CITY OF HAWAIIAN GARDENS
RESOLUTION NO. 111-2019

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF HAWAIIAN GARDENS CONSENTING TO THE ASSIGNMENT OF THE EXCLUSIVE SOLID WASTE SERVICES FRANCHISE AGREEMENT BETWEEN THE CITY OF HAWAIIAN GARDENS AND COMMERCIAL WASTE SERVICES, INC. TO WASTE RESOURCES, INC., AND FURTHER IMPOSING CONDITIONS ON FINDINGS OF DEFAULT UNDER SAID AGREEMENT AND PROVIDING ADDITION TIME TO CURE THE OUTSTANDING DEFAULTS THEREUNDER

WHEREAS, the City of Hawaiian Gardens ("City") entered into that certain Exclusive Solid Waste Services Franchise Agreement ("Agreement") with CWS on July 1, 2018 granting Commercial Waste Services, Inc. ("CWS") the exclusive franchise, right, license, and privilege to engage in the business of collecting and transporting all solid waste and recyclable materials generated within the City; and

WHEREAS, CWS has repeatedly and continually materially breached the Agreement, as set forth herein; and,

WHEREAS, the City provided CWS with numerous default notices and provided sufficient time for CWS to cure the identified breaches; and,

WHEREAS, CWS's failure to cure the material breaches places it in default of the Agreement; and,

WHEREAS, the City provided CWS with a notice of intent to terminate and held a termination hearing at a regularly-scheduled City Council meeting, on November 12, 2019; and,

WHEREAS, CWS was provided the opportunity to present evidence to demonstrate it is not in default and to rebut any evidence presented in favor of termination; and,

WHEREAS, the City Council considered all evidence presented at the hearing, including the staff report and exhibits, any presentations and argument by staff and CWS, any evidence submitted by CWS, and any public comment; and,

WHEREAS, the City Council adjourned the regularly-scheduled November 12, 2019 City Council meeting until November 19, 2019, continuing the public hearing on the termination to that date; and,

WHEREAS, amongst other things, during the course of the public hearing on November 12th, the City clearly and plainly directed CWS to not engage in the performance of any work or provision of any services under the Agreement unless and

until such time as CWS had provided proof of insurance meeting all of the requirements of the Agreement, and the City was able to verify such insurance policies; and,

WHEREAS, the City Council considered additional evidence attached to Staff's second staff report providing further defaults that occurred subsequent to the November 12, 2019 meeting; and,

WHEREAS, there is substantial evidence to support a finding that CWS is in default of the Agreement; CWS failed to timely cure the default; and that such default has caused a material breach of the Agreement and has a substantial negative impact upon the City; and,

WHEREAS, the Council must provide prior written consent to effectuate a transfer or assignment of the Agreement; and,

WHEREAS, as condition precedents to the City consenting to the assignment of the Agreement, the City shall have reviewed that certain "Assignment and Assumption Agreement" by and between CWS and Waste Resources, Inc. ("Assignee"), CWS shall execute a waiver and release of any and all claims, whether known or unknown, against the City, arising from or related to the Agreement, and CWS and Assignee shall consent in writing to the terms of this Resolutions, as provided herein; and,

WHEREAS, based upon the foregoing and the evidence and findings stated herein, the City Council desires to impose conditions on a finding of default and providing additional time for cure, including that the Agreement shall be fully assigned to Assignee and Assignee shall be afforded additional time to cure the outstanding defaults, as stated herein.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF HAWAIIAN GARDENS, AS FOLLOWS:

SECTION 1. INCORPORATION OF RECITALS

The City Council of the City of Hawaiian Gardens ("Council") finds that the above Recitals of this Resolution are true and correct and incorporated into this Resolution by reference as though fully set forth herein.

SECTION 2. INCORPORATION OF STAFF REPORT PROVIDED HEREWITH

The City Council hereby incorporates into this Resolution by reference the staff reports and exhibits, any presentations and argument by staff and CWS, any evidence submitted by CWS, and any public comment as though fully set forth herein.

SECTION 3. HISTORY OF CWS'S BREACHES OF THE AGREEMENT AND OPPORTUNITIES TO CURE

CWS has committed dozens of breaches of the Agreement, including numerous material breaches. These breaches have included matters that are both monetary as well as non-monetary. The City has afforded CWS well more time to cure than what is contractually required, in an effort to work with CWS to cure these breaches and defaults. The City provided CWS with numerous notices of default ("Default Notices"), ranging from March 25, 2019 through November 4, 2019, as well as the Notice of Termination on November 8, the accompanying staff report and resolution for the termination hearing, and the cease and desist letter of November 13, 2019, which each have informed CWS of the specific breaches and how to cure each of these defaults. In addition to the default notices, the City held an in-person meeting with CWS and offered to hold an additional in-person meeting, which CWS failed to schedule.

A. The City's March 25, 2019 Default Notice. The City issued its first Default Notice to CWS on March 25, 2019. This notice informed CWS of its failure to pay the 2018 fourth quarter Franchise Fees and its failure to a pay the one-time Administrative Fee of $100,000.00.

B. In-Person Meeting on June 3, 2019. Although the City was not required to do so, the City met with CWS in-person. This meeting took place on June 3, 2019 between the City and CWS. The City provided CWS with informal notice of the ample amount of breaches it intended to demand cure. Among other key issues, CWS ensured the City that it then had in effect a compliant performance bond (that had been in effect since the Agreement commenced) and that it would deliver a copy of that bond with 24 hours (which is subsequently did not).

C. The City's June 5, 2019 Default Notice The City issued its second default notice on June 5, 2019. This second default notice was essentially broken down into three main components: (1) material monetary breaches; (2) material non-monetary breaches; and (3) miscellaneous breaches.

i. Material Monetary Breaches. The Material Monetary Breaches were identified as follows:

The notice informed CWS that it had failed to: (1) pay the late payment penalties for the one-time administrative fee of $100,000, as set forth in the first default notice on March 25, 2019; (2) still provide the City with proof of the surety Performance Bond, as required under Section 3.3 of the Agreement (and as promised to be delivered within 24 hours during the June 3rd meeting), which required CWS to submit a $1 million Performance Bond as a condition precedent to the effectiveness of the Agreement (the purpose of this bond is to guarantee CWS's faithful performance of the waste hauling services under the Agreement); and (3) provide the City with proof of existing insurance coverages, as required under Article 11 of the Agreement, as CWS is required to procure and maintain, during the entire term of the Agreement, specified policies of insurance (CWS has failed to provide proof of insurance that showed CWS had active insurance following the May 3, 2019 expiration date of its prior policy).

Notably, as set forth in Section 1.43, failure to perform monetary obligations is a material breach of the Agreement. As such, each of these breaches was material. The

City ultimately demanded cure of these material monetary breaches within ten (10) days, in accordance with Section 9.3.

ii. Material Non-Monetary Breaches. The Material Monetary Breaches were identified as follows:

First, the Notice provided a material breach resulting from CWS having failed to ensure the City met the diversion rates required by AB 939. The notice explained that the City participated in the 2018 Annual AB 939 Reporting Conference call with CalRecycle in order to review the City's progress on implementation of required AB 939 programs. CalRecycle reported that the reports submitted by CWS, and the diversion rates thereof, indicated that certain mandatory recycling programs were not successfully implemented or maintained. Due to the disposal tonnage discrepancies and the unsuccessful implementation of mandatory recycling programs, CalRecycle suggested that the City submit an informal action plan to address the deficiencies prior to the City being placed on a formal non-compliance notice. Sections 5.5 and 5.9 of the Agreement provide that failure to divert the required amount of solid waste and failure to maintain the diversion programs is a material breach of the Agreement, and accordingly CWS in material breach.

Second, the notice then identified that CWS was inaccurately reporting its collection and diversion rates, which is a material breach of the Agreement. The City described the differences between what CWS was reporting and what the Disposal Report System ("DRS") maintained by the State of California reported.

Third, the notice then discussed that pursuant to Sections 4.13.3, 4.13.4, and 4.13.5, CWS was required to implement mandatory commercial recycling (AB 341) and mandatory organics recycling (AB 1826). These programs required CWS to recycle at least 50% of the collected waste. The City noted, based upon reports submitted by CWS and those of the State's DRS, that commercial recycling CWS achieved only 38.78% diversion in the 2018 third quarter and 28.97% diversion in the 2018 fourth quarter. Again, Sections 5.5 and 5.9 provide that failure to divert the required amount of solid waste and failure to maintain the diversion programs is a material breach of the Agreement.

Fourth, the notice then identified that CWS failed to provide the City with requested supplemental information and documentation regarding CWS's third quarter "Quarterly Report." The City noted that it had requested supplemental information and documentation multiple times but that CWS failed to provide such materials. Without the necessary documentation and information from CWS, the City is unable to accurately report to CalRecycle which puts the City at risk to receive compliance notices and penalties from the State. As set forth in Section 1.43 and Section 5.8, failure to cooperate with document requests is a material breach.

Fifth, the notice then discussed that CWS failed to provide proof of a purchase order for the acquisition of a clean-air vehicle fleet. Section 6.1.1 requires that during the first year of the Agreement, CWS must provide evidence of a purchase order for a fleet of new clean-air vehicles. The delivery of the vehicles must be before August 1, 2019. Failure to comply with Section 6.1.1 is a material breach.

Lastly, the notice discussed that CWS failed to implement on-site and/or Multi-Family Processing. Section 6.3.2 of CWS's bid proposal, which is incorporated into the Agreement pursuant to Section 1.19, promised to deliver multi-family containers to various processing facilities. CWS promised that it will achieve at least 50% diversion for all collected multi-family waste materials. Pursuant to the 2018 third and fourth Quarterly Reports, CWS was not in compliance with this Section, which was a material breach of the Agreement.

The City demanded cure of these non-monetary breaches within thirty (30) days, in accordance with Section 9.3.

iii. Miscellaneous Breaches. The Miscellaneous Breaches were identified as follows:

The City also provided CWS with a three-page list of breaches that, while individually may not have risen to the level of materiality, collectively constituted a material breach of the Agreement. These breaches included matters such as CWS failing to provide the City with necessary information needed to report to CalRecycle, failure to implement specific programs identified in the Agreement and CWS proposal, or was past due on various obligations.

D. **CWS's Document Production on June 16, 2019.** In response to the City's two prior default notices, CWS produced various documents in an attempt to resolve the monetary breaches. Through this production, CWS cured certain defaults, as follows: (i) it provided satisfactory proof of insurance coverage; (ii) CWS provided retail sales order showing that CWS had placed an order for the new clean air fleet, but did not provide proof of a delivery date before August 1, 2019; and (iii) provided a performance bond for the period of June 13, 2019 through June 12, 2020; however, CWS did not provide a performance bond covering the first year of the Agreement—that is July 1, 2018 through June 12, 2019 (although it had represented it existed). CWS also paid its late penalties for the Administration Fee.

E. The City's June 27, 2019 Supplemental Default Notice. On June 27, the City issued a Supplemental Notice of Default to CWS, which supplemented the June 5, 2019 Default Notice with information the City had learned regarding CWS's inaccurate reporting and diversion requirements.

First, the Supplemental Notice stated that CWS had failed to provide the City with its Performance Bond that satisfied Section 3.3 of the Agreement. CWS did not provide the City with a Performance Bond that covered the period of July 1, 2018 through June 12, 2019. As such, CWS was still in material breach of Section 3.3.

Second, the notice informed CWS that, with respect to CWS's inaccurate reporting, the City had been made aware that CWS was not accurately reporting correct diversion rates and was not disposing of waste at the correct facilities. Despite CWS's reporting, which indicated that the City was in compliance with AB 939, the State (CalRecycle) had informed the City that it was not in compliance. The City also received documentation from the Los Angeles County Sanitation District ("*LACSD*") and the

CalRecycle DRS that the 2018 third and fourth quarter tonnage reports submitted by CWS had tonnage information that could not be reconciled with disposal records provided by LACSD and DRS. The notice provided CWS with specific examples of the inaccurate reporting.

The notice warned CWS that their reporting was vastly inaccurate in terms of tonnages collected, tonnages diverted, and facility usage. The City reminded CWS that such inaccurate reporting was a material breach of the Agreement, pursuant to Section 1.43.

F. **CWS's July 5, 2019 Response Letter.** On July 5, 2019, CWS provided the City with a response letter to the June 5, 2019 Default Notice. CWS began its response by denying that it had committed any material breaches and demanded confirmation by the City. CWS claimed that it met the diversion rates required by AB 939 and the Agreement; rather, CWS alleged that some third party was falsely reporting that waste generated in other jurisdiction was generated in the City. CWS claimed that false reporting of the source of waste would thereby undermine CWS's diversion rates. CWS provided no evidence of this allegation.

CWS failed to provide the requested documentation and information to the City, which the City had requested in order to accurately report rates to CalRecycle. CWS claimed it had either already provided the information to the City or CWS could not obtain the documents requested. CWS then claimed that AB 1826 and AB 341 had been properly implemented, although CWS provided no substantive or credible evidence to support this claim. Finally, CWS failed to provide any evidence of the performance bond prior to June 12, 2019. CWS did not address any of the miscellaneous breaches.

G. **CWS's September 10, 2019 Email to City.** Despite claiming that CWS was meeting the diversion requirements, on September 10, 2019, CWS sent an email to the City requesting a meeting because the City was not meeting the requirements of AB 939. CWS appeared to blame this failure to meet diversion requirements on the City's waste consultant (although, the Agreement passes this obligation through to CWS, not the City).

H. **The City's September 25, 2019 Default Notice.** The City issued a comprehensive Subsequent Notice of Default of CWS's failure to cure all previously identified material breaches, identified new material breaches that needed to be cured, and issued a determination that CWS is in default of the Franchise Agreement. The City also provided a notice of audit.

This notice addressed three primary issues: (1) new material breaches by CWS; (2) commencement of the audit process; and (3) responding to the outstanding material breaches that were not cured. The City declared that because CWS failed to cure all of the material breaches identified in the City's previous default notices, CWS was in default of the Agreement, pursuant to Section 9.3.

(i) New Material Breaches

The notice identified that CWS failed to pay the 2019 second quarter Franchise Fee, which was due August 15, 2019. CWS also had failed to timely submit its second

quarter Quarterly Report, which was due the same date as the fee payment. As set forth in Sections 1.43 and 3.1, failure to timely and accurately pay this Franchise Fee is considered a material breach of the Agreement, as is the failure to submit Quarterly Reports.

(ii) Commencement of Audit

Due to CWS's continued breaches, failure to provide the City with the necessary diversion reporting documents, and failure to cure previous breaches, the City exercised its right to audit CWS. Pursuant to Section 8.1, the City sought to review CWS's financial statements. Pursuant to Section 8.2, the City sought review of CWS's records of customer complaints, tonnage collection, disposal, diversion compliance records, maps, billing records, gross income, franchise fee payments, curbside recycling payments, customer lists with service type and frequency, and customer payment histories.

(iii) Outstanding Material Breaches

The notice further discussed CWS's material braches that remained outstanding from the City's Notice of Default letters from June 2019. First, it noted that CWS still had not provided the City with a performance bond that satisfied Section 3.3 of the Agreement, which CWS had represented to the City had been in place and would be provided to the City within 24 hours of the meeting.

Second, the notice discussed that CWS continued to miss the diversion rates required by AB 939, and which CWS had admitted in its September 10th email was not being met, despite arguing it was not in breach of the Agreement. The City explained the diversion rates during 2018 in the Notice and explained how the City was not meeting its diversion requirements under AB 939. Notwithstanding the foregoing, CWS nevertheless contends that it is complying with this legal requirement. Because the City had yet to meet its diversion requirements under AB 939, CWS was in default.

Third, the notice then addressed that CWS was still not meeting the diversion requirements of Section 5.1. The relevant provision of Section 5.1 reads, "[t]he City requires the franchisee to meet or exceed this State mandate [AB 939] by diverting fifty percent (50%) **of the solid waste collected** under this franchise agreement." (Emphasis added.) That is, CWS is required to divert 50% of all waste it collects within the City. The City reminded CWS that this diversion requirement is separate and additional to that of ensuring the City meets its diversion requirements under AB 939. The City pointed out that CWS had failed to meet this diversion requirement for every quarter it was responsible for the City's waste. As such, CWS was in default of Section 5.1.

Fourth, the notice then addressed that CWS continued to fail to accurately report all solid waste collected, diverted, and disposed, which prevented the City from accurately monitoring diversion rates under Section 5.1 and AB 939, and failed to provide requested documentation and information to the City supporting its diversion rates. Further, in order for the City, and ultimately the State, to determine whether the City

complied with AB 939, the City needed accurate reporting and documentation.[1] Both failing to accurately report and failing to provide the City with requested documentation is are each material breaches under the Agreement.

Fifth, the notice addressed CWS's amended Quarterly Reports for 2018 quarter 3 and 2019 quarter 1, which included significantly different numbers from the original report. Inaccurate reporting may be taken as evidence of efforts to mislead the City about its diversion and collection rate. The City summarized the wildly different reporting between the original Quarterly Reports and the amended Quarterly Reports.

The notice suggested that part of the issue with CWS's breaches stemmed from CWS not having an agreement in place with LACSD to specifically sort the City's waste and report the City's specific diversion. CWS has claimed that such an agreement is not possible; however, the City contacted LACSD and confirmed this possibility that there are such city specific agreements for curb-side commingled recyclables, Multi-Family, and Commercial solid waste processing. This City-specific diversion is required as a part of the Agreement in accordance with Section 5.8.1, and failure to meet it is a material breach.

Sixth, the notice discussed that CWS continued to fail to provide evidence that it is in compliance with AB 1826 and AB 341. CWS had claimed in its prior response letter that the organic waste program and commercial recycling programs were fully implemented. However, the City could not verify these claims because CWS only provided a simple list of businesses as proof of compliance with AB 1826 and AB 341. Sections 4.13.3-4.13.5 and Section 5.8.1 requires that CWS provide AB 1826 and AB 341 program implementation reports and records. Because CWS failed to produce any evidence of compliance with AB 1826 and AB 341, it had not cured the material breach and remained in default.

Seventh, the City addressed CWS's failure to deliver its new fleet of clean-air vehicles. Section 6.1 of the Agreement requires that by August 1, 2019, CWS must have delivered and commenced operations with a fleet of clean-air collection vehicles. Failure to perform completely under Section 6.1 is a material breach.

Eighth, the notice addressed CWS's failure to cure its breach for not achieving a minimum of 50% diversion of the collected multi-family waste. Pursuant to Section 4.5.3, CWS must process all multi-family complexes consisting of five units or more at a fully permitted materials recovery facility and shall divert a minimum of 50% of the collected waste. CWS reported that it was processing this waste at the Puente Hills facility; however, CWS failed to provide any documentation that verified any measurable diversion. The City requested evidence demonstrating compliance.

Lastly, the notice addressed the fact that CWS had failed to cure any of the "miscellaneous breaches" identified in Exhibit "A" of the June 5, 2019 default notice,

[1] Around this time, the City met with representatives of CalRecycle, who expressed concern that the City was, amongst other things, not meeting its AB 939 requirements and, within the coming months, thus should expect further compliance action from the State.

despite the fact that three months had passed. The City demanded documentation addressing each pending item referenced in Exhibit "A" of the June 5 default notice.

Despite CWS being in default and having been given several more months than was required under the Agreement to cure, the City proposed a second in-person meeting date of October 28, 2019 to resolve all outstanding defaults.

I. CWS October 7, 2019 Response Letter. On October 7, 2019, CWS provided a response letter to the City's September 25, 2019 default notice. CWS maintained that it was not in breach of the Agreement.

CWS's response appears to argue that a third party contractor was intentionally dumping to dilute CWS's diversion rates so CWS would lose the contract with the City. CWS provided no substantial or credible evidence of these allegations. Moreover, despite the City not actually receiving any documentation or checks from CWS, CWS claimed that it had timely (and separately) submitted its second quarter Quarterly Report and Franchise Fee. CWS did not provide any evidence of this allegation.

With respect to AB 939, CWS then made argument that it was in compliance (although it had previously sent an email to the City saying the City was not in compliance) and that it was also in compliance with Section 5.1 because that section did not have its own diversion calculation separate from AB 939. CWS's letter did not provide credible evidence to substantiate its claims. Further, CWS did not (i) respond to the City's inaccurate reporting and discrepancies as set forth in the City's June 27, 2019 supplemental notice, (ii) provide any additional documentation to support its allegations that it had fully implemented AB 1826 and AB 341, or (iii) respond to the miscellaneous breaches. With respect to the outstanding performance bond, CWS refused to provide it, claiming it was "irrelevant."
Finally, CWS provided correspondence from an alleged vendor to establish that the new clean air vehicle fleet would be ready within 60 to 90 days.

J. The City's October 9 and October 28, 2019 Emails. The City sent an email to CWS on October 9, 2019, which requested that CWS provide documentation and information that was missing from CWS October 7, 2019 letter (and which CWS purported to include but did not). The City sought dates and times that CWS was available for a second in-person meeting. CWS did not respond to this email. The City then sent a final email to CWS providing it a final chance to resolve CWS's outstanding breaches of the Agreement on October 28, 2019.

In these emails, the City did the following:

1. Because CWS failed to respond to the City's request for availability for an in-person meeting, the City set a date and time for that meeting.

2. Demanded that CWS provide all outstanding record requests, including incomplete Quarterly Reports.

3. Noted that CWS still had not provided evidence that its order for a new fleet of vehicles was being delivered. In fact, the City attempted to contact the

businesses CWS claimed to be working with. From that investigation, it appeared that the business either did not exist as a business or claimed that there was no order pending as CWS claimed. The City therefore demanded that CWS provide proof that this alleged fleet will be produced.

4. Demanded that CWS provide information and documentation responding to Exhibit "A" of its June 5, 2019 default letter, which provided all of the "miscellaneous" breaches.

5. Demanded that CWS respond to its Supplemental Notice from June 27, 2019, including compliance regarding AB 1826 and AB 341.

K. The Results of the Audit. The City's waste management consultant, MuniEnvironmental, attempted to conduct an audit of CWS, pursuant to Sections 8.1 and 8.2. During the course of the audit, CWS failed to have or otherwise provide the requested documentation, or provided documentation that was incomplete. The results of the audit evidence that CWS is not complying with the account and records provision of the Agreement, as set forth in Article 8. It is unclear what records CWS actually has regarding the Agreement.

L. The City's November 4, 2019 Default Notice. Most recently the City had to issue a Default Notice to CWS on November 4, 2019 for failing to timely pay the 2019 second quarter franchise fee, as well as CWS's failure to pay the Annual Program Payments.

Pursuant to Article 3, Section 3.2, CWS shall make an annual payment to the City on the anniversary date of the Agreement—that is, every July 1st—for each of the following: (1) an AB 939 Program Payment in the amount of $20,000 and (2) a Performance Audit Program Payment in the amount of $25,000. CWS has not paid either of these annual payments. As such, CWS is in material breach of the Agreement.

M. On or about November 7, 2019, the City Received Notice that CWS's Insurance Has Termination. The City learned on or about November 7, 2019, that CWS's insurance, as required by the Agreement, had terminated and/or lapsed. This was confirmed by Millennium Corporate Solutions, who is the insurance broker for CWS on the certificates of insurance of which the City had received copies.

Insurance is mandatory under Article 11 of the Agreement and CWS cannot perform any work or services until it provides the City with new certificates of insurance that comply with the requirements of the Agreement. Failure to have insurance, or to notify the City of cancellation or modification of the insurance policies at least thirty (30) days in advance, are each a material breach of the Agreement. Moreover, the City must approve any insurance policies obtained by CWS for performance of the Agreement prior to conducting any work or services thereunder.

Losing insurance coverage prohibits CWS from performing its service obligations under the Agreement. Despites its contractual obligation to do so, CWS failed to notify the City that its insurance had been cancelled. The City had to confirm this default directly through the insurance broker, and the City has since learned that CWS's General

Liability, Business Auto, and Excess Liability policies were each *cancelled* effective September 2, 2019, and that its Workers Compensation Insurance was non-renewed effective October 1, 2019. Accordingly, it appears that CWS was aware of these losses of coverage in its insurance policies for over two (2) months (in which it has communicated with the City several times), but failed to notify the City.

At the November 12, 2019 hearing, CWS represented to the Council that it had procured an insurance policy that complied with Article 11 (*i.e.*, the insurance requirements) of the Agreement. CWS sent a text message of an image of the certificate of insurance to the City during the hearing. Given the time and that the public hearing was ongoing, the City was unable during the hearing to verify the insurance; the City explained it would need to independently verify the validity of the certificate of insurance, as required by the Agreement, before it could establish whether CWS had satisfied Article 11. The City instructed CWS that it could not perform any services under the Agreement until the alleged insurance policy could be independently confirmed by City Staff the following morning. The City further informed CWS that performing any services under the Agreement without the proper insurance is prohibited by the Agreement.

Notwithstanding the foregoing, it was clear from the certificate of insurance provided by CWS at the hearing that, even assuming arguendo that it was sufficient insurance (which, as discussed below, it was not), the insurance certificate was dated November 1, 2019 and the effective date for the insurance policies therein were October 9, 2019. As a result, it is evident that in all events CWS was performing under the Agreement without insurance for a significant amount of time. Further, as discussed below, the insurance certificate provided during the hearing did not satisfy the insurance requirements of the Agreement.

This level of breach gives rise to the right to immediate termination permitted under Section 9.1(i) and (vii), which provide, respectively, that the City may immediately terminate the Agreement "[i]f Franchisee practices, or attempts to practice, any willful fraud or deceit upon the City. Both parties agree and understand that any failure to disclose information material to the performance of the Agreement shall constitute a breach"; and, "[i]f Franchisee refuses to provide City with required information, reports, or test results in a timely manner as required by this Agreement."[2] Given that CWS has known of the loss of insurance for over two months, and given CWS's failure to notify the City of its cancellation of its insurance policies (which must be done at least 30 days prior to termination) or provide the City with proof of alternative insurance policies that satisfy the Agreement's requirements, CWS—at a minimum—has either willfully defrauded, or at a minimum, engaged in deceit upon the City by failing to timely provide the City with required information, pursuant to the terms of this Agreement.

N. City's November 13, 2019 Cease and Desist Letter to CWS. On November 13, 2019, the City sent CWS a cease and desist letter after it learned that CWS had performed waste services commencing the morning after the hearing (*i.e.*, November 13), in direct conflict with both the Agreement and City's directive at the

[2] Accordingly, the City need not provide a notice of default and opportunity to cure for this breach; instead, it may determine to immediately terminate on these grounds at the Termination Hearing.

hearing to not engage in waste hauling work or services until the certificate of insurance provided by CWS during the hearing had been verified. The City attempted to contact CWS by phone to cause them to immediately cease and desist from performing work, but those calls went unreturned.

Moreover, CWS was not authorized by the City to resume work or services under the Agreement. That same morning (*i.e.*, November 13), the City attempted to verify the certificate of insurance CWS had (i) provided during the hearing and (ii) represented satisfied the insurance obligations under the Agreement; however, the City learned that the proposed insurance certificate did not meet the requirements of Section 11.1. Amongst other things, neither the City, nor any of its officers, employees, or agents were listed as additional insureds, in violation of Section 11.1.5; there was no proof of the required automobile (Section 11.1.3) or workers' compensation insurance policies (Section 11.2); and the insurance limits did not meet the Agreement's specifications with respect to the umbrella policy (Section 11.1.4). As such, CWS's representations to the Council were false and CWS did not cure its material breach.

The City ordered that CWS immediately cease and desist from performing work or providing services under the Agreement until the City has both received and verified proof of insurance consistent with Section 11.1's requirements. On November 15, the City learned that CWS continued to disregard the City's clear directives, including the cease and desist letter, and continued to pick up solid waste without the requisite insurance. This willful disregard for the City's clear directive to not engage in work or services without the adequate insurance and approval from the City likewise is a material breach giving rise to the right to immediate termination permitted under Section 9.1,

SECTION 4. FINDINGS

Based on the foregoing, CWS is in material breach of the Agreement for several reasons and, due to its failure to timely cure those breaches, is in default under the Agreement and is now subject to termination. City Staff has expended considerable resources in an effort to help CWS obtain compliance with the Agreement and cure its defaults, without success.

As discussed above, in order for the City Council to terminate the Agreement in this hearing, Section 9.6 requires findings of default must be based upon substantial evidence supporting the following two findings:

(1) That a default in fact occurred and has continued to exist without timely cure; and,

(2) That such default has, or will, cause a material breach of the 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.

In accordance with Section 9.3, a "default" occurs 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 [], or (ii) a monetary default remains uncured for ten (10) days (or such lesser time as may be specifically provided in this Agreement.)

To terminate the Agreement or to otherwise impose conditions on a finding of default and time for cure, the City Council needs to find that there is only one default of the Agreement. However, as shown above and discussed further below, there are several outstanding defaults that support the findings in accordance with Section 9.6. Those breaches are summarized as follows:

1. **CWS has failed to cure the City's lack of compliance with AB 939 requirements and remains in default.**

   This is a material breach pursuant to Sections 1.43, 5.5, 5.9, and 11.4. CWS was notified of this issue at the in-person meeting on June 3, 2019 and was provided formal Notice of Default on June 5, 2019. As such, CWS has had nearly five months to take corrective action to cure. CWS also admitted in its September 2019 email that the City is not in compliance with AB 939.

   The City recently had a meeting with CalRecycle at which CalRecycle similarly expressed concerns over compliance with AB 939 and indicated the City will likely be subject to compliance regulations in the near future (and, ultimately, monetary penalties if uncured).

   Accordingly, CWS's failure to ensure compliance with AB 939 is a material breach under the Agreement (see Section 11.4), and has and will continue to have a substantial negative impact on the City and the environment. As a result, the City is out of compliance with State law. This alone is sufficient damage to the City. However, because the City has been out of compliance with AB 939 for over a year, the City may well be subject to additional regulatory compliance and oversight from CalRecylcle, which will—at a minimum—created additional costs for the City for purposes of monitoring such compliance requirements. Further, CWS's default has a substantially negative impact on the environment as the City is not contributing to ensuring that its solid waste is diverted and not simply added to landfill. Based upon CWS's reporting and the City's investigation, it appears as if the majority of the City's solid waste is simply being placed in a landfill, which is detrimental to the health of the environment.

2. **CWS has failed to cure the material breaches that CWS must fully implement mandatory programs in accordance with AB 341 and AB 1826.**

   These programs require CWS to recycle at least 50% of the collected waste. CWS has not fully implemented either of these programs and is also not meeting the diversion requirements. This is a material breach pursuant to Sections 1.43, 5.5, and 5.9. CWS has been aware of this issue since the in-person meeting on June 3, 2019 and was provided a formal Notice of Default on June 5, 2019. As such, CWS has had nearly five months to take corrective action to cure.

CWS's failure to implement AB 341 and AB 1826 is a material breach and has and will continue to have a substantial negative impact on the City and the environment. As a result, the City is not complying with State law. This alone is sufficient damage to the City. However, because CWS has not implemented these programs, which are intended to assist with achieving compliance under AB 939, the City is also not in compliance with AB 939. Further, CWS's default has a substantially negative impact on the environment as the City is not contributing to ensuring that its solid waste is diverted and not simply added to landfill.

3. **CWS has failed to deliver a clean-air vehicle fleet and has not timely cured its default.**

Section 6.1.1 requires that CWS must purchase and deliver the vehicles before August 1, 2019. Failure to comply with Section 6.1.1 is a material breach. CWS has been aware of this issue since the in-person meeting on June 3, 2019 and was provided formal Notice of Default on June 5, 2019 (as it had not provided evidence of the purchase of the vehicles). The vehicles were due on August 1, which is over three months ago. Further, the evidence that CWS provided the City to show it had actually purchased the vehicles was misleading and could not be substantiated.

CWS's failure to purchase and deliver a clean air fleet by August 1, 2019 is a material breach and has and will continue to have a substantial negative impact on the City and the environment. These clean air vehicles are required by State law and ensure that the waste hauler is not using outdated vehicles that produce unhealthy exhaust and greenhouse gases. CWS's existing fleet is outdated. CWS's failure to use clean air vehicles is contributing to the pollution and excessive emission of greenhouse gases.

4. **CWS has failed to provide the City with requested information and documentation and has not timely cured its default.**

These requests for information and documentation are set forth in Exhibit "A" of the City's June 5, 2019 Default Notice. It has been over five months and CWS has failed to address these matters. Without the necessary documentation and information from CWS, the City is unable to accurately report to CalRecycle. The City is already out of compliance with AB 939, and CWS's failure to provide the City with the necessary documentation inhibits the City's ability to monitor CWS and determine where the problem with compliance is coming from. As set forth in Section 1.43 and Section 5.8, failure to cooperate with document requests is a material breach. The City has requested supplemental information and documentation multiple times, but CWS has failed to provide any response.

CWS's failure to cooperate with document requests is a material breach and will continue to have a negative substantial impact on the City. Without receiving the necessary information from CWS, the City cannot accurately report to the State its diversion and collection rates. This necessarily impacts the City's ability to comply with AB 939. Ultimately, CWS's failure to provide the City with the

necessary information and documentation has contributed to the City's failure to comply with the requirements of AB 939.

5. **CWS has failed to cure its inaccurate reporting.**

   Failing to accurately report is a material breach pursuant to Section 1.43. In the City's June 27, 2019 Supplemental Notice to CWS further confirmed the inaccurate reporting by CWS that was initially addressed in the June 5, 2019 Default Notice. The notices addressed CWS's continued failure to accurately report all solid waste collected, diverted, and disposed. CWS has had months to cure the inaccuracies in its reporting but has failed to do so, which the City has determined through its independent investigation of CWS's diversion.

   CWS's failure to accurately report is a material breach and will continue to have a negative substantial impact on the City. CWS's inaccurate reporting prevents the City from accurately monitoring diversion rates under Section 5.1 and AB 939. Further, in order for the City, and ultimately the State, to determine whether the City has complied with AB 939, the City needs accurate reporting and documentation. This inaccurate reporting is a part of the fundamental root issue relating to the City's failure to meet the requirements of AB 939. Because the City and ultimately the State are uncertain what CWS's actual collection and diversion rates are, it is impossible for the City to create an action plan to address the issues.

6. **CWS has failed to provide the City with a performance bond that satisfies Section 3.3 of the Agreement.**

   Section 11.3 requires that CWS have a bond that commenced as of the effective date of the Agreement and remains in effect during the entire term of the Agreement. Despite representations by CWS that the performance bond *was* in place as required by the Agreement (and would provide evidence of it within 24 hours of June 3, 2019), CWS has not provided the City with a performance bond that establishes compliance with the period of July 1, 2018 through June 12, 2019. CWS has had months of notice to cure this material breach, but has failed to do so.

   CWS's failure to provide evidence of a performance bond that was in effect for the nearly first year of the Agreement is a material breach and will continue to have a negative substantial impact on the City.[3] The purpose of the performance bond is to guarantee CWS's faithful performance of waste hauling services, including payment of any penalty and the funding of any work to cure a breach of the Agreement. However, as noted herein, many of these breaches occurred during the first year of the Agreement, where there is no evidence of a performance bond.

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[3] Its failure to provide the document is also a material breach under Section 8.2 of the Agreement, which requires CWS to keep all records related to the Agreement for a period of five (5) years post-expiration or termination, and to provide those documents to the City upon request.

7. **CWS's insurance is no longer active, and it nevertheless performed services despite the City's directive to cease and desist without adequate insurance, giving rise to a right to immediate termination.**

On or about November 7, 2019, Millennium Corporate Solutions, which is the insurance broker for CWS, confirmed that CWS's insurance had terminated and no coverage was provided as required by the Agreement. Specifically, insurance is mandatory under Article 11 of the Agreement, and CWS cannot perform any work or services until it provides the City with new certificates of insurance that comply with the requirements of the Agreement. Failure to have insurance is a material breach of the Agreement. Moreover, the City must approve any insurance policies obtained by CWS for performance of the Agreement prior to conducting any work or services thereunder.

The Agreement further requires that CWS must notify the City at least thirty (30) days' prior to termination of any insurance required by the Agreement. However, not only did CWS not provide such contractually required notice, but failed to notify the City even after its insurance had been cancelled. The City learned of this default by its independent investigation and confirmation with CWS's insurance broker. Moreover, it appears that the insurance has been cancelled as of early September, which means CWS has been performing under the Agreement without insurance for a significant amount of time.

This level of breach gives rise to immediate termination permitted under Section 9.1(i), which provides that the City may immediately terminate the Agreement "[i]f Franchisee practices, or attempts to practice, any willful fraud or deceit upon the City. Both parties agree and understand that any failure to disclose information material to the performance of the Agreement shall constitute a breach," and under Section 9.1(vii), which provides the City may immediately terminate the Agreement "[i[f Franchisee refuses to provide City with required information, reports, or test results in a timely manner, as required by this Agreement." Certainly, failing to disclose that CWS lost its insurance coverage several months ago is a prime example of what these provisions are intending to prevent.

At the November 12, 2019 hearing, CWS represented to the Council that it had procured an insurance policy that complied with Article 11 (*i.e.*, the insurance requirements) of the Agreement and provided an image of that certificate of insurance. The City instructed CWS that it could not perform any services under the Agreement until the alleged insurance policy could be independently confirmed by City Staff the following morning. The City further informed CWS that performing any services under the Agreement without the proper insurance is prohibited by the Agreement.

On November 13, the City attempted to verify the certificate of insurance CWS had (i) provided during the hearing and (ii) represented satisfied the insurance obligations under the Agreement; however, the City learned that the proposed insurance certificate did not meet the requirements of Section 11.1. Amongst other things, neither the City, nor any of its officers, employees, or agents were listed as additional insureds, in violation of Section 11.1.5; there was no proof of

the required automobile (Section 11.1.3) or workers' compensation insurance policies (Section 11.2); and the insurance limits did not meet the Agreement's specifications with respect to the umbrella policy (Section 11.1.4). As such, CWS's representations to the Council were false and CWS did not cure its material breach.

Moreover, the insurance certificate was dated November 1, 2019 and the effective date for the insurance policies therein were October 9, 2019. As a result, it appears CWS was also performing under the Agreement without any insurance for a significant amount of time. As such, CWS willfully defrauded and/or deceived the City and engaged in work under the Agreement without insurance, which is a material breach of Section 11.1.5 of the Agreement.

Notwithstanding the foregoing, CWS nevertheless engaged in work the morning following the hearing (*i.e.*, November 13), despite it had been directed not to do so and despite that it had not been authorized by the City to resume work or services under the Agreement, given that the certificate of insurance did not satisfy the Agreement's insurance requirements. CWS further continued to engage in work (on November 14 and/or 15) following the delivery of the City's cease and desist letter.

This level of breach gives rise to the right to immediate termination permitted under Section 9.1(i) and (vii), which provide, respectively, that the City may immediately terminate the Agreement "[i]f Franchisee practices, or attempts to practice, any willful fraud or deceit upon the City. Both parties agree and understand that any failure to disclose information material to the performance of the Agreement shall constitute a breach"; and, "[i]f Franchisee refuses to provide City with required information, reports, or test results in a timely manner as required by this Agreement."[4] It further gives rise to immediate termination under Section 9.1, as a result of CWS's willful disregard of the City Council's directive to not engage in work without the requisite insurance, approved by the City. Given that CWS has known of the loss of insurance for over two months, given CWS's failure to notify the City of its cancellation of its insurance policies (which must be done at least 30 days prior to termination) or provide the City with proof of alternative insurance policies that satisfy the Agreement's requirements, and given CWS's disregard for the City Council's directive to not engage in work until insurance had been verified, CWS—at a minimum—has either willfully defrauded, or at a minimum, engaged in deceit upon the City by failing to timely provide the City with required information, pursuant to the terms of this Agreement.

8. **CWS has failed to pay the City the Annual Program Payments**

Pursuant to Section 3.2 of the Agreement, CWS shall make an annual payment to the City on the anniversary date of the Agreement—that is, every July 1st—for each of the following: (1) an AB 939 Program Payment in the amount of $20,000

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[4] Accordingly, the City need not provide a notice of default and opportunity to cure for this breach; instead, it may determine to immediately terminate on these grounds at the Termination Hearing.

and (2) a Performance Audit Program Payment in the amount of $25,000. CWS has not paid either of these annual payments.

CWS had ten (10) days from November 4, 2019 to cure these material breaches. CWS has not provided any payments to the City. This level of breach gives rise to both termination under Section 9.6, for failure to timely cure an existing default, as well as immediate termination under Section 9.1(iv), given that CWS failed to make any payments or pay any penalties required to be made or paid (which require no further need for notice, opportunity to cure, or hearing).

9. **CWS failed to timely pay the 2019 Second Quarter Franchise Fees and has not paid the late penalties**

   Pursuant to Section 3.1 of the Agreement, a failure to timely and accurately pay the Franchise Fee is considered a material breach of the Agreement. The 2019 Second Quarter Franchise Fee was due on August 15, 2019 and the City did not receive this payment until October 8, 2019. Due to the lateness of the payment, CWS was subject to a compounding late payment penalty of 1.5% per month, or any fraction of a month, beyond the prescribed due date for delinquent franchise fees.

   CWS had ten (10) days from November 4, 2019 to cure this material breach. CWS has not paid the late penalty fees. This level of breach gives rise to both termination under Section 9.6, for failure to timely cure an existing default, as well as immediate termination under Section 9.1(iv), given that CWS failed to make any payments or pay any penalties required to be made or paid (which require no further need for notice, opportunity to cure, or hearing).

The foregoing establish that CWS has at least nine outstanding defaults that have not been cured, three of which may result in immediate termination of the Agreement. The City has sought cure of the first six defaults for several months (well beyond its contractual obligations) and CWS has provided no plan for cure.

As such, the Council believes there is substantial evidence to support the above-findings that (1) a default has occurred and will continue to occur; (2) CWS failed to timely cure the defaults despite being provided adequate notice; and (3) that the defaults have caused a material breach of the Agreement and have also cause a substantial negative impact on the City.

SECTION 5. CONDITIONS ON A FINDING OF DEFAULT AND A TIME FOR CURE

Based upon the above-stated substantial evidence and findings, the City Council does hereby find that CWS is in default of the Agreement on each of the grounds stated above (the "Defaults"). However, CWS has sought the City's consent to the full assignment of the Agreement to Assignee. Accordingly, notwithstanding these defaults, the Council hereby determines not to immediately terminate the Agreement, and, subject to the following conditions on the Defaults stated herein, provides an opportunity to cure, as follows:

(1) The Assignment between CWS and Assignee (as defined herein, below) shall take effect within one (1) business day of the effectiveness of this Resolution, subject to the conditions imposed on the City's Consent (as defined herein, below) to the Assignment, as set forth below.

(2) Thereafter, Assignee shall be responsible for the cure of each of the Defaults, as follows:

a. **AB 939**: Within one (1) month from the date of the effectiveness of this Resolution, Assignee shall provide to the City Manager a plan to bring the City into compliance with AB 939. Additionally, Assignee must meet its AB 939 diversion and all other requirements, as well as any related requirements in the Agreement, by the end of the first quarter of 2020 (i.e., January-March 2020) and for each quarter thereafter. Failure to timely satisfy these requirements as specified herein shall be deemed a failure to cure this Default.

b. **AB 341 and AB 1826**: Within one (1) month from the date of effectiveness of this Resolution, Assignee shall provide to the City Manager a plan to bring the City into compliance with AB 341 and 1826. Additionally, Assignee must implement all existing and pending programs of diversion as specified in the Agreement (including the CWS proposal, which is incorporated by reference into the Agreement), including but not limited to programs and facilities to processes multi-family properties, AB 1826 and AB 341 covered generators, by the end of the first quarter of 2020 (*i.e.*, January-March 2020) and shall maintain these requirements for each quarter thereafter. Failure to timely satisfy these requirements as specified herein shall be deemed a failure to cure this Default.

c. **Clean Air Vehicles**: Immediately upon effectiveness of this Resolution, Assignee shall have deployed a fleet of clean air vehicles, aged less than five (5) years, and shall thereafter maintain such fleet consistent with <u>Section 6.1</u> of the Agreement; provided, however, that within six (6) months from the effectiveness of this Resolution, Assignee shall have delivered a new fleet of clean air vehicles consistent with the requirements of <u>Section 6.1</u>. Failure to timely satisfy these requirements as specified herein shall be deemed a failure to cure this Default.

d. **Document Requests**: Immediately upon effectiveness of this Resolution, Assignee shall comply with the Agreement's requirements to comply with document requests, including but not limited to the obligations set forth in <u>Sections 5.8 and 8.2</u>, and all documents provided to Assignee by CWS relating to the Agreement. Further, Assignee agrees to provide all verifiable documentation to all pending CalRecycle reporting requirements associated with the existing City of Hawaiian Gardens MCR and MORe informal plan. Failure to timely

satisfy these requirements as specified herein shall be deemed a failure to cure this Default.

e. **Inaccurate Reporting.** Immediately upon effectiveness of this Resolution, Assignee shall comply with the Agreement's requirements to provide accurate reports for purposes of monitoring diversion rates, as required by Section 5.1 of the Agreement and AB 939. Failure to timely satisfy these requirements as specified herein shall be deemed a failure to cure this Default.

f. **Performance Bond**. Within ten (10) business days from the date of effectiveness of this Resolution, Assignee shall have delivered a valid and effective performance bond to the City that satisfies the obligations of the Agreement, including but not limited to the requirements stated in Sections 3.3 and 11.3. Failure to timely satisfy these requirements as specified herein shall be deemed a failure to cure this Default.

g. **Insurance**. Immediately upon effectiveness of this Resolution, Assignee shall have delivered Certificates of Insurance or appropriate insurance binders evidence the insurance policies and requirements, as specified in Section 11.1 of the Agreement; provided, however, that Assignee's maintenance of an umbrella insurance policy with a $10 million policy limit shall not be deemed a default for the ten (10) business days immediately following the effectiveness of this Resolution. For the avoidance of doubt, after ten (10) business days from the effectiveness of this Resolution, all insurance policies, including without limitation the umbrella policy, must be in compliance with the policies and requirements as specified in Section 11.1. Except as expressly provided herein, in no event shall Assignee be entitled to work or otherwise provide services under the Agreement until such time as the City approves the insurance policies provided. Failure to timely satisfy these requirements as specified herein shall be deemed a failure to cure this Default.

h. **Monetary Defaults**. Within three (3) business days from the date of effectiveness of this Resolution, Assignee shall have delivered a cashier's check or other immediately available funds to the City for the Annual Program Payments, late penalties associated therewith, the 2019 Second Quarter Franchise Fees late payments, and any outstanding liquidated damages previously assessed by the City against CWS. Further, Assignee shall be responsible for the payment of any other outstanding fees, including Franchise Fees for the third quarter of 2019, due and owing to the City. Failure to timely satisfy these requirements as specified herein shall be deemed a failure to cure this Default.

Failure to cure any of the above-stated Defaults or to timely and adequately comply with any of these conditions as specified herein, shall be grounds for immediate termination without further notice or opportunities to cure. For the avoidance of doubt, such failure

to cure and comply with any of these conditions specified herein shall be deemed a default subject to immediate termination under Section 9.1(iii). Moreover, nothing herein shall preclude the City from otherwise further declaring a breach and/or default, subject to the terms and provisions of the Agreement.

SECTION 6. CONSENT TO ASSIGNMENT.

City and CWS have entered into the Agreement, and as specified herein, the City has deemed CWS to be in default of the Agreement. In lieu of termination for the Defaults, CWS desires to obtain the consent of the City in assigning the Agreement to Assignee, such that CWS will transfer and assign to Assignee, and Assignee shall accept and assume from CWS, all of CWS's rights, title, benefits, responsibilities, duties, liabilities, and obligations in, to, and under the Agreement, whether arising before, on, or after the effective date of such assignment ("Assignment"). In accordance with Section 10.1 of the Agreement, the Assignment shall not be operative except upon the written consent of the City, such that any attempted assignment without such consent shall be invalid and void.

Accordingly, CWS and Assignee desire to obtain City's consent to the Assignment, and City does hereby consent to the Assignment, subject to the following terms and conditions ("Consent"):

1. All references and meaning assigned to the term "Franchisee" in the Agreement shall hereinafter be understood to mean Waste Resources, Inc., and shall include all of the corresponding rights, obligations and benefits thereof as provided by this Consent and the Agreement.

2. CWS shall execute and deliver to the City the "Waiver of Liability and Release of Claims," attached to this Resolution as Attachment "1," such that the Assignment shall not include any purported claim, damage, cause of action, right or remedy that CWS may have or have had against the City arising from or in any way relating to the Agreement.

3. CWS and Assignee jointly represent and warrant to the City:

   a. That Assignee is an organization in good standing as a Delaware corporation and duly qualified to transact business under the laws of the State of California; and

   b. That the execution, delivery and performance of the Assignment by Assignee have been duly authorized.

4. Assignee expressly assumes, acknowledges, and agrees for the benefit of City to be bound by all liabilities, and to perform and comply with every responsibility, duty and obligation, of CWS under the Agreement (whether arising before, on, or after the Assignment), including without limitation, any Defaults and obligations to cure such Defaults as specified herein; for all such outstanding Defaults that have been previously identified throughout this Termination Hearing process, the City will not be required to conduct another hearing pursuant to Sections 9.3 through 9.6, should Assignee fail to

cure within the specified time period, which in such event, the City will have the explicit right to immediately terminate the Agreement. For the further avoidance of doubt, the City understands, and Assignee represents, that the Assignment by and between CWS and Assignee is for the entirety of the Agreement and in no way constitutes a partial assignment. City shall have the same rights and remedies as against Assignee as City, under the terms and provisions of the Agreement, has and had against CWS with the same force and effect as though every such duty, obligation, responsibility, right or remedy were set forth herein in full. Notwithstanding the foregoing, for any and all claims, demands, contracts, actions, liabilities, allegations, debts, controversies, agreements, damages and causes of action whatsoever, whether known or unknown, suspected or unsuspected, which City owns, holds, or claims to have or at any time heretofore have owned, held or claimed to have held ("Claims") against CWS, CWS and Assignee shall be jointly and severally liable for any such Claims and the City may seek any rights or remedies for such Claims against either. For the avoidance of doubt, this Consent to Assignment in no way shall constitute a release or waiver of any such Claims the City may have against CWS.

5. Without limiting Assignee's obligations under the Agreement following the Assignment, the insurance and indemnity provisions applicable to the Agreement are hereby expressly incorporated by reference and shall continue to apply. This provision shall not be interpreted to be exclusionary.

6. This Consent does not constitute a consent to any subsequent assignment and does not relieve Assignee or any person claiming under or through Assignee of the obligation to obtain the consent of City under Section 10.1 of the Agreement to any future assignment.

7. CWS and Assignee shall each execute an "Acceptance of Terms of Resolution and Consent," attached hereto as Attachment "2," in which CWS and Assignee shall agree to comply with and be bound by the terms and provisions of this Resolution and Consent. Such execution shall be deemed an execution by Assignee of the Agreement. Upon execution of this Consent, Assignee shall be deemed a signatory and party to the Agreement as if Assignee had directly executed the Agreement. Assignee agrees to be firmly bound by all covenants, obligations and conditions of the Agreement by its execution of the Acceptance of Terms of Resolution and Consent.

8. General Provisions of Consent:

a. If this Consent or the Assignment is determined by a court, administrative agency or arbitrator to be invalid, illegal or incapable of being enforced by any rule of law or public policy, the Agreement as originally executed shall nevertheless be deemed to remain in full force and effect as if this Consent and the Assignment had not been made or attempted.

b. If any term or other provision of this Consent is determined by a court, administrative agency or arbitrator to be invalid, illegal or incapable of being enforced by any rule of law or public policy, all other conditions and provisions of this Consent shall remain in full force and effect.

c. This Consent will be construed in accordance with and will be governed by the laws of the State of California.

d. This Consent may be executed in counterparts, each of which shall be deemed to be an original but all of which shall constitute one and the same agreement.

e. This Consent shall inure to the benefit of and be binding upon the parties hereto and their respective legal representatives and successors, and nothing in this Consent, express or implied, is intended to confer upon any other person any rights or remedies of any nature whatsoever under or by reason of this Consent. Assignee may not assign this Consent nor any rights or obligations hereunder, without the prior written consent of the City, and any such assignment shall be void.

f. Each of the parties hereto represents to the other parties that (a) it has the requisite power and authority to execute, deliver and perform this Consent; (b) the execution, delivery and performance of this Consent by it have been duly authorized by all necessary corporate or other actions; (c) it has duly and validly executed and delivered this Consent; and (d) this Consent is a legal, valid and binding obligation, enforceable against it in accordance with its terms.

g. Should any of the parties initiate any action at law or in equity to enforce or interpret the terms of this Consent, the prevailing party(ies) shall be entitled to reasonable attorneys' fees and legal costs from the non-prevailing party(ies) in addition to any other appropriate relief.

h. Except as explicitly stated in this Consent, nothing contained in this Consent will be deemed or construed to modify, waive, impair, or affect any of the covenants, agreements, terms, provisions, or conditions contained in the Agreement. In addition, City's acceptance and waiver of any breach of this Consent by Assignee, CWS or anyone else liable under the Agreement will not be deemed a waiver by City of any other provision of this Consent or the Agreement.

i. This Consent constitutes the final, complete and exclusive statement between the parties to this Consent pertaining to the terms of City's consent to the Assignment, and supersedes all prior and contemporaneous written and oral agreements. No party has been induced to enter into this Consent by, nor is any party relying on, any representation or warranty outside those expressly set forth in this Consent. Any agreement made after the date of this Consent is ineffective to modify, waive or terminate this Consent, in whole or in part, unless that agreement is in writing, is signed by the City and Assignee, and specifically states that agreement modifies this Consent.

SECTION 7. CEQA

This termination of the Agreement is exempt from the California Environmental Quality Act (Public Resources Code, § 2100, et seq; "CEQA"). The adoption of the proposed resolution is not a "project" under CEQA and the State CEQA Guidelines (14 Cal. Code of Regulations, § 15000, et seq.) as it does not have the "potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment." (CEQA Guidelines, §§ 15060 (c) (2)(3), 15378(a).) Moreover, even if the adoption of the resolution terminating the Agreement qualified as a project under CEQA, the resolution is exempt from CEQA as "it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment." (State CEQA Guidelines, § 15061 (b)(3).)

SECTION 8. SEVERABILITY

If any section, subsection, subdivision, sentence, clause, or phrase of this Resolution, or any part thereof is for any reason held to be unconstitutional or unlawful, such decisions shall not affect the validity of the remaining portion of this Resolution or any part thereof. The City Council hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause, or phrase thereof, irrespective of the fact that any one or more section, subsection, subdivision, paragraph, sentence, clause, or phrase be declared unconstitutional or unlawful.

SECTION 9. CERTIFICATION

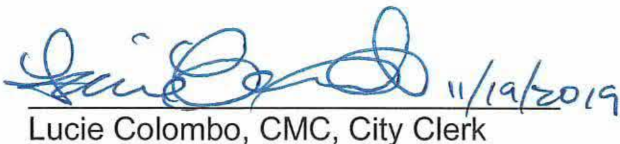
The City Clerk shall certify to the passage and adoption of this Resolution and the same shall take effect and be in force upon its adoption.

PASSED, APPROVED AND ADOPTED this 19th day of November, 2019 by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

Myra Maravilla, Mayor

ATTEST:



Lucie Colombo, CMC, City Clerk

Attachments: (1) Waiver and Release
(2) Consent to Terms of Resolution

CITY OF HAWAIIAN GARDENS
CITY CLERK'S OFFICE
CERTIFICATION

STATE OF CALIFORNIA)
COUNTY OF LOS ANGELES) SS
CITY OF HAWAIIAN GARDENS)

I, LUCIE COLOMBO, CMC, City Clerk of the City of Hawaiian Gardens, do hereby certify that **Resolution No. 111-2019**, was duly and regularly passed and adopted by the City Council of the City of Hawaiian Gardens at its meeting on this 1**9th day of November 2019**, by the following votes as the same appears on file and of record in the Office of the City Clerk.

AYES: ROA, TRIMBLE, ALVARADO, MARAVILLA
NOES: NONE
ABSENT: FARFAN
ABSTAIN NONE

LUCIE COLOMBO, CMC, CPMC
CITY CLERK

ATTACHMENT 1

WAIVER AND RELEASE OF ANY AND ALL CLAIMS BY CWS AGAINST THE CITY OF HAWAIIAN GARDENS FOR THE REASSIGNMENT OF THE EXCLUSIVE SOLID WASTE SERVICES FRANCHISE AGREEMENT

This waiver and release ("Release") is entered into between the City of Hawaiian Gardens ("City") and Commercial Waste Services, Inc. ("CWS"), as a condition precedent to the assignment of that certain Exclusive Solid Waste Services Franchise Agreement ("Agreement") by and between CWS and the City, effective as of November 19, 2019.

1. Purpose of the Waiver and Release

As an alternative to termination of the Agreement, CWS proposed that the City consent to the assignment of the Agreement to another waste hauler. In exchange for consent t the assignment of the Agreement, CWS agrees to waive any and all claims against the City for anything relating to or arising out of the Agreement, and release the City from any liability, damages, rights, or remedies CWS may have or later discover.

2. Condition Precedent

The execution of this waiver and release by CWS is a condition precedent to the City Council's consent to assignment of the Agreement, as specified in Resolution No. 111-2019.

3. No Guarantees

In exchange for CWS waiving any and all claims, demands, contracts, actions, liabilities, allegations, debts, controversies, agreements, damages and causes of action whatsoever, whether known or unknown, suspected or unsuspected, which they now own, hold, or claim to have or at any time heretofore have owned, held or claimed to have held ("Claims") against the City, and releasing the City from any and all such Claims, the City has agreed to consent to the assignment of the Agreement to another waste hauler. Should the City Council choose to consent to the assignment of the Agreement, there are no guarantees by the City beyond this initial consent to assignment. Upon the consent to assignment, and assignment, of the Agreement, the terms and provisions of the Agreement and the City's consent shall govern and dictate the relationship between the City and the new waste hauler. There is no guarantee by the City that the City's consent to assignment to the new waste hauler will result in a future contract beyond the express terms of the Agreement.

4. Waiver of Liability and Release

In exchange for the City consenting to the assignment of the Agreement, CWS and all of its respective trustee(s), heirs, executors, administrators, predecessors, officers, directors, agents, employees, representatives, attorneys, successors and assigns, agrees to release the City, any legislative bodies, commissions, or boards of the City, from any and all Claims against the City by reason of any matter or thing alleged or

referred to, or in any way connected with, arising out of or related to any of the matters, acts, events or occurrences, alleged or related to the Agreement.

CWS acknowledges that there is risk that, subsequent to the execution of this Release, it will incur or suffer loss, damage, or injury which is in some manner caused by the matters referenced above, but which is unknown and unasserted at the time this Releawse is executed, and CWS hereby expressly assumes the abovementioned risks.

Notwithstanding the foregoing, CWS agrees that this Release SHALL APPLY TO ALL KNOWN OR UNKNOWN OR UNANTICIPATED CLAIMS RESULTING FROM THE TRANSACTIONS AND OCCURRENCES DESCRIBED ABOVE, and that CWS expressly waives all rights under California Civil Code section 1542, which provides

> **A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.**

This Release has been entered into in contemplation of Civil Code § 1542. CWS hereby knowingly and voluntarily waives for itself, and its respective trustee(s), heirs, executors, administrators, predecessors, officers, directors, agents, employees, representatives, attorneys, successors and assigns, all rights under this Section and all provisions of comparable, equivalent or similar federal statutes, California and federal common law, and any other decisional law.

5. Understanding of Agreement

CWS acknowledges and represents that it has read the foregoing, understands it, and voluntarily sign it, without relying on any representations, statements, or information by the City. Prior to the execution of this Release, CWS had an opportunity to seek the benefit and advice of independent legal counsel of its own selection regarding the substance of this Release, and the Claims released herein.

6. Corporate Authority

CWS has received all corporate and other approvals necessary to sign this Release and that the person signing this Release on its behalf is fully authorized to commit and bind CWS to each and all of the terms and conditions hereof, and to release the Claims described herein, and that all documents and instruments relating thereto are, or, upon execution and delivery will be, valid and binding obligations, enforceable against them in accordance with their respective terms.

7. Attorney's Fees

In the event of any litigation claim concerning any controversy, claim or dispute between CWS and the City arising out of or relating to this Release or the interpretation thereof, the prevailing party shall be entitled to recover from the other party its reasonable expenses and costs, including attorney's fees, incurred in conjunction therewith or in the

enforcement or collection of any judgment or award rendered therein. The "prevailing Party" means the party determined by the court to have prevailed, even if such party did not prevail in all matters, not necessarily the one in whose favor a judgment or award is rendered.

8. Governing Law; Venue

This Release shall be governed by, and construed in accordance with, the laws of the State of California. Any action arising out of this waiver and release must be commenced in the state courts of the State of California, County of Los Angeles and CWS hereby consents to the jurisdiction of the above court in any such action and to the laying of venue in the State of California, County of Los Angeles, and agrees that such courts have personal jurisdiction over each of them.

9. Headings

The section headings that appear throughout this waiver and release have been provided solely for the convenience of CWS and do not define or limit the scope of any provision. Consequently, the headings shall not be considered when interpreting this Release.

WHEREFORE, CWS and City each have executed this Release, as of the date first set forth above.

FOR CWS:

Commercial Waste Services, Inc.

By:

Printed Name: Hak Petrosian

Its: Vice President

FOR CITY:

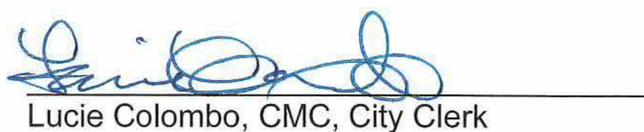
City of Hawaiian Gardens

By:

Printed Name: Myra Maravilla

Its: Mayor

ATTEST:



Lucie Colombo, CMC, City Clerk

APPROVED AS TO FORM:

Megan Garibaldi, Interim City Attorney

ATTACHMENT 2

Acceptance of Terms of Resolution and Consent

This Acceptance of Terms of Resolution and Consent ("Acceptance") is made as of the effective date of Resolution No. 111-2019 ("Effective Date"), by and among Commercial Waste Services, Inc., a California corporation ("CWS"), and Waste Resources, Inc., a California corporation ("Assignee"). All capitalized terms used herein shall have the meaning first ascribed to them in Resolution No. 111-2019.

CWS and Assignee each represent and warrant they have read the foregoing Resolution, including the City's Consent to the Assignment of the Agreement specified therein and all the terms and conditions imposed on such Assignment. By execution of this Acceptance, CWS and Assignee each further agree to be bound by all terms, conditions, and provisions specified in the Resolution and Consent.

WHEREFORE, CWS and Assignee each have executed this Acceptance of Terms of Resolution and Consent, as of the date first set forth above.

FOR CWS:

Commercial Waste Services, Inc.

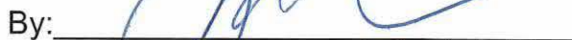
By:

Printed Name: Hak Petrosian

Its: Vice President

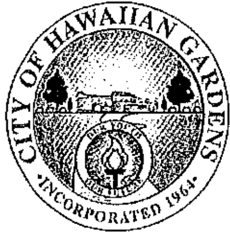
FOR ASSIGNEE:

Waste Resources, Inc.

By: 

Printed Name: Tommy Gendal

Its: COO - EVP



CITY OF HAWAIIAN GARDENS
CITY COUNCIL
STAFF REPORT

Agenda Item No A-1/C-1

City Manager__________

CITY OF HAWAIIAN GARDENS
ACTION:
Approved
Denied
Amended
Receive & File
Other
APPROVED AS AMENDED AT MTG. BY C. ATTORNEY (see signed orig.)
VOTE: 4-0-1 - Farfan Abstained
DATE: 11/19/2019

TO: Honorable Mayor and City Councilmembers

THRU: Ernie Hernandez, City Manager

FROM: Megan K. Garibaldi, Interim City Attorney

DATE: November 19, 2019

SUBJECT: CONTINUED PUBLIC HEARING FOR TERMINATION OF FRANCHISE AGREEMENT WITH COMMERCIAL WASTE SERVICES, INC., AND ADOPTION OF RESOLUTION (1) TERMINATING AGREEMENT OR (2) FINDING DEFAULTS UNDER THE AGREEMENT AND PROVIDING FURTHER OPPORTUNITY TO CURE, SUBJECT TO THE ASSIGNMENT OF THE AGREEMENT TO WASTE RESOURCES, INC.

RECOMMENDATION

Staff recommends that the City Council (i) continue to conduct the "Termination Hearing" of the Exclusive Solid Waste Services Franchise Agreement ("*Agreement*"), dated as of July 1, 2018, by and between the City of Hawaiian Gardens and Commercial Waste Services, Inc. ("*CWS*"), and (ii) adopt one of the two proposed resolutions attached to this staff report, which either (A) Terminate the Agreement (which such Resolution is attached to this staff report as Attachment "A"), or (B) Find Defaults Under the Agreement and Provide Further Opportunity to Cure, Subject to the Assignment of the Agreement to Waste Resources, Inc. (which such Resolution is attached to this staff report as Attachment "B").

BACKGROUND

At the November 12, 2019 regular City Council meeting, the City Council opened a public hearing, consistent with the requirements of the Agreement, for consideration of CWS's defaults under the Agreement and for the City Council to evaluate and determine whether to terminate that Agreement. The Staff Report for that meeting is incorporated by reference herein, as though set forth in full.

During that hearing, the City Council was presented with testimony, public comment, and other evidence. Amongst may other things, CWS indicated that it would like to see the assignment of the Agreement to another waste hauler, Waste Resources, Inc., and sought the City's consent to such assignment. CWS further represented to the Council

that it had procured an insurance policy that complied with Article 11 (*i.e.*, the insurance requirements) of the Agreement and presented a copy of that certificate of insurance to the City during the hearing. Given the time and that the public hearing was ongoing, the City was unable during the hearing to verify the insurance; the City explained it would need to independently verify the validity of the certificate of insurance, as required by the Agreement, before it could establish whether CWS had satisfied Article 11. The City instructed CWS that it could not perform any services under the Agreement until the alleged insurance policy could be independently confirmed by City Staff the following morning. The City further informed CWS that performing any services under the Agreement without the proper insurance is prohibited by the Agreement.

Accordingly, the City Council left the public hearing open and adjourned the regular meeting to November 19, 2019, such that the issues relating to assignment and insurance could be further investigated and reviewed.

PROCEDURE FOR TERMINATING THE AGREEMENT

As a reminder, the Agreement sets forth two ways in which the City may terminate the Agreement. They are:

1. Pursuant to Section 9.1, the City may immediately terminate the Agreement for specific, identified events that the Agreement categorizes as so material to CWS's performance that the City need not provide notice or an opportunity to cure, and is not required to hold any meetings or hearings, prior to termination. Relevant here is Section 9.1(i), which provides, that the City may immediately terminate the Agreement "[i]f Franchisee practices, or attempts to practice, any willful fraud or deceit upon the City. Both parties agree and understand that any failure to disclose information material to the performance of the Agreement shall constitute a breach."

2. Pursuant to Sections 9.3 through 9.6, which requires the City to satisfy several procedural requirements before terminating the Agreement, including Notice of Defaults and opportunities to cure, before the City issues a notice of intent to terminate the Agreement ("*Termination Notice*"). The City complied with this procedure by issuing a Termination Notice to CWS on November 8, 2019, and setting the hearing for termination for November 12, 2019.. The City's Termination Notice is attached to the staff report for the November 12th meeting as Attachment "O." The Termination Notice included the staff report and exhibits, which informs CWS of the evidence against it.

After issuing a Termination Notice, if required, the City must schedule a termination hearing at a regularly-scheduled meeting ("*Termination Hearing*") within thirty (30) days of the date of Termination Notice. The City has satisfied the relevant procedural requirements.

The purpose of the Termination Hearing is to provide CWS the opportunity to present evidence to demonstrate that it is not in default, and to rebut any evidence presented in favor of termination.[1] After consideration of all the evidence at the Termination Hearing, the City Council may, based upon substantial evidence, adopt a resolution that does any of the following:

(1) Terminates the Agreement;
(2) Determines CWS is innocent of default and dismiss the Termination Notice; or
(3) Not immediately terminate the Agreement, but instead impose conditions on a finding of default and a time for cure.

Pursuant to Section 9.6, findings of default or a conditional default must be based upon substantial evidence supporting the following two findings:

(1) That a default in fact occurred and has continued to exist without timely cure; and
(2) That such default has, or will, cause a material breach of the 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.

Based on the discussions during the November 12th meeting, the City Council determined that there was substantial evidence of defaults under the Agreement. However, the City Council wanted to consider the possibility of permitting the assignment of the Agreement, and thus continued the hearing for one week to allow the parties to take the necessary steps to effectuate such assignment. Accordingly, attached to this Staff Report are two Resolutions, either of which the City Council may adopt:

- Attachment A: Resolution of Termination
- Attachment B: Resolution Declaring Defaults and Providing an Opportunity to Cure Subject to Imposed Conditions, including Assignment of the Agreement to Waste Resources, Inc.

DISCUSSION

As discussed in detail at the hearing on November 12, staff believes substantial evidence exists of defaults, and the requisite findings can be made for termination of the Agreement. Alternatively, in the event Council desires to consent to the assignment of the Agreement, opportunities and means for cure of the existing defaults have been identified.

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[1] As a quasi-adjudicatory hearing, however, CWS is not entitled to cross-examination of witnesses, formal rules of evidence, or similar rights afforded to litigants in a civil or criminal trial.

Immediately below is a summary of the events that have occurred following last week's continuance of the Termination Hearing.

I. Insurance and Continued Work Under the Agreement, In Violation of the City's Direct Orders

With respect to CWS's Insurance Certificate provided during the public hearing on November 12th, even assuming arguendo that it was sufficient insurance (which, as discussed below, it was not), the insurance certificate was dated November 1, 2019 and the effective date for the insurance policies therein were October 9, 2019. As a result, it is evident that in all events CWS was performing under the Agreement without insurance for a significant amount of time. Further, as discussed below, the insurance certificate provided during the hearing did not satisfy the insurance requirements of the Agreement.

On November 13, 2019, the City sent CWS a cease and desist letter after it learned that CWS had performed waste services commencing the morning after the hearing (*i.e.*, November 13), in direct conflict with both the Agreement and City's directive at the hearing to not engage in waste hauling work or services until the certificate of insurance provided by CWS during the hearing had been verified. The City attempted to contact CWS by phone to cause them to immediately cease and desist from performing work, but those calls went unreturned.

Moreover, CWS was not authorized by the City to resume work or services under the Agreement. That same morning (*i.e.*, November 13), the City attempted to verify the certificate of insurance CWS had (i) provided during the hearing and (ii) represented satisfied the insurance obligations under the Agreement; however, the City learned that the proposed insurance certificate did not meet the requirements of Section 11.1. Amongst other things, neither the City, nor any of its officers, employees, or agents were listed as additional insureds, in violation of Section 11.1.5; there was no proof of the required automobile (Section 11.1.3) or workers' compensation insurance policies (Section 11.2); and the insurance limits did not meet the Agreement's specifications with respect to the umbrella policy (Section 11.1.4). As such, CWS's representations to the Council were false and CWS did not cure its material breach.

The City ordered that CWS immediately cease and desist from performing work or providing services under the Agreement until the City has both received and verified proof of insurance consistent with Section 11.1's requirements. (A copy of the Cease and Desist Letter is attached hereto as Exhibit "C"). On November 15, the City learned that CWS continued to disregard the City's clear directives, including the cease and desist letter, and continued to pick up solid waste without the requisite insurance.

This willful disregard for the City's clear directive to not engage in work or services without the adequate insurance and approval from the City is a material breach giving rise to the right to immediate termination permitted under Section 9.1, This level of breach gives rise to the right to immediate termination permitted under Section 9.1(i) and (vii), which provide, respectively, that the City may immediately terminate the

Agreement "[i]f Franchisee practices, or attempts to practice, any willful fraud or deceit upon the City. Both parties agree and understand that any failure to disclose information material to the performance of the Agreement shall constitute a breach"; and, "[i]f Franchisee refuses to provide City with required information, reports, or test results in a timely manner as required by this Agreement."[2] Given that CWS has known of the loss of insurance for over two months, and given CWS's failure to notify the City of its cancellation of its insurance policies (which must be done at least 30 days prior to termination) or provide the City with proof of alternative insurance policies that satisfy the Agreement's requirements, CWS—at a minimum—has either willfully defrauded, or at a minimum, engaged in deceit upon the City by failing to timely provide the City with required information, pursuant to the terms of this Agreement.

II. Assignment

With respect to the potential assignment, staff has prepared a second Resolution, which declares the existence of the defaults under the Agreement and provides additional times to cure such defaults, subject to the conditions specified therein—including the assignment of the Agreement to Waste Resources, Inc. (see Attachment B). The Resolution specifies the additional cure periods for each default, as well as the manner to cure such defaults, and the conditions imposed on the City's consent to the assignment of the Agreement to Waste Resources, Inc.

ENVIRONMENTAL REVIEW

This termination of the Agreement is exempt from the California Environmental Quality Act (Public Resources Code, § 2100, et seq; "CEQA"). The adoption of the proposed resolution is not a "project" under CEQA and the State CEQA Guidelines (14 Cal. Code of Regulations, § 15000, et seq.) as it does not have the "potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment." (CEQA Guidelines, §§ 15060 (c) (2)(3), 15378(a).) Moreover, even if the adoption of the resolution terminating the Agreement qualified as a project under CEQA, the resolution is exempt from CEQA as "it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment." (State CEQA Guidelines, § 15061 (b)(3).)

FISCAL IMPACT

If the City proceeds with termination of the Agreement, it will result in the City needing to obtain a new waste hauler. Amongst other things, this will require the City renegotiate terms of a new franchise agreement. The fiscal impact is thus uncertain because it will be dependent on the terms of any new franchise agreement. It is also possible that with the negotiation of a new franchise agreement with a new waste hauler, rates for residents may increase. In addition, it is anticipated that an interim agreement will cause the City to be billed directly for costs (instead of residents) and that, because the City

[2] Accordingly, the City need not provide a notice of default and opportunity to cure for this breach; instead, it may determine to immediately terminate on these grounds at the Termination Hearing.

does not currently having a billing system in place to pass through costs to residents, it is anticipated the City will not be able to sufficiently collet fees and will incur unknown costs until a new billing system is in place with a new hauler under a final, complete agreement.

If the City assigns the Agreement, the City will generally be in the same financial position as it is under the Agreement with CWS, although the City is hopeful the assignment will result in less costs expended on compliance efforts.

ATTACHMENT:

Attachment A:	Resolution of Termination
Attachment B:	Resolution Declaring Defaults and Providing an Opportunity to Cure Subject to Imposed Conditions, including Assignment of the Agreement to Waste Resources, Inc.
Attachment C:	The City's November 13, 2019 Cease and Desist Letter