreen" clauses, in the service contracts with its Customers. Franchisee may not execute service agreements with Customers before the date specified in Section 5.02.C of this Agreement. Customers must be provided with the option of terminating their services with Franchisee upon 30 days' notice to Franchisee. When requested by Administrator, Franchisee must provide the Administrator with unredacted copies of its contracts with Customers.

ARTICLE XVIII. RESERVED

ARTICLE XIX. FRANCHISEE'S BOOKS AND RECORDS; AUDITS

Section 19.01 Franchisee must maintain all records relating to the services provided hereunder including, without limitation, Customer lists, maps, Disposal and Collection records, and Customer complaints, for the full Term of this Agreement, and an additional period of not less than three years, or any longer period required by Applicable Law. City may, upon five business days' advance notice, inspect all records relating to this Agreement including, without limitation, billing records, Customer lists, maps, Disposal and Collection records, and Customer complaints. Such records must be made available to City at Franchisee's regular place of business, but in no event outside the County of Los Angeles.

Section 19.02 Biennial Audit. Upon City's request, an audit of Franchisee may be performed. The scope of the audit, and auditing party, will be determined by City and the scope may include, without limitation:

- A. Compliance with terms of this Agreement;
- B. Customer Service Levels and billing;
- C. Receipts;
- D. Tonnage;
- E. Complaint log;
- F. Compliance with Mandatory Commercial Recycling, Mandatory Commercial Organics Recycling, and SC 13831; and
- G. Verification of Diversion rate.

The first audit, to be performed during 2026, will be based on the Franchisee's reports and records for the period from commencement of the Agreement through December 2025. If the City agrees to extend this Agreement beyond its initial two-year term, audits will be performed every two years thereafter (the biennial audit). Franchisee will reimburse to City the cost of such audits up to \$25,000 for the first audit. The \$25,000 amount in subsequent years will be adjusted

annually by 2.5% per year. For example, the audit to be performed in 2028 will be reimbursed at: $\$25,000 \times 1.025 \times 1.025 = \$26,266.00$.

ARTICLE XX. THE ACT; REPORTING REQUIREMENTS

Section 20.01 During the period during which Collection services are provided pursuant to this Agreement, Franchisee at Franchisee's sole expense, must submit to City information and reports necessary for City to meet its reporting obligations imposed by (and the regulations implementing) AB 939, AB 341, AB 1826, and SB 1383. In addition to submitting all reports on paper, Franchisee agrees to submit all reports and information in an electronic format approved by City and compatible with City's software/computers at no additional charge. Monthly and annual reports must include at a minimum, all data and information described in Exhibit 13, unless otherwise specified under this Agreement.

Section 20.02 Upon request of either of the parties but not more than two times per year, City and Franchisee should meet and confer about the current reporting requirements and templates utilized for the prior calendar year to discuss updates or modifications to the formatting or additional information as required by Applicable Law.

Section 20.03 A copy of each of Franchisee's annual and other periodic public financial reports and those of its parent, subsidiary and affiliated corporation, and other entities, as City requests, must be submitted to City within five days after receipt of City's request.

Section 20.04 Pleadings and Complaints. Franchisee must submit to City copies of all pleadings, applications, notifications, communications, and documents of any kind, submitted by Franchisee to, as well as copies of all decisions, correspondence, and actions by, any federal, state, and local courts, regulatory agencies, and other government bodies relating specifically to Franchisee's performance of services pursuant to this Agreement. Any data which Franchisee seeks to be excluded from provisions of the California Public Records Act must be clearly identified as such by Franchisee with the basis for such claim of exclusion clearly specified. In the event City receives a request under the Public Records Act, or by subpoena, the City will notify Franchisee to allow Franchisee to intervene in the disclosure of such materials.

Section 20.05 Agency Information. Franchisee must provide City two copies (one to the City Manager, one to the City Attorney) of all reports, or other material adversely reflecting on

Franchisee performance under this Agreement, submitted by Franchisee to, or received by Franchisee from, the United States or California Environmental Protection Agency, the California Department of Resources Recycling and Recovery (CalRecycle), the Securities and Exchange Commission, or any other federal, state, or county agency. Copies must be submitted to City simultaneously with Franchisee submittal or receipts of such documents, or within three business days of Franchisee's receipt of or submittal of such matters with or from said agencies. Franchisee's routine correspondence with said agencies need not be automatically submitted to City but must be made available to City upon written request. Franchisee agrees to submit such reports and information by email or on computer discs, in a format acceptable to City at no additional charge, if requested by City.

Section 20.06 Other Information and Reports. Franchisee at no additional expense to City, must submit to the City such other information or reports in such forms and at such times as the City may reasonably request or require including, without limitation, the following:

A. Submittal of Reports. Reports must be submitted to:

City Manager
City of El Segundo
350 Main Street
El Segundo, CA 90245

B. Monitoring. Franchisee must provide City or its representatives and auditors with access to Franchisee's billing records and Customer lists and files and will make available to City or its billing agents, a computerized data base accessible to City at all times via the internet, of a complete file of Customers, addresses, property owners, and account classifications. Franchisee will also have to receive and process file transfers or corrections from City or its billing agent.

C. Franchisee-City Cooperation. Franchisee must cooperate with City in Discarded Materials Disposal characterization studies and waste stream audits and must implement measures adequate to achieve City's source reduction, Recycling, and waste stream Diversion goals for the Discarded Materials streams covered by this Agreement.

1. City may request additional information not specified above on an as needed basis, to review records at Franchisee's facility on demand and to conduct audits.

2. Franchisee will allow a City Representative to ride with either the Recycling or refuse vehicles on any route or routes. City will inform Franchisee at least one Working Day before date(s) of such route monitoring.
- D. Accounting Records. Franchisee must locally maintain current, accurate and complete financial records on the accrual basis of accounting relating to Agreement operations, including original ledgers, journals, accounts, and records in which are recorded entries reflecting its activities hereunder, as well as supporting documents such as bank statements, cancelled checks, bank account reconciliations, tax returns, contracts, employee files, time records, invoices, and receipts. All accounts must be maintained in accordance with Generally Accepted Accounting Principles.
 - E. Access to Records. Notwithstanding anything to the contrary herein, City may, at Franchisee's cost and expense (including compensation paid to City employees or City consultants) during normal business hours, and upon reasonable notice, inspect all financial records pertaining to any City contract related account and any other records of Franchisee reasonably and directly necessary for City administration of its right of review, approval, or enforcement by this Agreement.
 - F. Inspection and Audit Rights. In addition to the foregoing, City may, for a period of three years following the delivery of an auditor's report and financial statements, at Franchisee's cost and expense (but excluding compensation paid to City employees or City consultants), during normal business hours and upon reasonable notice, inspect for the purpose of audit all financial and other records of Franchisee concerning its operation pursuant to this Agreement.

Section 20.07 Costs. All reports and records required to be submitted by Franchisee to City under this Agreement must be furnished at no expense to City or Customers.

Section 20.08 Failure to Report. The willful refusal or failure of Franchisee to file any of the reports required, or to provide required information to City, or the inclusion of any false or misleading statement or representation by Franchisee in such report constitutes a material breach of this Agreement and subjects Franchisee to all remedies, legal or equitable, which are available to City under this Agreement or otherwise.

Section 20.09 Exhibit 10 sets forth, unless otherwise set forth in this Agreement, dates by which information is to be submitted to City.

ARTICLE XXI. ACTIVITIES AND FINANCIAL REPORTS; ADVERSE INFORMATION

Section 21.01 Reports. Franchisee, at no additional expense, must submit to City such information or reports in such forms and at such times as City reasonably may request or require, including, without limitation the reports set forth below.

Section 21.02 Monthly Reports. Monthly reports must be submitted to City, transmitted in a format acceptable to City, as an attachment to e-mail or by disc, at City's option. Monthly reports must be submitted not later than 30 days after the month ends and include, without limitation the following:

- A. Discarded Materials Tonnage and Complaints. The monthly report must show the number of tons Collected each month and the tonnage delivered to Disposal Facilities, itemized by Disposal Facility. A copy of the customer complaint log must be submitted with the quarterly report.
- B. Recyclable Materials. The monthly report must include information regarding Recyclable Materials including:
 - 1. A statement showing, by type of material, tons received during the month and tons marketed during each month.
 - 2. A report providing Recycling information.
 - 3. A narrative description of problems encountered and actions taken, including efforts to deter and prevent Scavenging. This is to include a description of tons rejected for sale after processing (type of material, tonnage), reason for rejection, and Franchisee's Disposal method for the rejected materials.
 - 4. A report of Recycling program promotional activities, including materials distributed by Franchisee to its customers.
- C. Hazardous Waste Diversion Reports. The monthly report must include a copy or summary of the records as required herein for Hazardous Waste Diversion.

Section 21.03 Annual Report. By March 1, beginning in 2026 and each year thereafter that Collection services are provided pursuant to this Agreement, Franchisee must submit to City a written year-end annual report in a form approved by City. The annual report must include, without limitation, the following information for the year ending on the preceding December 31st:

- A. Prior Year's Activities. A cumulative summary of the monthly reports and information and statistics with respect to City's compliance with the Act.
- B. Recommendations. Changes in integrated waste management, including projections and proposed implementation dates and costs, recommended by Franchisee and recommended amendments to City's source reduction and Recycling component or this Agreement, based on developments in Applicable Law or technology. Franchisee's recommendations with respect to compliance with the Act must state the specific requirement of the Act that the implementation of the recommendation is intended to satisfy.

Section 21.04 Certification. All reports must include a certification statement, under penalty of perjury, by the responsible corporate official, that the report is true and correct.

Section 21.05 Reporting Additional Matters. Franchisee must provide City two copies (one to City Manager, one to City Attorney) of all written reports, pleadings, applications, written notifications, notices of violation, communications, or other material relating specifically to Franchisee's performance of services pursuant to this Agreement, submitted by Franchisee to, or received by Franchisee from, the United States or California Environmental Protection Agency, the California Integrated Waste Management Board, the Securities and Exchange Commission, or any other federal, state, or county agency, including any federal or state court. Copies must be submitted to City simultaneously with Franchisee's filing or submission of such matters with said agencies. Franchisee's routine correspondence to said agencies need not be routinely submitted to City but must be made available to City upon written request.

Section 21.06 Failure to Report. The refusal or failure of Franchisee to file any required reports; to provide required information to City; or the inclusion of any materially false or misleading statement or representation by Franchisee in such report is a material breach of this

Agreement and subjects Franchisee to all remedies which are available to the City under this Agreement.

Section 21.07 City's Review of Franchisee's Performance. Annually, within 90 days of City's receipt of the Annual Report, City will review the annual report and other available information and may, but is not required to, hold a public hearing to determine whether Franchisee's performance for the year reported on was satisfactory and whether to implement changes, if any, recommended by Franchisee. Factors to be considered in the hearing include, without limitation, quality of services provided, service recipient complaints, rights of privacy, Franchisee's adherence to developments in the law, Franchisee's performance in meeting or exceeding City's goals and reporting requirements under the Act and costs. The reports required by this Agreement will be utilized as the primary basis for review. In addition, any service recipient comments or complaints and any other relevant information may be considered. Franchisee may be present and may participate at any public hearing held by City to review Franchisee's performance. If any non-compliance with the Agreement is found, City will offer Franchisee the opportunity to comment and offer information in rebuttal, and to correct any deficiencies. City may direct Franchisee to correct any inadequacies and City may pursue all other legal and equitable remedies.

Section 21.08 Costs. All reports and records required under this Agreement must be furnished at Franchisee's sole expense.

Section 21.09 City's Right to Request Information. City believes and Franchisee agrees that cooperation between City and Franchisee is critical to the success of this program. City may request, and Franchisee agrees to provide, additional information reasonably and directly pertaining to this Agreement on an "as-needed" basis.

Section 21.10 CERCLA Defense Records. City views the ability to defend against CERCLA and related litigation as a matter of great importance. For this reason, the City regards the ability to prove where its Discarded Materials were taken, as well as where it was not taken, to be matters of concern. Franchisee must maintain data retention and preservation systems that can establish where Discarded Materials Collected in the City was landfilled (and therefore establish where it was not landfilled) and a copy or summary of the reports required, for 50 years after the Term during which Collection services are to be provided pursuant to this Agreement and to

notify City's Risk Manager and City Attorney before destroying such records. This provision will survive the expiration of the period during which Collection services are to be provided under this Agreement.

Section 21.11 Collection Route Ride-Along. Franchisee will allow a City Representative to ride with Recycling and Solid Waste Collection vehicles on any route or routes. The City will inform Franchisee at least one Working Day before date(s) of ride-alongs.

ARTICLE XXII. SECURITY

Section 22.01 Simultaneously with the execution of this Agreement and all extensions of the Agreement, Franchisee shall file with the City and at all times thereafter maintain in full force and effect throughout the term of the Franchise and all extensions thereof, at Franchisee's sole expense, a corporate surety bond payable to the City, executed by a corporation authorized to transact surety insurance in the State of California. The principal sum of the bond shall be fifty thousand dollars (\$50,000). The bond shall be renewed annually, and conditioned upon the faithful performance of the Franchisee, and upon the further condition that in the event the Franchisee shall breach or fail to comply with any one or more of the provisions of the Agreement, AB 939 provisions, late fees, liquidated damages, penalties, or fines, there shall be recoverable jointly and severally from the principal and surety of such bond any damages or loss suffered by the City as a result thereof, including the full amount of any compensation, indemnification, or cost of removal or abandonment of any property of the Franchisee, plus a reasonable allowance for attorney's fees and costs, up to the full amount of the bond, such condition to be a continuing obligation for the duration of the Franchise and thereafter until the Franchisee has liquidated all of its obligations with the City which may have arisen from the acceptance of the Franchise by the Franchisee or from the Franchisee's exercise of any privilege granted by the ESMC. The bond shall provide that 30 calendar days' prior written notice of intention not to renew, cancellation, or material change shall be given to the City.

Section 22.02 In lieu of the corporate surety bond described above, and at the Administrator's sole discretion, Franchisee may deposit an irrevocable letter of credit in favor of the City issued by a financial institution authorized to do business in the State of California, open a certificate of deposit in the name of the City at a financial institution authorized to do business in the State of California, or deposit cash with the City Treasurer in the amount of fifty

thousand dollars (\$50,000). The first two alternatives described in this paragraph shall be made through a financial institution and in a form approved by the Administrator.

Section 22.03 All of City's costs of collection and enforcement of the provisions relating to the Security, including attorneys' fees and costs, must be paid by Franchisee.

ARTICLE XXIII. DEFAULT AND REMEDIES; TERMINATION

Section 23.01 If City's Administrator determines that Franchisee's performance pursuant to this Agreement may not be in conformity with reasonable industry standards which are obtained in similar cities in Southern California, the provisions of this Agreement, the California Integrated Waste Management Act, including, but not limited to, requirements for diversion, source reduction and recycling (as to the waste stream subject to this Agreement) or any other applicable federal, state or local law or regulation, including but not limited to, the laws governing transfer, storage or disposal of Hazardous Waste, the Administrator may advise Franchisee in writing of such suspected deficiencies. The Administrator may, in such written instrument, set a reasonable time within which Franchisee is to respond and, if Franchisee agrees with the report of suspected deficiencies to correct the deficiencies. Unless otherwise specified, a reasonable time for response and correction of deficiencies shall be 30 days from the receipt by Franchisee of such written notice. The Administrator shall review Franchisee's response and issue a decision in writing. A decision or order of the Administrator shall be final and binding on Franchisee if Franchisee fails to file a "Notice of Appeal" with the City Clerk within 30 days of receipt of the decision or order of the Administrator or the Administrator.

Section 23.02 If a matter is appealed to the City Council, the City Clerk shall set the matter for hearing. The City Clerk shall give Franchisee 14 days' written notice of the time and place of the hearing. At the hearing, the City Council shall consider the report of the Administrator indicating the deficiencies, and shall give Franchisee, or its representatives and any other interested person, a reasonable opportunity to be heard.

Section 23.03 Based on the evidence presented at the hearing and the report of the Administrator, the City Council shall determine by resolution whether the decision or order of the Administrator should be upheld. A tie vote of the City Council shall be regarded as upholding the action of the Administrator. If, based upon the record, the City Council

determines that the performance of Franchisee is in breach of any material term of this Agreement or any material provision of any applicable federal, state or local statute or regulation, the City Council, in the exercise of its sole discretion, may order Franchisee to take remedial actions to cure the breach, terminate forthwith the Agreement, or impose liquidated damages as defined herein. The decision of the City Council shall be final and conclusive. Franchisee's performance under the Agreement is not excused during the period of time prior to the City Council's final determination as to whether such performance is deficient.

Section 23.04 This right of termination or to impose liquidated damages is in addition to any other rights of City upon a failure of Franchisee to perform its obligations under this Agreement. Liquidation damages may be enforced to maximum extent provided by law, to the extent there is any inconsistency between the liquidated damages provisions in this Agreement and other provisions in this Agreement, the other provisions in this Agreement shall control.

Section 23.05 City further reserves the right to terminate the Agreement or impose liquidated damages in the event of any of the following, each of which is considered an event of default:

- A. Breach; Failure to Perform. Franchisee breaches or fails to perform any of its obligations under this Agreement, as it may be amended from time to time.
- B. Misrepresentation. Any misrepresentation or disclosure made to the City by Franchisee in connection with or as an inducement to entering into this Agreement or any future amendment to this Agreement, which proves to be false or misleading in any material respect as of the time the representation or disclosure is made, whether or not any such representation or disclosure appears as part of this Agreement.
- C. Seizure or Attachment. There is a seizure or attachment of (other than a prejudgment attachment), or levy affecting possession on, the operating equipment and facilities of Franchisee so as to substantially impair Franchisee's ability to perform under this Agreement and which cannot be released, bonded, or otherwise lifted within 72 hours, excluding weekends and holidays.
- D. Financial Insolvency. Franchisee files a voluntary petition for debt relief under any

applicable bankruptcy, insolvency, debt or relief, or other similar law now or hereafter in effect, or consents to the appointment of or taking of possession by a receiver, liquidator, assignee (other than as a part of a transfer of equipment no longer useful to Franchisee or necessary for this Agreement), trustee (other than as security for an obligation under a deed of trust), custodian, sequestrator (or similar official) for any part of Franchisee's operating assets or any substantial part of Franchisee's property, or makes any general assignment for the benefit of Franchisee's creditors, or shall fail generally to pay Franchisee's debts as they become due or shall take any action in furtherance of any of the foregoing.

- E. Court Decisions. Any court having jurisdiction shall enter a decree or order for relief in respect of Franchisee, in any involuntary case brought under any bankruptcy, insolvency, debt or relief or similar law now or hereafter in effect, or Franchisee shall consent to or shall fail to oppose any such proceeding, or any such court shall enter a decree or order appointing a receiver, liquidator, assignee, custodian, trustee, sequestration (or similar official) of Franchisee or for any part of Franchisee's operating equipment or assets, or order the winding up or liquidation of the affairs of Franchisee.
- F. Fraud or Deceit. If Franchisee practices, or attempts to practice, any fraud or deceit upon the City.
- G. Failure to Maintain Coverage. If Franchisee fails to provide or maintain in full force and effect the insurance and/or indemnification coverage as required by this Agreement.
- H. Violations of Regulation. If Franchisee violates any permits, orders or filing of any regulatory body having jurisdiction over Franchisee which violation or noncompliance materially affects Franchisee's ability to perform under this Agreement; provided that Franchisee may contest any such permits, orders or filings by appropriate proceedings conducted in good faith, in which case no breach of the Franchise shall be deemed to have occurred during the pendency of the proceedings or appeal, to the extent the Franchisee is able to adequately perform during that period.
- I. Acts or Omissions. Any other act or omission by Franchisee which materially violates the terms, conditions, or requirements of this Agreement, AB 939, as it may be amended

from time to time, SB 1383, as it may be amended from time to time, or an order, directive, rule, or regulation issued thereunder and which is not corrected or remedied within the time set in the written notice of the violation or, if Franchisee cannot reasonably correct or remedy the breach within the time set forth in such notices, if Franchisee should fail to commence to correct or remedy such violation within the time set forth in such notice and diligently effect such correction or remedy thereafter.

- J. Termination of Service. If Franchisee ceases to provide Collection service under this Agreement to all or a substantial portion of its customers for a period of 30 days or more, for any reason within the control of Franchisee.
- K. Any other act or omission by Franchisee which materially violates the terms, conditions, or requirements of the Agreement and which is not corrected or remedied within the time set in the written notice of the violation or, if Franchisee cannot reasonably correct or remedy the breach within the time set forth in such notice, if Franchisee should fail to commence to correct or remedy such violation within the time set forth in such notice and diligently effect such correction or remedy thereafter.

Section 23.06 Right to Terminate Upon Default. Upon default by Franchisee, and after the completion of the process described in this Article, City shall have the right to terminate this Agreement without the need for any additional hearing, suit, or legal action.

Section 23.07 Liquidated Damages.

- A. The City finds, and Franchisee agrees, that as of the time of the execution of this Agreement it is impractical to reasonably ascertain the extent of damages which will be incurred by the City because of a material breach by Franchisee of its obligations under this Agreement. The factors relating to the impracticability of ascertaining damages include, without limitation, (i) substantial damage results to members of the public who are denied services or denied quality or reliable service; (ii) such breaches cause inconvenience, anxiety, frustration, and deprivation of the benefits of the Agreement to individual members of the general public for whose benefit this Agreement exists, in subjective ways and in varying degrees of intensity which are incapable of measurement in precise monetary terms; (iii) that services might be available at substantially lower

costs than alternative services, and the monetary loss resulting from denial of services or denial of quality or reliable services is impossible to calculate in precise monetary terms; and (iv) the termination of this Agreement for such breaches, and other remedies are, at best, a means of future correction and not remedies which make the public whole for past breaches.

- B. Accordingly, the Administrator, or City Council on appeal, may, in their respective discretion, assess liquidated damages in the amounts identified in Exhibit 5 for each corresponding breach identified therein. In addition, the Administrator, or City Council on appeal, may order the assessment against the Surety required above, termination of the Agreement, or both.

- C. City finds, and Franchisee acknowledges and agrees that the above-described liquidated damages provisions represent a reasonable sum in light of all of the circumstances. Said liquidated damages sums are applicable to each calendar day of delay during which Franchisee is found to be in breach of this Agreement. Franchisee must pay any liquidated damages assessed by the Administrator, or the City Council on appeal, within 10 business days after they are assessed. If they are not paid within the 10 Working Day period, City may withdraw them from the surety and, in addition to any other remedies, terminate this Agreement.

City _____

Franchisee _____

(INITIAL)

ARTICLE XXIV. CITY'S ADDITIONAL REMEDIES

Section 24.01 In addition to any other legal remedies, City has these additional remedies in the event of a default by Franchisee which is not cured after reasonable written notice:

- A. The right to license others to perform the services otherwise to be performed by Franchisee;

- B. The right to obtain damages and/or injunctive relief. Both parties recognize and agree that in the event of a breach under the terms of this Agreement by Franchisee, City may suffer irreparable injury and incalculable damages sufficient to support injunctive relief,

to enforce the provisions of this Agreement and to enjoin the breach thereof.

- C. To require that Franchisee continue to provide the services set forth in this Agreement for the lessor of six months or the time it reasonably takes for City to replace the Franchisee.

Section 24.02 City's Damages for Failure to Achieve Diversion Goals. Franchisee agrees that its failure to achieve a compliance with the AB 939, AB 341, AB 1826 and SB 1383, as set forth in this Agreement for the waste stream Collected under this Agreement, arising from failure to maximize Diversion in accordance with the terms and conditions of this Agreement would constitute a material breach of this Agreement. If CalRecycle were to impose administrative civil penalties against City, then City's damages for Franchisee's material breach in its failure to achieve the Diversion goals for City within its Franchise Area as required by this Agreement, would include, without limitation, such administrative civil penalties, attorneys' costs and fees, and City's staff time devoted to the resolution of the administrative civil penalties against City. Franchisee acknowledges that the matters addressed in this Section are damages which would result in the event of a material breach by Franchisee, and not an indemnification, and therefore are not governed by Public Resources Code § 40059.1. Should City terminate this Agreement for Franchisee's failure to achieve Diversion goals, City's damages would include City's unreimbursed attorneys' fees and costs, advertising, and other expenses in the procurement of a replacement Discarded Materials enterprise to provide the services called for in this Agreement.

Section 24.03 Notwithstanding any other provision in this Agreement to the contrary, City may terminate this Agreement if any official of Franchisee, or any associated firm or entity including, without limitation, any parent or subsidiary Franchisee involved with the performance or administration of the Agreement is convicted of, or pleads guilty or nolo contendere to a felony relating to this Agreement or any other agreement for the provision of Discarded Materials services within the jurisdiction of another public entity.

ARTICLE XXV. FRANCHISE TRANSFER; CITY CONSENT; FEES

Section 25.01 Any attempt to transfer, sell, hypothecate, sublet, or assign this Franchise (collectively, a "Transfer") is prohibited. Any such purported action is void *ab initio*. Franchisee may request that the City Council approve such action. City's approval, which will not be

unreasonably withheld, must be reflected in a written resolution adopted by the City Council. For purposes of this Agreement, any dissolution, merger, consolidation, or other reorganization of Franchisee; any sale or other transfer or change in ownership or control of any of the capital stock or other capital or equity interests; or any sale or transfer of 25% or more of the voting stock or ownership interest of Franchisee constitutes a transfer. A change in corporate name only is not a transfer of the Franchise.

Section 25.02 If Franchisee attempts to transfer the Franchise before obtaining City consent, all of the profits or 25% of the Gross Revenues, from the date of attempted transfer until the date of City consent, whichever is greater, must be refunded to the Customers, on a pro rata basis.

Section 25.03 City's decision as whether to consent or not may be based upon the financial strength of the proposed transferee (being at least as strong as the Franchisee's), the history of the transferee in providing services to Commercial Customers of the size and type found in the City, proof that the transferee conducts its services in accordance with sound waste management practices in compliance with all Applicable Laws, transferee providing City with copies of all litigation, fines, and censures and the City determining that such were resolved in an acceptable manner, that neither transferee, nor its officers or managers, has had any relevant criminal convictions, including environmental or public integrity offenses, and any other information required by City for determining the transferee has the ability to perform the services required under this Agreement. If City gives its consent, it may impose conditions, including, without limitation, requiring acceptance of amendments to this Agreement. City may impose reasonable conditions of approval on a transfer, including, without limitation conditions requiring the payment of a transfer fee to the City.

Section 25.04 The prospective transferee has the burden of demonstrating that it has the financial and technical ability to provide the services required under this Agreement.

Section 25.05 Franchisee's internal reorganization does not constitute a transfer provided that City consent to the reorganization is sought and received before any internal reorganization. An internal reorganization includes any change in control of any of the voting stock through its conveyance to an affiliate of Franchisee, or by operation of law. Any request for an internal reorganization must be submitted in writing to the Administrator, not less than 120 days before the proposed effective date of the internal reorganization. Franchisee must reimburse City for all

of its costs to review the request and to determine if it is an internal reorganization. City expenses may include, without limitation, staff, legal (including the City Attorney), and accountant fees and costs. Determination by the City Manager is the City's final decision. Any attempt to implement an internal reorganization without City's consent constitutes a material breach of this Agreement. A reorganization resulting from a transfer or transfers to family members, family trusts, family partnerships, or other entities primarily for estate planning purposes which does not result in a change in beneficial ownership outside of the family of the shareholders of Franchisee, does not constitute a reorganization requiring consent of City.

Section 25.06 Franchise Transfer.

- A. Any application for a Franchise transfer must be made in a manner prescribed by the Administrator. Franchisee must pay a transfer fee to City equal to 1% of the annual revenue for the most recent 12 months before the Effective Date of the proposed change of ownership, multiplied by the number of remaining years, or fraction thereof.
- B. The application must include a deposit of \$20,000, to cover the estimated cost of all direct and indirect expenses, including City staff, consultants', and legal costs (including attorney's fees), incurred by City to adequately analyze the application and the qualifications of the prospective transferee. Any costs incurred by City exceeding \$20,000 must be reimbursed by Franchisee before it submits a proposed transfer to the City Council. Should City's costs be less than \$20,000, City must refund remaining deposit to Franchisee with 30 days after a transfer is considered. These Franchise transfer fees are over and above any Administrative Fees specified in this Agreement.

ARTICLE XXVI. ANNUAL REVIEW OF PERFORMANCE AND QUALITY OF SERVICE

Section 26.01 At City's sole option, within 90 days of the first anniversary of the Effective Date of this Agreement, and each year thereafter throughout the Term of this Agreement, City may hold a public hearing at which Franchisee's representatives must be present and participate, to review Franchisee's performance and quality of service. The reports required by this Agreement regarding Diversion rates and Customer complaints may be utilized as the basis for review. At City's sole option, City may include a Customer service survey as part of the performance review. In addition, any Customer may submit comments or complaints during the

review meetings, either orally or in writing.

Section 26.02 Within 30 days after the conclusion of the public hearing, City should issue a report with respect to the adequacy of performance and quality of service. If any non-compliance with the Agreement is found, City may direct Franchisee to correct the inadequacies in accordance with this Agreement.

ARTICLE XXVII. SYSTEM AND SERVICES REVIEW

Section 27.01 To provide for technological, economic, and regulatory changes in refuse Collection and Recycling, to promote competition in the refuse and Recycling industry and to achieve a continuing, advanced refuse Collection and Recycling system, the following system and services review procedures are established:

Section 27.02 At City's sole option, City may hold a public hearing on or about the first anniversary date of the Agreement at which it reviews Collection and Recycling systems and services. Subsequent system and services review hearings may be scheduled by City each year thereafter. It is City's intent to conduct any system and services review concurrently with any annual review of performance and quality of service.

Section 27.03 Sixty days after receiving notice from City, Franchisee must submit a report to City showing the following:

- A. All refuse Collection, Organic Materials and Recycling services reported in refuse Collection, and Recycling industry trade journals that are being commonly provided on an operational basis, excluding tests and demonstrations, to communities in the United States with comparable populations, that are not provided by Franchisee to City;
- B. Changes recommended to improve the City's Diversion rate;
- C. Any specific plans for provision of such new services by Franchisee, or a justification indicating why Franchisee believes that such services are not feasible for the Franchise Area;
- D. Topics for discussion and review at the system and services review hearing must include, without limitation, services provided, Customer complaints, rights of privacy,

amendments to the Agreement, developments in the law, and new initiatives for meeting or exceeding the Act's goals and regulatory constraints;

E. City and Franchisee may each select additional topics for discussion at any system and services review hearing; and

F. Not later than 60 days after the conclusion of each system and services review hearing, Franchisee must issue a report that identifies services not being provided to City that are considered technically and economically feasible by City. City may require Franchisee to provide such services within a reasonable time.

ARTICLE XXVIII. LIMITATIONS ON SCOPE

Section 28.01 Prohibitions. Franchisee is prohibited from commingling waste Collected from within City's limits with other wastes such as that from the unincorporated area or other cities. However, nothing prohibits commingling of residual waste after Diversion of Recyclable Materials, unless such commingling violates rules or regulations of landfills to which Franchisee transports such residual waste.

Section 28.02 Awarding this Agreement does not preclude the categories of Discarded Materials or other materials listed below from being delivered to and Collected and transported by other persons, provided that nothing in this Agreement is intended to or may be construed to excuse any person from obtaining any authorization from the City which is otherwise required by law:

Section 28.03 This Franchise Agreement does not include state run school systems, lawfully operated Self-Haulers, Residential Units, or others exempt from the Franchise as permitted by law.

Section 28.04 Recyclable and Organic Materials. Other persons maintain the right to: (i) accept Source Separated Recyclable Materials and Source Separated Organic Materials donated from the service recipient, or (ii) sell, in a commercial transaction, for Source Separated Recyclable Materials and Source Separated Organic Materials provided that there is no net payment made by the service recipient to a third person in the form of discounted service fees, rebates or otherwise.

Section 28.05 Self-Hauled Materials. A Generator may transport Recyclable Materials, and Organic Materials for processing, generated in or on their own Premises with their own vehicle(s), equipment, and/or employees. Self-Hauler must deliver any Recyclable Materials or Organic Materials to a permitted facility and have proof of transactions, such as weight tickets, to document any Self-Haul transaction in accordance with the ESMC.

Section 28.06 Construction and Demolition Debris (C&D). Construction and Demolition Debris which is removed by a duly-licensed construction or demolition company or as part of a total construction and demolition service offered by said licensed company or by City, where the licensed company utilizes its own equipment.

Section 28.07 Donated or Sold Materials. Any items which are Source Separated at any Premises by the Generator and sold or donated to youth, civic, or charitable organizations. Materials will not be deemed donated if they are Collected by a non-franchised waste hauler that is not an IRC § 501(c)(3) organization.

Section 28.08 Food Scraps. Food scraps that are separated by the Generator and used by the Generator or distributed to other person(s) for lawful use as animal feed, in accordance with 14 Cal. Code Regs. §18983.1(b)(7). Food scraps intended for animal feed may be Self-Hauled by Generator or hauled by another party.

Section 28.09 Beverage Containers. Containers delivered for Recycling under the California Beverage Container Recycling and Litter Reduction Act, Public Resources Code § 14500, *et seq.*

Section 28.10 Materials Removed by Customer's Contractor as an Incidental Part of Services. Recyclable Materials, Organic Materials, Solid Waste, and Bulky Items removed from a Premises by a contractor (e.g., gardener, landscaper, tree-trimming service, construction contractor, clean-out service) as an incidental part of the service being performed, rather than as a separately contracted or subcontracted hauling service.

Section 28.11 On-site or Community Composting. Organic Materials composted or otherwise legally managed at the site where it is generated (e.g., backyard composting, or on-site anaerobic digestion) or at a Community Composting site.

Section 28.12 Excluded Waste. Excluded Waste regardless of its source.

Section 28.13 Materials Generated by State and County Facilities. Materials generated by State and County facilities located in the City, including without limitation the El Segundo and Wiseburn Unified School Districts, provided that the Generator has arranged services with other persons or has arranged services with another contractor through a separate agreement.

Section 28.14 Franchisee acknowledges and agrees that City may allow other persons besides the Franchisee solely to Collect materials identified in this Section that are excluded from the scope of this Franchise, as set forth above, without seeking or obtaining approval of Franchisee.

Section 28.15 This Agreement and scope of this Franchise must be interpreted to be consistent with Applicable Law, now and during the Term of the Agreement. If future judicial interpretations of current law or new laws, regulations, or judicial interpretations limit the ability of the City to lawfully contract for the scope of services in the manner and consistent with all provisions as specifically set forth herein, Franchisee agrees that the scope of the Agreement will be limited to those services and materials which may be lawfully included herein and that City is not responsible for any lost profits or losses claimed by Franchisee to arise out of limitations to the scope or provisions of the Agreement set forth herein.

ARTICLE XXIX. GENERAL PROVISIONS

Section 29.01 Force Majeure. Franchisee is not in default under this Agreement should the Collection, transportation, and/or Disposal services of Franchisee are temporarily interrupted for any of the following reasons: riots; war or national emergency declared by the President or Congress and affecting City; sabotage; civil disturbance; insurrection; explosion; terrorist attack in any form including, without limitation, bombs, airplane crashes, or any chemical, biological, or radiological weapon or device; natural disasters such as floods, earthquakes, landslides, and fires; or other catastrophic events which are beyond the reasonable control of Franchisee. "Other catastrophic events" does not include the financial inability of Franchisee to perform, service disruptions due to a work stoppage associated with a labor dispute, failure of Franchisee to obtain any necessary permits or licenses from other governmental agencies, or the right to use the facilities of any public agency where such failure occurs despite the exercise of reasonable diligence by Franchisee.

Section 29.02 Independent Contractor. Franchisee is an independent contractor and not an officer, agent, servant, or employee of City. Franchisee is solely responsible for the acts and omissions of its officers, agents, employees, contractors, and subcontractors, if any. Nothing in this Agreement may be construed as creating a partnership or joint venture between City and Franchisee. Neither Franchisee nor its officers, employees, agents, or subcontractors may obtain any rights to retirement or other benefits which accrue to City employees.

Section 29.03 Pavement Damage. Normal wear and tear on City's Streets resulting from general vehicular traffic excepted, Franchisee is responsible for damage to City's driving surfaces, whether or not paved, resulting from the operation of Franchisee's vehicles providing Discarded Materials services within City, willful or negligent. Franchisee understands that the exercise of this Franchise may involve operation of its Collection vehicles over private roads and streets. Disputes between Franchisee and its customers as to damage to private pavement are civil matters and complaints of damage will be referred to Franchisee as a matter within its sole responsibility.

Section 29.04 Property Damage. Any physical damage caused by the negligent or willful acts or omissions of employees of Franchisee to City must be repaired or replaced by Franchisee, at Franchisee's sole expense. Except as otherwise provided, this Agreement does not purport to affect, in any way, Franchisee's civil liability to any third parties.

Section 29.05 Governing Law; Venue. California law governs this Agreement. In the event of litigation between the parties, venue in state trial courts lies exclusively in the County of Los Angeles Superior Court. In the event of litigation in a U.S. District Court, exclusive venue lies in the Central District of California. Franchisee waives its right to jury trial.

Section 29.06 Fees and Gratuities. Franchisee may not, nor may it permit any officer, agent, employee, or subcontractor employed by it, to request, solicit, demand, or accept, either directly or indirectly, any compensation or gratuity for the Collection, transportation, Recycling, processing, or Disposal of Discarded Materials other than what is required to be Collected under this Agreement.

Section 29.07 Notices. All notices required or permitted to be given under this Agreement must be in writing and be personally delivered, sent via a reputable overnight delivery service

(e.g., FedEx), or sent by United States certified mail, postage prepaid, return receipt requested, addressed as follows:

To City: City Manager
 City of El Segundo
 350 Main Street
 El Segundo, California 90245

Copy to: Director of Public Works
 City of El Segundo
 350 Main Street
 El Segundo, California 90245

Copy to: City Attorney
 City of El Segundo
 350 Main Street
 El Segundo, California 90245

To Franchisee: 




Notice is effective on the date personally delivered, the date of delivery by an overnight delivery service provider (as evidenced by a written or electronic delivery confirmation), or, if mailed, three business days from the date such notice is deposited in the United States mail. Changes may be made in the names or addresses of persons to whom notices are to be given by giving notice in the manner prescribed in this paragraph.

Section 29.08 Savings Clause and Entirety. If any non-material provision of this Agreement is for any reason held to be invalid or unenforceable, the invalidity or unenforceability of such provision does not affect the validity and enforceability of any of the remaining provisions of this Agreement.

Section 29.09 Exhibits Incorporated. Exhibits 1 through 14 are attached. These Exhibits are

incorporated in this Agreement by reference and to the extent there is any inconsistency between Exhibit 6 and 7 and this Agreement, the terms and provisions of this Agreement govern.

ARTICLE XXX. MISCELLANEOUS PROVISIONS

Section 30.01 Upon submission of this Agreement to City for approval, Franchisee must reimburse City for expenses, including staff time, consultants' and attorneys' fees, and expenses associated with granting this Agreement. The reimbursement for this Agreement shall range from \$25,000 to \$30,000 and will be determined upon completion of the selection process. Should City Council fail to approve this Agreement, the funds submitted to City by Franchisee will be returned by City to Franchisee within 30 days after City Council denial.

Section 30.02 Franchisee warrants that it will comply with all Applicable Laws relating to the services it will perform pursuant to or arising from this Agreement including, without limitation, implementing regulations, as they, from time to time, may be amended, specifically including, without limitation the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. §§ 9601, *et seq.*, the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901, *et seq.*; the California Integrated Waste Management Act of 1989; South Coast Air Quality Management District Rules; and all other applicable federal, state, and local laws and regulations whether or not such are specifically identified in this Agreement.

Section 30.03 Severability. If any portion of this Agreement is declared by a court of competent jurisdiction to be invalid or unenforceable, then such portion will be deemed modified to the extent necessary in the opinion of the court to render such portion enforceable and, as so modified, such portion and the balance of this Agreement will continue in full force and effect.

Section 30.04 This Agreement will be interpreted as being drafted jointly by the parties to this Agreement and words and terms are ascribed their defined or ordinary meaning and may not be interpreted against either party hereto based upon any allegation that one of the parties was responsible for the drafting of this Agreement. This Agreement contains the entire understanding between the parties and any prior statement, Agreements or representations are superseded hereby.

Section 30.05 If Franchisee is a subsidiary of a parent company, the parent company must

execute a guaranty in form attached as Exhibit 9 as a condition precedent to this Agreement becoming effective.

Section 30.06 Successors. All the terms, conditions and covenants of this Agreement will inure to the benefit of and be binding upon the Parties' successors and assigns. The provisions of this Section will not be deemed as a waiver of any of the conditions against assignment as set forth herein.

Section 30.07 Records. The Parties will maintain full and accurate records with respect to all services and matters covered under this Agreement. Each Party will have free access at all reasonable times to such records, and the right to examine and audit the same and to make transcript therefrom, and to inspect all program data, documents, proceedings, and activities. The Parties will retain such financial and program service records for at least three years after termination or final payment under this Agreement.

Section 30.08 Consistency. In interpreting this Agreement and resolving any ambiguities or inconsistencies between this Agreement and its Exhibits, the inconsistencies or ambiguities will be resolved in the following order:

- A. The main body of this Agreement; and then
- B. Exhibits to this Agreement.

Section 30.09 Acceptance of Electronic Signatures/Counterparts.

- A. The Parties agree that agreements ancillary to this Agreement, and related documents to be entered into in connection with this Agreement will be considered signed when the signature of a party is delivered by facsimile or by e-mail/PDF transmission. Such electronic signature will be treated in all respects as having the same effect as an original signature.
- B. This Agreement may be executed in any number or counterparts, each of which will be an original, but all of which together will constitute one instrument executed on the same date.

Section 30.10 City is subject to the California Public Records Act (Government Code §

7920.000, *et seq.*) and nothing in this Agreement is intended to impair City's requirements or obligations under that Act. Franchisee agrees that all data and reports including without limitation business operations, Customer lists, routing, tonnage, Service Levels, work orders issued from dispatch, Customer service logs and account notes, and work force and bargaining agreements, do not constitute proprietary information or trade secrets and must be made available to the Administrator or their designee upon request and within five Working Days.

Section 30.11 Transition to Next Discarded Materials Enterprise. If in the final 12 months of the period during which Franchisee is to provide Collection services under this Agreement, Franchisee and City have not entered into a succeeding agreement, Franchisee must cooperate fully with City and the subsequent Discarded Materials enterprise(s), Franchisee(s), licensee(s), permittee(s), or other Person providing services similar to the services so as to assure an efficient, orderly, timely, and effective transition. In that regard, Franchisee agrees to make available to City and to prospective proposers in any competitive process used by City to select a successor, route maps, customer lists, and all other records requested by City.

IN WITNESS WHEREOF the parties hereto have executed this contract the day and year first hereinabove written.

CITY OF EL SEGUNDO

[Franchisee]

Title: Mayor

Title:

ATTEST:

Susan Truax, City Clerk

APPROVED AS TO FORM:

By: _____
Mark D. Hensley
City Attorney

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EXHIBIT 1:
FRANCHISE AREA OF THE AGREEMENT

Exhibit 1 is a map of the City of El Segundo on file with the City Clerk. It is incorporated into this Agreement by this reference.

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EXHIBIT 2:

RESERVED

EXHIBIT 3: CONTAINER SPECIFICATIONS

All containers provided to Customers by Franchisee must meet these minimum specifications.

Container Standards: All carts are to be new, unless the Customer was already being served by Franchisee immediately prior to the effective date of this Agreement, and all bins (including roll-offs) distributed to customers are to be clean, newly painted, in good repair, and free of graffiti and tags. Bins provided for temporary or drop-box service do not have to be newly painted, but must be clean, in good repair, and free of graffiti and tags.

1. All Carts must be manufactured by injection or rotational molding methods. The Cart handles and handle mounts may be an integrally molded part of the Cart body or molded as part of the lid. The Cart handles must provide comfortable gripping area for pulling or pushing the Cart or lifting the lid. Pinch points are unacceptable. Carts provided to Customer must have a useful life of 10 or more years or more as evidenced by a manufacturer's warranty or other documentation acceptable to the City.
2. Carts must remain durable, and at a minimum, must meet the following durability requirements to satisfy its intended use and performance, for the Term of this Agreement: maintain its original shape and appearance; be resistant to kicks and blows; require no routine maintenance and essentially be maintenance free; not warp, crack, rust, discolor, or otherwise deteriorate over time in a manner that interferes with its intended use; resist degradation from ultraviolet radiation; be incapable of penetration by biting or clawing of household pets (i.e., dogs and cats); the bottoms of Cart bodies must remain impervious to any damage, that would interfere with the Cart's intended use after repeated contact with gravel, concrete, asphalt, or any other rough and abrasive surface; all wheel and axle assemblies are to provide continuous maneuverability and mobility as originally designed and intended.
3. Carts must be resistant to common household or Residential products and chemicals; human and animal urine and feces; and, airborne gases or particulate matter currently present in the ambient air of the Service Area.

EXHIBIT 3:
CONTAINER SPECIFICATIONS

4. All Bins with a capacity of one cubic yard or more must meet applicable Federal regulations for Bin safety and be covered with attached lids.
5. Franchisee must obtain City's written approval of Container material, design, colors, labeling, and other specifications before acquisition, painting, labeling, or distribution occurs.
6. When purchasing plastic Collection Containers, Franchisee must purchase Containers that contain a minimum of ten percent (10%) post-consumer recycled plastic content, unless such requirement is waived by the City Administrator.
7. Container lids must be designed such that the follow requirements are met when properly utilized by the customer:
 - a. Prevents the intrusion of rainwater and vectors;
 - b. Prevents the emissions on odors;
 - c. Enables the free and complete flow of material from the Container during the dump cycle without interference with the material already deposited in the truck body or the truck body itself and its lifting mechanism;
 - d. Permits users of the Cart to conveniently and easily open and shut the lid throughout the serviceable life of the Cart;
 - e. Hinges to the Cart body in such a manner to enable the lid to be fully opened, free of tension, to a position whereby it may rest against the backside of the Cart body;
 - f. Prevents damage to the Container body, the lid itself, or any component parts through repeated opening and closing of the lid by Generators or in the dumping process as intended;
 - g. Remains closed in winds up to twenty-five (25) miles per hour from any direction. All lid hinges must remain fully functional and continually hold the lid in the

EXHIBIT 3:
CONTAINER SPECIFICATIONS

original designed and intended positions when either opened or closed or any position between the two (2) extremes; and,

- h. Designed and constructed such that it prevents physical injury to the user while opening and closing the Cart.

- 8. Containers must be stable and self-balancing in the upright position, when either empty or loaded to its maximum design capacity with an evenly distributed load, and with the lid in either a closed or an open position. Containers must be capable of maintaining upright position in sustained or gusting winds of up to 25 miles per hour as applied from any direction.

- 9. Containers must be capable of being easily moved and maneuvered, if applicable, with an evenly distributed load equal in weight to its maximum design capacity on a level, sloped or stepped surface.

- 10. All such Containers must be recyclable at the end of their useful life.

- 11. All Containers must be designed and constructed to be watertight and prevent the leakage of liquids.

Container Colors: Franchisee must provide all Customers with Collection Containers that comply with the Container color requirements specified in this Exhibit 3, or as otherwise specified in 14 CCR Section 18982; 14 CCR, Division 7, Chapter 12, Article 3; or other Applicable Law. Colors must be colorfast and resistant to fading as a result of weathering or ultraviolet degradation; and the lids and bodies must be uniform for each Container type, as follows:

- 1. Source Separated Recyclable Materials Container lids must be blue;
- 2. Source Separated Organic Materials Container lids must be green; and,
- 3. Solid Waste Container lids must be gray.
- 4. Source Separated Food Waste Container lids must be brown.

EXHIBIT 3: CONTAINER SPECIFICATIONS

Hardware such as hinges and wheels on the Containers may be a different color than specified above. All Containers must comply with these color requirements..

New Containers purchased, must have consistent colors that will be in compliance with the Container color requirements specified in SB 1383, 14 CCR Section 18984.8. However, in accordance with Container requirements specified in SB 1383, Franchisee is not required to replace existing Containers that do not comply with the color requirements, including Containers purchased before January 1, 2022, before the end of the useful life of those Containers, or before January 1, 2036, whichever comes first. Franchisee is required to have all Containers in compliance with the color requirements of SB 1383 by January 1, 2036.

Container Labeling: Refuse, Recyclable Materials, and Organic Materials Carts must carry stickers/labels or other identifying markings indicating the materials that should and should not be placed in each Container.

All Carts that are not currently in Franchisee's inventory must include a high-quality educational information label using in-mold technology, such that all labeling must be integral to the outside of the lid, through the use of injection molding, and may not be affixed to any part of the Cart or lid using adhesives. Notwithstanding the provisions of this Exhibit 3, or the requirements of SB 1383, the in-mold lid label must, at a minimum, include for each Container: primary materials accepted; a clear indication of Prohibited Container Contaminants for that Container type, notification forbidding Hazardous Waste and describing proper Disposal thereof. Design for the in-mold labels must be approved by City before ordering labels or Carts. Lids must be replaced when in-mold labels become worn, but no later than 90 days of request from City.

Information on the Refuse Carts must include the telephone number to call for Franchisee for Bulky Item pickups and for general Customer service. All Carts must be labeled in accordance with CalRecycle requirements under SB 1383 throughout the Term of this Agreement. In-mold

EXHIBIT 3:
CONTAINER SPECIFICATIONS

labels must be designed to include English, Spanish, and Chinese. Hot stamps must be on the top of the lid and/or on the body of the Cart and be reviewed and approved by City.

Service Standards:

1. All Customers receiving cart service must be initially provided with new carts.
2. When a Customer notifies Franchisee of a broken or damaged container, Franchisee must replace or repair the container before the Customer's next scheduled collection.
3. If a Customer reports that a container has been stolen and Franchisee can verify that the container has been stolen and not re-purposed, Franchisee must provide the Customer with a replacement container before the Customer's next scheduled collection.
4. Customers provided with bin service have the option to select one or more bin. When determining the level of service to be provided to a Customer receiving bin service, Franchisee must present the Customer with the combination of bin size, quantity, and frequency of weekly collection that meets the Customer's needs at the lowest possible monthly cost.
5. If a Customer consistently overfills a container such that on collection day refuse is spilling from the container, and the Customer refuses to accept a larger container or an additional container, Franchisee must bring this situation to the attention of the Administrator. The Administrator may take measures allowed by the El Segundo Municipal Code to ensure that the Customer is subscribing to a level of service consistent with its needs.
6. After containers are emptied, they must be returned to the location from which they were picked up by Franchisee's employees, upright and with lids properly secured. Franchisee's employees must use reasonable means to ensure that containers are not deposited in any driveway, sidewalk, or street other than at the curb.

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EXHIBIT 4:
PLANNING REQUIREMENTS AND CUSTOMER SERVICE AND
EDUCATION

4.1 Customer Education and Communication

Franchisee must provide all Customers with education and information materials as follows:

- 4.1.1 To all Customers during the Pre-service Planning Period described in Section 5 of this Agreement, and to all new customers, written information that describes:
- a. Franchisee's services, including how materials are Diverted from Disposal and container sizes available;
 - b. Customer's collection schedule, including when collection will occur when a Customer's collection day falls on a Holiday, and those Holidays that are observed by Franchisee;
 - c. How refuse and materials are to be prepared and placed in containers and a description of wastes and materials that are not be placed in containers;
 - d. How containers are to be placed and made accessible for collection by Franchisee;
 - e. Proper handling and disposal of hazardous wastes and universal wastes, including identification of local facilities and events that accept these wastes;
 - f. How to contact Franchisee's customer service office, including the telephone number, email address, and times during which customer service personnel are available to respond to customer requests;
 - g. Franchisee's policy for investigating and responding to Customer complaints and requests for service;

EXHIBIT 4:
PLANNING REQUIREMENTS AND CUSTOMER SERVICE AND
EDUCATION

- h. The availability of rollout/backyard service, the fees associated with this service;
- i. The temporary bin services available from the Franchisee;
- j. A description of the requirements of AB 341, and AB 1826, and SB 1383 and an explanation of how these requirements affect the Customers;
- k. Methods by which Customers may pay their bills.

4.2 Quarterly Outreach. Once per quarter throughout the Term of this Agreement, Franchisee must provide Customers with a newsletter or bill insert, as determined by the Administrator, that describes and discusses:

- a. The percent of waste and materials collected from Customers that Franchisee has Diverted from Disposal during the previous six months;
- b. Upcoming local events for the collection of hazardous and universal waste;
- c. Planned changes to Franchisee's services, collection schedules, or routes;
- d. How refuse and materials are to be prepared and placed in containers and a description of wastes and materials that are not be placed in containers;
- e. Any other issues related to the Franchisee's services that are affected by Customer behavior.

4.3 Educational Materials for Tenants. Franchisee must provide Commercial Premises and property managers/Owners with public education materials, required by SB 1383, for their distribution to all tenants, employees, contractors, and customers of the property annually (or more frequently upon Customer request). The public education materials must include, at a minimum, information about Organic Waste recovery requirements, proper sorting of

EXHIBIT 4:
PLANNING REQUIREMENTS AND CUSTOMER SERVICE AND
EDUCATION

Discarded Materials, and move-in/move-out information and procedures. Commercial Premises and City property managers/Owners may request these materials more frequently if needed to comply with the SB 1383 requirement to provide information to new tenants before or within 14 days of occupancy.

- 4.3.1 Franchisee must provide electronic bill inserts (or separate email attachments) to Customers who are billed electronically, and paper bill inserts to Customers who receive paper bills. For Customers receiving electronic bills, Franchisee agrees to distribute newsletters, bill insert, or other information as attachments to Customer invoices, within Franchisee's billing system requirements. Electronic bill inserts/attachments must be readily available for the Customer to view upon receipt of the invoice (attachments may not be provided as links). Upon City request for billing inserts, Franchisee must comply with such request during its next billing cycle for the targeted Customer group, if specified. Franchisee must perform this service with no additional requirement for compensation.
- 4.3.2 Before distributing any materials to Customers, Franchisee must provide drafts of these materials to the Administrator for review and comment at least 30 days prior distribution of these materials to Customers.
- 4.3.3 Franchisee's customer service telephone number and email address is to be identified on all materials distributed to Customers.
- 4.3.4 All costs for preparation, printing, and distribution of customer education and information materials is to be at Franchisee's expense, and may not be billed to or the responsibility of City or Franchisee's Customers.

EXHIBIT 5:
SCHEDULE OF LIQUIDATED DAMAGES

The following liquidated damages apply and are due and payable by Franchisee for breaches of the terms of this Agreement by Franchisee.

Conditions When Liquidated Damages Apply	Liquidated Damage Amount
1. Franchisee Operations	
1.1 Failure of Franchisee to achieve and maintain a monthly Diversion standards as described in Article 8 and Exhibit 11 of this Agreement.	\$5,000 for the first month in any 12-month period that the required Diversion standards are not achieved or maintained; \$10,000 for the second month in any 12-month period that the required Diversion standards are not achieved or maintained; \$15,000 for the third month (and any additional months) in any 12-month period that required Diversion standards are not achieved or maintained.
1.2 Reserved.	
1.3 Failure to cleanup litter or spills from Franchisee's vehicles as specified in this Agreement	\$500 per incident
1.4 Failure to deliver a container to a Customer or make a container exchange requested by a Customer before the Customer's next scheduled collection.	\$100 per incident
1.5 Failure to repair or replace a damaged or missing container before the Customer's next scheduled collection.	\$100 per incident

1.6	Failure to respond to a Customer service request within 24 hours or the end of the next business day, whichever is sooner.	\$100 per incident
1.7	Failure to notify a Customer of the reason for non-collection.	\$100 per incident
1.8	Failure to collect a missed pick-up before the end of the next business day after receiving a notice	\$200 per incident

EXHIBIT 5:
SCHEDULE OF LIQUIDATED DAMAGES

Conditions When Liquidated Damages Apply		Liquidated Damage Amount
	from Customer	
1.9	Failure to replace containers in their approximate original, upright position after service more than 20 times in any month	\$200 per incident greater than 20 per month
1.10	Failure to repair damage caused to private property within 30 days	\$500 for each day greater than 30 that the damage is not repaired
1.11	Failure to begin service to a new Customer within 5 business days of receiving Customer request	\$200 per incident
1.12	Failure to remove containers from a premises that is no longer receiving service from Franchisee within 3 days of being requested to do so by the City or Customer	\$500 per day that the containers are not removed after request by the City of Customer
1.13	Providing services to Customers that are not authorized by this Agreement	\$1,000 per incident

Conditions When Liquidated Damages Apply		Liquidated Damage Amount
2. Franchisee Vehicles		
2.1	Use of vehicles that are not in compliance with SCAQMD Rule 1193	\$5,000 per vehicle per day that such a vehicle is used in the City
2.2	Use of any vehicles in the City that have not been properly registered or inspected	\$500 per vehicle per day that such a vehicle is used in the City

**EXHIBIT 5:
SCHEDULE OF LIQUIDATED DAMAGES**

2.3	Failure to remove graffiti or tagging from vehicles	\$500 per vehicle
2.4	Use vehicles that are not in compliance with SB 1383 approved renewable fuel when required to do so by this Agreement.	\$5,000 per vehicle per day that such a vehicle is used in the City

Conditions When Liquidated Damages Apply		Liquidated Damage Amount
3. Containers		
3.1	Failure to provide containers that meet the minimum standards specified in this Agreement	\$10 per container not meeting the minimum standards
3.2	Failure to place labels or stickers on containers as required by this Agreement	\$10 per container
3.3	Failure to remove graffiti or tagging from containers	\$25 per incident

Conditions When Liquidated Damages Apply		Liquidated Damage Amount
4. Submittals to the City		
4.1	Failure to provide a monthly report, annual report, or other required submittal by the due date	\$100 per day that the report or submittal is not submitted
4.2	Submittal of false or inaccurate information on a report or form	\$1,000 per incident per report
4.3	Failure to provide verification of insurance or copies of inspections or certifications requested by City or required by this Agreement by the due date	\$250 per incident
4.4	Failure to provide an acceptable annual update to Franchisee's Waste Disposal and Diversion Plan	\$500 per incident

EXHIBIT 5:
SCHEDULE OF LIQUIDATED DAMAGES

Conditions When Liquidated Damages Apply	Liquidated Damage Amount
5. Communication with Customers	
5.1 Reserved	
5.2 Reserved	
5.3 Failure to provide advance copies of notifications to Customers to the City for review and comment	\$500 per incident
5.4 Failure provide notifications, newsletters, or other Customer education materials required by this Agreement	\$1,000 per incident
5.5 Acceptance or demands for gratuities or any other payments from Customers not specifically authorized by this Agreement	\$5,000 per incident
5.6 Representing that Franchisee has the exclusive right to provide services to Customers	\$1,000 per incident
5.7 Including terms or conditions in service agreements with Customers that are not in compliance with the terms of this Agreement	\$500 per incident

Conditions When Liquidated Damages Apply	Liquidated Damage Amount
6. Accuracy of Billing	
6.1 Each Customer invoice that is not itemized in accordance with the requirements of this Agreement	\$25 per invoice not to exceed \$2,500 per Billing run
6.2 For each instance or invoice in which Franchisee	\$50 per incident

EXHIBIT 5:
SCHEDULE OF LIQUIDATED DAMAGES

Conditions When Liquidated Damages Apply	Liquidated Damage Amount
imposes a fee for a service not requested by the service recipient which exceeds ten (10) such occurrences annually:	
6.3 Failure to provide a Customer with a response, including an explanation and/or correction, to a Billing Complaint within seven Business Days from the Complaint:	\$100 per incident Each additional day response not provided: \$50

Conditions When Liquidated Damages Apply	Liquidated Damage Amount
7. Cooperation with Service Provider Transition	
7.1 For each day routing information requested by City in accordance with Section 30.12 is received after City-requested due dates, both for preparation of a request for proposals and for new service provider's implementation of service	\$250 per day
7.2 Reserved.	

EXHIBIT 5:
SCHEDULE OF LIQUIDATED DAMAGES

Conditions When Liquidated Damages Apply	Liquidated Damage Amount
8. SB 1383 Requirements - Failure to meet SB 1383 requirements set forth below	
8.1 Use of Unauthorized Facilities. For each individual occurrence of delivering Discarded Materials to a Facility other than an Approved Facility(ies) for each Discarded Material type under this Agreement.	1st violation - \$50 per Ton per occurrence 2nd violation - \$100 per Ton per occurrence 3rd and subsequent violations - \$250 per Ton per occurrence
8.2 Failure to Perform Contamination Monitoring Requirements. For each failure to conduct contamination monitoring support in accordance with Section 11.2 of this Agreement.	1st violation - \$50 per route per occurrence 2nd violation - \$100 per route per occurrence 3rd and subsequent violations - \$250 per route per occurrence
8.3 Failure to Comply with Container Labeling and Colors. For each occurrence of Franchisee's failure to comply with Container labeling and color requirements pursuant to SB 1383.	1st violation - \$50 per occurrence 2nd violation - \$100 per occurrence 3rd and subsequent violations - \$250 per occurrence
8.4 Failure to Conduct Compliance Tasks. For each failure to conduct any compliance review, Discarded Materials evaluations pursuant to SB	1st violation - \$50 per occurrence 2nd violation - \$100 per

**EXHIBIT 5:
SCHEDULE OF LIQUIDATED DAMAGES**

Conditions When Liquidated Damages Apply	Liquidated Damage Amount
1383, and/or other inspection required by this Agreement.	occurrence 3rd and subsequent violations - \$250 per occurrence
8.5 Failure to Issue Contamination Notices. For each failure of Franchisee Collection personnel to issue contamination notices and Non-Collection Notices and maintain documentation of issuance as required by 13.02 of this Agreement.	1st violation - \$50 per route per day 2nd violation - \$100 per route per day 3rd and subsequent violations - \$250 per route per day
8.6 Failure to Conduct Follow-Up Inspections. For each failure to conduct a follow-up inspection as required by Section 13.02 of this Agreement.	1st violation - \$50 per occurrence 2nd violation - \$100 per occurrence 3rd and subsequent violations - \$250 per occurrence
8.7 Failure to establish a recycling and/or organics program for each Customer in compliance with SB 1383, unless provided a waiver by the City.	\$100 per non-compliant Customer per year as of December 31 of each year
8.8 Failure to Maintain and/or Provide Access to Information Systems.	\$100 per day

Payment of any liquidated damages by Franchisee does not release Franchisee from fulfillment of the terms of this Agreement.

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EXHIBIT 6:
CITY REQUEST FOR QUALIFICATIONS AND FRANCHISEE'S
STATEMENT OF QUALIFICATIONS

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EXHIBIT 7:
CITY REQUEST FOR APPLICATIONS AND FRANCHISEE'S APPLICATION
FOR A WASTE COLLECTION AND RECYCLING FRANCHISE

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EXHIBIT 8:
EXHIBIT RESERVED

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EXHIBIT 9:
FORM OF GUARANTY

PARENT COMPANY GUARANTEE

This GUARANTEE AGREEMENT ("Guarantee") is made as of the _day of _____, 2024, by _____ ("Guarantor"), for the benefit of the City of El Segundo ("City"). Guarantor and City are individually referred to herein as a "Party" and collectively as the "Parties."

RECITALS

WHEREAS City has entered into a Solid Waste Hauling Franchise Agreement (the "Agreement") dated _____, 2024 with _____ ("Franchisee") pursuant to which Contractor is obligated to provide multi-family and commercial solid waste hauling services within the City on the terms and conditions set forth therein.

WHEREAS Guarantor is the parent organization of Franchisee;

WHEREAS Guarantor has agreed to guarantee the performance of the Agreement in the manner hereinafter set forth;

WHEREAS this Guarantee is approved by, or is made pursuant to authority granted by, the Board of Directors of Guarantor;

WHEREAS the Board of Directors of Guarantor has determined that this Guarantee directly, or indirectly, benefits Guarantor.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual promises and covenants set forth herein, and for other good and valuable consideration, the receipt of which is hereby acknowledged, the Parties agree as follows:

EXHIBIT 9:
FORM OF GUARANTY

1. In consideration of the City entering into the Agreement with the Franchisee, as Guarantor hereby acknowledges, Guarantor hereby unconditionally and irrevocably guarantees to the City:
 - 1.1 The due and punctual performance and observance by the Franchisee of all duties, acts, covenants and obligations to be performed or observed by the Franchisee under or pursuant to the Agreement; and
 - 1.2 The due and punctual payment by the Franchisee of all sums payable under or pursuant to the Agreement to the City as and when the same fall due.
2. In the event Franchisee fails to carry out, observe or perform any of the acts, obligations, duties, undertakings, covenants and conditions under the Agreement, Guarantor will be liable for and must indemnify City against all losses, damages, costs, expenses, whatsoever which City may incur by reason or as a consequence or any such failure on the part of Franchisee.
3. Guarantor is not discharged or released from this Guarantee by the occurrence of any one or more of the following:
 - 3.1 Any alteration to the nature of the extent of the services or otherwise to the terms of the Agreement
 - 3.2 Any allowance of time, forbearance, indulgence or other concession granted to the Franchisee under the Agreement or any other compromise or settlement of any dispute between the City and the Franchisee;
 - 3.3 The liquidation, bankruptcy, administration, dissolution, or any change in name, composition or constitution of the Franchisee or the Guarantor.
4. Guarantor understands and acknowledges the critical nature of the services provided by Franchisee pursuant to the Agreement, and the critical importance of those services being provided to the community in a timely fashion. The failure of Franchisee to timely collect

EXHIBIT 9:
FORM OF GUARANTY

and haul solid waste in accordance with the terms and conditions of the Agreement poses a significant risk to public health and safety. Consequently, Guarantor's duty to guarantee the punctual performance of Franchisee's 'solid waste collection and hauling obligations attach immediately upon demand from the City and without regard to whether City has yet taken action against Franchisee or exhausted all or any remedies available to it under the Agreement.

5. This Guarantee is a continuing guarantee and, accordingly, remains in effect until all obligations, duties, undertakings, covenants, conditions and warranties now or hereafter to be carried out or performed by the Franchisee under the Agreement, or any amendments thereto, are satisfied or performed in full and is in addition to and not in substitution for any other security for which the City may at any time hold for the performance of such obligations and may be enforced without first having recourse to any such security and without taking any other steps or proceedings against the Franchisee. The City's rights under this Guarantee are in addition to and not exclusive of those provided by the Agreement or by law.
6. Notwithstanding anything to the contrary herein, Guarantor's liability under this Guarantee may not exceed Franchisee's liability under the Agreement. Guarantor does not waive any right to assert against the City any defense that the Franchisee could assert under the Agreement.
7. All notices, requests, demands and other communication under this Guarantee are deemed to be given (a) when delivered in person to the address of the Party listed below, (b) upon confirmation of receipt when transmitted by facsimile transmission to the number of the Party listed below, (c) upon receipt after dispatch by registered or certified mail to the address of the Party below, or (d) on the next business day if transmitted by national overnight courier to the address of the Party below, with confirmation of delivery.

EXHIBIT 9:
FORM OF GUARANTY

To Guarantor:

To City:

City of El Segundo

Attn: City Manager

350 Main Street

El Segundo, CA 90245

8. This Guarantee is binding upon Guarantor and its successors and assigns.
9. This Guarantee constitutes the entire agreement and understanding between the parties hereto and supersedes any and all prior agreements and understandings, oral or written, relating to the subject matter hereof. Each of the Parties acknowledges that no other Party, nor any agent or attorney of any other Party, has made any promise, representation, or warranty whatsoever, and acknowledges that the Party has not executed or authorized the execution of this Guarantee in reliance upon any such promise, representation or warranty, that is not expressly contained herein. Guarantor is responsible for guarantying all obligations of the Franchisee under the Agreement and any amendments thereto.
10. Each of the individuals signing this agreement on behalf of a Party hereto warrants and represents that such individual is duly authorized and empowered to enter into this agreement and bind such Party hereto.

EXHIBIT 9:
FORM OF GUARANTY

IN WITNESS WHEREOF, the Parties have executed this Guarantee as of the date first hereinabove set forth.

GUARANTOR:	CITY:
[NAME]	
By:	By:
Print:	Print:
Title:	Title: City Manager

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EXHIBIT 10:
SCHEDULE OF SUBMITTALS

Report or Submittal		Due Date
1.	Copies of initial education and marketing materials for distribution to new customers	Within 45 days of the Effective Date of this Agreement
2.	Copies of Customer notifications and educational materials provided to the City	Within 30 days before distribution to Customers
3.	Proof of insurance - initial	Before the execution of this Agreement
4.	Proof of insurance - revisions or updates	Within ten days of the effective date of any change or revision
5.	Monthly Report	Within 30 days after the end of the month
6.	Identification of Customers that generate more than 2 cubic yards of Solid Waste per week and refuse to participate in Franchisee's recycling programs	Within 30 days of customer refusal to participate
7.	Initial Waste Disposal and Diversion Plan	May 1, 2025
8.	Copies of collection route maps and customer lists	Submitted with Part II of Franchisee's transition plan, and 45 days before the implementation of any changes
9.	Copy of Franchisee's contingency plan (Section 11.07)	May 1, 2025 and whenever the plan is changed or updated.

EXHIBIT 10:
SCHEDULE OF SUBMITTALS

	Report or Submittal	Due Date
10.	Listing of Franchisee's Customers that are covered by the requirements of AB 341, AB 1826, and SB 1383	Initial list by May 1, 2025. Annual updates on September 1 of each year.
11.	Annual Activities Report (Section 21.03)	March 1 annually

EXHIBIT 11:
EXAMPLE OF THE FRANCHISEE COLLECTED DIVERSION RATE
CALCULATION METHOD

Calculation. Franchisee must achieve and maintain a Diversion rate that is to be calculated for each reporting period as follows:

- A. Total weight (in tons) of Solid Waste, Recyclable Materials, and Organic Materials collected by Franchisee from Customers in the City that is Diverted from Disposal, divided by the total weight (in tons) of Solid Waste, Recyclable Materials, and Organic Materials collected by Franchisee from Customers in the City during the same reporting period.

Example: During a reporting period, Franchisee collected and diverted the following quantities:

	Collected From Customer	Diverted from Disposal
Solid Waste	500 tons	100 tons
Recyclable Materials	200 tons	156 tons
Organic Materials	200 tons	122 tons
Totals	900 tons	378 tons

The Franchisee's Diversion rate for this reporting period would be calculated as:

$$378 \div 900 = 42.0\%$$

- B. Franchisee must calculate its Diversion rate each month and report this rate to City in a method and form specified by City.
- C. Notwithstanding the other provisions of this Agreement, Franchisee must Divert from Disposal not less than sixty-five percent (65%) of all Construction and Demolition Debris collected when providing the Temporary Bin Services authorized by this Agreement.

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EXHIBIT 12:

RESERVED

EXHIBIT 13: REPORTS

- 13.1 Records. Records must be maintained in forms and by methods that facilitate flexible use of data contained in them to structure reports, as needed. Reports are intended to compile recorded data into useful forms of information that can be used to, among other things:
- 13.1.1 Evaluate past and expected progress towards achieving the Franchisee's Diversion goals and objectives.
 - 13.1.2 Provide concise and comprehensive program information and metrics for use in fulfilling reporting requirements under Applicable Law.
 - 13.1.3 Determine needs for adjustment to programs.
 - 13.1.4 Evaluate Customer service and Complaints.
 - 13.1.5 Determine Customer compliance with Applicable Law and any subsequent State-mandated Recycling requirements.
- 13.2 Monthly Reports. Monthly reports must be submitted by Franchisee to the City and include the following information pertaining to the most recently-completed calendar month. In addition, each monthly report must include a year-to-date summary page that includes the data submitted from the monthly report(s) submitted in the calendar year before the submittal of the current monthly report. Franchisee must report the information included in the following subsections.
- 13.2.1 The weights of Solid Waste, Recyclable Materials, and Organics collected in the City, and recycled, processed, composted, transformed and disposed by Franchisee. These reports must be in a form and method specified by the City;
 - 13.2.2 The number of Customers to which Franchisee has provided temporary bin service, the total weight of materials collected, recycled, composted, and disposed from the

EXHIBIT 13: REPORTS

temporary bin service provided, and the gross receipts received for the temporary bin service provided;

- 13.2.3 The name of each facility utilized by Franchisee and the weight of Solid Waste, Recyclable Materials and Organics taken to each facility by Franchisee. It is Franchisee's responsibility to demonstrate to City's satisfaction that the weights reported by Franchisee are true and accurate and represent weights of Solid Waste, Recyclable Materials, and Organics actually collected in the City by Franchisee. All information reported to the City is subject to audit and verification by the City;
- 13.2.4 Solid disposal weights reported to the City by Franchisee must be the same as those identified as being from the City and reported by Franchisee to the operators of facilities utilized by Franchisee, Los Angeles County, and the State of California Disposal Reporting System; and,
- 13.2.5 Contamination Monitoring Report. Description of the Franchisee's process for determining the level of contamination or Container overfilling. Franchisee must document the contamination and/or overfilling through use of film or digital photography.
- 13.2.5.1 A record of each special pick-up fee assessed, which must include, at a minimum:
- a. Name and address of the Customer;
 - b. The date the contaminated Container was observed;
 - c. The staff who conducted the inspection;
 - d. The total number of violations found and a description of what action was taken for each;
 - e. Copies of all notices to Customers with Prohibited Container Contaminants; and,

EXHIBIT 13:
REPORTS

- f. Photographic documentation.
- 13.2.5.2 Documentation of the total number of Containers Disposed of due to observation of Prohibited Container Contaminants.
- 13.2.5.3 Summary report of Courtesy Pick-Up Notices, Non-Collection Notices, and/or Contamination Processing Fee assessment notices issued, which for each notice must include the date of issuance, Customer name, and service address.
- 13.2.5.4 A list of all Customers assessed Contamination Processing Fees, pursuant to Section 4.10 of this Agreement, reported separately by Customer Type, and including the Customer name, Customer address, and reason for the assessment of the Contamination Processing Fee; the total number of instances Contamination Processing Fees were assessed in the month; and the total amount of fees collected in the month.
- 13.2.5.5 Any other information reasonably requested by the City or specified in contamination monitoring provisions of this Agreement.
- 13.2.6 Education and Outreach
 - 13.2.6.1 A copy of all education and outreach materials provided to Generators, or otherwise used for education and outreach efforts in accordance with Section 12.4 of the Agreement and Exhibit 4, including, but not limited to: flyers, brochures, newsletters, invoice messaging/billing inserts, website, and social media postings.
 - 13.2.6.2 A record of the date and to whom the information was disseminated, or direct contact made, in the form of a list that includes: the Generator's name or account name, the type of education or outreach received; the distribution date, and the method of distribution.

EXHIBIT 13: REPORTS

- 13.2.6.3 For any mass distribution through mailings or bill inserts, provide a record of the date, a copy of the information distributed, and the type and number of accounts that received the information.
- 13.2.6.4 A copy of all electronic media—e.g., social media posts, e-mail communications, or other electronic messages—including the dates posted or sent. A summary report must be provided for electronic marketing that itemizes each communication and reports performance metrics for each that are relevant to that type of communication (e.g., open and click-through rates for email marketing, engagement numbers for social media, etc.).
- 13.2.6.5 Summary of the results of the Diversion opportunity assessments provided to Customers (reporting Multi-Family separate from Commercial) by identifying the number of Diversion opportunity assessments conducted each month in the most-recently completed quarter, and contact information including address, contact names, telephone number of Persons contacted, number of Dwelling Units (for Multi-Family), and the Recyclable Materials, Organic Materials, and Solid Waste Service Level for each complex. Include any Service Level changes resulting from such visits.
- 13.2.6.6 Dates, times, and group or event names of any site visits, meetings, and events attended in the month.
- 13.2.7 Service Complaint Log Record of all complaints, including date, time, complainant's name and address (if the complainant is willing to give this information) and the nature and date and manner of resolution of complaint.
- 13.2.8 SB 1383 Non-Compliance Complaint Log. Record of all received including the following information:

EXHIBIT 13:
REPORTS

- 13.2.8.1 Total number of Complaints received, and total number of Complaints investigated.
- 13.2.8.2 Copies of documentation recorded for each Complaint received, which must at a minimum include the following information: (i) The Complaint as received; (ii) The name and contact information of the complainant, if the Complaint is not submitted anonymously; (iii) The identity of the alleged violator, if known; (iv) A description of the alleged violation; including location(s) and all other relevant facts known to the complainant; (v) Any relevant photographic or documentary evidence submitted to support the allegations in the Complaint; and, (vi) The identity of any witnesses, if known.
- 13.2.8.3 Documentation of any follow-up inspections and/or outreach, if any, conducted upon City request pursuant to Section 14.03 of this Agreement, which includes at a minimum: (i) The date the Contractor investigated the Complaint; (ii) documentation of the findings of the investigation; and (iii) Any photographic or other evidence collected during the investigation.
- 13.2.9 Renewable fuel usage totals expressed in units as required by SB 1383.
- 13.2.10 Hazardous Waste Diversion Reports.
- 13.2.11 Warning Notice Reports. Record of all warning notices, including date, time, Customer's name, address, and a monthly total.
- 13.3 Annual Report. The annual report is the final monthly report, including annual totals, summary pages, and a compilation of any materials required by the monthly report. The annual report is due March 1, for the period of January 1 – December 31, annually in a form approved by the City, including, but not limited to, the following information:

EXHIBIT 13:
REPORTS

- 13.3.1 A summary of the previous year's (or, in the case of the initial report year, the initial year's) activities including, but not limited to, services begun or discontinued during the reporting year.
 - 13.3.2 The number of customers for each class and level of service.
 - 13.3.3 A record of all compliance agreements for quarantined Organic Materials that are Disposed of, including the name of Generator, date issued, location of final disposition, and the amount of quarantined Organic Materials that was required to be Disposed at a landfill, pursuant to Section 13.01.C and 13.01.D of the Agreement.
 - 13.3.4 Written notification that the Approved Organic Waste Processing Facility(ies) has and will continue to have the capabilities to Process and recover the Compostable Plastics, in accordance with Section 10.12.J of the Agreement.
 - 13.3.5 A list of Franchisee's officers and members of its board of directors.
- 13.4 Additional Reports
- 13.4.1 Upon Incident Reporting. City reserves the right to request additional reports or documents in the case of unforeseen events or additional requirements imposed upon the City. The Franchisee must provide the requested reports, documents, or information within 10 Business Days upon receipt of the request or within a timeframe determined by the City Administrator or their designee, which may not to exceed 10 days.
 - 13.4.2 AB 901 Reporting. At the City's option, City may require that Franchisee provide the City copies of Franchisee's AB 901 reports on a regular basis (such as monthly, quarterly, or annually) or within 10 Business Days of the request.

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EXHIBIT 14:
APPROVED FACILITIES LIST

Approved Facility Type	Required Facility Information
Approved Transfer Facility(ies)	Facility Name: <ul style="list-style-type: none"> • Address: • Operator: • SWIS Number: • Facility Type: • Material Type(s):
Approved Disposal Facility(ies)	Facility Name: <ul style="list-style-type: none"> • Address: • Operator: • SWIS Number: • Facility Type: • Material Type(s): • (If Applicable) Transfer Facility:
Approved C&D Facility(ies)	Facility Name: <ul style="list-style-type: none"> • Address: • Operator: • SWIS Number: • Facility Type: • Material Type(s): • (If Applicable) Transfer Facility:
Approved Organic Materials Processing Facility(ies)	Facility Name: <ul style="list-style-type: none"> • Address: • Operator: • SWIS Number: • Facility Type: • Material Type(s): • (If Applicable) Transfer Facility: Facility Name: <ul style="list-style-type: none"> • Address: • Operator: • SWIS Number: • Facility Type: • Material Type(s): • (If Applicable) Transfer Facility:

EXHIBIT 14: APPROVED FACILITIES LIST

Approved Facility Type	Required Facility Information
Approved Recyclable Materials Processing Facility	Facility Name: <ul style="list-style-type: none"> • Address: • Operator: • SWIS Number: • Facility Type: • Material Type(s): • (If Applicable) Transfer Facility:
Approved High Diversion Organic Waste Processing Facility (if collecting Mixed Waste)	Facility Name: <ul style="list-style-type: none"> • Address: • Operator: • SWIS Number: • Facility Type: • Material Type(s): • (If Applicable) Transfer Facility:
Approved Reusable Materials Processing Facility	Facility Name: <ul style="list-style-type: none"> • Address: • Operator: • SWIS Number: • Facility Type: • Material Type(s): • (If Applicable) Transfer Facility: