

RESOLUTION NO. _____

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CARSON
APPROVING THE FRANCHISE AGREEMENT FOR WASTE MANAGEMENT
SERVICES BETWEEN THE CITY OF CARSON AND WASTE RESOURCES
TECHNOLOGIES, INC, A DELAWARE CORPORATION**

WHEREAS, the City of Carson has the authority to award a nonexclusive, partially exclusive or wholly exclusive franchise, contract, license, or permit for solid waste collection services pursuant to Public Resources Code section 40059. The Act at section 49501 defines "exclusive solid waste handling services" to include circumstances when one or more solid waste enterprises has the exclusive right to provide solid waste handling services of any class or type within all or any part of the territory of the City local agency; and

WHEREAS, the City decided to consolidate all solid waste management services (commercial and residential) under one exclusive and comprehensive franchise agreement for a period of 15 years, with a City option to provide one additional twenty-four month extension; and

WHEREAS, on July 20, 2017, the City released a Request for Proposal for Integrated Solid Waste Management Services (RFP P17-19), seeking qualified companies to provide solid waste collection, transportation, recycling and disposal services, as well as the potential development of solid waste facilities within the City; and

WHEREAS, the City received proposals from the following solid waste haulers: EDCO Disposal (EDCO), Waste Management Services, Inc. (WMI), Commercial Waste Services (CWS), Southland Environmental Services (SES), Athens Services (AS), Universal Waste Systems (UWS) and Waste Resources Inc. ("WRI" or Waste Resources Technologies a Delaware Corporation) by the October 5, 2017 RFP submission deadline. An Ad-hoc Solid Waste Committee (Committee) narrowed the contract prospects to two final candidates, EDCO and WRI for the Council consideration and appointment; and

WHEREAS, On December 5, 2018 the City Council chose to direct City staff to negotiate RFP P17-19's "Exclusive Franchise Agreement for Provision of Solid Waste Handling Services" (the "Agreement") with WRI for the provision of refuse and recycling services to commercial and residential customers. The parties have negotiated the Agreement in the form attached hereto at Exhibit 1. Staff is recommending City Council approval of the Agreement. The Agreement provides for an exclusive franchise arrangement with WRI for residential and commercial/industrial solid waste management services for 15 years, with a one-time option to extend for an additional twenty-four months; and

WHEREAS, On December 5, 2018 the City Council chose to direct City staff to negotiate RFP P17-19's "Exclusive Franchise Agreement for Provision of Solid Waste Handling Services" (the "Agreement") with WRI for the provision of refuse and recycling services to commercial and residential customers. The parties have negotiated the Agreement in the form attached hereto at Exhibit 1. Staff is recommending City Council approval of the Agreement. The Agreement provides for an exclusive franchise Arrangement with WRI for residential and commercial/industrial solid waste management services for 15 years, with a one-time option to extend for an additional twenty-four months; and

WHEREAS, after review and consideration, the City Council determines that the public interest is served by approving the Exclusive Franchise Agreement.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Carson as follows:

Section 1. The foregoing recitals are true and correct and are incorporated by reference.

Section 2. The City Council hereby approves the Exclusive Franchise Agreement, City of Carson – Waste Management Resources Inc, a Delaware Company, attached as Exhibit 1, (Fifteen year term, with a one-time twenty-four month extension) and authorizes the Mayor or City Manager to execute the same on behalf of the City subject to approval as to final form by the City Attorney. The Maximum Rate Schedule attendant to the Agreement shall be approved by separate action of the Council in accordance with Proposition 218; this Resolution approves the balance of the Agreement’s terms subject to approval as to final form by the City Attorney.

Section 3. The Agreement shall be effective when fully executed by both parties, with solid waste services commencing July 1, 2018.

Section 4. The City Council finds that the Agreement serves a public purpose and is in the best interest and welfare of the City of Carson and its residents.

Section 5. This Resolution shall be effective upon adoption.

PASSED, APPROVED and ADOPTED at a regular meeting of the City Council on this _____ day of February, 2018.

Albert Robles, Mayor

ATTESTED:

Donesia L. Gause, City Clerk

APPROVED AS TO FORM:

By: _____

, City Attorney
Aleshire & Wynder, LLP

I, _____, City Clerk of the City of Carson, California, DO HEREBY CERTIFY that the foregoing is a true and accurate copy of the Resolution passed and adopted by the City Council of the City of Arvin on the date and by the vote indicated herein.

Exhibit 1: Exclusive Franchise Agreement, City of Carson – Waste Management Resources, Inc, a Delaware Corporation

EXCLUSIVE FRANCHISE AGREEMENT
FOR PROVISION OF SOLID WASTE HANDLING SERVICES

THIS EXCLUSIVE FRANCHISE AGREEMENT FOR PROVISION OF SOLID WASTE HANDLING SERVICES is made and entered into this ____ day _____ of 2018 by and between Waste Resource Technologies, Inc., a Delaware corporation ("Franchisee") and THE CITY OF CARSON, a municipal corporation of the State of California ("City"). City and Franchisee are occasionally herein referred to each as a "Party" and collectively as the "Parties".

RECITALS

A. The Legislature of the State of California, by enactment of the California Integrated Waste Management Act of 1989 ("AB 939") declares that a City may determine all aspects of solid waste handling which are of local concern, including, but not limited to, frequency of Collection, means of Collection and transportation, level of services, charges and fees and the nature, location and extent of providing solid waste handling services;

B. The passage of AB 32, the California Global Warming Solutions Act of 2006, ("AB 32") required by law a sharp reduction of greenhouse gas (GHG) emissions. AB 32 requires California to reduce its GHG emissions to 1990 levels by 2020 — a reduction of approximately 15% below emissions expected under a “business as usual” scenario. Local governments will play a vital role in the implementation of AB 32 by identifying opportunities and best practices to increase waste reduction and recycling, thereby reducing carbon emissions. Franchisee's hauling operations shall aim to reduce GHG emissions by maximizing diversion to reduce gas-producing landfill deposits and utilizing latest fuel and vehicular technologies to reduce carbon emissions produced by waste hauling vehicles in performing waste Collection and diversion activities for the City and by recovering and recycling commodities in the waste stream;

C. In 2011, the State of California enacted Assembly Bill 341 ("AB 341"), which provides further procedures for complying with the statute under AB 32 which requires a reduction in greenhouse gas (GHG) emissions. The purpose of AB 341 is to achieve the reduction in GHG by increasing the amount of commercial waste recycled in California, specifically, by requiring businesses and public entities that generate 4 cubic yards or more of solid waste per week, and multifamily residences with 5 or more units, to recycle. Such commercial recycling shall be required by this Agreement;

D. AB 939, AB 32, AB 341, AB 1826 and related laws pertaining to the environmental impacts of solid waste, as may be enacted or amended in the future, are collectively referred to herein as the “Refuse Impact Reduction Laws”. Pursuant to California Public Resources Code Section 40059(a)(1), the City Council of the City of Carson has determined that the public health, safety, and welfare require that an exclusive franchise be awarded to a qualified solid waste enterprise for solid waste handling in residential, commercial, and industrial areas in the City;

E. The successful implementation of solid waste handling in residential, commercial, and industrial areas in the City will entail the expenditure of large sums of capital by the Franchisee, for which the Franchisee is, subject to the terms of Proposition 218, entitled to be compensated. City intends that this Agreement will contribute to safeguarding public health by providing the most cost-effective, efficient, reliable, and environmentally appropriate solid waste services to its citizens.

F. In 2017 the City issued a Request for Proposals (“RFP”) for the Collection services franchised hereunder, with Franchisee being the successful proposer at the conclusion of the RFP process. In addition to the services franchised under this Agreement, Franchisee’s competitive proposal offered:

- (i) To lease areas of the City’s Corporate Yard located at 2400 E. Dominguez St., Carson, CA 90745 for Franchisee’s storage of certain equipment utilized by Franchisee in the course of providing the Collection services franchised hereunder. Such lease arrangement shall be memorialized in a lease agreement to be separately entered by the Franchisee and City at a time commensurate with the Effective Date of this Agreement (the “City Yard Lease”).
- (ii) To take reasonable efforts to facilitate the opening of the headquarters of third-party Dongfeng Progen Electric Vehicles LLC within the boundaries of the City of Carson.
- (iii) Franchisee shall pay the City a fee of \$1.00/ton for all Solid Waste and Recyclables generated in the City and delivered to Waste Resources Recovery, Inc. (“WRR”), located at 357 West Compton Boulevard, Gardena, CA 90248.

G. The inducements proposed by Franchisee described in the preceding recital were material inducements to the City’s award of this Agreement to Franchisee.

NOW THEREFORE, in consideration of the promises and covenants contained herein, the above recitals, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto agree as follows:

**ARTICLE I
ARTICLE I DEFINITIONS; DELEGATION OF
AUTHORITY.**

1.1. General. Whenever any term used in this Agreement has been defined by the provisions of Chapter 2 of Article V the Carson Municipal Code (hereinafter "Chapter 2") or by Division 30, Part I of the California Public Resources Code, the definitions in the Municipal Code or the Public Resources Code shall apply unless the term is otherwise defined in this Agreement, in which case this Agreement shall control.

1.2. Definitions. Except as provided in Section 1.1, words beginning with lower case letters are being used with their common ordinary meanings, not as defined terms. Otherwise, the following capitalized words and terms shall have the following respective meanings:

1.2.1 AB 939. "AB 939" means the California Integrated Waste Management Act of 1989, Public Resources Code Section 40000 *et seq.* and regulations promulgated thereunder, as amended from time, to time.

1.2.2 AB 341. "AB 341" means Assembly Bill 341 from the 2011-1012 Regular Session of the California Legislature (Chapter 476, Statutes of 2011).

1.2.3 AB 32. "AB 32" means Assembly Bill 32, the Global Warming Solutions Act of 2006.

1.2.4 AB 1826. "AB 1826" means Assembly Bill 1826 from the 2013-2014 Regular Session of the California Legislature (Chapter 727, Statutes of 2014).

1.2.5 Affiliate. "Affiliate" means all businesses (including corporations, limited and general partnerships and sole proprietorships) which are directly or indirectly related to Franchisee by virtue of direct or indirect ownership interest or common management shall be deemed to be "Affiliated with" Franchisee and included within the term "Affiliates" as used herein. An Affiliate shall include a business in which Franchisee owns a direct or indirect ownership interest, a business which has a direct or indirect ownership interest in Franchisee and/or a business which is also owned, controlled or managed by any business or individual which has a direct or indirect ownership interest in Franchisee. For purposes of determining whether an indirect ownership interest exists, the constructive ownership provisions of Section 318(a) of the Internal Revenue Code of 1986, as in effect on the date of this Agreement, shall apply; provided, however, that (i) "ten percent (10%)" shall be substituted for "fifty percent (50%)" in Section 318(a)(2)(C) and in Section 318(a)(3)(C) thereof; and (ii) Section 318(a)(5)(C) shall be disregarded. For purposes of determining ownership under this paragraph and constructive or indirect ownership under Section 318(a), ownership interest of less than ten percent (10%) shall be disregarded and percentage interests shall be determined on the basis of the percentage of voting interest or value which the ownership interest represents, whichever is greater. Being an Affiliate does not exempt a business from the application of assignment requirements under Article X hereof.

1.2.6 Agreement or Haul Agreement. "Agreement" or "Haul Agreement" means this Agreement for Provision of Solid Waste Handling Services.

1.2.7 Annual Diversion Report. "Annual Diversion Report" means the annual report submitted by the Franchisee to the City describing the previous year's Diversion activities, Diversion percentages and associated calculations and the description of the Diversion activity planned for the upcoming year, if applicable. The Annual Diversion Report shall be prepared in a manner that directly corresponds to the reporting requirements of the California Department of Resources Recycling and Recovery (CalRecycle), the California Integrated Waste Management Act, and Refuse Impact Reduction Laws, all as may be amended.

1.2.8 Bin and Franchisee Provided Bin. "Bin" and "Franchisee Provided Bin" means any Solid Waste container of a capacity exceeding 96 gallons and generally unmovable by just one individual (i.e., a "dumpster") and provided to customers by Franchisee.

1.2.9 Bulky Waste. "Bulky Waste" means an item too large to fit in a Cart, including but not limited to White Goods, furniture (including chairs, sofas, mattresses, and rugs), residential waste (including green waste larger than three (3) inches in diameter or three (3) feet in length, such as tree stumps, trunks or branches), and tires. Bulky Waste does not include car bodies, C&D Materials or items requiring more than two persons to remove. In the event a question arises as to whether a specific item or category of items meets the definition of Bulky Waste, City shall determine whether said definition shall apply, and the City's determination shall be final and binding on the Parties. Notwithstanding the above, Bulky Waste will never include materials that Franchisee is not legally permitted to handle.

1.2.10 CalRecycle. "CalRecycle" means the California Department of Resources Recycling and Recovery.

1.2.11 Cart and Franchisee Provided Cart. "Cart" and "Franchisee Provided Cart" means any molded container provided by Franchisee of a size not to exceed 96 gallons with two or more wheels for easy carting by an individual.

1.2.12 City. "City" means the City of Carson, a municipal corporation organized under the laws of the State of California, and all of the territory lying within the municipal boundaries of the City as presently existing and, subject to the provisions of Section 3.1.3, all geographic areas which may be added or annexed thereto during the term of this Agreement.

1.2.13 City Facility. "City Facility" means any building, park, central avenue or other site owned, leased or used by the City. City Facilities also include all public bus stops located within City limits. A list of City Facilities, and their typical Solid Waste service needs, is attached hereto as **Exhibit C**. Sites may be added or removed from the scope of "City Facilities" by mutual written acknowledgement signed by Franchisee and City Manager.

1.2.14 City Manager. "City Manager" means the Manager of the City or his or her designee(s).

1.2.15 Collection. "Collection" means the process whereby Solid Waste is removed and transported from within the City.

1.2.16 Commercial and Industrial Unit. "Commercial and Industrial Unit" shall mean the Premises of a business that is neither a City Facility nor a Single-Family Residential Unit, and specifically includes all Multi-Family Complexes.

1.2.17 Complaint. "Complaint" means any complaint received by the City or Franchisee via mail, email, in writing, verbally, by telephone or in person.

1.2.18 Construction and Demolition Debris or C&D Material. "Construction and Demolition Material" or "C&D Material" means any combination of inert building materials and Solid Waste resulting from construction, remodeling, tenant improvements, repair, cleanup, or

demolition operations as defined in California Code of Regulations, Title 22 Section 66261.3 *et seq.* This term includes, but is not limited to, asphalt, concrete, cement, brick, lumber, gypsum wallboard, cardboard, and other associated packaging, roofing material, ceramic tile, carpeting; plastic pipe and steel. The material may be commingled with rock, soil, tree stumps; and other vegetative matter resulting from land clearing and landscaping for construction or land development projects.

1.2.19 County. "County" means the County of Los Angeles.

1.2.20 CPI. "CPI" means the Consumer Price Index for All Urban Consumers (CPI-U), Los Angeles, CA, all items index.

1.2.21 Customer. "Customer" shall mean any person or entity receiving Solid Waste Handling Services from Franchisee within the City.

1.2.22 Day. "Day" means calendar day, unless otherwise stated in this Agreement.

1.2.23 Designated Disposal Site. "Designated Disposal Site" shall have the meaning ascribed in Section 4.1.4 of this Agreement.

1.2.24 Disposal Fee. "Disposal Fee" means those costs imposed at a Disposal Site for the handling or dumping of Solid Waste collected by Franchisee.

1.2.25 Disposal Site. "Disposal Site" means a final end-point or permanent site for the final disposition of Solid Waste, such as a landfill, incineration facility, pyrolysis, distillation, gasification, biological conversion or final processing facility for Recyclables.

1.2.26 Divert or Diversion. "Divert" or "Diversion" means to divert from disposal facilities such as a Disposal Site, through source reduction, Recycling and composting, as provided in Section 41780 of the Act as such act may be hereafter amended or superseded provided that Divert or Diversion shall include delivery to transformation facilities if the overall Diversion achieved by the City is at a level where delivery to such facilities shall be considered Diversion pursuant to the Act.

1.2.27 Effective Date. "Effective Date" means the date this Agreement has been fully executed by both parties and approved by the City Council.

1.2.28 Electronic Waste. "Electronic Waste" means "Covered Electronic Waste" as defined in Section 42463 of the Public Resources Code and other discarded electronic equipment commonly known as "brown goods" or "non-covered electronic waste" such as, but not limited to, CD players and recorders, DVD players and recorders, stereos, computers, printers, keyboards, and peripherals. Revenues from the recycling of Electronic Waste shall be accounted for separately from revenues from other Recyclable Materials.

1.2.29 EV Company. "EV Company" means that electric vehicle sales operation of Dongfeng Progen Electric Vehicles, LLC.

1.2.30 Food Waste. "Food Waste" means solid waste comprised of animal, fruit or vegetable matter that attends the preparation, consumption, decay, dealing in or storage of meats, fish, fowls, fruits or vegetables, and compostable paper used with food service.

1.2.31 Franchisee. "Franchisee" means Waste Resource Technologies, a Delaware corporation.

1.2.32 Franchise Documents. "Franchise Documents" means Chapter 2 of Article V the Carson Municipal Code governing Solid Waste services in the City, as such Chapter may be amended from time to time and/or any successor City ordinances governing refuse and waste hauling services in the City.

1.2.33 Franchise Fee. "Franchise Fee" means that consideration paid by Franchisee to the City as consideration for the grant of exclusive franchise effected by the Agreement and as described in Section 3.3.1 hereof.

1.2.34 Franchisee Provided Container or Container. "Franchisee Provided Container" or "Container" refers to either a Bin or a Cart provided by Franchisee to customers receiving Franchisee's automated Collection service. Carts and Bins (but not Roll-Offs) shall be constructed of a minimum of twenty percent (20%) post-consumer recycled content once Franchisee has exhausted its existing inventory of Carts and Bins (i.e., Franchisee's existing inventory may not meet the 20% requirement but all Carts and Bins acquired by Franchisee following this Agreement shall meet such requirement). Franchisee shall not be required to replace its existing Carts and Bins to meet the requirements of this Section unless or until they are in need of replacement as reasonably determined by Franchisee or as otherwise provided in this Agreement. Carts and Bins not meeting the 20% requirement and replaced under a manufacturer's warranty shall be exempt from the 20% requirement.

1.2.35 Green Waste. "Green Waste" means any and all forms of biodegradable plant material which can be placed in a covered Container, such as wastes generated from the maintenance or alteration of public, commercial or residential landscapes including, but not limited to, yard clippings, leaves, tree trimmings, prunings, brush, and weeds. Tree stumps and limbs greater than three (3) inches in diameter are excluded unless they are reduced to a chipped form; otherwise, such large portions of Green Waste shall be considered Bulky Waste.

1.2.36 Gross Receipts. "Gross Receipts" means any and all revenue collected from billings by Franchisee, and compensation in any form, of Franchisee or subsidiaries, parent companies or other Affiliates of Franchisee, derived from Solid Waste Handling attributable to Solid Waste generated in City. Franchisee's Net Recycling Revenues are included in Gross Receipts for purposes of calculating Franchise Fees. The Franchise Fees owed to City pursuant to Section 3.3.1 are to be deducted from Gross Receipts for purposes of calculating Franchise Fees.

1.2.37 Hazardous Waste. "Hazardous Waste" means any hazardous or toxic substance, material or waste which is or becomes regulated by any local governmental authority, the State of California or the United States Government. The term "Hazardous Material" includes, without limitation, any material or substance which is: (i) petroleum or oil or gas or any

direct or derivate product or byproduct thereof; (ii) defined as a "hazardous waste," "extremely hazardous waste" or "restricted hazardous waste" under Sections 25115, 25117 or 25122.7, or listed pursuant to Section 25140, of the California Health and Safety Code, Division 20, Chapter 6.5 (Hazardous Waste Control Law); (iii) defined as a "hazardous substance" under Section 25316 of the California Health and Safety Code, Division 20, Chapter 6.8 (Carpenter-Presley-Tanner Hazardous Substance Account Act); (iv) defined as a "hazardous material," "hazardous substance," or "hazardous waste" under Sections 25501(j) and (k) and 25501.1 of the California Health and Safety Code, Division 20, Chapter 6.95 (Hazardous Materials Release Response Plans and Inventory); (v) defined as a "hazardous substance" under Section 25281 of the California Health and Safety Code, Division 20, Chapter 6.7 (Underground Storage of Hazardous Substances); (vi) "used oil" as defined under Section 25250.1 of the California Health and Safety Code; (vii) asbestos; (viii) listed under Chapter 11 of Division 4.5 of Title 22 of the California Code of Regulations, or defined as hazardous or extremely hazardous pursuant to Chapter 10 of Division 4.5 of Title 22 of the California Code of Regulations; (ix) defined as waste or a hazardous substance pursuant to the Porter-Cologne Act, Section 13050 of the California Water Code; (x) designated as a "toxic pollutant" pursuant to the Federal Water Pollution Control Act, 33 U.S.C. Section 1317; (xi) defined as a "hazardous waste" pursuant to the Federal Resource Conservation and Recovery Act, 42 U.S.C. Section 6901, *et seq.* (42 U.S.C. § 6903); (xii) defined as a "hazardous substance" pursuant to the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. Section 9601, *et seq.* (42 U.S.C. § 9601); (xiii) defined as "Hazardous Material" pursuant to the Hazardous Materials Transportation Act, 49 U.S.C. Section 5101, *et seq.*; or (xiv) defined as such or regulated by any "Superfund" or "Superlien" law, or any other federal, state or local law, statute, ordinance, code, rule, regulation, order or decree regulating, relating to, or imposing liability or standards of conduct concerning Hazardous Materials and/or oil wells and/or underground storage tanks and/or pipelines, as now, or at any time hereafter, in effect.

1.2.38 Household Hazardous Waste or HHW. "Household Hazardous Waste" or "HHW" shall mean that waste resulting from products purchased by the general public for household use which, because of their quantity, concentration, or physical, chemical, or infectious characteristics, may pose a substantial known or potential hazard to human health or the environment when improperly treated, disposed, or otherwise managed.

1.2.39 Infectious Waste. "Infectious Waste" means waste capable of producing an infection or pertaining to or characterized by the presence of pathogens including, but not limited to, certain wastes generated by medical practitioners, hospitals, nursing homes, medical testing labs, mortuaries, taxidermists, veterinarians, veterinary hospitals and medical testing labs.

1.2.40 Materials Recovery Facility/Transfer Station or MRF/TS. "Material Recovery Facility/Transfer Station" or "MRF/TS" shall mean a fully permitted facility where Solid Waste, Recyclable Materials, and other materials are processed, sorted or separated for the purposes of recovering reusable or Recyclable Materials, processing or composting, which facility may or may not include a transfer station that receives Solid Waste from collection vehicles and transfers the material to larger vehicles for transport to landfills and other destinations.

1.2.41 Maximum Rate Schedule. "Maximum Rate Schedule" means that schedule of rates charged to Residential Units and Commercial and Industrial Units located in the City for Solid Waste Handling by Franchisee. The Maximum Rate Schedule, which is effective as of the Services Start Date, is attached to this Agreement at **Exhibit A**.

1.2.42 Multi-Family Complex. "Multi-Family Complex" means a Premises comprised of five (5) or more Residential Units, including, but not limited to, condominium projects, townhouse projects, apartment houses, or mobile home parks, irrespective of whether residence therein is transient, temporary or permanent. Occupants of Multi-Family Complexes dispose of Solid Waste in one or more communal Bins at centralized locations. Any ambiguity as to whether a Customer's Premises qualifies as a Multi-Family Complex shall be resolved by the City Manager, whose decision shall be final.

1.2.43 Net Recycling Revenues. "Net Recycling Revenues" means the gross recycling revenues received by Franchisee from the sale of all Recyclable Materials handled by Franchisee as a whole (including the recycling of Electronic Waste, HHW, U-Waste and White Goods) that are generated in the City, less all processing costs incurred by Franchisee for such Recyclable Materials.

1.2.44 Oil Waste. "Oil Waste" means used motor oil and used oil filters.

1.2.45 On-Call Service. "On-Call Service" means any Collection provided by Franchisee by appointment or that is not regularly scheduled. On-Call Service is initiated by a Customer by calling, emailing, or requesting the service in person at Franchisee's office.

1.2.46 Organics Waste. "Organics Waste" means Food Waste, Green Waste, landscape and pruning waste, nonhazardous wood waste, and food-soiled paper that is mixed in with Food Waste.

1.2.47 Owner. "Owner" means the person, organization or corporation holding the legal title to the real property constituting the Premises to which Solid Waste Handling services are provided or required to be provided. For the purposes of sending notices, billings or other communications required by this Agreement, Franchisee may regard the Owner as the person, organization, corporation or other entity shown in the records of the Assessor of the County or as may be indicated by documents recorded in the Office of the Recorder of the County.

1.2.48 Premises. "Premises" means any parcel of land, building(s) and/or structure(s), or portion thereof, in the City where Solid Waste and/or Recyclable Materials are produced, generated or accumulated and which is billed as one Customer.

1.2.49 Proposition 218. "Proposition 218" means Articles XIII C and XIII D of the California Constitution and any implementing legislation promulgated thereunder, as may be amended from time to time.

1.2.50 Reasonable Business Efforts. "Reasonable Business Efforts" means those efforts a reasonably prudent business person would expend under the same or similar

circumstances in the exercise of such Person's business judgment, intending in good faith to take steps calculated to satisfy the obligation which such Person has undertaken to satisfy.

1.2.51 Recyclable Materials and Recyclables. "Recyclable Materials" or "Recyclables" interchangeably mean any product salvaged or collected for the purpose of reprocessing or remanufacturing including, but not limited to, Electronic Waste, glass, newsprint, aluminum, cardboard, paper, Green Waste, C&D Material, wood, plastics or metal. Recyclable Materials discarded or self-hauled by the Owner (including where the owner pays a fee or other consideration to have Recyclable Materials collected by another party) are Solid Waste. "Recyclable Materials" or "Recyclables" also include materials that are source-separated from other Solid Waste for the purpose of Recycling, such as, but not limited to, paper, newsprint, printed matter, pasteboard, paper containers, cardboard, glass, aluminum, polyethylene terephthalate and other plastics, beverage containers, compostable materials and such other materials designated by the City Manager or CalRecycle as recyclable.

1.2.52 Recycling. "Recycling" means the processing of Recyclable Materials for the purpose of returning them to the economy in the form of raw materials for new, reused, or reconstituted products. The Collection, transportation or Disposal of Solid Waste not intended for, or capable of, reuse is not Recycling. Recycling does not include the use of Solid Waste for conversion to energy.

1.2.53 Remodel or Remodeling. The term "Remodel" or "Remodeling" shall refer to any construction or demolition project (other than mere repair work) requiring the issuance of a building permit *or* such construction and demolition project that generates for disposal bulky structural items, appliances (household or commercial) such as showers, tubs, toilets, ovens, stoves, cabinetry and built-in units, roofing materials, etc., and other C&D Material.

1.2.54 Residential Unit. "Residential Unit" means one or more rooms designed for occupancy by one family for living and sleeping purposes and containing kitchen facilities or an area designed for the preparation of food for use solely by one family.

1.2.55 Roll-Off. The term "Roll-Off" means a metal container with a capacity of ten (10) or more cubic yards that is normally loaded onto a motor vehicle and transported to an appropriate facility.

1.2.56 Services Start Date. "Services Start Date" shall mean July 1, 2018.

1.2.57 Solid Waste or Refuse. "Solid Waste" or "Refuse" means all solid wastes generated by residential, commercial, and industrial sources, and all solid waste generated at construction and demolition sites, which are collected and transported under the authorization of the City or are self-hauled by residents or contractors. Solid Waste does not include Hazardous Waste, Infectious Waste or any waste which is not permitted to be disposed of at a Class III landfill and which falls within the definition of "Nonhazardous Solid Waste" set forth in Title 23, Chapter 15, Section 2523(a) of the California Code of Regulations as amended or designated Class II wastes. Materials shall be deemed "Solid Waste" consistent with the meaning of California Public Resources Code Section 40191, and for purposes of this Agreement shall be

regulated as such, whether or not they may be potentially recyclable, if (i) the material is mixed or commingled with other types of Solid Waste, or (ii) the payment of a fee, charge, or other consideration, in any form or amount, is directly or indirectly solicited or received from the generator by any person or combination of persons in exchange for Collection, removal, transportation, storage, processing, conversion, consulting, container rental or disposal services ("fee for service" recycling), whether or not arranged by or through a subcontractor, broker, agent or affiliate of the service provider.

1.2.58 Solid Waste Enterprise. "Solid Waste Enterprise" means "solid waste enterprise" as defined in Public Resources Code Section 40193 (i.e., any individual, partnerships, joint venture, unincorporated private organization, or private corporation, which is regularly engaged in the business of providing solid waste handling services).

1.2.59 Solid Waste Handling. "Solid Waste Handling" or "Handling" (or other form thereof) means: (i) "Solid Waste Handling" or "Handling" as defined in Public Resources Code Section 40195 (i.e., the Collection, transportation, storage, transfer, or processing of solid wastes) and Solid Waste disposal by a Solid Waste Enterprise defined in Section 40193 of the Public Resources Code, such as residential or commercial refuse Collection in packer-type vehicles by haulers whose core business is refuse Collection or the small-scale Collection and disposal of residential or commercial solid waste in any type of truck, trailer or vehicle; and (ii) the development and operation of Solid Waste facilities, such as materials recovery facilities, transfer stations, conversion/transformation facilities, storage sites for equipment related to Solid Waste Handling (including without limitation the City Yard), or other such facilities.

1.2.60 Single-Family Residential Unit. "Single-Family Residential Unit" means Premises used or designated for residential use and consisting of no more than four (4) Residential Units, such that each Residential Unit receives its own set of Carts and individual curbside Collection services. Any ambiguity as to whether a Customer's Premises qualifies as a Single-Family Residential Unit shall be resolved by the City Manager, whose decision shall be final.

1.2.61 Source Reduction. "Source Reduction" means the process of reducing the amount of waste produced by the person or organization generating such waste. Source Reduction occurs through the use of alternative goods and products and/or the reuse of goods and products.

1.2.62 Source Separated. "Source Separated" describes the segregation, by the generator, of materials designated for separate Collection for some form of materials recovery, Recycling or special handling.

1.2.63 Term. "Term" shall have the meaning ascribed in Section 2.3 of this Agreement, including any extensions.

1.2.64 Universal Waste or U-Waste. "Universal Waste" or "U-Waste" means all waste defined by Title 22, Subsections 66273.1 through 66273.9 of the California Code of Regulations. These include, but are not limited to, batteries, fluorescent light bulbs, mercury switches, and Electronic Waste.

1.2.65 Waste Diversion or Diversion. "Waste Diversion" or "Diversion" means to divert from Disposal Sites or Transformation facilities (as "Transformation" is described in Section 40201 of the Act, as may be amended) through Source Reduction, Recycling and composting, as provided in Section 41780 of the Act. "Divert" or "Diversion" shall include conversion and transformation that reduces the amount of waste delivered to Disposal Sites .

1.2.66 White Goods. "White Goods" means inoperative and discarded refrigerators, microwave ovens, ranges, water heaters, freezers, and other similar household appliances. White Goods are a subset of Bulky Wastes.

1.3. Delegation of Authority. The administration of this Agreement by the City shall be under the supervision and direction of the City Manager and the actions specified in this Agreement shall be taken by the City Manager or his/her designee.

ARTICLE II GENERAL REPRESENTATIONS & TERM

2.1. Documents; Compliance with Ordinances. All of the provisions of the Franchise Documents are incorporated and made a part of this Agreement as though set forth in full. Nothing shall prevent the City from amending the Franchise Documents or from adopting such other and further legislation as the City deems necessary or appropriate. The City shall give Franchisee thirty (30) days' notice prior to considering any amendment to the Franchise Documents if such amendment would affect costs or revenue under this Agreement, and during that period the Parties shall meet and confer in good faith to determine whether the planned amendment will materially increase Franchisee's costs and whether a Proposition 218 hearing process is warranted for purposes of allowing Franchisee to adjust service rates pursuant to Section 7.2 hereof. Otherwise, Franchisee shall abide by all provisions of the Franchise Documents, and if there is a conflict between the Franchise Documents and the terms of this Agreement that cannot be harmonized through reasonable principles of interpretation, the terms of this Agreement shall prevail, unless otherwise mutually agreed in writing by the Parties.

2.2. Effective Date; Commencement of Services. This Agreement shall become effective at the Effective Date. However, the provision of Solid Waste Collection, imposition of customer rates, payment of Franchise Fees, and actual Collection services by Franchisee, shall commence on the Services Start Date. Franchisee understands and agrees that the interim time between the Effective Date and the Services Start Date is intended to provide Franchisee with ample and sufficient time to, among other things, order equipment, prepare necessary routing schedules and route maps, obtain any permits and licenses, establish/build facilities, obtain required service agreements, begin the public awareness campaign as part of Franchisee's transition program as specified in this Agreement, and undertake a Proposition 218 hearing process for purposes of adopting the initial Maximum Rates at **Exhibit A**.

2.3. Term and Extended Term. Unless earlier terminated in accordance with Article IX of this Agreement, this Agreement shall continue in full force and effect from and after the Services Start Date for a period of fifteen (15) years. City reserves the right, in its sole and unfettered discretion, to extend the term of this Agreement, under the then-existing terms and conditions, for a maximum of one 24-month period. This means that service would commence

July 1, 2018 and end on June 30, 2033 (if no extension is granted), or end June 30, 2035 (if the extension is granted). City shall give notice of intention to extend the term of this Agreement in writing no later than six (6) calendar months prior to expiration of the term of the Agreement.

2.4. Representations and Warranties of Franchisee.

2.4.1 Corporate Status. Franchisee is doing business as a corporation, duly organized, validly existing and in good standing under the laws of the State of California. Franchisee is qualified to transact business in the State of California and has the corporate power to own its properties and to carry on its business as now owned and operated and as required by this Agreement.

2.4.2 Corporate Authorization. Franchisee has the authority to enter into and perform its obligations under this Agreement. The Board of Directors of Franchisee (or the shareholders if necessary) have taken all actions required by law, its articles of incorporation, its bylaws or otherwise, to authorize the execution of this Agreement. The persons signing this Agreement on behalf of Franchisee have authority to do so. Entering into this Agreement does not violate any provision of any other Agreement to which Franchisee is bound.

2.4.3 Accuracy of Representations. The representations and warranties made by Franchisee in this Section 2.4 are true and correct on and as of the Effective Date of this Agreement.

2.5. Ownership of Solid Waste. City and Franchisee acknowledge that Franchisee, and not City, is responsible for Collection of Solid Waste and Recyclables, and that City has not, and by this Agreement does not, instruct Franchisee on its Collection methods, nor supervise the Collection process; nor do the Parties intend to place title to the Solid Waste and Recyclables collected by Franchisee in City. Rather, the Parties intend that whatever title, if any, in and to the Solid Waste and Recyclables that are collected by Franchisee that otherwise might exist in or with City in the absence of this Agreement is hereby transferred to Franchisee; and further that if Franchisee gains title to such Solid Waste and Recyclables it is by operation of law and agreement with its Customers and is not the result of this Agreement. At no time does City obtain any right of ownership or possession of any Solid Waste or Recyclable Materials placed for Collection, and nothing in this Agreement shall be construed as giving rise to any inference that City has any such rights. City and Franchisee agree that, for the purposes of the California Commercial Code and all other laws imposing liability for defective products, it is Franchisee, and not City, which is to be considered the merchant of the goods Recycled pursuant to this Agreement. Subject to the provisions of this Agreement, and unless City exercises its rights to direct the location for disposal and processing of Solid Waste and Recyclables, Franchisee shall have the right to retain, Recycle, process, convert, transform, dispose, and otherwise use Solid Waste collected pursuant to the terms of this Agreement in any lawful fashion or for any lawful purpose; and, further, shall have the right to retain any benefit resulting from its right to retain, Recycle, process, convert, transform, dispose, and otherwise use the Solid Waste and Recyclables which it collects.

**ARTICLE III
GRANT OF FRANCHISE; SCOPE OF FRANCHISE;
EXCLUSIONS**

3.1. Grant of Franchise.

3.1.1 General Grant. The City grants to Franchisee, and Franchisee shall have during the Term, the exclusive franchise, right, license and privilege (except as provided in Section 3.2 below) to engage in the business of collecting, transporting, transferring, processing, Recycling, treating, diverting, converting, and disposing of all Solid Waste and Recyclable Materials generated by Single-Family Residential Units and Commercial and Industrial Units within the City of Carson. Franchisee's exclusive franchise shall include the exclusive right to rent Containers for the Collection of Solid Waste and Recyclables to its Customers. It is expressly understood that the Solid Waste Enterprise and Collection is conducted by Franchisee and not City, and while City grants the right to conduct the business within the terms of this Agreement, the Franchisee must determine what personnel to employ, terms and conditions of employment, what equipment to utilize and all methods, costs, obligations and mechanisms to undertake the terms of the franchise.

3.1.2 Duty. To the extent that the franchise granted hereby is exclusive, it shall be so only if Franchisee is and shall be at all times ready, willing and able to perform its obligations under this Agreement, including but not limited to, Collecting, transporting and disposing of all Solid Waste and Recyclables generated within the City in accordance with the provisions of this Agreement and all applicable law, rules and regulations.

3.1.3 Annexations. This Agreement shall extend to any territory annexed to the City during the Term that is not covered by an existing Solid Waste permit, license, agreement or franchise granted by another public entity, except to the extent that Collection by Franchisee within that annexed territory would violate the provisions of Public Resources Code Section 49520. In such event, this Agreement shall become effective as to such area at the earliest possible date permitted by law, and City agrees that it shall cooperate with Franchisee to fulfill any requirement necessary for Franchisee to serve the annexed area consistent with this Section 3.1.3.

3.1.4 Enforcement of Exclusivity. City shall be responsible for enforcing the exclusivity of this Agreement. City shall use Reasonable Business Efforts to enforce the exclusivity of this Agreement and Franchisee shall reasonably assist City in those efforts. In addition, City shall adopt such ordinances or other regulations as is necessary or desirable to protect the exclusive rights granted by this Agreement.

3.2. Scope of Franchise; Mandatory Service And Exclusions. The franchise granted to Franchisee shall be exclusive within City limits, such that Franchisee shall be the sole provider of general Solid Waste and Recyclable Materials hauling services to City residents and businesses. To this end, at all times during the Term the City shall require the Owner of each Single-Family Residential Unit and Commercial and Industrial Unit where Solid Waste is produced to subscribe to the Collection service provided for in this Agreement and in the

Franchise Documents. The hauling services franchise herein granted shall be subject to the following exclusions.

3.2.1 Intergovernmental Immunity. All (i) universities, (ii) school districts, (iii) other state agencies, (iv) any other governmental entity that is not subject to the City's police powers, and (v) the exclusivity provisions of any ordinance to be adopted by the City.

3.2.2 Self-Hauling. Self-hauling by City residents, Owners, or occupants of Premises. To qualify as a "self-hauler" for purposes of this exemption, an Owner or occupant must remove and personally transport Solid Waste and/or Recyclables from his/her own Premises using his/her own equipment for the purpose of lawfully delivering same to a Disposal Site or MRF/TS authorized to receive and handle Solid Waste or Recyclables. The use of a subcontractor is not "self-haul" within the meaning of this exception. Self-hauling of Solid Waste or Recyclables does not exempt the property owner from subscribing to franchise Collection service. For purposes of the Diversion reporting requirements set forth in AB 939, City shall use Reasonable Business Efforts (such as City permitting or inspection procedures) to collect data from any self-hauler regarding the amount and location of their disposal of Solid Waste and Recyclables excluded under this sub-section. This information shall be reported to Franchisee on a quarterly basis.

3.2.3 Gardner/Landscaper Green Waste. Green Waste and other compostables removed from a Premises by an Owner or resident of Premises or by a gardening, landscaping or tree trimming contractor as an incidental part of a total service offered by that contractor rather than as a hauling service. To qualify for this exemption, a gardener or landscaper must not be a hauling service or Solid Waste Enterprise, must not separately or additionally charge for the incidental service of removing, transporting or disposing (except for tipping fee) of the Green Waste, and must utilize only his or her own employees and equipment to collect, transport and dispose of said Green Waste. For purposes of the Diversion reporting requirements set forth in AB 939, City shall use Reasonable Business Efforts (such as City permitting or inspection procedures) to collect data from any Owner, resident of Premises, or gardening, landscaping or tree trimming contractor regarding the amount and location of their disposal of Solid Waste and Recyclables excluded under this sub-section. This information shall be reported to Franchisee on a quarterly basis.

3.2.4 C&D Material. The Collection, transportation and disposal by a construction contractor of C&D Material from jobs which are generated as an incidental part of providing such Remodeling services, provided that the construction contractor is not a hauling service or Solid Waste Enterprise, does not separately or additionally charge for the incidental service of removing, transporting or disposing (except for tipping fee) of the C&D Material, and utilizes only his/her own employees and equipment to collect, transport and dispose of the C&D Material. For purposes of the Diversion reporting requirements set forth in AB 939, City shall use Reasonable Business Efforts (such as City permitting or inspection procedures) to collect data from any construction contractor regarding the amount and location of its disposal of Solid Waste and Recyclables excluded under this sub-section. This information shall be reported to Franchisee on a quarterly basis.

3.2.5 Automotive Dismantling. The Collection, transportation and disposal of vehicles or machine parts and waste generated by an automotive/vehicle dismantler or Owner of a vehicular salvage or disposal yard. For purposes of the Diversion reporting requirements set forth in AB 939, City shall use Reasonable Business Efforts (such as City permitting or inspection procedures) to collect data from any automotive/vehicle dismantler or Owner of a vehicular salvage or disposal yard regarding the amount and location of their disposal of Solid Waste and Recyclables excluded under this sub-section. This information shall be reported to Franchisee on a quarterly basis.

3.2.6 Asphalt/Concrete/Dirt Materials. The Collection, processing and/or transport of asphalt, concrete and dirt, and the Parties hereto acknowledged that other entities in the City are, and shall continue to be permitted to collect, process and transport asphalt, concrete and dirt materials. For purposes of the Diversion reporting requirements set forth in AB 939, City shall use Reasonable Business Efforts (such as City permitting or inspection procedures) to collect and report to Franchisee on a quarterly basis data from any entity in the City regarding the amount and location of their disposal of Solid Waste and recyclables excluded under this sub-section. This information shall be reported to Franchisee on a quarterly basis.

3.2.7 Hazardous Waste. The Collection, processing and/or transport of Hazardous Waste and non-spadeable wastewater or sewage sludge by third-party entities duly licensed to handle such Hazardous Waste and/or non-spadeable wastewater or sewage sludge materials.

3.2.8 Recyclable Materials. Recyclable Materials not "discarded" (but rather sold or donated) directly by an Owner of Premises which are disposed of at legally-mandated public redemption centers that comply with all reporting and other requirements imposed by any political entity having jurisdiction over those redemption centers. A mere discount or reduction in price of third-party charges for the handling of Recyclables is not a sale or donation within the meaning of this Agreement and is thus precluded by Franchisee's exclusive franchise.

3.2.9 Emergency Collections by City. The casual or emergency Collection, removal, disposal or Diversion of Solid Waste or Recyclables by the City through City officers or employees in the normal course of their employment.

3.2.10 Legally-Required Exemptions. Other Collection, removal or disposal activities required to be exempt from mandatory franchise services pursuant to law, or entities exempt from such franchise pursuant to State or Federal law, including but not limited to Non-City governmental entities located within City boundaries.

3.2.11 Unoccupied Units. Premises which have been unoccupied by any human habitation and upon which no refuse has been produced or accumulated for three (3) consecutive months may be exempted from this Agreement by the City until such Premises become occupied. The granting of an exemption shall be conditioned upon completion of an application for exemption by Franchisee and its approval. Exemptions shall expire on December 31 of each calendar year. An exemption may be renewed, provided that during three (3) consecutive months prior to the application for renewal, the Premises have been unoccupied by any human habitation and no refuse has been produced or accumulated. Notwithstanding anything in this Section

3.2.11 to the contrary, all exemptions in existence on the Service Start Date shall remain valid. For purposes of this Section, a unit shall be deemed "unoccupied" if the structure is both unoccupied and unused (such as, without limitation, foreclosed or abandoned structures). Structures that are presently unoccupied by virtue of their continuing use as a vacation home or a seasonal business shall not be considered as "unoccupied". Residential rental units, such as those rented as vacation rentals or seasonal rentals (e.g., Residential Units under an AirBnB account or similar such program) shall not be exempted from service unless Franchisee obtains a written acknowledgement from the Premises Owner that such premises will be unoccupied for a period of at least three (3) upcoming consecutive months, in which case the Owner shall arrange for immediate reinstatement of Solid Waste and Recycling services upon re-occupation of the Premises.

3.2.12 City Hauls. The Collection, removal, disposal or Diversion of Solid Waste or Recyclables by the City through City officers or employees in the normal course of their City employment. For purposes of Diversion reporting requirements set forth in AB 939, City shall report to Franchisee on a quarterly basis, the amount and location of its disposal of Solid Waste and recyclables excluded under this sub-section.

3.2.13 Oil Waste. The Collection, processing and/or transport of Oil Waste by third-party entities duly licensed to handle such waste, such as licensed automotive shops and mechanic businesses.

3.2.14 Tires. The Collection, processing and/or transport of tires by third-party entities duly licensed to handle such waste.

3.2.15 Infectious Waste. Franchisee's franchise does not preclude the Collection, processing and/or transport of Infectious Waste by third-party entities duly licensed to handle such Infectious Waste.

3.2.16 HHW, White Goods and U-Waste. The Collection, processing and/or transport of HHW, White Goods and U-Waste by third-party entities duly licensed to handle such Waste.

3.3. Compensation To City for Grant of Franchise.

3.3.1 Franchise Fee. In consideration for the grant of the franchise provided herein, Franchisee agrees to pay the City a franchise fee equaling:

(a) 12.5% of the Gross Receipts derived by Franchisee from the services provided in City to all Cart Customers; and

(b) 15% of the Gross Receipts derived by Franchisee from the Collection services provided in City to all Roll-Off and Bin Customers.

Concurrent with each Franchise Fee payment, Franchisee shall provide an accounting worksheet showing the (i) the number of accounts billed at each billing rate to arrive at Gross Receipts; (ii) amount, if any, of delinquent customer accounts, (iii) an accounting worksheet showing the discrepancy, if any, between Gross Receipts as calculated for purposes of the Franchise Fee

versus the Franchisee's gross receipts actually collected, and (iv) an accounting of Net Recycling Revenues, including collection and sale records for City-generated Recyclables. City shall pre-approve the format of required accounting worksheet. The City has found that the Franchise Fee stated herein bears a reasonable relationship to the value of the exclusive franchise rights herein granted, and is comparable or equivalent to franchise fees found in the Los Angeles County region.

3.3.2 Administrative Costs to be Paid by Franchisee. Franchisee shall pay certain administrative costs associated with the administration and preparation of this Agreement, which have been estimated by the City for reasonable nexus to the actual costs of such administrative functions incurred by City. The administrative costs to be paid by Franchisee are as follows:

(a) *Administrative Costs.* Franchisee shall pay to City a one-time administrative fee, to be paid no later than the Services Start Date, for the City's legal fees (attorneys' fees and costs) and staff/administrative costs incurred in the negotiation, research and drafting of this Agreement. This fee shall be One Hundred Fifty-Thousand Dollars Even (\$150,000.00).

(b) *Annual Public Education Fee.* Commencing from the Services Start Date, Franchisee shall pay to City annual a fee for (i) preparation and distribution of public education materials and community newsletters by the City, (ii) production and broadcast of public service announcements promoting resources conservation by City, and (iii) internal City staff training and education on Solid Waste and Recyclables issues and enforcement. In the first year of the Term, this fee shall be One Hundred Thousand Dollars (\$100,000.00). In each year that Franchisee receives a COLA Adjustment to its Maximum Rate Schedule pursuant to Section 7.2.2, this fee shall also be adjusted in an amount equal to the annual percent change in the CPI, as is more fully described in Section 3.3.2(f).

(c) *Annual Infrastructure Impact Fee.* Commencing from the Services Start Date, Franchisee shall pay to the City an annual "Roadway Maintenance Fee" as compensation to the City for additional damage and accelerated deterioration caused to the City's roadways as a result of the Franchisee's operations within the City. In the first year of the Term, this fee shall be Two-Hundred Fifty-Thousand Dollars (\$250,000.00). In each year that Franchisee receives a COLA Adjustment to its Maximum Rate Schedule pursuant to Section 7.2.2, this fee shall also be adjusted in an amount equal to the annual percent change in the CPI, as is more fully described in Section 3.3.2(f).

(d) *Annual Inspection Fees.* Commencing from the Services Start Date, Franchisee shall pay to the City an annual "Inspection Fee" for the cost of monitoring and enforcing anti-dumping and anti-scavenging regulations. In the first year of the Term, this fee shall be Three Hundred and Sixty-Three Thousand, Five Hundred Dollars (\$363,500.00). In each year that Franchisee receives a COLA Adjustment to its Maximum Rate Schedule pursuant to Section

7.2.2, this fee shall also be adjusted in an amount equal to the annual percent change in the CPI, as is more fully described in Section 3.3.2(f).

(e) *Annual Mobile Phone Application Fee.* Commencing from the Services Start Date, Franchisee shall support the continuing use and development of the City's service request system (currently, IWORQ application for public works trash-related needs (i.e., illegal dumping, Bulky Waste, street sweeping, etc.). The application will be maintained and developed to, at a minimum, will include an application allowing users to receive reminders of their respective Collection times, service changes, holidays, events and Carson Clean Environment Week services and to track reporting of illegal bins/boxes and abandoned items on the internet and on their mobile phones. In the first year of the Term, this fee shall be Seventy-Five Hundred Dollars (\$7,500.00). In each year that Franchisee receives a COLA Adjustment to its Maximum Rate Schedule pursuant to Section 7.2.2, this fee shall also be adjusted in an amount equal to the annual percent change in the CPI, as is more fully described in Section 3.3.2(f).

(f) *Administrative Cost CPI Adjustment.* In any year that the administrative costs and fees set forth in Sections 3.3.2(b)-(e) are to be adjusted, the adjustment shall be made each July 1st and shall be equal to the percentage change in CPI-U for the year that ended the immediately preceding March 31 for Los Angeles-Riverside-Orange counties, base year 1967. The COLA Adjustment calculation is [current rate X (1 + the percentage change in CPI-U) = new rate].

3.3.3 Tonnage Processing Fee. Franchisee shall pay the City a fee of \$1.00/ton for all Solid Waste and Recyclables generated in the City and delivered to Waste Resources Recovery, Inc. ("WRR"), located at 357 West Compton Boulevard, Gardena, CA 90248. This includes all Solid Waste and Recyclables delivered to WRR by Franchisee, self-haulers and any other person or entity disposing of waste generated from within the jurisdictional limits of the City of Carson (with the exception of tonnage generated by gratis services such as those for City Facilities, City clean-ups, abandoned item Collections, illegal dumping Collections, Bulky Waste collection events and Bulky Waste sweeps). This per-ton processing fee will be paid in the same manner as Franchise Fees per Section 3.3.4(b) below. All financial and tonnage records relating to the tonnage processing fee set forth in this Section shall be maintained by Franchisee and made available to City in accordance with the terms of Article

3.3.4 Payment Protocols.

(a) *Administrative Fees:* On and after the Services Start Date, the administrative fees set forth in Section 3.3.2(b) through Section 3.3.2(e) shall be paid quarterly, with equal installments due within thirty (30) days from the end of each calendar quarter.

(b) *Franchise Fees:* Franchise Fees paid to the City pursuant to this Section 3.3 shall be made to City within thirty (30) days of the conclusion of each calendar quarter during the term of this Agreement, including any extension, as set forth in Section 2.3, above. Upon the expiration of any such thirty (30) day

period, a delinquent assessment of five percent (5%) per month shall be levied against any unpaid balance. All remittances by Franchisee shall be accompanied by a report setting forth the basis and calculations used for computing the amount due. Each payment of the Franchisee Fee shall be accompanied by a statement separately setting forth the Gross Revenues, including the Net Recycling Revenues collected by Franchisee, and the computation of the total Franchise Fee due. Each statement shall include the following certification executed by an officer of the Franchisee: "I hereby certify that the foregoing statement of Franchise Fee payments as based on Gross Receipts, including Net Recycling Revenues collected by Franchisee, is made by me, that I am authorized to make such statement, and that, to the best of my knowledge and belief, it is true, correct and complete."

(c) *No Waiver:* No acceptance by City of any payment shall be construed as an accord that the amount is the correct amount, nor shall such acceptance of payment be construed as a release of any claim City may have against Franchisee for any additional sums payable under the provisions of this Agreement. All amounts paid shall be subject to independent audit and recompilation by City.

(d) *Pro-rating:* Payments over partial years or partial quarters shall be pro-rated by quarter, month or day, as applicable.

ARTICLE IV SERVICES OF FRANCHISEE

4.1. General Standards.

4.1.1 *Initial Transition Program.* No later than March 2, 2018, Franchisee shall provide a written "transition program plan" to the City in a form reasonably acceptable to City ("Transition Plan"). A transition period is necessary to implement all components of this Agreement and to ensure Customer needs are met throughout the process. The transition period will begin on the Effective Date and service will begin at the Service Start Date. Major Transition Plan elements may include, without limitation, the following elements at the City's option:

- i. Truck Procurement;
- ii. Equipment/Bin Procurement;
- iii. Customer Database:
 - Development and Management;
 - Customer Database Development;
 - Billing Procedures;
 - Account Transfers (permitted hauler to franchise hauler);
- iv. Routing / Mapping:
 - Type of Services Needed by Each Customer;
 - Customer mapping;
 - Level of Service;

- Routing:
 - Route Balancing
 - Route Optimization
- v. Incremental Personnel Hiring and Training;
- vi. Driver Hiring and Training;
- vii. Customer Service Procedures and Tracking;
- viii. Communication Plan:
 - Notice to Customers;
- ix. Public Education and Outreach;
- x. Facility Certification;
- xi. Schedule for the above:
 - Transition Plan End Date;
 - Identity of Franchisee Primary Contact with City During Transition Period.

The terms and timeframes set forth in the Transition Plan, once accepted by the City, shall become a term and condition of this Agreement and incorporated herein by this reference.

(a) The Transition Plan may be updated by concurrence of the parties as needed to accommodate Franchisee's operations and actual implementation of the transition.

(b) The Franchisee shall (i) be solely responsible for implementation of the Transition Plan and the handling of Customer complaints received during the transition period, and (ii) have sufficient Solid Waste Handling resources (i.e., vehicles, personnel and Containers) prior to the Service Start Date to make the Solid Waste Handling transition as efficient, clean and accordant as possible in the exercise of Franchisee's Reasonable Business Efforts. In the event Franchisee is unable or unwilling to secure the resources needed to resolve Customer disputes, Container shortages, incidents of unauthorized container use, missed Collections, or other such problems arising during the transition period, Franchisee shall at its sole cost have on stand-by another Solid Waste Hauling service or contractor duly permitted, licensed and able to resolve such disputes or service shortfalls.

(c) Under no circumstances shall City be responsible for the resolution of Customer disputes relating to the Transition Plan, transition period, or resources allocated thereto, except to the extent such disputes are directly attributable to City's active negligence or gross misconduct. However, for any transition period shortfalls in Solid Waste Handling services that are directly attributable to the cooperation or management of any former City-franchised waste hauler, the City and Franchisee shall meet and confer to negotiate in good faith a cooperative plan for securing the cooperation of the former franchised hauler(s). Nothing herein waives or limits the City's rights and remedies to abate nuisance conditions or service shortfalls during the transition period, including without limitation those rights under Sections 4.2, 9.1, 9.8 and 9.13.

4.1.2 Furnishing of Services. The work to be performed pursuant to this Agreement shall include the furnishing of all labor, materials and equipment necessary for, and the Collection of all Solid Waste and Recyclables from Single-Family Residential Units and Commercial and Industrial Units within the City according to the terms of this Agreement, and the disposal, Recycling and/or Diversion of such materials. Franchisee shall own or lease and maintain at its expense all equipment necessary to perform its duties as provided for under the Agreement, including sufficient radio equipment for office to field equipment communication. All work shall be accomplished in a courteous, thorough and workmanlike manner and adhere to the highest standards consistent with the best practice in the industry. As of the Services Start Date, Franchisee shall not be required to collect materials unless they have been properly placed in Franchisee-Provided Containers unless otherwise specifically stated herein (including but not limited to mandated services for Bulky Waste, holiday trees, and HHW/E-Waste/U-Waste stated herein). Notwithstanding the foregoing, the Parties hereto acknowledge that a need may arise for Franchisee to collect materials that are either placed in alternative, non-Franchisee-Provided Containers or that are placed directly for Collection without containment; to this end, the Parties may meet and confer in good faith in order to reach an accord as to how such needs may be met. Any program specifically requiring Franchisee to collect materials from alternative containers or to collect uncontained materials shall be memorialized in writing executed by each Party.

4.1.3 Oversight of City Manager.

(a) Performance of each of the provisions of this Agreement shall be under the direction of the City Manager or designee and the work hereunder shall be done in a thorough and workmanlike manner under the direction, and to the satisfactions, of the City Manager or designee. To this end, the City Manager shall have the power to establish rules and regulations relating to the accumulation, Collection, Recycling, disposal, and management of Solid Waste not inconsistent herewith and/or as necessary to ensure compliance with laws, ordinances and regulations, and which the City Manager finds are reasonably necessary for enforcement hereof or of applicable laws, ordinances and regulations, or for preservation of the public peace, health, and safety.

(b) The Parties may negotiate a means of recompensing Franchisee for material increases in Franchisee's costs as a result of either (i) new or changed rules and regulations by the City Manager, or (ii) other services required by the City that are in excess of those contemplated by this Agreement. If any such changes cause an increase or decrease in the cost of, or the time required for performance of the Agreement, an equitable adjustment shall be made in the Agreement price or schedule, or both, subject to the requirements of Section 7.2.3 hereof (Proposition 218).

4.1.4 Designated Disposal Site. Franchisee shall dispose of all collected Refuse at the Designated Disposal Sites listed on Exhibit G. Franchisee may request that City designate additional or alternate Designated Disposal Sites for Franchisee's use. Any changes to the Designated Disposal Site or the addition of alternate Designated Disposal Sites shall be subject to prior written consent of the City Manager, which shall not be unreasonably withheld. Notwithstanding the above, Franchisee may transport any and all collected Refuse to a

transformation site for processing and Diversion before final deposit at a Designated Disposal Site, subject to any limits on credits for Diversion under the Refuse Impact Reduction Laws. All costs associated with its disposal of collected Refuse at a Designated Disposal Site are to be borne by Franchisee.

4.1.5 Hazardous Materials.

(a) The scope of this Agreement and franchise excludes the handling of Hazardous Materials, and no right to provide Hazardous Materials handling services is conferred on Franchisee as a result of this Agreement. Franchisee shall use commercially reasonable efforts to ensure that only persons duly-licensed to handle Hazardous Materials shall be engaged when such services become necessary.

(b) Franchisee shall implement a system of Hazardous Waste and Prohibited Material (as defined by CCR Title 22, Chapter 11, Sections 66261.1 through 66261.126) screening, identification, and prevention protocol reasonably designed to screen-out Hazardous Waste and prohibited materials that Franchisee is not permitted to handle pursuant to applicable law prior to Franchisee accepting such materials. If Franchisee inadvertently collects Hazardous Waste or other materials that Franchisee is not qualified or permitted to handle (under any applicable permit conditions or applicable laws), the Franchisee shall arrange, at no cost and without liability to City, for the proper disposal of the such materials in accordance with applicable laws and regulations; provided however, that Franchisee shall be entitled to return any such Hazardous Waste, if the customer can be identified, or at its own expense pursue all legal rights and remedies it may have against the customer(s) who generated such materials. The City shall be indemnified by Franchisee from liability for any disposal of Hazardous Waste or other materials that Franchisee is not qualified or permitted to handle pursuant to Section 11.2 hereof.

4.2. Standards of Performance.

4.2.1 Availability of Franchisee. Franchisee has established, and shall continue to maintain a local office for the purpose of receiving customer payments and handling customer inquiries, orders and complaints. The "local" office must remain in a location within three (3) miles of the City boundary and have the same telephone area code as that existing in the City. The local office shall be open to the public between the hours of 9:00 a.m. to 5:00 p.m., five (5) days per week, Monday through Friday, except Holidays ("Regular Business Hours"). A representative of Franchisee shall be available during Regular Business Hours for communication with the public at such local office. Additionally, the Franchisee shall continue to employ the services of a telephone representative, answering exchange or message system for calls during non-business hours and provide a telephone system and staff sufficient and adequate to handle calls during peak periods.

4.2.2 Franchisee Liaison to City. Franchisee shall be reasonably available to the City. The Franchisee shall provide the City Manager and the Police and Fire Departments with

an emergency telephone number for effectively reaching Franchisee in the case of off-hour emergencies. Franchisee shall also provide the City Manager with the cellular phone number of a Franchisee representative(s) with day-to-day managerial responsibility over Franchisee services provided within the City. One or more of the Franchisee's representatives described in this Section shall visit City offices at such reasonable times as the City Manager shall designate for the purpose of discussing any matters relating to this Agreement or the Franchisee's performance thereof. Any representative appointed by Franchisee shall occupy a position of sufficient managerial authority and knowledge of day-to-day Franchisee operations as to be able to meaningfully discuss performance issues with the City Manager.

4.2.3 Citizen Complaints. The Franchisee shall commence response to all complaints within eight (8) business hours, shall return all Customer phone calls received within eight (8) business hours, and shall exercise Reasonable Business Efforts to resolve all complaints. The City may, but is not obligated to, respond to complaints that have not been addressed within two (2) business days and may charge the Franchisee for the actual costs incurred therefor.

4.2.4 Record of Complaints. Franchisee shall maintain a record of all complaints received by mail, by telephone or in person for a period of three (3) years. Franchisee's records shall include the date of the Customer complaint, the address and name of the Customer, a description of the complaint or request, and a description of the action taken by Franchisee to resolve the complaint. Copies of all complaints and the records described in this Section 4.2.4 shall be submitted to the City Manager on a quarterly basis, before the 15th of the following month.

4.2.5 Disputes. Disputes between the Franchisee and its Customers regarding the services provided in accordance with this Agreement may be resolved by the City; provided, however, the City shall not be obligated to resolve any such disputes. The City Council by resolution or ordinance may prescribe the procedures for processing customer complaints. The City's decision shall be final and binding unless challenged in a court of competent jurisdiction.

4.2.6 Tags & Record of Non-Collected Material. The Franchisee shall notify Customers in the event any item left for disposal is not picked up. Said notification shall be in the form of a written tag placed upon the Customer's container or entry door if identifiable, stating Franchisee's telephone, address and the reason for non-Collection. Reasons for non-Collection may include, but are not limited to the following: Containers inaccessible to Franchisee (after Franchisee has made a reasonable effort to secure access); improper Container or use of a non-Franchisee Provided Container; Container overfilled; overweight Container; or a Container that includes Hazardous Waste. Franchisee shall implement a system of progressive warnings and penalties for repeat Customer violations, which system and any changes thereto shall be noticed to all Customers in Franchisee bills and on Franchisee's website. Franchisee shall maintain a record of all items not collected. Should Franchisee fail to collect and dispose of materials set out or placed for Collection at times required, after notification by City and a reasonable time thereafter, City may collect and dispose of uncollected materials and Franchisee shall be liable to the City for the expenses incurred, plus overhead charges equal to ten (10%) of the City's expenses in Collection. Nothing herein shall waive or limit the City's rights to inspect,

tag or initiate code enforcement procedures in response to repeated or significant violations of Container use, Solid Waste dumping or unlawful scavenging.

4.2.7 Property Damage Caused by Franchisee. The Franchisee shall be responsible for the cost of repairing any property damaged by the negligent or intentional conduct of its employees or agents. The City may, but is not obligated to, respond to complaints that have not been addressed in accordance with Section 4.2.3 hereof and may charge the Franchisee for the actual costs incurred by the City therefor.

4.2.8 Quality of Service Surveys. The City may, at its own expense, conduct periodic quality of service surveys of Franchisee's Customers. Prior to finalizing the survey form, the City shall review the survey with the Franchisee. Results of the quality of service survey shall be reviewed with the Franchisee and used to discuss improvements in service delivery.

4.2.9 Annual Route Audit. At least once annually, Franchisee shall conduct an audit of its Collection routes. The annual route audit shall include the identity of the truck servicing each route, the number of accounts serviced per route (residential, commercial, industrial and municipal), the frequency of pick-ups, the size of each Container for each account on the route, the frequency of service for each account on the route, as well as the weight of the truck and refuse delivered to the applicable Disposal Site. Results of the annual route audit shall be available for review by the City.

4.2.10 "On-Call" Equipment and Personnel. During Regular Business Hours, the Franchisee shall have "on-call" at least one (1) truck to handle duly-appointed or noticed pick-ups or missed Collections. After Regular Business Hours, the Franchisee shall have "on-call" the necessary manpower and equipment (including without limitation an emergency service vehicle to attend to complaints or emergency calls) to respond to Customer emergencies that are an immediate threat to life or property. Franchisee's on-call equipment and personnel shall also be available to assist the City with debris Collection and removal within a reasonable time resulting from emergencies and natural disasters, excepting that nothing in this Section shall require Franchisee to collect, haul or dispose of waste that Franchisee is not permitted to handle.

4.3. Hours & Dates of Collection. Franchisee shall conduct its operations so as to offer the least possible obstruction and inconvenience to public traffic or disruption to the peace or quiet of the area within which Collections are effected. In accordance therewith, Collection services by Franchisee shall operate in the City between the hours of 7:00 a.m. and 6:30 p.m., Monday through Friday. Franchisee's trucks shall not leave Franchisee's yard or operate in City streets before 6:30 a.m. Franchisee may not change its established Collection schedules without obtaining prior written consent of the City Manager. Further, Franchisee shall observe the following holidays annually (whereby there will be no Collection services and Collection shall occur one day late following the holiday):

New Year's Day (January 1st)

Memorial Day (4th Monday in May)

Independence Day (July 4th)

Labor Day (1st Monday in September)

Thanksgiving Day (4th Thursday in November)

Christmas Day (December 25th)

Franchisee shall also observe any additional holidays coinciding with the holiday schedule observed by the County to the extent such County-observed holiday results in the closure of the Designated Disposal Site. In any week in which one of these holidays falls on a Collection day, Collection will be delayed to the next business day. Any changes to the holiday collection schedule may only be made as approved by the City Manager in advance in writing.

4.4. Single-Family Residential Customers: Source-Separated Three-Stream Collection For Refuse, Recyclable Materials and Green Waste. All Three Containers For Each Stream To Be Collected Weekly.

4.4.1 Single-Family Residential Unit Refuse Collection. Franchisee shall collect and remove Refuse from all Single-Family Residential Units once per week from Franchisee Provided Carts. Franchisee shall provide each Customer with at least one 96 gallon Cart specially for the purpose of Refuse as the default service level for Refuse Collection.

(a) *Collection Location; Roll-Out Service.* Franchisee shall collect Refuse from Single-Family Carts curbside unless the Customer has requested Cart “roll-out” service (described below) and has agreed to pay the applicable premium service rate (as reflected in the **Exhibit A** Maximum Rate Schedule). Roll-out services shall be provided free of charge to disabled Customers who have applied for and received certification by the City. In the case of roll-out service, Franchisee shall collect Carts from and return Carts to the alternative service location (such as the side yard or back yard) specified by the Customer and agreed-to by Franchisee. Also, where paved alleys exist in the rear of a Single-Family Residential Unit, Collections may be made by Franchisee from alleys (provided, however, that this requirement does not apply to a blind alley). Absent a roll-out service arrangement, Franchisee shall not be under any obligation to enter private courts or places, blind alleys, or other private property, to make Collections from Single-Family Residential Units.

(b) *Rates on Per-Cart Basis; Smaller Cart Option.* The basic, default rate for Refuse service (i.e., one Refuse Cart) is set forth in the Maximum Rate Schedule (**Exhibit A**). Single-Family Residential Units that regularly require more than 95/96-gallons of Refuse Cart capacity may request additional Refuse Carts for an additional charge per Cart in accordance with the Maximum Rate Schedule. Single-Family Residential Units shall be permitted the option of electing a smaller Refuse Cart (either 64/65- gallons or 32/35-gallons). However the smaller Cart option shall be serviced at the same rates as the default 95/96-gallon Carts.

(c) *Refuse Overages.* Single-Family Residential Units are entitled to two annual overage pickups per year of material not-to-exceed three (3) 30-gallon

bags of Refuse (cumulatively over the year) that did not otherwise fit in the Refuse Cart(s) at no additional cost. In addition to the overage allowance provided in the preceding sentence, Refuse overage pickups may also be provided at no additional charge during the two Carson Clean Environment Weeks as described below. Any additional Refuse overage pickups may be charged per pickup in accordance with the Maximum Rate Schedule (**Exhibit A**). This overage service is exclusive of Bulky Waste services. Single-Family Residential Units will not need to call ahead to schedule this service; Franchisee will track each account's use of this service and additional Refuse overage pickups will be documented and charged in accordance with the Maximum Rate Schedule.

4.4.2 Single-Family Residential Unit Recyclable Materials Collection. Franchisee shall collect and remove source-separated Recyclable Materials from all Single-Family Residential Units once per week from Franchisee-Provided Carts. Franchisee shall provide each Single-Family Residential Unit with a 95/96- gallon Cart dedicated to Recyclable Materials as the default service at no additional cost.

(a) *Manner of Collection.* Collection of Recyclable Materials shall be made from the same location and in the same manner as Refuse from the Single-Family Residential Units, and shall occur on the same day each week as Refuse Collection.

(b) *Smaller Cart Option.* Single-Family Residential Units shall be permitted the option of electing smaller Recycling Carts, either 64/65-gallon or 32/35-gallon.

(c) *Recycling Overages.* Single-Family Residential Units are entitled to two annual overage pickups per year of material not-to-exceed three 30-gallon bags of Recyclables (cumulatively over the year) that did not otherwise fit in the provided Recyclable Cart(s) at no additional cost. In addition to the overage allowance provided in the preceding sentence, Recycling overage pickups may also be provided at no additional charge during the two Carson Clean Environment Weeks as described below. Any additional Recycling overage pickups may be charged per pickup in accordance with the Maximum Rate Schedule (**Exhibit A**). This overage service is exclusive of Bulky Waste services. Single-Family Residential Units will not need to call ahead to schedule this service; Franchisee will track each account's use of this service and additional Recycling overage pickups will be documented and charged in accordance with the Maximum Rate Schedule.

4.4.3 Single-Family Residential Unit Green Waste Collection. Franchisee shall collect and remove source-separated Green Waste from all Single-Family Residential Units once per week from Franchisee Provided Carts. Franchisee shall provide each Single-Family Residential Unit with at least one 95/96-gallon Cart dedicated to Green Waste as the default service, at no charge.

(a) *Manner of Collection.* Collection of Green Waste shall be made from the same location and in the same manner as Refuse from the Single-Family Residential Units, and shall occur on the same day each week as Refuse Collection.

(b) *Rates on Per-Cart Basis; Smaller Cart Option.* Single-Family Residential Units shall be permitted the option of electing smaller Green Waste Carts, either 64/65-gallon or 32/35-gallon.

(c) *Green Waste Overages.* Single-Family Residential Units are entitled to two annual overage pickups per year of material not-to-exceed three 30-gallon bags of Green Waste (cumulatively over the year) that did not otherwise fit in the provided Green Waste Cart(s) at no additional cost. In addition to the overage allowance provided in the preceding sentence, Green Waste overage pickups may also be provided at no additional charge during the two Carson Clean Environment Weeks as described below. Any additional Green Waste overage pickups may be charged per pickup in accordance with the Maximum Rate Schedule (**Exhibit A**). This overage service is exclusive of Bulky Waste services. Single-Family Residential Units will not need to call ahead to schedule this service; Franchisee will track each account's use of this service and additional Refuse overage pickups will be documented and charged in accordance with the Maximum Rate Schedule.

4.4.4 *Smart Gardening Program.* Franchisee will use the County's Smart Gardening Program to provide workshops designed to educate residents on proper Green Waste composting techniques, xeriscaping, and grasscycling. If the County program cannot be used due to low numbers of pre-registered residents, Franchisee will provide experienced staff to teach these classes. A guide to composting will be prepared and a page on Franchisee website will be added to promote the program. For those residents who attend a workshop, Franchisee will provide a Twenty Dollar (\$20.00) rebate to those who purchase a backyard composting and/or vermicomposting bin within one month of attending the workshop. Residents will need to supply a proof of purchase and residency in order to receive the rebate.

4.4.5 Containers & Changes to Collection Schedules. All Carts and Containers shall be the property of Franchisee, and shall be placed by Franchisee, following Collection therefrom, in an upright position where found; provided, Franchisee shall not place any Cart or other Container in a manner interfering with a public street or public right-of-way.

(a) *Notice of Residential Collection Schedule.* Franchisee shall post and maintain up-to-date written route schedules and maps of the routes on a publicly-accessible and easy-to-find website maintained by Franchisee for purposes of its hauling services and/or other waste management operations in the City.

(b) *Changes in Residential Collection Schedule.* City may require changes in the route schedule for among other things, to improve service or resolve complaints. Prior to the change of a route schedule, Franchisee shall

provide written notice of the change to affected customers thirty (30) days in advance and shall post the changes on a publicly accessible website maintained by the Franchisee for purposes of its hauling services and/or other waste management operations in the City.

4.5. Commercial and Industrial Customers: Shared Container or Individual Containers; Recycling Commercial and Industrial Unit Refuse Collection.

Franchisee shall collect Refuse from Commercial and Industrial Units not less than once per week and more frequently if required to handle the Refuse generated at the Premises where the Containers are located. The Franchisee shall provide each Customer with all necessary and required Bins at the rates set forth in the Maximum Rate Schedule (**Exhibit A**). At a minimum, Franchisee shall offer the following Refuse Collection service methodologies to Commercial and Industrial Customers:

(a) *Centralized Service on Premises.* Commercial and Industrial Units may share Bins with neighboring Commercial and Industrial Units provided that all sharing units are on the same Premises and so long as the sharing of Bins does not result in the overfilling of, or overflow from, the Bins. In such case, Franchisee shall provide the Premises with a choice of Bin capacities including one (1), two (2), three (3), four (4) and six (6) cubic yards, provided that capacity shall be sufficient to provide that no Refuse need be placed outside the Bin(s).

(b) *Commercial and Industrial Units with Individual Bins.* Commercial and Industrial Units may elect to have its own Bin that is not shared with another Commercial and Industrial Units on the same Premises, so long as such Unit's Bins can be properly stored out of public view in a location that reasonably maximizes discreet Bin storage and reasonable ease of Collection by Franchisee (either by direct automated collection or roll-out/scout services).

(c) *Commercial and Industrial Unit Cart Service.* Franchisee shall offer Cart Collection to Commercial and Industrial Units that do not have space for a Bin or larger Container at the service rate for such Cart identified in the Maximum Rate Schedule. Collection frequency for Commercial and Industrial Carts may occur either on the same regular times and routes as for Commercial and Industrial Collections in the area, or on the same regular schedule/route as for Single-Family Residential Unit Cart Collections in the area.

To the extent their unit is able to accommodate curbside pickup and Cart storage, Multi-Family Complexes may elect to obtain Cart service at the same rates as Single-Family Cart Customers. Collection frequency for Multi-Family Carts may occur either on the same regular times and routes as for Commercial and Industrial Collections in the area, or on the same regular schedule/route as for other Single-Family Residential Unit Cart Collections in the area. This program is intended to benefit Multi-Family Complexes with hauling and collection needs analogous to Single-Family needs (i.e., condominiums, townhouses and mobilehome units). Franchisee shall notify any Owner of mobilehome park Premises and the City in writing of individual mobilehome

units receiving Cart service to facilitate the City's mobilehome park rent control program.

(d) *Temporary Bin and Roll-Off Box Service and Processing.* Franchisee shall be the exclusive provider of temporary Bin service and permanent and temporary Roll-Off box service, at the rates identified the Maximum Rate Schedule (**Exhibit A**). Roll-off box sizes include ten (10), twenty (20), thirty (30) and forty (40) cubic yard capacities.

4.5.2 Commercial and Industrial Recyclables Collection (Not Including Organics Waste). Franchisee shall cooperate and assist the City in meeting the requirements of State-mandated Recycling for businesses including, but not limited to, identifying Commercial and Industrial Units that are required to receive Recycling services under the Refuse Impact Reduction Laws. Franchisee shall undertake Recycling Collection services for Commercial and Industrial Units in compliance with current Refuse Impact Reduction Laws, as may be amended from time to time.

(a) *Commercial and Industrial.* Commercial and Industrial Units shall subscribe to source-separated Recyclable Materials Collection service and shall pay Franchisee for such service based on the number of Franchisee Provided Bins dedicated to Recyclables Collection, in accordance with the Maximum Rate Schedule (**Exhibit A**). Franchisee shall offer a range of service options for Recycling Bins and Recycling service choices that is similar or equivalent to the service options offered for Commercial and Industrial Refuse Collection per Section 4.5.1, subject to the condition that the level of service for Recycling Collection shall be of sufficient capacity and frequency that it does not result in the overfilling of, or overflow from, the Recycling Bin(s). Franchisee shall collect source-separated Recyclable Materials collected from Commercial and Industrial Units not less than once per week. Recyclable Bins for Commercial and Industrial Units shall be serviced on the same day as Commercial and Industrial Refuse Collection.

(b) *Multi-Family Complexes.* Multi-Family Complexes receiving Refuse Collection service (including individual Cart service per Section 4.5.1(c)) shall be provided one (1) Container designated for Recyclables Collection for every Refuse Container serving the Premises, subject to the condition that the level of service for Recycling Collection shall be of sufficient capacity and frequency that it does not result in the overfilling of, or overflow from, the Recycling Container(s). Recyclable Containers for Multi-Family Complexes shall be serviced at least once per week and on the same day as the Premises' Refuse Container(s) at a rate identified in the Maximum Rate Schedule (**Exhibit A**).

(c) *Level of Service Audit; Monitoring Reports.*

(1) *Level of Service Audit.* Franchisee shall conduct a waste audit of all Commercial and Industrial Units to determine their Recyclable

Collection needs within the first year following the Service Start Date. The process used to conduct this audit shall be shared with the City to ensure permit compliance and acceptance. Those Customers that demonstrate a significant Recyclable content shall have their level of services for Recyclables Collection adjusted (i.e., by changes in Container size, number or Collection frequency) such that the level of services provided meets actual Recycling demand. Commercial and Industrial Units that demonstrate lower Recyclables Collection needs may have their level of services downsized accordingly. Such audits and service adjustments shall be repeated by Franchisee at least every four (4) years or as required by law.

(2) *Monitoring Reports.* Franchisee shall provide the City with quarterly reports upon Franchisee's status of compliance with all Refuse Impact Reduction Laws applicable to Commercial and Industrial Units, and will assist the City with all related filing and reporting requirements of CalRecycle. As part of such reporting, Franchisee will maintain a database for the City detailing all Commercial and Industrial Units that are subject to mandatory Recycling under the Refuse Impact Reduction Laws in order to track Franchisee's progress and compliance with the implementation of State-mandated Commercial Recycling programs.

4.5.3 Commercial and Industrial Organics Programs. Franchisee shall provide all Commercial and Industrial Units mandated by the State to participate in an Organic Waste Diversion program under the Refuse Impact Reduction Laws with a compliant program. Collection of Organic Waste shall be provided at rates equal to the Refuse rates for the same size Container and frequency of service as outlined in the Maximum Rate Schedule (**Exhibit A**). Notwithstanding any other provision in this Section 4.5.3, as of the Services Start Date, those Commercial and Industrial Units that are *not* required to participate in Food Waste Recycling under the Refuse Impact Reduction Laws shall only be required to subscribe to a Container that is dedicated to Green Waste; in such case the term "Organic Waste" as used in this Section 4.5.3 may be read as limited to "Green Waste".

(a) *Commercial and Industrial Organic Waste Generators.* Those Commercial and Industrial Units that are required to engage in Mandatory Commercial Organics Recycling under the Refuse Impact Reduction Laws shall subscribe to source-separated Organic Waste Collection or processing service. These Commercial and Industrial Units shall utilize their own Container dedicated to Organic Waste (i.e., a Container not shared with other Commercial and Industrial Units unless such Units sharing the Container are also required to engage in Organic Waste Recycling under the Refuse Impact Reduction Laws). Franchisee shall offer a range of service options for Organics Containers and Organics Collection services that is similar or equivalent to the service options offered for Commercial and Industrial Refuse Collection per Section 4.5.1, subject to the condition that the level of service for Organic Waste shall be of sufficient capacity and frequency that it does not result in the overfilling of, or overflow from, the Organics Container(s). Franchisee shall collect source-

separated Organic Wastes from Commercial and Industrial customers not less than once per week. Commercial and Industrial Organics Containers shall be serviced on the same day as Commercial and Industrial Refuse and Recycling Collection.

(b) *Food Rescue.* To the extent possible, Franchisee will notify generators of edible food waste of local food rescue opportunities that provide outlets for unwanted, yet usable food items. The use of this option will be tracked through Franchisee's level of service audit program.

(c) *Multi-Family Organics.* Multi-Family Complexes that are required to engage in Mandatory Commercial Organics Recycling under the Refuse Impact Reduction Laws shall subscribe to source-separated Organic Waste Collection service, and will be offered a range of service options designated for Organic Waste Collection, subject to the condition that the level of service for Organic Waste Collection shall be of sufficient capacity and frequency that it does not result in the overfilling of, or overflow from, the Organic Waste Container(s). Multi-Family Complex Recycling Containers shall be serviced at least once per week and on the same day as the Premises' Refuse Container(s) at a rate identified in the Maximum Rate Schedule (**Exhibit A**). Organic Waste for Multi-Family Complexes does not include Food Waste, unless otherwise provided by the Refuse Impact Reduction Laws, as may be amended.

(d) *Level of Service Audit; Monitoring Reports.*

(1) *Level of Service Audit.* Franchisee shall conduct a waste audit of all Commercial and Industrial Units to determine their Organic Waste Collection needs within the first year following the Services Start Date. The process used to conduct this audit shall be shared with the City to ensure permit compliance and acceptance. Those accounts that demonstrate a significant generation of Organic Waste shall have their level of services for Organic Waste Collection adjusted (i.e., by changes in Container size, number or Collection frequency) such that the level of services provided meets actual Organic Waste demand. Commercial and Industrial Units that demonstrate lower Organic Waste Collection needs may have their level of services downsized accordingly. Such audits and service adjustments shall be repeated by Franchisee at least every four (4) years or as required by law.

(2) *Monitoring Reports.* Franchisee shall provide the City with quarterly reports upon Franchisee's status of compliance with all Refuse Impact Reduction Laws applicable to Commercial and Industrial Units, and will assist the City with all related filing and reporting requirements of CalRecycle. As part of such reporting, Franchisee will maintain a database for the City detailing all Commercial and Industrial Units that are subject to mandatory Organic Waste Recycling under the Refuse Impact Reduction Laws in order to track Franchisee's progress and compliance

with the implementation of State-mandated Organic Waste Recycling programs.

4.5.4 Commercial Container Storage, Roll-Out Services & Collection Schedules.

(a) *Appropriate Collection/Storage Locations.* Unless expressly instructed by the City in writing, Franchisee shall provide Franchisee Provided Containers only to those Commercial or Industrial Units that provide an appropriate location for such Container(s) in accordance with the City of Carson Municipal Code, but in no event shall such Containers be maintained in the street or plain public view. Storage of Commercial or Industrial Containers must utilize any Container shelters located on the Premises.

(b) *Multi-Family, Commercial and Industrial Roll-out Services.* Commercial and Industrial Units may put Containers out for access, or subscribe to roll-out service. Franchisee shall provide retrieval or “roll-out” services as requested by Commercial and Industrial Units at the rates identified in the Maximum Rate Schedule (**Exhibit A**). Roll-out services shall include, but not be limited to moving manually or by a specialized “scout” truck the Containers from their storage location for Collection and returning the Containers to their storage location.

(c) *Collection Schedules; Changes.* Collection schedules for Commercial and Industrial Units shall be subject to the same terms as for Single-Family Residential Units as described in Section 4.4.4 above.

4.6. Specialized Collection Services and Events.

4.6.1 Bulky Waste and E-Waste Collection.

(a) *Single-Family Bulky Waste/E-Waste Pickup.* Franchisee shall provide Bulky Waste/E-Waste pickup service to all Single-Family Residential Units on the regularly-scheduled Collection day or by appointment with Franchisee. Each Single-Family Residential Unit is entitled to four (4) Bulky Waste/E-Waste pickups per calendar year at no charge, once per quarter. In addition, the Bulky Waste/E-Waste pickups may be provided at no additional charge during the two (2) Carson Clean Environment Weeks as described below (making for a total cumulative of six (6) Bulky Waste/E-Waste pickups possible to Residential Units). Each Bulky Waste/E-Waste pickup includes Collection of up to five (5) items. Franchisee may offer a Customer the alternative option of a three cubic yard temporary Bin for Bulky Waste/E-Waste Collection if requested, which will be subject to an additional charge for such Bin (as such charge is stated in the Maximum Rate Schedule (**Exhibit A**)). Single-Family Residential Units that exceed the number of free Bulky Waste/E-Waste pickups per annual quarter may receive additional curbside Bulky Waste/E-Waste Collection at the rate set forth in **Exhibit A**. Customers shall provide Franchisee with notice of

Bulky Waste/E-Waste pickup service requests prior to 12 noon on the business day before pickup (up to one week prior), and Customers shall have ability to request the service by phone, online, or through the City website. Bulky Waste/E-Waste must be placed within three (3) feet of the curb, swale, paved surface of the public roadway, closest accessible roadway, or other such location agreed to by the Franchisee and Customer, that will provide safe and efficient accessibility to the Franchisee's Collection crew and vehicle.

(b) *Multi-Family Bulky Waste/E-Waste Pickup.* Customers in Multi-Family Complexes shall be entitled to a number of annual Bulky Waste/E-Waste pickups at no additional charge equal to the number of Residential Units in the Multi-Family Complex. Excessive Bulky Waste/E-Waste deposited in Multi-Family Complexes may be subject to an additional charge to the Owner in accordance with the Maximum Rate Schedule (**Exhibit A**).

(c) *Commercial/Industrial Bulky Waste/E-Waste.* Excluding Multi-Family Complexes, Commercial and Industrial Units may receive Bulky Waste/E-Waste Collection for a fee set in the Maximum Rate Schedule (**Exhibit A**). This Bulky Waste/E-Waste pickup service shall be made curbside on the regularly scheduled Collection day, or by appointment with the Franchisee, in which case the Customer shall notify Franchisee of the Bulky Waste/E-Waste pickup service request by noon the day prior to the next scheduled collection day by phone, online, or through the City website.

(d) *Bulky Waste/E-Waste Collection Restrictions.* The following applies to items Collected under this Section:

(1) No single item that cannot be handled by two workers will be accepted.

(2) The following items will not be picked up: Hazardous Substances and Hazardous Waste, waste oil, antifreeze, HHW, Infectious Waste, and U-Waste (other than E-Waste).

(3) Vehicles used for Collection of Bulky Waste shall not use compactor mechanisms or mechanical handling equipment that may damage reusable goods or release Freon or other gases from pressurized appliances.

(4) *Bulky Waste Containing Freon.* In the event Franchisee Collects Bulky Waste that contains Freon, Franchisee shall handle such Bulky Waste in a manner such that the Bulky Waste is not subject to regulation as Hazardous Waste under applicable state and federal laws or regulations.

4.6.2 Holiday Tree Collection and Recycling. Franchisee will Collect and Divert holiday trees placed curbside (or within the Container area in the case of Multi-Family Complexes) from all Residential Unit Customers (both Single-Family and Multi-Family

Complexes) on all regular collection days following Christmas through the second week in January. Franchisee will Divert all holiday trees from landfilling, with the exception of trees that cannot be Diverted due to flocking, tinsel or ornaments.

4.6.3 Locking Commercial Containers. Franchisee shall provide locking Containers (Bins or Roll-Offs) charged in accordance with the Maximum Rate Schedule **(Exhibit A)** as an option for Industrial and Commercial Premises.

4.6.4 Oil Waste Collection Center Inspections. Franchisee will conduct annual inspections of all Used Oil Certified Collection Centers (as certified by CalRecycle) located in the City by June of each year following the Effective Date at no cost to the City. Upon mutual written agreement between the City and Franchisee, Franchisee may work with an outside vendor to collect used motor oil and filters curbside in order to provide additional recycling opportunities for residents. Any costs to Franchisee that are associated with this additional service is subject to review during the annual rate adjustment process.

4.6.5 Residential Sharps Collection Program. Franchisee shall provide Residential Unit Customers (both Single-Family and Multi-Family Complex) with pre-paid postage mail-back sharps containers at no additional charge. Sharps shall be handled as follows:

(a) Residential Unit Customers may call or email Franchisee to request a free sharps kit (i.e., a container designed for sharps disposal, a pre-paid postage label and a form). The kit will be delivered the following week. Residential Unit Customers then collect household-generated sharps in the container in accordance with directions therefor. Residential Unit Customers mail the container back for safe disposal by Franchisee or Franchisee's contractor using the pre-paid postage label provided and sign the form included in side pocket of the kit.

(b) Residential Unit Customers will receive one free sharps mail-back kit per quarter, with further kits available at the rates reflected in the Maximum Rate Schedule **(Exhibit A)**. Limit one kit at a time.

(c) Franchisee will receive a certificate from its contractor after the container has been properly emptied that documents that the sharps were safely and completely processed. That information will be added to the customer's account data for future review and reference and may be subject to City review in accordance with other audit procedures herein.

4.6.6 Carson Clean Environment Weeks. Franchisee will provide special Collection services during two one-week cleanup campaigns known as the "Carson Clean Environment Weeks."

(a) *Time.* The Carson Clean Environment Weeks shall occur as one week in the Spring and one week in the Fall of each year. The City and Franchisee shall mutually agree in writing upon the exact dates of each Carson Clean Environment Week at least 60 days prior to such Week to allow for adequate public notice and advertising.

(b) *Services.* Free services provided during each Carson Clean Environment Week shall include the following:

<u>Spring Clean Week</u>	<u>Fall Clean Week</u>
1. Curbside pickup of extra Refuse bags of up-to three 30-gallon bags per Single-Family Residential Unit.	1. Curbside pickup of extra Refuse bags of up-to three 30-gallon bags per Single-Family Residential Unit.
2. Curbside pickup of extra Recycling bags of up-to three 30-gallon bags per Single-Family Residential Unit.	2. Curbside pickup of extra Recycling bags of up-to three 30-gallon bags per Single-Family Residential Unit.
3. Curbside pickup of extra Green Waste bags of up-to three 30-gallon bags per Single-Family Residential Unit.	3. Curbside pickup of extra Green Waste bags of up-to three 30-gallon bags per Single-Family Residential Unit.
3. Curbside pickup of up-to four Bulky Waste items per Single-Family Residential Unit.	3. Curbside pickup of up-to four Bulky Waste items per Single-Family Residential Unit.
4. At least one paper "shredding event" to be centrally located in the City (i.e., at City Hall) to provide paper shredding for up-to three (3) bankers' boxes of paper submitted per Residential or Commercial Unit customer, until the capacity for shredded material is full.	4. At least one paper "shredding event" to be centrally located in the City (i.e., at City Hall) to provide paper shredding for up-to three (3) bankers' boxes of paper submitted per Residential or Commercial Unit customer, until the capacity for shredded material is full.
5. HHW, E-Waste and U-Waste "drop-off event" during which each Single-Family Unit, Multi-Family Unit, and Commercial and Industrial Units may deliver up-to 100 pounds of HHW, E-Waste or U-waste to a central location.	5. HHW, E-Waste and U-Waste "drop-off event" during which each Single-Family Unit, Multi-Family Unit, and Commercial and Industrial Units may deliver up-to 100 pounds of HHW, E-Waste or U-waste to a central location.

(c) *Curbside Pickup Process.* Carson Clean Environment Week pickups for Single Family Residential Units will be made curbside on the regularly-scheduled pickup day for that week, or by appointment with the Franchisee. In the case of by-appointment pickups, at least eight (8) business hours prior to Collection, residents shall inform Franchisee of the types and numbers of extra Refuse, Recyclables, Organic Waste, Bulky Waste, E-Waste or other items to be serviced during a Carson Clean Environment Week.

(d) *Event Coordination.* The exact dates and locations for paper shredding events and HHW/E-Waste/U-Waste events held during a Carson Clean Environment Week will be coordinated with City of Carson Staff in writing with ample time provided to notice and advertise the events prior to the start of Carson Clean Environment Week. These events may be undertaken directly by Franchisee, if Franchisee is duly-licensed to provide such services, or through a City-approved subcontractor.

(e) *Large Venues and Public Events Recycling Program.* In support of the City's compliance with AB 2176, Franchisee will provide reports for the venues and events previously identified in the AB939 Annual Report process and will work with those locations to provide detailed information that will demonstrate compliance with the law. In some instances, these venues/events may use other service providers, hence third party information may be used for reporting purposes.

4.7. Free Service to City Facilities. The Franchisee shall collect not less than once per week, at no cost to the City, all Solid Waste, Recyclables, Organic Waste and C&D Materials from all City Facilities that are existing on or after the Services Start Date. Where locking lids are available for a Container type serving a City Facility, the City may request use of locking lids at no charge.

Franchisee shall provide the City with a Cart or small Bin for E-Waste at City Facilities where such items are generated. Franchisee shall Collect E-Waste from City Facilities on-call (but in no event more often than once per month) at no charge. These services may be provided by Franchisee directly, or through a City-approved subcontractor.

Additionally, self-hauls of Solid Waste and Recyclables Collected by City employees and delivered by City employees during the ordinary course of their job duties to WRR or other processing facility owned and operated by Franchisee shall be deposited by the City employees at no cost (i.e., no tipping fees) charged by the Franchisee facility.

City Facilities that are under construction are not eligible for free service. However, if the City is constructing a new City Facility that is intended to be certified by the Leadership in Energy and Environmental Design ("LEED") program, then Franchisee shall provide at no charge any Solid Waste Handling services that exceed the standards for non-LEED buildings, along with all required reporting to obtain LEED certification.

4.8. Free Service to City Events. Franchisee shall provide Solid Waste, Food Waste and Recycling Collection and disposal/processing service for all City-sponsored events at no additional charge. Customers will be provided Solid Waste, Recycling and Food Waste capacity at the appropriate service levels for each venue or event, as determined by City. When requested by event organizers, Solid Waste, Food Waste and Recycling Collection service, special event boxes and liners will be provided for each venue or event. For City Events that may generate a significant amount of Food Waste, WRC will provide Containers for Food Waste with appropriate signage for the disposal of Food Waste. Containers available for these events shall consist of standard cardboard temporary use Containers with liners generally used for short-term events as standard in the Solid Waste Handling industry. Collection frequency will be provided as needed by the event. The list of some City-sponsored events for which services will be provided is attached hereto at **Exhibit D**.

4.9. Battery Collection. Franchisee shall provide battery collection containers at various locations throughout the City. These containers can be mailed directly to a third-party duly licensed to handle and Recycle such Universal Waste from its collection point, with Franchisee receiving documentation upon battery disposal/Recycling. Totals collected will be included in Franchisee's regular records subject to audit. This program is only for small household batteries (alkaline, button, or NiCad), not automotive or marine batteries. The location of collection containers for U-Waste is listed at **Exhibit F** hereto.

4.10. Illegal Dumping.

4.10.1 *Bulky Waste "Clean-Sweep" Program.* Franchisee shall provide "clean-sweeps" whereby a truck shall Collect Bulky Waste abandoned on any City right-of-way, alley or street, park or easement. The City will be split into four areas and each week, one area of the City will be scouted for any abandoned Bulky Waste items and any abandoned Bulky Waste will be collected. This service shall be provided at no charge to City or Customers.

4.10.2 *Private Property Illegal Dumping and Scavenging.* Franchisee shall direct its drivers to note in writing any unauthorized dumping, Recyclables scavenging, unauthorized Container use, or nuisance Refuse accumulation observed at any private property Premises, and report the same to the City within two (2) business days of such observation. Owner(s) of the Premises may request removal of illegally abandoned items from their Premises at the applicable rate under the Maximum Rate Schedule, or may utilize one of their free Bulky Waste or free Refuse/Recyclable overage Collection privileges. Franchisee shall exercise Reasonable Business Efforts to cooperate with the City's Code Enforcement Division in the course of any abatement, prosecution or administrative code enforcement process, including the provisions of bills, records, reports, observations, and Franchisee employee testimony.

4.10.3 *Extra Collections in Code Enforcement Matters.* In addition to the above programs, the City has the right, but not the obligation, to direct Franchisee to Collect illegally abandoned Bulky Waste/E-Waste from any Premises (public or private) at a rate chargeable to the City on the basis of time and materials at rates proposed by Franchisee and approved by the City Manager. The Franchisee shall create a specific work order in response to each call for abandoned item Collection with a monthly "Summary of Unlawfully Discarded Solid Waste Work Order Completed." The summary shall include, but not be limited to, the date, time, hours

spent, and type of unlawfully discarded Solid Waste Collected and disposed of. Franchisee agrees to reasonably cooperate with City in any code enforcement process to facilitate City's recovery of such amounts paid for the Premises clean-up under this Section. Franchisee agrees that if requested to provide such services in connection with abatement activities for which reimbursement is sought from the property owner by City through abatement liens or otherwise, Franchisee will provide billing information sufficient for City to include it in its liens, and Franchisee will be paid at such time as the abatement lien is paid, or reimbursement is otherwise obtained by City from the property owner.

ARTICLE V WASTE DIVERSION.

5.1. State Mandate. Franchisee hereby agrees to meet or exceed the Diversion mandates set forth in the Refuse Impact Reduction Laws, as may be amended. The Refuse Impact Reduction Laws currently set the directive of Diverting fifty percent (50%) of the City's Solid Waste, with a goal to Divert 75% by the year 2020. If the City fails to implement its required plans to achieve the aforementioned directive under the Refuse Impact Reduction Laws, CalRecycle may impose administrative civil penalties of up to TEN THOUSAND DOLLARS (\$10,000.00) per day until the City implements its plans. Furthermore, City anticipates that the State Legislature will adopt new legislation that will increase the minimum Diversion requirement. Upon the effective date of any new legislation that affects the Diversion requirements currently imposed by the current Refuse Impact Reduction Laws, Franchisee agrees, subject to the provisions of Section 7.2, to implement a revised or new Diversion program meeting such amended legislative requirements. Failure to implement an amended Diversion program based upon new State legislation mandating Waste Diversion levels shall constitute a default of this Agreement.

5.1.1 *Diversion Processing; Facilities.* To facilitate Franchisee's Diversion obligations hereunder, the Parties agree that Solid Waste, Recyclables, and Organic Waste shall be delivered to one or more of the recovery facilities (Transfer Stations and/or Materials Recovery Facilities) identified in Franchisee's proposal (**Exhibit E** hereto) for Diversion recovery prior to final disposal at a Disposal Site. Franchisee shall direct all source-separable or separated Organic Wastes to an Organics processing facility, as approved by the City Manager, capable of meeting the requirements AB 1826 and any other applicable Refuse Impact Reduction Law. The list of facilities in **Exhibit E** to be utilized prior to final disposition at a Disposal Site may be amended at any time with the written concurrence of the City Manager, excepting that any use, operation or acquisition of a recovery facility by Franchisee within the City of Carson jurisdictional boundaries shall require prior approval by the City Council. However, Franchisee agrees to use Reasonable Business Efforts to maximize the amount of Solid Waste, Recyclables and Organic Wastes processed at Waste Resources Recovery, Inc. ("WRR"), located at 357 West Compton Boulevard, Gardena, CA 90248, and WRR will reserve tipping capacity for such Carson-generated materials at WRR.

5.2. Joint Responsibilities; Development of Diversion Program. The City and Franchisee shall meet and confer in good faith to jointly develop Solid Waste Diversion strategies and develop a program adequate to meet the requirements established by the State. In the event of any change to State or regional laws, regulations or mandates setting new Diversion

requirements applicable to the City, the Parties shall promptly meet and confer to negotiate in good faith the implementation of such amendments to law through the City's Solid Waste Diversion program. City and Franchisee shall reasonably cooperate in good faith with all effort by each other to meet statutory Diversion requirements and otherwise to ensure compliance with the Act including, without limitation, requests to CalRecycle pursuant to Public Resources Code §§ 41785 and/or 41820. If the City and Franchisee cannot agree on a program within thirty (30) days after initially commencing any meet and confer process, City shall be entitled to specify the program to be implemented, subject to the provisions of Section 7.2. Programs negotiated, prepared and implemented by Franchisee shall include the a Waste Diversion Plan for City of Carson and proposed "Zero Waste Plan" for the City.

5.3. Franchisee Waste Diversion Responsibilities.

5.3.1 Cooperation and Education. The Franchisee shall cooperate with the Solid Waste Diversion activities of the City and shall coordinate Diversion activities and programs to the extent possible. The Franchisee shall cooperate with the City's efforts to develop and implement public education and information programs designed to promote Source Reduction, Recycling and composting in general as well as specific Waste Diversion strategies. Franchisee shall have a public education program in place by which it will distribute free educational information about Solid Waste management and Recycling to customers in their regular bills.

(a) *Waste Diversion Education.* Both City and Franchisee shall immediately undertake public outreach as approved by the City in writing to encourage customers to divert many types of wastes within Franchisee Provided Containers; education programs shall encourage a public perception of recycling that understands the re-use value of such material in the production of clean-burning fuels and alternative energy. Said education shall be, but not limited to, informational tags, education fliers, supportive "ataboy" and South Bay Business Environmental Coalition rewards programs for compliant customers, community broadcasts, community newsletters, billing inserts, etc., sent to every Single-Family Unit, and every Multi-Family Unit, Commercial and Industrial Unit subject to the mandates of AB 1826.

5.3.2 Implementation of Strategies and Penalties. The Franchisee shall implement the Diversion strategies jointly developed and agreed to by the Parties. If Franchisee's failure to perform its obligations under this Section 5.3 results in the imposition of penalties against the City pursuant to the provisions of any Refuse Impact Reduction Laws, Franchisee shall protect, defend with counsel approved by City, indemnify, and reimburse the City (including its officers, directors, employees and agents) for such fine or penalty within thirty (30) days of its imposition, subject to any limitations on such indemnification contained in Public Resources Code § 40059.1.

5.3.3 Waste Diversion Reporting Requirements. The Franchisee shall comply with the Waste Diversion reporting requirements established by the City. Franchisee shall provide City with regular written reports in a form acceptable to the City and adequate to meet City's reporting requirements to the CalRecycle on compliance with all Refuse Impact Reduction Laws, including a breakdown of the type and quantity of waste (by weight and volume) hauled

by Franchisee, generator type and program area, the type and quantity of Recyclable Materials, HHW/U-Waste/E-Waste (as may be inadvertently received by Franchisee), Organic Waste and Bulky Waste, and including a discussion of the quarterly Waste Diversion percentages achieved during the year. Franchisee shall report such information on a quarterly basis. Quarterly records will allow for reporting of seasonal variation in waste quantities and will assist in program operation, improvement and expansion.

5.3.4 Meet and Confer Process. If Franchisee fails to Divert the required amount of the City's Solid Waste, as described in this Agreement, Franchisee and City shall meet and confer in good faith to develop a revised or new Diversion program. If the City and Franchisee fail to agree on a revised or new Diversion program within ninety (90) days of commencing the meet and confer process (which date may be extended by mutual written agreement), notwithstanding anything to the contrary contained herein, City may elect, in its sole discretion, to terminate this Agreement on thirty (30) days written notice. Franchisee agrees to continue performance under this Agreement until City hires a new contractor.

5.4. Recycling Program.

5.4.1 Ownership of Solid Waste and Recyclable Materials. Except as otherwise provided by law, once Solid Waste, Refuse, Recyclable Materials and/or Organic Waste have been actually discarded by an Owner or Solid Waste generator in a Container, ownership transfers to Franchisee. Franchisee is thereby granted the right to retain, recycle, compost, dispose of and otherwise use such waste, or any part thereof, in any lawful fashion or for any lawful purpose desired by Franchisee. Subject to the Recycling Fee and provisions of this Agreement, and excepting any material which is not a Solid Waste and which was inadvertently or improperly discarded, Franchisee shall have the right to retain any benefit or profit resulting from its right to retain, recycle, compost, convert, dispose of or use the refuse which it collects, including, without limitation, the market value of all greenhouse gas (GHG) emissions, reduction, carbon, or renewable energy credits, offsets or similar benefits arising from the Solid Waste Handling activities undertaken by Franchisee pursuant to this Agreement. City shall have the right to report any such benefits as part of City's Climate Action Plan or similar plan, and Franchisee shall provide information requested by City for such reporting. Solid Waste and any other material which is disposed of at a Disposal Site or sites (whether landfill, transformation facility, transfer station or material recovery facility) shall, as between the City and Franchisee, remain the responsibility of the Franchisee, and Franchisee shall retain ownership of the same.

5.4.2 Franchisee As Sole Authorized Recycling Agent. City hereby designates Franchisee as the sole authorized Recycling agent for the purposes of conducting Recycling activities within the City for those Recyclables actually discarded by the generator. This designation is made pursuant to the terms of Public Resources Code § 40105. Notwithstanding the foregoing, Franchisee at all times shall be and remain independent from the City.

**ARTICLE VI
VEHICLES, EQUIPMENT AND PERSONNEL**

6.1. Vehicles.

6.1.1 General. Franchisee shall utilize a fleet of Collection vehicles sufficient in number and capacity to perform efficiently the work required by this Agreement in strict accordance with its terms. As of the Service Start Date, Franchisee's Collection vehicles will be new CNG-fueled collection vehicles. Franchisee agrees to maintain each piece of equipment used by it in good order and repair, and not more than three (3) years of age as of the Services Start Date. All vehicles shall be uniformly painted and fully equipped for efficient automated Collection. All vehicles shall be registered with the California Department of Motor Vehicles and shall meet or exceed all applicable State and local requirements, including State CARB standards. Each Collection vehicle shall also carry a fire extinguisher, first aid kit and a broom and shovel to be used for the immediate removal of any spilled material. All spilled material shall be immediately removed by Franchisee. Franchisee shall be responsible for the cost of repairing all damage to driveway approaches caused by Franchisee's vehicles.

(a) Franchisee has ordered two (2) electric truck chassis from the EV Company as part of the fleet it will use to perform the work required by this Agreement. Franchisee's goal is to have an all-electric fleet of Collection vehicles by July 1, 2023. Franchisee shall use Reasonable Business Efforts to meet this goal. However, as of the Service Start Date the EV Company does not currently offer a right-hand drive truck chassis, which is required for the side-loading vehicles in the Collection fleet, and the availability of a suitable all-electric truck chassis from another manufacture is neither known nor predictable at this time. If Franchisee is unable to reach the goal of an all-electric fleet of Collection vehicles through Reasonable Business Efforts, Franchisee shall utilize vehicles that contain the next gen CNG engine that is near-zero for emissions, or any other commercially available truck chassis with equal or lower emissions performance, such as a hybrid truck chassis. Notwithstanding the above, the City may require Franchisee to improve or upgrade Collection vehicles to incorporate the latest technology available to control environmental impacts of the work required by this Agreement; provided, however, that Franchisee shall not be required to perform any substantial upgrade relative to the original cost of the subject vehicle unless a reasonable period of time and fee structure is available under the Agreement to recover such investment.

(b) As of the Services Start Date, all Franchisee Collection vehicles will have GPS systems installed. All Collection vehicles will be fitted with up-to-date technology enabling drivers to access real-time routing and dispatch by wireless communication to Franchisee offices. Such modules and technology will be will be continuously updated so that routes and stops are sequenced to minimize vehicular miles traveled.

6.1.2 Truck Bodies. All truck bodies used by Franchisee shall be constructed of metal, shall be watertight and leak-proof and shall be so constructed as to prevent odors or the

falling, leaking or spilling of Solid Waste, Recyclables, or other materials. Franchisee shall maintain all trucks and equipment used within City in good mechanical condition and the same shall be clean and uniformly painted and numbered. All trucks and equipment shall have painted thereon, or affixed thereto, in letters and numbers at least six (6) inches in height, the name and telephone number of Franchisee, which name and telephone shall be clearly visible at all times. Each vehicle utilized by Franchisee shall be identified by numerals at least six (6) inches in height in a location or locations on such vehicles to be specified by City. A list showing each vehicle so identified shall be made available to City and maintained in the current status by Franchisee and, upon notice given by City, Franchisee shall make the equipment available for inspection. If City finds that any truck or equipment being used by Franchisee is not in satisfactory condition then the truck or equipment requiring correction of defects shall not be used by Franchisee in the performance of the Agreement until corrected to the reasonable satisfaction of City. In addition, if Franchisee's trucks are inspected by any other public agencies, copies of any inspection report shall be made available to the City upon request.

6.1.3 Backup Alarm. Each vehicle used for collecting, hauling or disposing of Solid Waste and/or Recyclables shall be equipped with an audible warning device that is activated when the vehicle is backing up.

6.1.4 Gross Vehicle-Weight Limit. No vehicle used for collecting, hauling or disposing of Solid Waste and/or Recyclables shall be loaded in excess of the manufacturer's gross vehicle weight rating or in excess of the maximum weight specified by the California Vehicle Code, whichever is less. Evidence of the manufacturer's name and gross vehicle weight rating shall be maintained in, or upon, every vehicle.

6.1.5 Preventive Maintenance and Repair Program. Within thirty (30) days of the Effective Date of this Agreement, Franchisee shall have implemented a complete and comprehensive preventive maintenance and repair program, or if such repair program has already been implemented, Franchisee shall continue its performance thereof. Franchisee shall provide a copy of its preventative maintenance program to City for its review and approval, or if such a program has already been approved by the City, Franchisee shall notify the City of any updates to the program for City approval. Franchisee shall perform all scheduled maintenance functions in accordance with the manufacturer's specifications and schedule and shall inspect each vehicle daily to ensure that all equipment is in good working order. Franchisee shall keep accurate records of all vehicle maintenance and repairs, recorded according to date and mileage, nature of maintenance or repair and the signature of a maintenance supervisor or mechanic that the maintenance or repair has been properly performed. Franchisee shall make such maintenance records available to City on request.

6.1.6 Vehicle Cleaning. Vehicles in use shall be washed completely at least once a week and steam-cleaned on a regular basis so as to present a clean appearance and minimize odors, but in no event less than once a month.

6.1.7 Vehicle Storage. No vehicle used by Franchisee in performance of this Agreement shall be stored on any public street or other public property in the City, except as may be permitted under the City Yard Lease. All Franchisee's vehicles if kept within the boundaries of the City shall at all times when not in use be kept on property of the proper zone either within

a building or fenced yard, or at 2400 E. Dominguez Street, Carson, California (comprised of APN No. 7316-026-900).

6.2. Container Condition. Franchisee, at its sole cost and expense, shall maintain all Franchisee Provided Containers in good condition and repair as needed and shall clean and/or paint all Franchisee Provided Bins and Roll-offs annually. More frequent cleaning and painting shall be conducted by Franchisee if needed or as otherwise specified, and can be charged to the Customer per the rates set forth in **Exhibit A**. Franchisee shall, at no charge, replace any Franchisee Provided Containers that become unusable by reason of normal conditions of wear and tear. If damages occur to a Franchisee Provided Container necessitating repair or replacement, and if said damages were incurred as a direct result of Customer negligence, the Customer may be liable for such costs and/or replacement of the Container. During all times that a Franchisee Provided Container is in the custody and control of Franchisee, Franchisee shall not store such Container in or on public streets or rights-of-way.

6.2.1 Franchisee Provided Containers that have graffiti on them must be (i) removed and replaced, or (ii) cleaned of all graffiti, or (iii) repainted to a like-new appearance within two (2) business days of Franchisee reasonably becoming aware of such graffiti.

6.2.2 Any addresses, name, company or other identifiers on Franchisee Provided Containers shall be neatly stenciled on, or adhered to, the Containers.

6.2.3 If new laws or regulations relating to composting are enacted such that additional receptacles are required to be provided to Customers for purposes of complying with the composting program, Franchisee will supply appropriate Franchisee Provided Carts or Bins at no additional cost to meet new State mandates.

6.2.4 Upon request by a Cart Customer, Franchisee shall provide steam cleaning services of Franchisee Provided Carts once per year at no cost to the City or Customer. Franchisee shall provide additional steam cleaning services for Carts at such charge as adopted in Franchisee's Maximum Rate Schedule (**Exhibit A**).

6.2.5 All Containers dedicated to the Collection of Organic Waste that includes commingled Food Waste shall be exchanged for a fresh Containers after each Collection.

6.2.6 All Containers dedicated to a single Collection stream shall clearly indicate the appropriate materials to be disposed in such Container. If such instructions are placed on the Container by paint or decal, such paint or decal shall be maintained by Franchisee in an attractive, and well-adhered condition.

6.3. Inspection.

6.3.1 City Inspections. Franchisee shall give the City at least fifteen (15) days prior written notice of any vehicle inspection to be performed by the California Highway Patrol ("CHP") and the City may elect to observe the CHP inspection. Without limiting the City's right to observe the CHP inspections, City reserves the right to cause any vehicle used in performance of this Agreement to be inspected and tested at any commercially reasonable time and in such manner as may be appropriate to determine that the vehicle is being maintained in compliance

with the provisions of the City of Carson Municipal Code and the State Vehicle Code, including but not limited to California Vehicle Code §§ 27000(b), 23114, 23115, 42030, 42032, and all Vehicle Code Sections regarding smog equipment requirements. City may direct the removal of any vehicle from service if that vehicle is found to be in nonconformance with applicable codes. No vehicle directed to be removed from service shall be returned to service until it conforms with applicable codes and such conformance has been acknowledged by City. The City may elect in its sole discretion to hire an independent contractor to perform a comprehensive inspection of Franchisee's vehicles. If the City hires an independent contractor to perform the inspection on behalf of the City the Franchisee shall pay for the cost of such inspection. City shall act prudently in requesting any such inspection.

6.3.2 Brake Inspections. The brake system of each vehicle used in performance of this Agreement shall be inspected bi-annually by the CHP and shall comply with State law. Notice of certification shall be filed with the City within thirty (30) days after each such certification. Failure to submit the required certification shall be grounds for terminating this Agreement.

6.3.3 Correction of Defects. Following any inspection, the City Manager shall have the right to reasonably require Franchisee to take out of service any vehicles and equipment not in good working order and cause Franchisee to recondition or replace any vehicle or equipment found to be unsafe, unsanitary or unsightly within thirty (30) days of notification of defect in such vehicle or equipment. The City Manager's determination may be appealed to the City Council.

6.4. Personnel.

6.4.1 General. Franchisee shall furnish such qualified drivers, mechanical, supervisory, clerical and other personnel as may be necessary to provide the services required by this Agreement in a courteous, safe and efficient manner. Franchisee shall keep itself fully informed of existing and future State and Federal laws, rules and regulations rules and orders in any manner affecting those engaged and employed in or on the work contemplated herein or in any way affecting the conduct of that work and of all orders or decrees of bodies of officials having jurisdiction or authority over the same, and shall, at all times, observe and comply with and cause any and all persons employed by Franchisee or under Franchisee cause to observe and comply with all such laws, ordinances, rules, regulations, orders and decrees. Franchisee and any subcontractors and/or employees under Franchisee shall comply with and be governed by the law of the State of California having to do with working hours as set forth in the Labor Code of the State of California, as the same may be amended from time to time.

6.4.2 Driver Qualifications. All drivers shall be trained and qualified in the operation of Collection vehicles and must have in effect a valid license, of the appropriate class, issued by the California Department of Motor Vehicles.

6.4.3 Uniforms and Identification Badges. Franchisee shall require its drivers and all other Collection personnel to wear a suitable and appropriate uniform as a means of identifying the employee. All other employees of Franchisee who come into contact with the public shall carry suitable identification badges or cards upon their person.

6.4.4 Employee Appearance and Conduct. All employees, while engaged in the Collection of Solid Waste and/or Recyclables within the City or otherwise engaged in services described in this Agreement, shall be attired in uniform. At least one member of every Collection truck crew shall be able to read and speak English. Franchisee shall use its best efforts to assure that all employees present a neat appearance and conduct themselves in a courteous manner. Franchisee shall regularly train its employees in customer courtesy, shall prohibit the use of loud or profane language, and shall instruct Collection crews to perform the work as quietly as possible. If any employee is found not to be courteous or not to be performing services in the manner required by this Agreement, Franchisee shall take all appropriate corrective measures.

6.4.5 Safety Training. Franchisee shall provide suitable operational and safety training for all its employees who use or operate vehicles or equipment for Collection of Solid Waste or who are otherwise directly involved in such Collection. Franchisee shall train its employees involved in Solid Waste and/or Recycling Collection to identify, and not to collect, Hazardous Wastes. Franchisee and its employees shall comply with the terms of all contracts between the Los Angeles County Department of Public Works and any Disposal Site that is used by Franchisee.

6.4.6 Safety. All work performed pursuant to this Agreement shall be performed in a manner that provides safety to the public and meets or exceeds safety standards outlined by the California Construction Safety Orders under the State of California Code of Regulations ("CAL-OSHA"). City reserves the right to issue restraint or cease and desist orders to Franchisee when unsafe or harmful acts are observed or reported to City. Franchisee shall instruct its employees to report immediately any hazardous conditions or Hazardous Wastes they observe within the City during the course of their work to the City.

6.4.7 No Gratuities. Franchisee shall not permit its employees or subcontractors to demand or solicit, directly or indirectly, any additional compensation or gratuity from members of the public for the work performed by those employees or subcontractors pursuant to this Agreement.

6.4.8 Notice of Labor Disputes. Franchisee shall advise City in writing at the time any negotiations are undertaken between Franchisee and its employees relating to the wages and benefits and Franchisee shall report the status of said negotiations from time to time including any pending strike, lock out, walkout, boycott or other labor dispute.

ARTICLE VII FRANCHISEE'S COMPENSATION

7.1. Maximum Rate Schedule. In the attached **Exhibit A**, which is incorporated herein by this reference ("Maximum Rate Schedule"), the City has established the maximum service rates which may be charged by Franchisee to its Customers in the City. The Maximum Rate Schedule will go into effect on Services Start Date, and shall be the Maximum Rate Schedule in effect as of the Services Start Date. Franchisee may establish such rates and charges Franchisee believes are appropriate in the marketplace, provided such rates and charges do not exceed the maximum rates set forth in the Maximum Rate Schedule. Franchisee shall not

receive any other fees or compensation for the services to be performed pursuant to this Agreement in excess of those provided in the Maximum Rate Schedule unless until such additional fees or compensation have been duly noticed and subjected to a public hearing process in accordance with Proposition 218.

7.2. Adjustments to Maximum Rate Schedule.

7.2.1 General. Franchisee acknowledges that under current law, increases in the Maximum Rate Schedule are subject to the substantive and procedural requirements of Proposition 218. During the Term, the City and Franchisee may mutually agree to adjustments or increases to the Maximum Rate Schedule, subject to the provisions and requirements of Proposition 218. Any increases in the Maximum Rate Schedule are strictly subject to the assent of the City and compliance with Proposition 218 as provided in Section 7.3.

7.2.2 COLA Adjustments; Government Code § 53756. Subject to the requirements of Proposition 218 and this Agreement, the Maximum Rate Schedule may be adjusted to account for annual inflationary increases to all regular, weekly service rates for both Single-Family Residential Units and Commercial and Industrial Units in an amount equal to the annual percent change in the CPI. This adjustment (the "COLA Adjustment") shall be made each July 1st and shall be equal to the percentage change in CPI-U for the year that ended the immediately preceding March 31 for Los Angeles-Riverside-Orange counties, base year 1967. The COLA Adjustment calculation is [current rate X (1 + the percentage change in CPI-U) = new rate]. Notwithstanding the above, the COLA Adjustment to the Maximum Rate Schedule shall be subject to the following requirements:

(a) The COLA Adjustment may take effect only after it has been adopted and passed pursuant to a Proposition 218 hearing and/or protest process. The COLA Adjustment shall be enacted consistent with Government Code § 53756, such that no prior approval of a COLA Adjustment may exceed a period of five (5) years.

(b) Commencing from the date of adoption for any COLA Adjustment, such adjustments shall continue automatically on a year-to-year basis for a period not to exceed five (5) years after the date such adjustments were adopted in accordance with Proposition 218.

(c) At the end of the five-year period, there shall be no further CPI escalations or other automatic adjustments to the Maximum Rate Schedule unless or until further automatic adjustments are adopted through a subsequent Proposition 218 process as required by Government Code § 53756.

(d) Notwithstanding any other provision hereof, there shall be no COLA Adjustment for period of three (3) years following the Services Start Date. Upon the expiration of such three-year period, the COLA Adjustment shall be applied for a period of two (2) years thereafter (or up-to July 1, 2023). After July 1, 2023, any further automatic rate adjustments must be processed in accordance with the terms of this Agreement and Government Code § 53756.

7.2.3 Increases for Cost Pass-Throughs. Subject to adoption in accordance with Proposition 218 and this Agreement, the Maximum Rate Schedule (**Exhibit A**) shall be adjusted to account for Franchisee's increased costs during the Term such that cost increases shall be "passed-through" to Franchisee's customers in the form of service rate adjustments ("Pass-Through Adjustments"). Such costs that shall be passed-through include, without limitation:

(a) The cost of paying the Franchise Fee;

(b) Cost increases (i.e., on any direct or indirect cost, whether fixed or variable) associated with an increase in the level of Franchisee's Solid Waste or Recyclables handling services, including new programs or services, increases in tipping fees, which may be required of, or agreed to by, Franchisee, or;

(c) Increased actual costs due to changes in law or legal requirements imposed upon Franchisee.

These Pass-Through Adjustments may be adopted through a Proposition 218 process any time after the Services Start Date. Pass-Through Adjustments, however, may not be increased automatically each year, but shall remain at *status quo* unless and until another Proposition 218 process is undertaken to increase Pass-Throughs again as needed to cover actual cost increases to be incurred by Franchisee. (*See, Government Code § 53756, which only extends automatic increases for inflationary adjustments.*) Franchisee agrees to notify City in writing of any expected cost increases that could result in a Pass-Through Adjustment, and Franchisee shall use Reasonable Commercial Efforts to utilize any alternate action (including, as appropriate, a change to using a Disposal Site with lower Disposal Fees) to the extent reasonably feasible to avoid passing-on cost increases to Franchisee's customers.

7.2.4 Purpose of Adjustments. The rates and rate adjustment provisions contemplated by this Agreement are calculated (1) to provide Franchisee with the means to fund Diversion efforts, (2) to pay certain other costs and expenses, including fuel costs, that are of a contingent and uncertain nature, along with a commercially reasonable profit and (3) assume, to a limited degree, a certain amount of revenue from the recovery of Recyclable Materials. The parties recognize further that recycling markets, along with fuel costs, will likely fluctuate throughout the Term. Accordingly, the parties understand and agree that while Franchisee will remain obligated to maximize Waste Diversion and identify and pursue opportunities to market the Recyclable Materials it recovers, Franchisee cannot influence or dictate fuel prices or the availability or adequacy of markets for Recyclable Materials, including beverage containers, and that a future fuel cost increase, or decline in revenue from the sale of Recyclable Materials may, depending upon the scale of that increase or decline, justify a cost pass-through in accordance with this Paragraph 7.2.3.

7.3. Proposition 218 Process for Adjustments to Maximum Rate Schedule.

7.3.1 Compliance with Proposition 218 Required; Timeframes. Further adjustments and/or increases to the Maximum Rate Schedule in addition to those identified in Section 7.2, above, are strictly subject to the assent of the City and compliance with Proposition 218. The City intends to comply with all applicable laws, including without limitation

Proposition 218, concerning the setting of adjustments to the Maximum Rate Schedule under this Agreement. Franchisee shall pay up to and not exceeding Fifteen Thousand Dollars (\$15,000.00) for the administration of Proposition 218 compliance, including the costs of public noticing.

(a) *Preliminary Meeting Re Proposed Rate Adjustments.* At a minimum, the City and Franchisee will meet at least once per year in March to discuss potential rate adjustments (increases or decreases) and the justifications therefor. Such meetings will be conducted between Franchisee and the City Manager or his/her designee. Franchisee represents that as of the Services Start Date the Customer rates and/or the Maximum Rates shall be competitive with the rates charged for similar services to Residential and Commercial and Industrial customers in the local area.

(b) *Timing/Notice to City of Rate Adjustment Requests.* For any rate adjustment subject to a Proposition 218 majority hearing process, Franchisee hereby acknowledges that it typically takes 75-90 days to process an adjustment through Proposition 218. Therefore, Franchisee shall provide the City written notice of a requested rate adjustment, with the specific proposed new rates, at least 120 days the date such adjusted rates are contemplated to take effect.

7.3.2 Indemnification. Franchisee shall indemnify, defend and hold harmless the City, their officers, employees, agents and volunteers, (collectively, indemnitees) from and against all claims, damages, injuries, losses, costs, including demands, debts, liens, liabilities, causes of action, suits, legal or administrative proceedings, interest fines, charges, penalties and expenses (including attorneys' and expert witness fees, expenditures for investigation, and administration) and costs or losses of any kind whatsoever paid, imposed upon, endured or suffered by or assessed against Franchisee or any of the indemnitees resulting in any form from the City's establishing maximum rates for service under this Agreement or in connection with the application of California Constitution Article XIII C and Article XIII D to the imposition, payment or Collection of rates and fees for services provided by Franchisee under this Agreement. Notwithstanding the foregoing, this indemnity shall not extend to any portion of the rates that is not associated with Franchisee's costs in providing service, such as governmental fees, franchise fees or charges, nor shall it apply to any loss arising directly from the negligence of City, its officers and employees. Nothing herein is intended to imply that California Constitution Articles XIII C or XIII D, apply to the setting of rates for the services provided under this Agreement; rather this Section is provided merely to allocate risk of loss as between the Parties.

7.3.3 Notice of Increases to Ratepayers. Franchisee shall give prompt written notice of any duly-adopted rate increases to all customers, which notice shall inform customers of the exact date on which the increase becomes effective. These notices shall be provided on the Franchisee's publicly-accessible website and shall also be included in those billing invoices mailed out at a time in conformance with Government Code § 53756.

7.3.4 Rate Increase Not Automatic. While City reserves all powers afforded to cities generally under the provisions of applicable law, this Agreement, including the rate

adjustment elements hereof, has been agreed to by the parties following arms-length negotiations and upon advice of counsel, for the dual purposes of safeguarding public health and facilitating the performance of obligations undertaken by Franchisee on City's behalf and for its benefit. Accordingly, while this Agreement does not require City's approval of a Maximum Rate Schedule adjustment in every case, it does contemplate that City will exercise its powers reasonably and in good faith, and shall favorably consider and shall accord proper weight to a Maximum Rate Schedule proposal if accompanied by substantial supporting evidence. In no case will City's failure to approve any specific Maximum Rate Schedule adjustment be a default hereunder, and City bears no liability to Franchisee for any damages suffered by Franchisee as a result of the failure to pass new Maximum Rate Schedules or adjustments thereto. Accordingly, the City Council is completely free within its police powers to exercise its discretion in considering such matters, and the City has not contracted away any of its police powers or duties to protect the public health, safety or general welfare of its citizens pursuant to State and Federal law.

7.3.5 Rate Studies. The City shall at its option, have the right but not the obligation, to conduct, or retain a consultant to conduct, a Proposition 218 rate study once every three (3) years to review the Maximum Rate Schedule's substantive compliance with the requirements of Proposition 218. Franchisee shall reimburse City up to, but not exceeding, Fifty Thousand Dollars (\$50,000.00) for the cost actually incurred and paid for the rate study.

7.4. Billing. All Commercial and Industrial Unit accounts shall be directly billed by Franchisee monthly. Billing and Collection for service may be done on a monthly basis in advance of service, providing the due date of said bill is not more than sixty-five (65) days prior to the end of the billing cycle where service is being provided. Franchisee shall refund any portion of charge for service which is not provided within ten (10) days of cancellation of service.

7.4.1 Default service levels for Single-Family Residential accounts shall be billed via enrollment on annual property tax rolls. In accordance with County property tax protocols, all account bills to be enrolled onto property taxes are due to the County by August 1 each year. Such enrollment also requires City Council action.

7.4.2 Enrollment upon the tax rolls only applies to "default" or basic level Collection services to Single-Family accounts. Additional Carts, Bins, temporary Containers, and special, non-regular services that vary from month-to-month may be directly billed to Single-Family accounts by Franchisee on a monthly basis.

7.4.3 Franchisee shall provide monthly statements to residential and commercial customers upon request by the customers. Franchisee is responsible for bad debt.

7.5. Delinquent Accounts.

7.5.1 Residential Units. Franchisee shall provide at least three (3) monthly, written notices of delinquency/past-due account status to the occupants and/or owner of any Residential Unit with a delinquent account for items that are directly billed to the Residence (as opposed to bills enrolled on property tax rolls). Franchisee shall otherwise make diligent efforts

to resolve said account delinquencies, including but not limited to the reasonable use of a collection agency. Further, Franchisee shall be entitled to collect all applicable fees and late charges set forth in the Maximum Rate Schedule (**Exhibit A**). After three (3) months of delinquency on any account, Franchisee will take prompt action in the exercise of all Reasonable Business Efforts to collect on the account in a manner that does not unreasonably prolong the Collection process. Franchisee shall also be entitled to utilize any remedies or lien procedures available to it for the Collection of delinquent accounts as provided in the City of Carson Municipal Code, as such may be amended from time to time.

7.5.2 Industrial and Commercial Unit Accounts. City may permit Franchisee to discontinue service to Commercial and Industrial Units whose accounts are more than ninety (90) days past due. Franchisee shall be entitled to collect late charges at the rate of 1.5% per month and, in addition, to charge a reasonable rate for the redelivery of Franchisee Provided Containers. Franchisee shall also be entitled to utilize any remedies or lien procedures available to it for the collection of delinquent accounts as provided in the City of Carson Municipal Code, as such may be amended from time to time.

7.5.3 No Waiver of City Remedies to Address Public Nuisance. Should Franchisee terminate service to any Customer in the City, nothing herein waives or supersedes the City's rights to initiate code enforcement action(s) in response to the build-up, long-term stagnation, or misplacement of Solid Waste as a result of said termination of Franchisee's service. In addition, the City and Franchisee shall, at the option of either party, meet and confer in good faith to resolve any matters of public nuisance or Solid Waste build-up that resulted from a termination of service by Franchisee.

7.6. City's Payment To Franchisee For Residential Solid Waste Collection. *To be completed via staff and WRI invoicing process.*

ARTICLE VIII ACCOUNTING AND RECORDS.

8.1. Recordkeeping. Franchisee shall maintain records required to conduct its operations, to support requests it may make to City, and to respond to requests from City in the conduct of City business. Adequate record security shall be maintained to preserve records from events that can be reasonably anticipated such as a fire, theft and earthquake. Electronically maintained data/records shall be protected and backed up. All records shall be maintained for five (5) years, and shall continue to be available for five (5) years after the expiration of this Agreement. After minimum holding periods are met, Franchisee will notify City 90 days before destroying records.

(a) *Related Operations and Account Histories.* Franchisee agrees that the records of any and all companies conducting operations addressed in the Agreement shall be provided or made available to City and its official representatives during normal business hours. Account histories shall be accessible to the City by computer for a minimum of five (5) years. City may review or utilize any of the records described in this Section for any purpose whatsoever.

(b) *Contract-Related Records.* Franchisee understands and agrees that it shall keep full and complete books, records and accounts of all financial transactions with respect to this Agreement. All such books, records and accounts shall be maintained for a minimum of five (5) years from and after the end of the fiscal year in which any such books, records and accounts are created. Records subject to this Section shall include paper, electronic, magnetic or other media including, but not limited to, records of recovered materials, marketing records, cash register records of purchases of source separated Recyclables, and video tape recordings of Franchisee operations, vehicular registration and maintenance records, complaint logs, the log of uncollected materials, personnel files, customer correspondence and other correspondence, etc.

(c) *Financial Records.* Financial records shall be maintained and expense and revenue information for City shall be segregated from other areas served by Franchisee. Where the allocation of expenses or revenues to various categories of customers is required to develop equitable rates that reflect the cost of service, Franchisee shall segregate such expenses and revenues. Franchisee shall maintain at least the following records:

(1) Audited financial statements for Franchisee or, if a guarantee was provided, for the parent company guarantor as a whole;

(2) Financial statements (compiled, reviewed or audited) of revenue and expense for this Agreement segregated from the other operations of Franchisee (including without limitation those operations of Franchisee in City and surrounding jurisdictions which are not covered by this Agreement), including a description of segregation methodology; and

(3) Complete descriptions of related party transactions (corporate and/or regional management fees, inter-company profits from transfer, processing or Disposal operations).

(d) *Solid Waste Records.* Records shall be maintained by Franchisee for City relating to:

(1) Customer services and billing;

(2) Route audits and maps;

(3) Tons Collected, processed, diverted and disposed by waste stream (Refuse, Recycling, Organic Waste), by customer type (Cart, Bin, Roll-Off, etc.) and Facilities (Transfer Station, MRF, Transformation Facility, landfill or others) where such material was taken;

(4) Bulky Waste and C&D Materials (with separate line items to be included for temporary and regular Bin and Roll-Off services), Collection and Diversion results including tons disposed;

- (5) Annual cleanup event results, including tons disposed and Diverted;
- (6) Facilities, equipment and personnel used;
- (7) Facilities and equipment operations, inventories, maintenance and repair;
- (8) Number of Refuse, Recycling and Organic Waste Franchisee provided containers in service;
- (9) Complaints; and,
- (10) Missed pickups.
- (11) Records for all other programs including, but not limited to, public education, Bulky Waste programs, City Facilities and Events, illegal dumping and scavenging programs, and customer outreach activities, amongst any other program identified herein. These records shall be tailored to specific needs of the program at issue. In general, the records shall include: (i) Plans, tasks, and milestones; and (ii) Accomplishments in terms such as dates, activities conducted, quantities of products used, produced or distributed, and numbers of participants and responses.

Franchisee shall maintain copies of billings, service and Collection records and receipts relating to Franchisee's services under this Agreement, each in chronological order, for a period of five (5) years after the date of service for inspection by City upon request. Franchisee may, at its option, maintain those records in computer form, on microfiche, or in any other manner, provided that the records can be preserved and retrieved for inspection and verification in a timely manner, are sufficient to verify accuracy of Franchise Fees owed to the City, and may be produced in a form and manner sufficient to establish the existence of customer obligations in a court of competent jurisdiction.

8.2. Right to Annually Conduct Audit. The City may annually, at City's option, request the Franchisee's audited financial reports/statements (or parent company, if parent company submits Corporate Guaranty of Performance), and Franchisee's internally prepared supplemental statement of income and expenses related specifically to City of Carson operations, for up to the most recently completed last two fiscal years not previously reviewed by the City in connection with a proposed rate adjustment, rate audit, billing audit, Franchise Fee audit, or verification of other information required under this Agreement. The financial statements and footnotes shall be prepared in accordance with Generally Accepted Accounting Principles (GAAP) and audited, in accordance with Generally Accepted Auditing Standards (GAAS) by a certified public accountant (CPA) licensed (in good standing) to practice public accounting in the State of California as determined by the State of California Department of Consumer Affairs Board of Accountancy.

8.2.1 City Audit of Records. City shall have the right to conduct a contract compliance audit at any time, and City anticipates that such audit shall be performed not less than once every two years for purposes of reviewing and ensuring Franchisee's compliance with all terms of this Agreement. In addition to any records to be retained and available for inspection under this Article 8, the audit may request review or copying of financial statements maintained by Franchisee, which may include, without limitation, comparative balance sheets, comparative operating statements, statements of changes in investments in property and equipment, statements of source and application of funds, and a statement of any changes in Franchisee's equity, in which shall be set forth the names of principal officers and stockholders of the corporation, income statements for local hauling operations, profit/loss statements for local hauling operations, any other documents that may reasonably be requested by City or its auditor.

(a) *Cost of Audit*. The cost for preparation of the financial statements, and the reimbursement of the City's contract compliance audit costs shall be borne by Franchisee as a direct cost of service. In addition, Franchisee shall provide to City the supplemental schedule on a compiled basis showing Franchisee's results of operations, including the specific revenues and expenses in connection with the operations provided for in this Agreement, separated from others included in such financial statements.

(b) *Working Papers*. At City's request, Franchisee shall provide City with copies of working papers or other documentation deemed relevant to the audit by City or relating to information shown in the disclosure letter. The disclosure letter shall be provided to City.

(c) *Payments and Refunds*. Should the performance of an audit by the City disclose that the Franchise Fees payable by the Franchisee was underpaid or that customers were overcharged for the period under review, Franchisee shall pay to City any underpayments of the Franchise Fee and/or refund to Franchisee's customers any overcharges. Should the performance of an audit by the City disclose that Franchise Fees were overpaid, City shall promptly refund to Franchisee the amount of the overpayment.

8.3. CERCLA Defense Records. City views the ability to defend against the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) and related litigation as a matter of great importance. For this reason, the City regards the ability to prove where Solid Waste Collected in the City was taken for disposal, as well as where it was not taken, to be matters of concern. Franchisee shall maintain data retention and preservation systems which can establish where Solid Waste Collected in the City was landfilled (and therefore establish where it was not landfilled) and provide a copy or summary of the reports required in Section 8.3 for five (5) years after the term during which Collection services are to be provided pursuant to this Agreement, or to provide copies of such records to City. Franchisee agrees to notify City's Risk Manager and City Attorney before destroying such records and to offer records to the City. This provision shall survive the expiration of the period during which Collection services are to be provided under this Agreement.

**ARTICLE IX
ENFORCEMENT OF AGREEMENT.**

9.1. City Right to Terminate. The City shall have the right to terminate Franchisee's franchise and this Agreement upon Franchisee's material breach of this Agreement. The City's right to terminate shall be in addition to any other remedy provided in this Agreement or provided by law and shall include, but not be limited to, any of the events of default set forth in this Article IX. In addition, specific events of default by Franchisee include, without limitation, the following:

(a) If Franchisee practices, or attempts to practice, any fraud or deceit upon the City.

(b) Should the Franchisee or any of its officers, directors, shareholders (who have been active in the business of Franchisee), or employees be found guilty of felonious conduct, illegal transport or disposal of Hazardous Waste, or bribery of public officials, the City reserves the unilateral right to terminate this Agreement should they not be removed from their position upon conviction, or to impose such other sanctions (which may include financial sanctions, temporary suspensions or any other condition deemed appropriate short of termination) as it shall deem proper under the circumstances. The term "felonious conduct" shall mean a felony that in the City's determination has the potential of endangering the public or affecting Franchisee's ability to perform this Agreement (e.g., identity theft). The term "found guilty" shall be deemed to include any judicial determination of guilt including, but not limited to, pleas of "guilty", "nolo contendere", "no contest" or "guilty to a lesser charge" entered as part of a plea bargain. This Section is not intended, and shall not be interpreted, to require that Franchisee terminate any current employee who may, as of the Effective Date, have a criminal record.

(c) If Franchisee fails to provide or maintain in full force and effect the workers' compensation or any other insurance coverage or performance bond required by this Agreement.

(d) If Franchisee willfully violates any orders or rulings of any regulatory body having jurisdiction over Franchisee, provided that Franchisee may reasonably contest any such orders or rulings by appropriate proceeding conducted in good faith, in which case no breach of this Agreement shall be deemed to have occurred.

(e) If Franchisee fails to make any payments or to pay any penalties required to be made or paid by Franchisee pursuant to this Agreement. This includes the failure to pay the administrative fee set forth in Section 3.3.3 hereof.

(f) If Franchisee for any reason ceases to provide Solid Waste and/or Recycling management services required under this Agreement over all or a substantial portion of its franchise area for a period of thirty (30) days.

(g) If Franchisee violates the terms, conditions or requirements of the City of Carson Municipal Code or Refuse Impact Reduction Laws or successor legislation, as they may be amended from time to time or violates any order, directive, rule or regulation issued pursuant to the foregoing legislation, where the violation is not remedied within the time set in the written notice of the violation.

(h) If Franchisee refuses to provide City with required information, financial statements, report or test results in a timely manner as required by this Agreement.

(i) If Franchisee becomes insolvent, unable or unwilling to pay its debts, or upon the appointment of a receiver to take possession of all or substantially all of the assets of Franchisee, or upon a general assignment by Franchisee for the benefit of creditors, or upon any action taken by or suffered by Franchisee under any insolvency or bankruptcy act.

(j) If Franchisee fails to meet the Diversion requirements of this Agreement or Refuse Impact Reduction Laws.

(k) If Franchisee should persistently and repeatedly refuse or should fail to supply enough properly skilled workers or proper materials or equipment for the Collection and disposal of Solid Waste from City in a good and workmanlike manner, or fail to make prompt payment for materials, equipment or labor, or fail to make any payment to City when due, or persistently disregard laws, ordinances, or the instructions of City or its duly authorized representatives, or otherwise to be in substantial violation of any provision of the Agreement.

(l) If Franchisee should persistently and repeatedly fail to perform its services hereunder in a professional and workmanlike manner as required by the performance standards set forth herein, or if Franchisee's conduct of its services under this Agreement should result in a recurrent or persistent condition of public nuisance or threat to public health and safety.

(m) If Franchisee fails to make reasonable efforts to process, market and sell Recyclables.

(n) If Franchisee should commit an uncured default of the City Yard Lease. In the event that the City, following a hearing on a Default, determines to terminate this Agreement as a remedy for such default, such determination shall concurrently cause termination of the City Yard Lease, and vice versa, except as the City shall otherwise direct by resolution.

9.2. Rights of Nondefaulting Party after Default. The Parties acknowledge that both Parties shall have hereunder all legal and equitable remedies as provided by law following the occurrence of a default or to enforce any covenant or agreement herein. Before this Agreement may be terminated or action may be taken to obtain judicial relief the Party seeking relief for a default ("Non-defaulting Party") shall comply with the notice and cure provisions below.

9.3. Notice of Default and Opportunity to Cure. A Non-defaulting Party in its discretion may elect to declare a default under this Agreement in accordance with the procedures hereinafter set forth for any failure or breach of the other Party ("Defaulting Party") in its performance of a material duty or obligation of said Defaulting Party under the terms of this Agreement. However, the Non-defaulting Party must provide written notice to the Defaulting Party setting forth the nature of the breach or failure and the actions, if any, required by Defaulting Party to cure such breach or failure ("Default Notice"). The Defaulting Party shall be deemed in "default" under this Agreement, where: (i) said breach or failure can be cured, but the Defaulting Party has failed to fully cure within thirty (30) days after the date of the Default Notice (subject to the provisions below), or (ii) a monetary default remains uncured for ten (10) days (or such lesser time as may be specifically provided in this Agreement).

9.4. Non-Monetary Defaults; Longer Cure Period. The Defaulting Party on a non-monetary default shall not be deemed in breach of this Agreement, and such default shall be waived, if such non-monetary default cannot reasonably be cured within the above-prescribed thirty-day period, and as long as the Defaulting Party does each of the following:

- (a) Notifies the Non-defaulting Party in writing with a reasonable explanation as to the reasons the asserted default is not curable within the thirty (30) day period;
- (b) Notifies the Non-defaulting Party of the Defaulting Party's proposed cause of action to cure the default;
- (c) Promptly commences to cure the default within the thirty (30) day period;
- (d) Makes periodic reports to the Non-defaulting Party as to the progress of the program of cure; and
- (e) Diligently prosecutes such cure to completion.

9.5. Termination Upon Default. Upon receiving a Default Notice, should the Defaulting Party fail to timely cure any default, or fail to diligently pursue such cure as prescribed above, the Non-defaulting Party may, in its discretion, provide the Defaulting Party with a written notice of intent to terminate this Agreement and other Agreements ("Termination Notice"). The Termination Notice shall state that the Non-defaulting Party will elect to terminate this Agreement and will describe the evidence upon which the decision to terminate is based. Once the Termination Notice has been issued, the Non-defaulting Party's election to terminate this Agreement will only be waived if (i) the Defaulting Party fully and completely cures all defaults prior to the date of termination.

9.6. Franchisee Hearing Opportunity Prior to Termination. If Franchisee is the Defaulting Party, then the City's Termination Notice to Franchisee shall additionally specify that Franchisee has the right to a hearing prior to the City's termination of the Agreement ("Termination Hearing"). The Termination Hearing shall be scheduled as an open public hearing item at a regularly-scheduled City Council meeting within thirty (30) days of the Termination Notice, subject to any legal requirements including but not limited to the Ralph M. Brown Act,

Government Code Sections 54950-54963. At said Termination Hearing, Franchisee shall have the right to present evidence to demonstrate that it is not in default and to rebut any evidence presented in favor of termination. Based upon substantial evidence presented at the Termination Hearing, the Council may, by adopted resolution, act as follow:

- (a) Decide to terminate this Agreement; or
- (b) Determine that Franchisee is innocent of a default and, accordingly, dismiss the Termination Notice and any charges of default; or
- (c) Impose conditions on a finding of default and a time for cure, such that Franchisee's fulfillment of said conditions will waive or cure any default.

Findings of a default or a conditional default must be based upon substantial evidence supporting the following two findings: (i) that a default in fact occurred and has continued to exist without timely cure, and (ii) that such default has, or will, cause a material breach of this Agreement and/or a substantial negative impact upon public health, safety and welfare, the environment, the City or the financial terms established in this Agreement.

9.7. Interest on Monetary Default. In the event Franchisee fails to perform any monetary obligation under this Agreement, Franchisee shall pay interest thereon at the rate of ten percent (10.0%) per annum from and after the due date of said monetary obligation until payment is actually received by City.

9.8. City's Right to Perform Service.

9.8.1 City Rights. In addition to any and all other legal or equitable remedies, in the event that Franchisee, for any reason whatsoever, fails, refuses or is unable to collect, transport or process any or all Solid Waste or Recyclables which it is required by this Agreement to collect and transport, at the time and in the manner provided in this Agreement, for a period of more than five (5) days, and if, as a result thereof, Solid Waste should accumulate in the City to such an extent, in such a manner, or for such a time that the City Manager in his or her sole discretion should find that such accumulation endangers or menaces the public health, safety or welfare, then the City Manager shall have the right, but not the obligation, without payment to Franchisee, to (i) cause to be performed, such services itself with its own personnel or employ Franchisee's personnel, without liability to Franchisee; and/or (ii) to take possession of any or all of Franchisee's equipment and other property used or useful in the Collection and transportation of Solid Waste and to use such property at the expense of Franchisee to collect and transport any Solid Waste which Franchisee would otherwise be obligated to collect and transport pursuant to this Agreement.

9.8.2 Franchisee and City Responsibilities. Franchisee further agrees that in such event:

- (a) It will fully cooperate with City to effect the transfer of possession or property to the City for City's use;

(b) It will, if City Manager so requests, and to the extent feasible, keep in good repair and condition all of such property, provide all motor vehicles with fuel, oil and other service, and provide such other service as may be necessary to maintain said property in operational condition; and

(c) The City agrees to assume complete responsibility for the proper and normal use of such equipment and facilities while in its possession.

9.8.3 Franchise Waivers. Franchisee agrees that the City's exercise of its rights under this Article IX:

(a) Does not constitute a taking of private property for which compensation must be paid, but is rather an exercise of the City's police power;

(b) Will not create any liability on the part of City to Franchisee, including but not limited to, any right to compensation for use of Franchisee's equipment;

(c) Does not exempt Franchisee from the indemnity provisions of Article XI, which are meant to extend to circumstances arising under this Section 9.8, provided that Franchisee is not required to indemnify City against claims and damages arising from the negligence of City, its officers, employees, agents, or volunteers acting under this Section 9.8; and

(d) Does not terminate this Agreement, unless termination occurs under other provisions of this Agreement.

9.9. Duration of City's Possession. City has no obligation to maintain possession of Franchisee's property and/or continue its use in Collecting and transporting Solid Waste or Recyclables for any period of time and may, at any time, in its sole discretion, relinquish possession to the Franchisee. Should the City desire to retain possession of Franchisee's property, the City's right to retain temporary possession, and to provide Solid Waste Collection services, shall continue until Franchisee can demonstrate to the City Manager's reasonable satisfaction that it is ready, willing and able to resume such services.

9.10. Forfeiture of Performance Bond. In the event Franchisee shall for any reason become unable to, or fail in any way to, perform as required by this Agreement, City may declare that portion of the performance bond or other security established pursuant to Section 11.3 which is necessary to recompense and make whole the City, forfeited to the City. Upon partial forfeiture of the performance bond or other security, Franchisee shall promptly take all steps necessary to restore the performance bond or other security to its face amount.

9.11. City's Right to Lease Franchisee's Equipment Following Termination. If City terminates this Agreement for cause, the City shall have the right to lease Franchisee's equipment from Franchisee at its fair market value for a period not to exceed six (6) months in order to allow City to perform the services required under this Agreement.

9.12. Cooperation Following Termination. At the end of the Term or in the event this Agreement is terminated for cause prior to the end of the Term, Franchisee shall cooperate fully with City and any subsequent contractor to assure a smooth transition of Solid Waste management services. Franchisee's cooperation shall include, but not be limited to, providing operating records needed to service all properties covered by this Agreement.

9.13. Remedies for Nuisance Violations.

9.13.1 Liquidated Damages. The provision of poor public service or the production of any nuisance condition will subject Franchisee to administrative procedures, potential liquidated damages and, ultimately, termination, for severe and repeated violations.

9.13.2 Complaints. Public complaints (whether received by the City regarding Franchisee' performance or received directly by Franchisee) will be handled as prescribed in Sections 4.2.3 and 4.2.4 hereof.

9.13.3 Nuisance Conditions. Repeated, substantiated complaints of, or continued conditions of, poor service quality and/or nuisance conditions may be handled in the manner prescribed below. For purposes of this Section, the term "nuisance conditions" shall include, but is not limited to, the following:

- (a) Failure to duly collect Solid Waste and/or Recyclables that have been properly set-out for Collection through the willful or negligent conduct of Franchisee employees;
- (b) Uncured damage to the property of third parties or customers through the willful or negligent conduct of Franchisee employees;
- (c) Legitimate complaints of rude or unprofessional behavior or conduct by Franchisee's employees in the course of their duties;
- (d) Failure to perform service surveys and route audits as required by Sections 4.2.8 and 4.2.9, respectively, hereof;
- (e) Unreasonable spillage of Solid Waste or other collected materials from Franchisee's vehicles;
- (f) Failure to immediately or promptly collect Solid Waste that spilled or fell from Franchisee's vehicles onto public streets or third-party property;
- (g) Poor maintenance of Franchisee's vehicles, containers and equipment in violation of Sections 6.1 through 6.3 hereof;
- (h) Violations of personnel standards and qualifications in contravention of Section 6.4 hereof;

(i) Any other failure to meet performance standards in such a manner as to give rise to a condition of public nuisance or threat to public health and safety.

9.13.4 Notice of Violation. Initially, when the City Manager or a designated enforcement officer observes a violation, a verbal warning shall be given to the Franchisee. If the violation is thereafter repeated and, in the opinion of the City Manager or designated enforcement officer, Franchisee has not taken timely, effective action to correct the violation and prevent its repetition, then the City Manager or designated enforcement officer may issue a written notice of violation (the "Notice of Violation") describing the violation, the period in which Franchisee is required to cure the violation (if such violation is curable) and a warning that continued violations can be subject to liquidated damages.

9.13.5 Franchisee's Right To Contest. Within five (5) business days after receiving the Notice of Violation, Franchisee may submit a written response (the "Response") to the Notice of Violation to the City Manager. The City Manager shall review Franchisee's Response and may further investigate the claimed violation. The City Manager shall make a final determination regarding the Notice of Violation and the City Manager shall deliver to Franchisee a written conclusion concerning the Notice of Violation. Additionally, at the election of either Party, the Parties may meet to develop a written corrective action plan ("Correction Plan") to prevent further occurrence of the problematic conditions established in the Notice of Violation. The Correction Plan shall be finally prepared by the City (or, at the election of the City, by Franchisee) within ten (10) business days after the meeting between the City Manager (or designee) and Franchisee. The Correction Plan may include additional procedures, as deemed necessary by the City Manager, to assure that in the future Franchisee will be able to perform its services in compliance with this Agreement.

9.13.6 Liquidated Damages. There shall be no basis for the imposition of Liquidated Damages for any Notice of Violation issued within ninety (90) days of the Service Start Date. If a second Notice of Violation is issued for any violation *after* an initial verbal warning and thereafter the issuance of a written Notice of Violation that is not withdrawn pursuant to Subsections 9.13.4 or 9.13.5 above, then liquidated damages may thereafter be assessed against Franchisee (as liquidated damages and not a penalty) by the City Manager in the amount of \$450 for every day the condition persists. Further, if the violation for which liquidated damages were assessed recurs on three (3) or more days within a 60-day period following any assessment of liquidated damages, then starting on the fourth (4th) day that such violation either persists or recurs the amount of liquidated damages shall increase to \$700 per day.

9.13.7 Basis for Liquidated Damages. The Parties further recognize that if Franchisee recurrently fails to prevent and remediate nuisance conditions, the City and its residents will suffer damages and that it is and will be impractical and extremely difficult to ascertain and determine the exact amount of damages which City and its citizens will suffer. Therefore, the Parties agree that the liquidated damages established herein represent a reasonable estimate of the amount of such damages for such specific violations, considering all of the circumstances existing on the date of this Agreement, including the relationship of the sums to the range of harm to City that reasonably could be anticipated and the anticipation that proof of

actual damages would be costly or impractical. In placing their initials at the places provided, each Party specifically confirms the accuracy of the statements made above and the fact that each Party has had ample opportunity to consult with legal counsel and obtain an explanation of these liquidated damage provisions prior to entering this Agreement.

Franchisee's Initials _____

City Initials _____

9.13.8 Further Remedies For Severe Or Persistent Violations. The above provisions for a Correction Plan procedure and liquidated damages are intended to give the Parties a remedy under this Agreement short of termination or default; however, should Franchisee's violations be severe and repetitive or otherwise not reasonably subject to correction through liquidated damages, the Planning Director may, in his sole discretion, institute the procedures set forth in this Article hereof.

9.14. No Waiver Of City's Police Powers Or Legal Rights. Nothing in this Agreement is intended to limit the power and ability of the City or any law enforcement agency to initiate administrative and/or judicial proceedings for the abatement of nuisance conditions or violations of any applicable law. Nothing herein shall waive or limit any other legal rights or recourses the City may have in response to Franchisee's repeated, material violations of Performance Standards or failure to mitigate nuisance conditions.

9.15. Early Termination of Agreement for Non-Delivery of EV Assembly Plant. Franchisee has entered negotiations to collaborate with Dongfeng Progen, a current supplier of Franchisee's waste hauling fleet, to open the EV Company within the City of Carson. Franchisee expects Dongfeng Progen to open the EV Company by February 1, 2018. Given that Franchisee's relationship with Dongfeng was a substantial inducement to the City's award of this Agreement to Franchisee, the City has a vested interest in the successful opening and operation of the EV Company within its city limits at the operational levels represented. It is therefore agreed that should the EV Company fail to open, fully commence operations by February 1, 2018, and continue sales tax-generating operations within the City for at least two years, then within two (2) years thereafter the City may elect to:

9.15.1 Terminate this Agreement, such termination to be without prejudice to the City, at the City's discretion, and upon no less than 90 days written notice to Franchisee; *and/or*

9.15.2 Undertake a new request for proposal process to obtain new proposals for the franchised Collecting, transporting, transferring, processing, recycling, treating, diverting, converting, and Collecting for disposal all Solid Waste and Recyclable Materials generated by Residential, Commercial and Industrial establishments within the City of Carson; *and/or*

9.15.3 Undertake negotiations or an immediate award of contract with another Solid Waste Enterprise that submitted a qualified proposal to the City in 2017 for the Collecting, transporting, transferring, processing, Recycling, treating, Diverting, converting, and Collecting for disposal all Solid Waste and Recyclable Materials generated by Residential, Commercial and Industrial establishments within the City of Carson.

**ARTICLE X
TRANSFERS OF INTEREST.**

10.1. Restrictions on Transfers. The City, in entering into this Agreement, has placed a special value, faith and confidence in the experience, background, and expertise of the Franchisee in the field of waste disposal. Such faith and confidence being a substantial consideration in the granting of this Agreement warrants the transfer restrictions provided in this Article X.

10.2. Definition of Transfer. As used in this Section, the term "Transfer" shall include any hypothecation, mortgage, pledge, or encumbrance of this Agreement by Franchisee, subject to the exceptions set forth in Section 10.4 below. A Transfer shall also include the transfer to any person or group of persons acting in concert of more than forty-nine percent (49%) of the present equity ownership and/or more than forty-nine percent (49%) of the voting control of Franchisee (jointly and severally referred to herein as the "Trigger Percentages"), taking all transfers into account on a cumulative basis, except transfers of such ownership or control interest to an affiliate owned or controlled by the present beneficial owners of Franchisee or members of their immediate family, or between members of the same immediate family, or transfers to a trust, testamentary or otherwise, in which the beneficiaries are limited to members of the transferor's immediate family. A transfer of interests (on a cumulative basis) in the equity ownership and/or voting control of Franchisee in amounts less than Trigger Percentages shall not constitute a Transfer subject to the restrictions set forth herein. In the event Franchisee or its successor is a corporation or trust, such Transfer shall refer to the transfer of the issued and outstanding capital stock of Franchisee, or of beneficial interests of such trust; in the event that Franchisee or any general partner comprising Franchisee is a limited or general partnership or a limited liability company, such Transfer shall refer to the transfer of more than the Trigger Percentages in the limited or general partnership or limited liability company interest; in the event that Franchisee or any general partner is a joint venture, such Transfer shall refer to the transfer of more than the Trigger Percentages of such joint venture partner, taking all transfers into account on a cumulative basis.

10.3. Transfers Require City Approval. Franchisee shall not Transfer this Agreement or any of Franchisee's rights hereunder, directly or indirectly, voluntarily or by operation of law, except as provided below, without the prior written approval of City, and if so purported to be transferred, the same shall be null and void. Franchisee will submit its request for City consent to the City together with documents, including but not limited to: (i) the transferee's audited financial statements for at least the immediately preceding three (3) operating years; (ii) proof that the proposed transferee has municipal solid waste management experience on a scale equal to or exceeding the scale of operations conducted by Franchisee; (iii) proof that in the last five (5) years, the proposed transferee has not suffered any citations or other censure from any federal, state, or local agency having jurisdiction over its waste management operations due to any significant failure to comply with federal, state, or local waste management law and that the transferee has provided the City with a complete list of such citations and censures; (iv) proof that the proposed transferee has at all times conducted its operations in an environmentally safe and conscientious fashion; (v) proof that the proposed transferee conducts its municipal solid waste management practices in accordance with sound waste management practices in full compliance with all federal, state, and local laws regulating the Collection and disposal of waste,

including hazardous waste; (v) proof that the transferee's officers or directors have no criminal convictions for fraud, deceit, false claims or racketeering with respect to the transferee's course of business; (vi) a "transition plan" describing how Franchisee proposes to efficiently transition the rights and obligations hereunder to the transferee or assignee without material disruptions to service, and (vii) any other information required by the City to ensure the proposed transferee can fulfill the terms of this Agreement, including the payment of indemnities and damages and provision of bonds and/or performance standards, in a timely, safe, and effective manner.

10.4. Exceptions. The requirement to obtain City approval for a Transfer shall not apply to any of the following:

(a) Any mortgage, deed of trust, sale/lease-back, or other form of conveyance for financing and any resulting foreclosure therefrom.

(b) A sale or transfer resulting from or in connection with a reorganization as contemplated by the provisions of the Internal Revenue Code of 1986, as amended or otherwise, in which the ownership interests of a corporation are assigned directly or by operation of law to a person or persons, firm or corporation which acquires the control of the voting capital stock of such corporation or all or substantially all of the assets of such corporation.

(c) A sale or transfer to an affiliate of Franchisee owned or controlled by the present beneficial owners of Franchisee or members of their immediate family, or between members of the same immediate family, or transfers to a trust, testamentary or otherwise, in which the beneficiaries are limited to members of the transferor's immediate family.

(d) A sale of Franchisee's securities in a public offering, so long as the public offering does not result in the transfer to any person or group of persons acting in concert of more than forty-nine percent (49%) of the present equity ownership and/or more than forty-nine percent (49%) of the voting control of Franchisee. In addition, such public offering shall not result in a material change in Franchisee management, employees, budget, or level of services allocated to the City of Carson without the City's prior written consent.

10.5. Assumption of Obligations. No attempted Transfer of any of Franchisee's obligations hereunder shall be effective unless and until the successor party executes and delivers to City an assumption agreement in a form approved by the City assuming such obligations. Following any such assignment or Transfer of any of the rights and interests of Franchisee under this Agreement, the exercise, use and enjoyment shall continue to be subject to the terms of this Agreement to the same extent as if the assignee or transferee were Franchisee.

10.6. Release of Franchisee. City's consent to a Transfer shall not be deemed to release Franchisee of liability for performance under this Agreement unless such release is specific and in writing executed by City, which release shall not be unreasonably withheld. Upon the written consent of City to the complete assignment of this Agreement and the express written assumption of the assigned obligations of Franchisee under this Agreement by the

assignee, Franchisee shall be relieved of its legal duty from the assigned obligations under this Agreement, except to the extent Franchisee is in default under the terms of this Agreement prior to said Transfer. Franchisee shall cooperate with the City and transferee or assignee to assist in an orderly transition of obligations and rights, including without limitation Franchisee timely providing route lists, billing information, etc., to the transferee or assignee.

10.7. Franchisee to Pay Transfer Costs. Franchisee will pay City its reasonable expenses for attorneys' fees and investigation costs necessary to investigate the suitability of any proposed transferee or assignee, and to review and finalize any documentation required as a condition for approving any such Transfer. In the event of a Transfer, Franchisee shall pay City a "transfer fee" in within thirty (30) days of the date the Transfer is effective. The amount of the transfer fee paid to City shall depend on the date the number of years remaining in the Term of this Agreement, as of the date of the Transfer:

<u># Years Remaining in Term</u>	<u>Amount of Transfer Fee</u>
Less than 1 year	\$120,000
1 to 2 years	\$160,000
2 to 3 years	\$200,000
3 to 4 years	\$240,000
4 to 5 years	\$280,000
5 to 6 years	\$320,000
6 to 7 years	\$360,000
8 years or more	\$400,000

10.8. Subcontracting. This Agreement, or any portion thereof, shall not be subcontracted except with the prior written consent of the City, which consent shall not be unreasonably withheld. No such consent shall be construed as making the City a Party to such subcontract, or subject the City to liability of any kind to any subcontractor. Franchisee shall submit all subcontracts for review and approval by the City and any permitted subcontract shall terminate on or before the termination of this Agreement. All subcontractors shall be licensed as required under State, Federal and local laws and regulations to perform their subcontracted work and obtain and maintain a City business license if required. Franchisee shall remain otherwise liable for the full and complete performance of its obligations hereunder. City acknowledges and approves of Franchisee's use of a subcontractor to haul transfer rigs to the landfill, subject to City's approval of such subcontractors, which will not be unreasonably withheld.

10.9. Heirs and Successors. The terms, covenants and conditions of this Agreement shall apply to and shall bind the heirs, successors, executors, administrators and assigns of the Franchisee and City.

**ARTICLE XI
INSURANCE, INDEMNITY AND PERFORMANCE BOND.**

11.1. Insurance. Franchisee shall procure and maintain, at its sole cost and expense, in a form and content satisfactory to City, during the entire term of this Agreement including any extension thereof, the policies of insurance contained in **Exhibit B** hereto.

11.2. Indemnification. Without regard to the limits of any insurance coverage, Franchisee agrees to indemnify, defend with counsel appointed by the City, protect and hold harmless the City, its representatives, officers, agents and employees against any and all fines, response costs, assessments, actions, suits, injunctive relief, claims, damages to persons or property, losses, costs penalties, obligations, errors, omissions or liabilities, (“claims or liabilities”) that may be asserted or claimed by any person, firm or entity arising out of or in connection with (i) violations of the commerce clause of the U.S. Constitution, AB 939, the Comprehensive Environmental Response, Compensation and Liability Act, Title 42 U.S.C. §9601 *et seq.* (“CERCLA”), HSAA, RCRA, any other Hazardous Waste laws, or other federal, state or local environmental statutes, ordinances and regulations which arise from this Agreement; (ii) the negligent performance of the work or services of Franchisee, its agents, employees, subcontractors, or invitees, provided for in this Agreement; (iii) the negligent acts or omissions of Franchisee hereunder, or arising from Franchisee's negligent performance of or failure to perform any term, provision, covenant or condition of this Agreement, whether or not there is concurrent passive or active negligence, on the part of the City, its representatives, officers, agents or employees but excluding such claims or liabilities arising from the sole negligence or willful misconduct of the City, its representatives, officers, agents or employees, who are directly responsible to the City, and in connection therewith:

(a) Franchisee will defend any action or actions filed in connection with any of said claim or liabilities and will pay all costs and expenses, including legal costs and attorneys' fees incurred in connection therewith;

(b) Franchisee will promptly pay any judgment rendered against the City, its officers, agents or employees for any such claims or liabilities arising out of or in connection with the negligent performance of or failure to perform such work or services of Franchisee hereunder; and Franchisee agrees to save and hold the City, its officers, agents and employees harmless therefrom;

(c) In the event the City, its officers, agents or employees is made a party to any action or proceeding filed or prosecuted against Franchisee for such damages or other claims arising out of or in connection with the negligent performance of or failure to perform the work or services of Franchisee hereunder, Franchisee agrees to pay to the City, its officers, agents or employees, any and all costs and expenses incurred by the City, its officers, agents or

employees in such action or proceeding, including but not limited to, legal costs and attorneys' fees.

Franchisee's obligations hereunder shall survive the termination or expiration of this Agreement.

11.3. Faithful Performance Security. Concurrently with execution of this Agreement, Franchisee shall deliver to City a bond or a letter of credit in the amount of Ten Million Dollars (\$10,000,000.00) which shall secure the faithful performance of this Agreement, including, without limitation, payment of any penalty and the funding of any work to cure a breach of this Agreement, unless such requirement is waived by the City Manager. If Franchisee elects to submit a bond, the performance bond shall be executed by a surety company licensed to do business in the State of California, having an A: VII or better rating, and approved by the City; and included on the list of surety companies approved by the Treasurer of the United States. The bond shall contain the original notarized signature of an authorized officer of the surety and affixed thereto shall be a certified and current copy of his or her power of attorney. The bond shall be unconditional and remain in force during the entire Term. If Franchisee elects to submit a letter of credit, the instrument shall be an irrevocable standby letter of credit in a form approved by the City Attorney and issued by a bank which is reasonably satisfactory to City. The bank must be chartered in the United States, have a rating of B or above or a number rating of 40 or above in the Bank Watch Thomas Ratings, or such equivalent rating service as may be mutually agreed upon between the City and Franchisee, maintain an office in the State of California, maintain an agent for service of process in the State of California, and otherwise do business in the State of California. In the event Franchisee shall for any reason become unable to, or fail in any way to perform as required by this Agreement, City may declare a portion or all of the performance bond or letter of credit forfeited to the City. Upon partial or full forfeiture of the performance bond or letter of credit, Franchisee shall restore the performance bond or letter of credit to its face amount within thirty (30) days of the City's declaration. Failure to restore the performance bond or letter of credit to its full amount within thirty (30) days shall be a material breach of this Agreement.

11.4. AB 939 Guarantee and Indemnification. Without in any way limiting the indemnification provisions in Section 11.2 above, Franchisee guarantees compliance with the requirements AB 939 as amended from time to time. Franchisee shall carry out its obligations under this Agreement so that the City will meet or exceed the diversion requirements set forth in AB 939, and all amendments thereto more fully set forth below. City and Franchisee shall reasonably assist each other to meet the City's AB 939 diversion requirements. In carrying out the provisions of this Section, Franchisee agrees to perform the following obligations at its cost and expense:

(a) Defend, with counsel approved by City, indemnify and hold harmless the City against all fines and/or penalties imposed by the CalRecycle, if Franchisee fails or refuses to provide information relating to its operations which is required under this Agreement and such failure or refusal prevents or delays City from submitting reports required by AB 939 in a timely manner;

(b) Assist City in preparing for, and participating in, the CalRecycle's biannual review of the City's source reduction and recycling element pursuant to Public Resources Code Section 41825;

(c) Assist City in responding to inquiries from the CalRecycle in applying for an extension under Public Resources Code Section 41820, if so directed by City; in conducting any hearing conducted by the CalRecycle relating to AB 939; or in any other investigative or enforcement manner undertaken by any agency;

(d) Defend, with counsel acceptable to City, and indemnify and hold harmless the City against any fines or penalties levied against it for violation of AB 939's diversion requirements, provided that Franchisee's obligation to indemnify City shall be subject to the limitations set forth in Public Resources Code Section 40059.1(c) as may be amended from time to time;

(e) In cooperating with the City, should it seek to become its own enforcement agency, to the extent it may be permitted under state law.

11.5. AB 939 Education. Franchisee and City shall jointly develop and implement a public awareness and education program that is consistent with the City's Source Reduction and Recycling goals as stated in Article V.

ARTICLE XII GENERAL PROVISIONS.

12.1. Force Majeure. The time period(s) specified for performance of the provisions of this Agreement shall be extended because of any delays due to unforeseeable causes beyond the control and without the fault or negligence of the Franchisee, including, but not restricted to, acts of God or of the public enemy, unusually severe weather, fires, earthquakes, floods, epidemics, quarantine restrictions, riots, strikes, freight embargoes, wars, litigation, and/or acts of any governmental agency, including the City if the Franchisee shall within ten (10) days of the commencement of such delay notify the City Manager in writing of the causes of the delay; no extension of time for performance shall be granted, however, by reason of the unavailability of any Disposal Site or by reason of strikes, lockouts, or other labor disturbances, or breakage or accidents to vehicles, equipment, machinery or plants. The City Manager shall ascertain the facts and the extent of delay, and extend the time for performing the services for the period of the enforced delay when and if in the judgment of the City Manager such delay is justified. In no event shall Franchisee be entitled to recover damages against the City for any delay in the performance of this Agreement, however caused, Franchisee's sole remedy being extension of the Agreement pursuant to this Section 12.1.

12.2. Notices. All notices, demands, requests, approvals, disapprovals, proposals, consents, or other communications whatsoever which this Agreement contemplates or authorizes, or requires or permits either Party to give to the other, shall be in writing and shall be personally delivered, sent by telecopier or sent by registered or certified mail, postage prepaid, return receipt requested, addressed to the respective Party as follows:

If to Franchisee: Waste Resource Technologies
Attn: Tommy Gendal
P.O. Box 2410
Gardena, CA 90247

With copy to: TUCKER ELLIS, LLP
Attn: Bart L. Kessel
515 South Flower Street
42nd Floor
Los Angeles, CA 90017

If to City: City Manager
CITY OF CARSON
701 East Carson Street
Carson, CA 90745

With copy to: ALESHIRE & WYNDER, LLP
18881 Von Karman Avenue, Suite 1700
Irvine, CA 92612
Attention: Sunny Soltani, City Attorney

or to such other address as either Party may from time to time designate by notice to the other given in accordance with this Section 12.2. Notice shall be deemed effective on the date personally served or by facsimile or, if mailed, three (3) days from the date such notice is deposited in the United States mail.

12.3. Non-discrimination. Franchisee covenants that, by and for itself, its heirs, executors, assigns and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of race, color, creed, religion, sex, marital status, national origin, sexual orientation, or ancestry in the performance of this Agreement. Franchisee shall take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, color, creed, religion, sex, marital status, sexual orientation, national origin or ancestry.

12.4. Compliance with Immigration Laws. Franchisee agrees that, in the performance of this Agreement, it will comply with all applicable immigration laws and regulations.

12.5. No Liability of City Officials. No officer, employee or agent of the City shall be personally liable to the Franchisee, or any successor in interest, in the event-of any default or breach by the City or for any amount that may become due to the Franchisee or to its successor, or for breach of any obligation of the terms of this Agreement.

12.6. Laws and Regulations. Franchisee shall observe all the terms of any City ordinance or resolution now in effect, or as the same maybe subsequently adopted or amended by the City, governing or affecting the Collection, removal and disposal of Municipal Solid Waste in the City of Carson. Franchisee further agrees to comply with all applicable county, state or federal laws or regulations as they exist now or may subsequently be adopted or amended, governing the Collection, removal and disposal of Municipal Solid Waste or related environmental laws. Franchisee further agrees to comply with all applicable state and federal

laws governing employment, wages, working conditions, use of materials, equipment, supplies and the like.

12.7. Proprietary Information: Public Records. The City acknowledges that a number of the records and reports of the Franchisee are proprietary and confidential. Franchisee is obligated to permit City inspection of certain of its records, as provided herein, on demand and to provide copies to City where requested. City will endeavor to maintain the confidentiality of all proprietary information provided by Franchisee and shall not voluntarily disclose such proprietary information. Notwithstanding the foregoing, any documents provided by Franchisee to City that are public records may be disclosed pursuant to a proper public records request. City shall notify Franchisee of any such request affecting Franchisee's records or reports at least five (5) business days prior to their release, to enable Franchisee to seek a protective order or otherwise prevent disclosure; provided, however, that City's failure to provide such notice shall not be a breach of this Agreement.

12.8. Waiver of Future Claims. No delay or omission in the exercise of any right or remedy by a Non-Defaulting Party on any default shall impair such right or remedy or be construed as a waiver. A Party's consent to or approval of any act by the other party requiring the party's consent or approval shall not be deemed to waive or render unnecessary the other party's consent to or approval of any subsequent act. Any waiver by either Party of any default must be in writing and shall not be a waiver of any other default concerning the same or any other provision of this Agreement.

12.9. Conflict of Interest. No officer or employee of the City shall have any financial interest, direct or indirect, in this Agreement nor shall any such officer or employee participate in any decision relating to the Agreement which affects his financial interest or the financial interest of any corporation, partnership or association in which he is, directly or indirectly, interested, in violation of any State statute or regulation. The Franchisee warrants that it has not paid or given and will not pay or give any officer, employee or agent of the City any money or other consideration for obtaining this Agreement.

12.10. Interpretation. The terms of this Agreement shall be construed in accordance with the meaning of the language used and shall not be construed for or against either Party by reason of the authorship of this Agreement or any other rule of construction which might otherwise apply.

12.11. Integration: Amendment. It is understood that there are no oral agreements between the Parties hereto affecting this Agreement and this Agreement supersedes and cancels any and all previous negotiations, arrangements, agreements and understandings, if any, between the Parties, and none shall be used to interpret this Agreement. This Agreement may only be amended at any time by the mutual consent of the Parties by an instrument in writing. This Agreement is intended, in part, to carry out City's obligation to comply with the provisions of AB 939 and regulations promulgated thereunder, as amended from time to time. In the event that AB 939 or other state or federal laws or regulations enacted after this Agreement prevent or preclude compliance with one or more provisions of this Agreement, such provisions of this Agreement shall be modified or suspended as may be necessary to comply with such state or

federal laws or regulations. No other amendment of this Agreement shall be valid unless in writing duly executed by the Parties.

12.12. Severability. In the event that part of this Agreement shall be declared invalid or unenforceable by a valid judgment or decree of a court of competent jurisdiction, such invalidity or unenforceability shall not affect any of the remaining portions of this Agreement which are hereby declared as severable and shall be interpreted to carry out the intent of the Parties hereunder unless the invalid provision is so material that its invalidity deprives either Party of the basic benefit of their bargain or renders this Agreement meaningless.

12.13. Attorneys' Fees. If either Party to this Agreement is required to initiate or defend or is made a party to any action or proceeding in any way connected with this Agreement, the prevailing party in such action or proceeding, in addition to any other relief which may be granted, whether legal or equitable, shall be entitled to reasonable attorneys, fees and expert witness fees.

12.14. No Joint Venture. Neither the City nor any of its employees shall have any control over the manner, mode or means by which Franchisee, its agents or employees, perform the services required herein, except as otherwise set forth. Franchisee shall perform all services required herein independent from the City and shall remain at all times as to City a wholly independent entity with only such obligations as are consistent with that role. Franchisee shall not at any time or in any manner represent that it or any of its agents or employees are agents or employees of City. City shall not in any way or for any purpose become or be deemed to be a partner of Franchisee in its business or otherwise or a joint venturer or a member of any joint enterprise with Franchisee.

12.15. Rights and Remedies are Cumulative. Except with respect to rights and remedies expressly declared to be exclusive in this Agreement, the rights and remedies of the parties are cumulative, and the exercise by either Party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the other Party.

12.16. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California.

12.17. Jurisdiction and Venue. The parties hereto agree that the State of California is the proper jurisdiction for litigation of any matters relating to this Agreement. The Parties further agree that Los Angeles County, California is the proper place for venue as to any such litigation arising out of the Agreement and Franchisee agrees to submit to the personal jurisdiction of such court in the event of such litigation.

12.18. Legal Action. In addition to any other rights or remedies, either Party may take legal action, in law or in equity, to cure, correct or remedy any default, to recover damages for any default, to compel specific performance of this Agreement, to obtain declaratory or injunctive relief, or to obtain any other remedy consistent with the purposes of this Agreement.

IN WITNESS WHEREOF, the Parties hereto do hereby set their hands and seals as of the day and the year first written above.

CITY OF CARSON

By: _____
Mayor

FRANCHISEE

ATTEST:

Donesia Gause,
CMC, City Clerk

By: _____, President

APPROVED AS TO FORM:
ALESHIRE & WYNDER, LLP

Sunny Soltani, City Attorney

By: _____, Vice President

EXHIBIT A
MAXIMUM RATE SCHEDULE

EXHIBIT B

INSURANCE PROVISIONS

Franchisee shall carry the following types and levels of insurance:

1. Comprehensive General Liability Insurance. Throughout the Term of this Agreement, Franchisee shall keep or cause to be kept in full force and effect, for the mutual benefit of City and Franchisee, comprehensive broad form general public liability insurance against claims and liability for personal injury, death or property damage arising from Franchisee's operations hereunder, said liability insurance shall be a minimum of Five Million Dollars (\$5,000,000). Such insurance shall be carried only in responsible insurance companies licensed to do business in the State of California. Franchisee shall pay all premiums therefor, without contribution by the City. All such policies shall contain language that: (i) the insurer waives the right of subrogation against City and against City's elected officials, officers, employees, agents, and representatives; (ii) the policies are primary and non-contributing with any insurance that may be carried by City; and (iii) they cannot be canceled or materially changed except upon forty-five (45) days' prior written notice by the insurer to City. In the event of any such cancellation or material change in such policy of insurance, then this Agreement shall terminate and be of no further force and effect. Franchisee agrees to furnish City copies of all such policies promptly upon receipt of them, or certificate evidencing the insurance. Franchisee further agrees that all such policies shall name City, its elected officials, officers, agents and employees as additional insureds. Franchisee may effect for its own account insurance not required under this Agreement.

2. Workers' Compensation Insurance. Franchisee shall, at Franchisee's sole cost and expense, maintain a policy of workers' compensation insurance in such amount as will fully comply with the laws of the State of California and which shall indemnify, insure and provide legal defense for both the Franchisee and the City against any loss, claim or damage arising from any injuries or occupational diseases occurring to any worker employed by or any persons retained by the Franchisee in the course of carrying out the work or services contemplated in this Agreement. Franchisee shall furnish to City a copy of its workers' compensation policy or certificate evidencing such policy.

3. Automotive Insurance. A policy of comprehensive automobile liability insurance written on a per occurrence basis in an amount not less than either (i) bodily injury liability limits of \$1,000,000.00 per person and \$2,000,000.00 per occurrence and property damage liability limits of \$1,000,000.00 per occurrence and \$2,000,000.00 in the aggregate or (ii) combined single limit liability of \$2,000,000.00. Said policy shall include coverage for owned, non-owned, leased and hired cars.

4. Umbrella Insurance. Umbrella coverage to bring total aggregate insurance coverage for all underlying insurance coverage to TWENTY MILLION DOLLARS (\$20,000,000.00).

5. No Limitation. Franchisee agrees that the provisions of this Exhibit shall not be construed as limiting in any way the extent to which the Franchisee may be held

responsible for the payment of damages to any persons or property resulting from the Franchisee's activities or the activities of any person or persons for which the Franchisee is otherwise responsible.

6. Rating. The insurance policies required by this Agreement shall be satisfactory only if issued by companies qualified to do business in California rated All or better in the most recent edition of Best Rating Guide, The Key Rating Guide or in the Federal Register, and only if they are of a financial category Class IV or better, unless such requirements are waived by the Risk Manager of the City.

7. Primary Insurance. The insurance policies shall be considered primary insurance as respects any other valid and collectible insurance the City may possess including any self-insured retention the City may have, and any other insurance the City does possess shall be considered excess insurance and shall not contribute with it. The insurance policies shall act for each insured, as though a separate policy had been written for each. This, however, will not act to increase the limit of liability of the insuring company.

8. Changes in Market. In the event the Risk Manager determines that (i) the market conditions creates an increased or decreased risk of loss to City, (ii) greater insurance coverage is required due to the passage of time or (iii) changes in the insurance industry require different coverages be obtained, Franchisee agrees that the minimum limits of any insurance policy required to be obtained by Franchisee may be hanged accordingly upon receipt of written notice from the Risk Manager.

EXHIBIT "C"
CITY FACILITIES



EXHIBIT D
CITY EVENTS

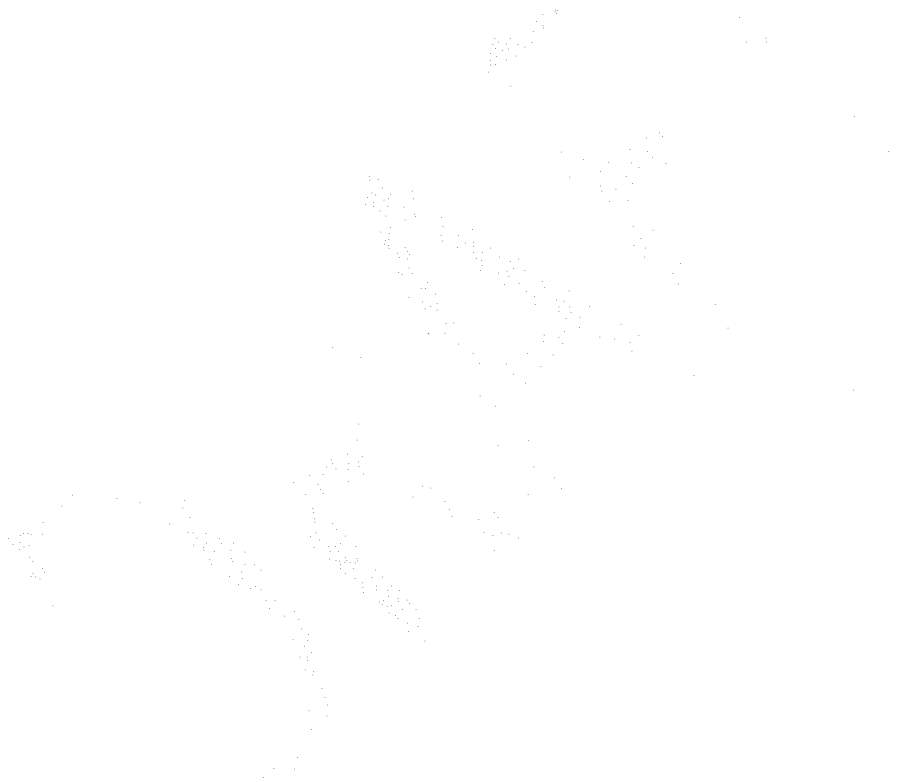


EXHIBIT E

LIST OF PERMITTED RECOVERY FACILITIES



EXHIBIT F

LIST OF U-WASTE DISPOSAL CONTAINERS

City Hall (Front Desk)

701 E. Carson Street, Carson, CA 90745

Juanita Millender McDonald Community Center (Front Desk)

801 E. Carson Street, Carson, CA 907476

Corporate Yard - Public Works Department (Front Desk)

2390 E. Dominguez Street, Long Beach, CA 90810



EXHIBIT G

LIST OF DESIGNATED DISPOSAL SITES

Chiquita Canyon Landfill
29201 Henry Mayo Dr.
Castaic, California 91384