

**AMENDMENT NO. 1 TO
EXCLUSIVE SOLID WASTE SERVICES
FRANCHISE AGREEMENT BETWEEN
THE CITY OF HAWAIIAN GARDENS AND
WASTE RESOURCES INC.**

THIS AMENDMENT No. 1 (“Amendment”) to the Exclusive Solid Waste Services Franchise Agreement is made and entered into this 28th day of September 2021 (“Effective Date”), by and between the CITY OF HAWAIIAN GARDENS, a general law city and municipal corporation (“City”), and WASTE RESOURCES, INC., a California corporation (“Franchisee”).

RECITALS

A. City granted an exclusive solid waste services franchise to Commercial Waste Services, Inc. (“CWS”) by entering into that certain Exclusive Solid Waste Services Franchise Agreement (“Agreement”), dated July 1, 2018.

B. City adopted Resolution No. 111-2019, dated November 19, 2019, consenting to the assignment of Agreement from CWS to Franchisee, effective November 20, 2019, whereupon Franchisee assumed responsibility for providing exclusive solid waste services to all properties in the City under the terms of the Agreement.

C. On or about April 1, 2020, that certain “Temporary Reduction of Letter of Credit and Suspension of Franchise Fees Required under Franchise Agreement,” by and between the City and Franchisee, dated April 1, 2020 (“Tolling Agreement”), was entered as a temporary measure to mitigation immediate impacts from COVID-19 on Franchisee. Amongst other things, the Tolling Agreement tolled but did not waive the payment of Franchise Fees and Annual Program Fees, subject to the terms set forth in the Tolling Agreement.

D. In accordance with Proposition 218, City approved a rate increase to the residential, commercial, and industrial solid waste services authorized under the Agreement, following a majority protest hearing conducted on September 14, 2021, through the adoption of Resolution No. 025-2021.

E. City and Franchisee desire to amend the Agreement to extend the term and incorporate additional modifications to the Agreement, as provided in this Amendment.

AGREEMENT

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

SECTION 1. Article 1, Section 1.1A, entitled “AB 341,” is added to read as follows:

“1.1A AB 341

‘AB 341’ means the act amending Sections 41730, 41731, 41734, 41735, 41736, 41800, 42926, 44004, and 50001 of, and adding Sections 40004, 41734.5, and 41780.01 to, to add Chapter 12.8 (commencing with

Section 42649) to Part 3 of Division 30 of, and to add and repeal Section 41780.02 of, the Public Resources Code, relating to solid waste.”

SECTION 2. Article 1, Section 1.1B, entitled “AB 1826,” is added to read as follows:

“1.1B AB 1826

‘AB 1826’ means the Organic Waste Recycling Act of 2014 (Chapter 727, Statutes of 2014 modifying Division 30 of the California Public Resources Code), also commonly referred to as “AB 1826,” as amended, supplemented, superseded, and replaced from time to time.”

SECTION 3. Article 1, Section 1.13A, entitled “Commercial Business,” is added to read as follows:

“1.13A Commercial Business

‘Commercial Business’ means a firm, partnership, proprietorship, joint-stock Franchisee, corporation, or association, whether for-profit or nonprofit, strip mall, or industrial facility, Multi-Family Dwelling, or as otherwise defined in 14 CCR Section 18982(a)(6).”

SECTION 4. Article 1, Section 1.13B, entitled “Commercial Edible Food Generator,” is added to read as follows:

“1.13B Commercial Edible Food Generator

‘Commercial Edible Food Generator’ means a tier one or tier two commercial edible food generator, as defined in 14 CCR Section 18982.

A. A tier one commercial edible food generator is one of the following:

1. Supermarket, as defined in 14 CCR Section 18982(a)(71).
2. Grocery store, as defined in 14 CCR Section 18982(a)(30) with a total facility size equal to or greater than 10,000 square feet.
3. Food service provider, as defined in 14 CCR Section 18982(a)(27).
4. Food distributor, as defined in 14 CCR Section 18982(a)(22).
5. Wholesale food vendor, as defined in 14 CCR Section 18982(a)(76).

B. A tier two commercial edible food generator is one of the following:

1. Restaurant, as defined in 14 CCR Section 18982(a)(64), with 250 or more seats, or a total facility size equal to or greater than 5,000 square feet.
2. Hotel, as defined in 14 CCR Section 18982(a)(34), with an on-site food facility and 200 or more rooms.
3. Health facility, as defined in 14 CCR Section 18982(a)(32), with an on-site food facility and 100 or more beds.
4. Large venue, as defined in 14 CCR Section 18982(a)(39).
5. Large event, as defined in 14 CCR Section 18982(a)(38).

6. A State agency with a cafeteria with 250 or more seats or a total cafeteria facility size equal to or greater than 5,000 square feet.
7. A local education agency with an on-site food facility.”

SECTION 5. Article 1, Section 1.27A, entitled “Edible Food,” is added to read as follows:

“1.27A Edible Food

‘Edible Food’ means food intended for human consumption, as defined in 14 CCR Section 18982(a)(18). For the purposes of the Agreement, Edible Food is not Solid Waste if it is recovered and not discarded. Nothing in the Agreement requires or authorizes the recovery of Edible Food that does not meet the food safety requirements of the California Retail Food Code.”

SECTION 6. Article 1, Section 1.29A, entitled “Food Waste,” is added to read as follows:

“1.29A Food Waste

‘Food Waste’ means all discarded food such as, but not limited to, fruits, vegetables, meat, poultry, seafood, shellfish, bones, rice, beans, pasta, bread, cheese, food soiled paper, and eggshells. Food Waste excludes fats, oils, and grease when such materials are Source Separated from other Food Waste.

SECTION 7. Article 1, Section 1.29B, entitled “Food Recovery,” is added to read as follows:

“1.29B Food Recovery

‘Food Recovery’ means actions to collect and distribute Edible Food for human consumption which otherwise would be disposed, or as otherwise defined in 14 CCR Section 18982(a)(24).”

SECTION 8. Article 1, Section 1.29C, entitled “Food Recovery Organization,” is added to read as follows:

“1.29C Food Recovery Organization

“Food Recovery Organization,” as defined in 14 CCR Section 18982(a)(25), means an entity that primarily engages in the collection or receipt of Edible Food from Commercial Edible Food Generators and distributes that Edible Food to the public for Food Recovery either directly or through other entities, including, but not limited to:

- A. A food bank as defined in Section 113783 of the Health and Safety Code;
- B. A nonprofit charitable organization; or,
- C. A nonprofit charitable temporary food facility as defined in Section 113842 of the Health and Safety Code.

SECTION 9. Article 1, Section 1.29D, entitled “Food Recovery Service,” is added to read as follows:

“1.29D Food Recovery Service

‘Food Recovery Service’ means a Person or entity that collects and transports Edible Food from a Commercial Edible Food Generator to a Food Recovery Organization or other entities for Food Recovery; or as otherwise defined in 14 CCR Section 18982(a)(26).”

SECTION 10. Article 1, Section 1.56A, entitled “SB 1383,” is added to read as follows:

“1.56A SB 1383

‘SB 1383’ means Senate Bill 1383 of 2016 approved by the Governor on September 19, 2016, which added Sections 39730.5, 39730.6, 39730.7, and 39730.8 to the Health and Safety Code, and added Chapter 13.1 (commencing with Section 42652) to Part 3 of Division 30 of the Public Resources Code, establishing methane emissions reduction targets in a statewide effort to reduce emissions of short-lived climate pollutants as amended, supplemented, superseded, and replaced from time to time. To the extent any capitalized terms used herein are not defined or otherwise ascribed a particular meaning, such capitalized terms shall have the meaning ascribed to them in SB 1383.”

SECTION 11. Article 2, Section 2.5, entitled “Franchise Term,” is hereby deleted and shall be replaced in its entirety with the following:

“2.5 Franchise Term

The term of the Agreement shall be for a period of seven (7) years, commencing on July 1, 2021, and expiring on June 30, 2028, unless terminated earlier pursuant to Article 9 of the Agreement, or otherwise.

On July 1, 2028, the Term shall automatically be extended for an additional three (3) year period to June 30, 2031, unless City determines, in its reasonable discretion, that there has been any form of non-performance of uncured service deficiency, as defined under Article 9 of the Agreement.

SECTION 12. Article 2, Section 2.6, entitled “Option to Extend,” is deleted in its entirety and will be hereafter noted as, “**Intentionally Omitted.**”

SECTION 13. Article 2, Section 2.14, entitled “Deferment of Effective Date of SB 1383,” is hereby added as follows:

“2.14 Deferment of Effective Date of SB 1383.

Subject to the time frames of SB 619, Franchisee may prepare and submit on behalf of City the appropriate deferral request to CalRecycle. If such request is not granted, Franchisee shall comply with all applicable requirements of SB 1383.”

SECTION 14. Article 4, Section 4.12(x), entitled “Corrective Action ‘Red Tag’ Notice,” is hereby deleted in its entirety and replaced by Article 4.12.2, entitled “Contamination Monitoring Procedures,” to read as follows:

“4.12.2 Contamination Monitoring Procedures

- A. **General.** This section presents inspection method(s) for Container contaminants to be used by Franchisee in conducting contamination monitoring.
- B. **Container Inspection Methods.** When Franchisee’s route personnel dismounts from Collection vehicles to empty a Container, such personnel will lift the Container lid and observe the contents. Upon finding prohibited Container contaminants in a Container, Franchisee will follow the contamination noticing procedures and contaminated Container handling protocols as set forth in the Municipal Code.

For Collection vehicles with automated Collection service, the Collection vehicle hopper will be equipped with a video camera and monitoring system. Franchisee’s route personnel will observe, via the hopper video camera and monitoring system, the contents of the Containers as the materials are emptied into the Collection vehicle. Upon finding prohibited Container contaminants in a Container, Franchisee will follow the contamination noticing procedures and contaminated Container handling protocols set forth in the Municipal Code.

The next day on which a Customer with prohibited Container contaminants is to receive service, the Franchisee’s route personnel will perform a lid lift of the Container, and visually inspect the contents of the Container. If the Franchisee’s route personnel determine that the Container again contains prohibited Container contaminants, Franchisee will follow the contamination noticing procedures and contaminated Container handling protocols set forth in the Municipal Code.

- C. **Red Tag and Recordkeeping.** Franchisee will place a red tag or other warning notice approved by City on all Refuse, Recyclable Material, Green Waste, or Organic Waste (as such terms are defined in the Agreement, including through this Amendment, or if not so defined, as defined in Chapter 6.12 of City’s Municipal Code, as may from time to time be amended), in the containers that are contaminated, indicating to the Customer (1) the requirement to properly source separate materials; (2) why the load was not Collected; and (3) any photographic evidence providing Franchisee’s telephone number. For Customers with off-site management such as small apartment buildings, Franchisee will also mail or email a copy of the warning to the Customer’s address or email address on file. Franchisee will notify City on a monthly basis of any warning notices issued pursuant to this section, including providing (1) the address of the Customer; (2) the date contamination was observed; (3) any photographs; and (4) what action was taken, and will provide copies of such warnings to City upon request.

- D. **Courtesy Pick-up.** Franchisee will Collect the contaminated source separated Recyclable Materials or Organic Waste, including Green Waste and Food Waste; and transport the material to the appropriate facility for processing; or, Franchisee may Collect the contaminated materials with the Refuse Container and transport the contaminated materials to the appropriate Disposal Site or Materials Recovery Facility for Disposal or processing.
- E. **Removal of Containers from Habitual Contaminators.** With prior written City authorization, Franchisee may remove Recycling, Green Waste, or Organic Waste Containers from habitual contaminators that have received four (4) warnings in any three-month period. Containers will be returned upon change of occupancy or if directed to return the container by City.”

SECTION 15. Article 4, Section 4.8, entitled “Organics and Food Waste Recycling Optional,” is deleted in its entirety and replaced to read as follows:

“Section 4.8 Organic Waste Program”

‘Organic Waste’ means Solid Wastes containing material originated from living organisms and their metabolic waste products, including but not limited to food, green material, landscape and pruning waste, organic textiles and carpets, lumber, wood, Paper Products, Printing and Writing Paper, manure, biosolids, digestate, and sludges or as otherwise defined in 14 CCR Section 18982(a)(46).”

SECTION 16. Article 4, Section 4.8.1, entitled “Organic Waste Collection Service for Single-Family Dwellings,” is hereby added as follows:

“4.8.1. Organic Waste Collection Service for Single-Family Dwellings

Organic Waste Collection Effective January 1, 2022. Effective January 1, 2022, Franchisee will continue to provide all Customers receiving Cart Refuse Collection with a 64-gallon Cart for Collection of Organic Waste, as set forth in the regulations of SB 1383, including, but not limited to, Green Waste and Food Waste (as such terms are defined in the Agreement, including through this Amendment, or if not so defined, as defined in Chapter 6.12 of City’s Municipal Code, as may from time to time be amended), 96-gallon Green Waste Carts will also be made available to Customers upon request. Customers will be instructed to place the Carts in the street gutter for Collection. However, Franchisee will relocate Carts for Collection, when necessary, and return them to their original position. Franchisee will Collect all Green Waste and Food Waste placed in Green Waste Carts, as well as all Green Waste bundled as set forth below, and put out for Collection by Customers not less than once per week on the same day as Refuse Collection. Customers that regularly fill their Green Waste Carts may receive a second Cart at no additional charge. Carts beyond two (2) will be provided for an additional cost per Cart per month, in accordance with the approved rate schedule.

Franchisee will have an Organic Waste Collection program whereby it, at a minimum, Collects the types of Green Waste and Food Waste. Franchisee will only be obligated to Collect Green Waste set out for Collection in bundles if it is a maximum of forty-eight (48) inches long and twenty-four (24) inches in diameter, with a bundled weight limit of forty-five (45) lbs.

If Franchisee is unable to process mixed Green Waste and Food Waste from Green Waste Carts at a Green Waste Processing Facility, Materials Recovery Facility, or other processing facilities that process mixed Green Waste and Food Waste, then Franchisee will provide all Customers receiving Cart Refuse Collection with a separate Organic Waste Cart for Collection of Food Waste only. The Organic Waste Carts will be new and comply with colors approved within the SB 1383 regulations. Franchisee will Collect all Food Waste placed in Organic Waste Carts put out for Collection by Customers not less than once per week on the same day as Refuse Collection. Franchisee will, at a minimum, collect and divert the types of Food Waste as defined in Section 1.29A.

Franchisee warrants that the Organic Waste Collection service to be implemented pursuant to Section 4.8.1 will comply in all aspects with SB 1383.”

SECTION 17. Article 4, Section 4.8.2, entitled “Organic Waste Collection Service for Commercial Premises and Multi-Family Dwellings,” is hereby added to reads as follows:

“4.8.2 Organic Waste Collection Service for Commercial Premises and Multi-Family Dwellings

Organic Waste Collection Effective January 1, 2022. Effective January 1, 2022, Franchisee will provide mandatory Organic Waste Collection services to all Customers of Commercial Premises and/or Multi-Family Dwellings who are subject to the requirements of AB 1826 and SB 1383 and SB 619. For Multi-Family Dwellings, SB 1383 and SB 619 will require diversion of both Green Waste and Food Waste. The operational elements of the Organic Waste Collection service will consist, at a minimum, of the following:

1. Franchisee will provide the collection of Food Waste from restaurants and other businesses (as that term is defined in Public Resources Code Section 42649.8) as well as other Organic Waste from Commercial Premises. Franchisee will continue mixed waste processing of Bin Refuse at a Materials Recovery Facility, including Bin Refuse from Multi-Family Dwellings to divert Green Waste. Franchisee will also provide Organic Waste Collection service to Customers of Multi-Family Dwellings which will include processing of Green Waste and Food Waste.
2. Franchisee will provide participating Customers with Carts and/or Bins as necessary for the segregation and storage of Organic Waste to be recycled.

3. The collected Organic Waste will be delivered to a City approved facility that processes Organic Waste for recycling in accordance with AB 1826.
4. Franchisee will maintain a list of all Organic Waste generator accounts receiving Organic Waste Collection service, including Customer name, address, number, and type of Containers provided and frequency of service. Franchisee will submit the list to City at least annually at the end of each calendar year and at City's request at any time, with the list being provided by the next business day.
5. For Customers receiving Organic Waste Collection service, Franchisee will conduct a site visit to ensure there is adequate space for a Cart or Bin for Organic Waste. Franchisee will also conduct an education and outreach program that, at a minimum, includes: (1) handout materials (including brochures) with details on Organic Waste Collection service and Franchisee contact information; (2) educational training for owners, managers, or supervisors of Commercial Premises; (3) site visits, including follow-up visits to ensure source separated program is being implemented successfully; and (4) placement of brochures in areas designated by the Hawaiian Gardens Chamber of Commerce and within Hawaiian Gardens City Hall.
6. Customers provided with Organic Waste Collection service will receive Containers designed for Organic Waste Collection. If Carts and/or Bins are used, Franchisee may charge rates not to exceed the maximum rates approved by City. Franchisee will place Containers for Organic Waste Collection service in a location selected by the Customer and subject to approval by City.

Franchisee warrants that the Organic Waste Collection service to be implemented pursuant to Article 4.8.2 will comply in all aspects with AB 1826 and SB 1383.”

SECTION 18. Article 4, Section 4.8.3, entitled “End Uses for Green Waste and Food Waste,” is hereby added to read as follows:

“4.8.3 End Uses for Green Waste and Food Waste

Franchisee will comply with Chapter 6.12 of City's Municipal Code, as may from time to time be amended, in all respects, including without limitation to divert Green Waste and Food Waste materials Collected through weekly Cart and bundle Collection, holiday tree Collection, Roll-off Box Collection and mixed waste processing (if applicable) from Disposal. Franchisee must provide end uses for Green Waste and Food Waste that maximize diversion credits for City according to regulations established by CalRecycle. Franchisee will divert through uses other than as alternative minimum daily cover. Franchisee is responsible for monitoring how the Green Waste and Food Waste will be diverted at selected facilities and for selecting alternative facilities if necessary, to ensure full diversion credit is achieved.”

SECTION 19. Article 4, Section 4.5.3 (i), entitled “Containers,” is hereby amended to read as follows:

- i. **Multi-Family Containers & Collections.** Multi-Family complexes utilize one or more Franchisee Provided Container(s) (generally at least one Bin for Solid Waste) located at a central on-site location and shared by multiple Residential Units. The location of Containers and the location for automated collection therefrom in Multi-Family complexes shall be mutually-agreed as between the Multi-Family site management and Franchisee, excepting that any storage or placement of Multi-Family Containers in public streets or rights-of-way shall be subject to the prior written approval of the City.

Multi-Family complexes consisting of five (5) units or more are by mandate, required to recycle pursuant to AB 341 “*Mandatory Commercial Recycling*”. ~~Franchisee shall process all Multi-Family Bin Waste at a fully permitted Materials Recovery Facility (MRF) and shall divert a minimum of fifty percent (50%) of the collected waste.~~ Franchisee shall supply each property that is mandated by CalRecycle regulations to recycle, at least one (1) Recycling Cart or Recycling Bin, along with applicable outreach materials to the property manager.

SECTION 20. Article 4, Section 4.5.4, entitled “Cart Replacement,” is hereby added to read as follows:

“4.5.4 Cart Replacement

Regardless of any deferral of the implementation date of SB 1383, on or before January 30, 2022, Franchisee shall provide evidence of the purchase of replacement Carts for all residential and multi-family automated Cart recipients. Franchisee will distribute 96-gallon Refuse Carts, 96-gallon Recycling Carts, and 64-gallon Green Waste Carts to all existing residential Cart customers. Those customers wishing to order additional Carts will be given the choice of 96-gallon and 64-gallon refuse Carts and billed accordingly, per the approved “Maximum Permitted Rate Schedule” (Attachment B). Customers with size restrictions will be offered the opportunity to downsize their default 96-gallon refuse Cart for smaller Carts, equaling the same volume capacity as the default 96-gallon capacity. Franchisee has agreed to procure Carts, the specifications of which are to the mutual reasonable satisfaction of City and Franchisee, and will provide proof of purchase of such Carts to City by no later than October 31, 2021, with delivery of such Carts by January 30, 2022.”

SECTION 21. Article 4, Section 4.5.5A, entitled “Cart Specifications,” is hereby added to read as follows:

“4.5.5A Cart Specifications

i. Capacity

The references to Cart sizes of 64 and 96-gallons are approximate. Franchisee will provide Refuse Carts of approximately 64 and 96-gallons, Recycling Carts of approximately 64 and 96-gallons, Green Waste Carts of

approximately 64 and 96-gallons, and Organic Waste Carts of approximately 64-gallons in size. Kitchen food waste pails are approximately 2-gallons.

ii. Cart Colors

The Refuse, Recycling, and Organic Waste Carts will be differentiated by color according to the implementing regulations for SB 1383. The colors will be colorfast and resistant to fading as a result of weathering or ultraviolet degradation. Color must be uniform within each Container, including replacement Carts distributed throughout the Term of the Agreement. Refuse Carts will be black or gray, Recycling Carts will be blue, and Organic Waste Carts will be green or a color to be proposed by Franchisee for City review and approval, if it meets the requirements of SB 1383. Cart colors will be consistent throughout City.

iii. Identification Markings

All markings on the Containers will match Containers currently in distribution, or will be approved by City in advance of ordering Carts. The words REFUSE, RECYCLING, GREEN WASTE or ORGANIC WASTE must be hot stamped or labeled on the Refuse, Recycling, and Organic Waste Carts respectively, in characters no less than one (1) inch in English and Spanish.

- **Labels/Stencils for Existing Carts.** Labels/stencils will include Franchisee's Customer Service telephone number and a list of allowable contents in English and Spanish, and icons, and be updated as necessary at Franchisee's cost. An anti-scavenging warning will be included on Recycling Containers in both languages.

- **Labels/Imprints for New Carts.** On or before January 1, 2022, Franchisee will place a label or imprint on the body or lid of each new Container that will be provided to a Customer that includes language, in both English and Spanish, or graphic images, or both, that indicate the primary materials accepted and the primary materials prohibited in that Container. Labels or imprints will clearly indicate items that are prohibited Container contaminants for each Container. Franchisee's Customer Service telephone number will be included on all labels and an anti-scavenging warning will also be included on Recycling Containers in both languages. Prior to ordering labels for Containers, Franchisee will submit a copy of its proposed label, proposed location(s) for placement of labels on each type of Container, and its labeling or imprinting plan to City for approval. Labels or imprints will be updated as necessary at Franchisee's cost.

SECTION 22. Article 4, Section 4.5.5B, entitled "Bin Identification and Color," is hereby added to read as follows:

"4.5.5B Bin Identification and Color

Each Bin placed in City by Franchisee will have the name and phone number of Franchisee in letters not less than three (3) inches high on the exterior of the Bin so as to be visible when the Bin is placed for use. Franchisee will identify the Bins that are assigned to each Customer of Multi-Family

Dwellings and Commercial Premises using a method that is acceptable to City. Franchisee will repaint Bins upon City's request. All Refuse Bins will be painted the same color. All commingled Recycling Bins will be painted the same color.

On or before January 1, 2022, Franchisee will place a label or imprint on the body or lid of each new Container that will be provided to a Customer that includes language, in both English and Spanish, or graphic images, or both, that indicate the primary materials accepted and the primary materials prohibited in that Container. Labels or imprints will clearly indicate items that are prohibited Container contaminants for each Container. An anti-scavenging warning will also be included on Recycling Containers in both languages. Prior to ordering labels for Containers, Franchisee will submit a copy of its proposed label, proposed location(s) for placement of labels on each type of Container, and its labeling or imprinting plan to City for approval. Labels or imprints will be updated as necessary at Franchisee's cost. Once Bins reach the end of their useful life, or January 1, 2036, whichever comes sooner, they will be replaced with Bins according to the container color requirements in the implementing regulations of SB 1383."

SECTION 23. Article 4, Section 4.12, entitled "Public Outreach Programs," paragraph iii, entitled "City-Wide Newsletter," is amended to read in its entirety as follows:

"4.12 Public Outreach Programs

...

- iii. **City-Wide Newsletter:** Franchisee shall prepare a quarterly newsletter to be distributed to all single-family, multi-family, and commercial customers in the City. The first quarterly newsletter shall be mailed with billing statements in or about March 2022, and each quarter thereafter, and shall be subject the review and approval by the City prior to each distribution. The newsletter shall discuss various important topics in waste management, including but not limited to local recycling programs, source reduction opportunities, and important developments in waste management practices, as determined by Franchisee and City Staff and subject to the approval of the City in its sole and absolute discretion, to be pertinent to City residents.

SECTION 24. Article 4, Section 4.13.4, entitled "Commercial Organics Recycling," is amended to read in its entirety as follows:

4.13.4 Commercial Organics Recycling

Pursuant to SB 1383, "Mandatory Organics Recycling," Franchisee shall provide organics recycling to all commercial customers. Organics recycling, as defined by SB 1383, includes food waste, wood waste, green waste and food soiled paper. Franchisee shall include a complete narrative of their proposed Organics Recycling Program in the Work Plan section of their proposal

SECTION 25. Article 4, Section 4.13.5, shall be entitled “Commercial AB 341 and SB 1383 MRF Processing,” and is amended to read as follows:

“4.13.5 Commercial AB 341 and SB 1383 MRF Processing

Commercial properties, meeting the thresholds determined by CalRecycle for Mandatory Recycling, selecting not to implement an on-site AB 344 Mandatory Commercial Program Recycling or an ~~AB 1826~~ Mandatory Organics Recycling Program, shall have all residue materials processed at a Materials Recovery Facility (MRF). Franchisee shall recover and recycle at least 5030% of the collected waste.

Those customers that implement ~~AB 344~~ a Mandatory Commercial Recycling Program (AB 341) and/or a Mandatory Organics Recycling Program (SB 1383) ~~AB 1826 recycling~~ through a third-party recycler, must provide evidence to the Franchisee and City that their respective program meets the requirements of CalRecycle requirements. Pricing, for the purpose of meeting AB 341 and/or ~~AB 1826~~ SB 1383 requirements for customers refusing to implement said program, shall be charged a surcharged MRF processing and recovery fee pursuant to the Maximum Customer Rates (Attachment B) and be subject to mandatory fines and penalties pursuant to legislative mandates.

Franchisee is required to conduct quarterly waste composition audits, at no charge to the City, of the solid waste collected from residents in curbside recycling containers. The purpose of this audit is to establish the materials and their relative percentages by weight, in the residential curbside waste stream. The City and/or its designee shall have the right to be present to oversee the Franchisee while this audit is conducted.”

SECTION 26. Article 5, Section 5.1, entitled “Solid Waste Diversion,” is amended to read as follows:

5.1 Solid Waste Diversion

AB 939 currently sets the directive of diverting fifty percent (50%) of the City’s Solid Waste. Subject to Public Resources Code Section 40059.1, if the City fails to implement its required plans to achieve the aforementioned directive under AB 939, the California Integrated Waste Management Board (“Board”) may impose administrative civil penalties of up to TEN THOUSAND DOLLARS (\$10,000.00) per day until the City implements its plans. The City requires the Franchisee to meet or exceed this State mandate by diverting fifty percent (50%) of the solid waste as measured by CalRecycle under the current disposal methodology ~~collected under this franchise agreement~~. Furthermore, City anticipates that the State Legislature will adopt new legislation that will increase the minimum diversion requirement. Upon the effective date of any new legislation that affects the diversion requirements currently imposed by AB 939, Franchisee agrees to implement a revised or new diversion program meeting such amended legislative requirements. City agrees that subject to Proposition 218 hearing and in accordance with the rate increase the City authorized on September 14, 2021 pursuant to Resolution No. 025-2021, rates will be adjusted to cover the costs of such requirements. Failure to implement

an amended Diversion program based upon new State legislation mandating waste diversion levels shall constitute a Material Breach of the Agreement.”

SECTION 27. Article 5, Section 5.2, entitled “Construction and Demolition Waste Diversion,” is amended to read as follows:

"5.2 Construction and Demolition Waste Diversion

In addition to meeting the solid waste diversion requirements of Section 5.1 above, City wishes to meet the construction and demolition waste diversion goals, established by SB 1374 (2002) and the current year California Green Building Code recycling requirement, by diverting ~~75%~~ 65% of construction and demolition waste materials. The Franchisee is required to meet a ~~75%~~ 65% diversion level for all construction and demolition wastes collected under the Agreement. A failure to reach this diversion goal, equates to a material breach of this Agreement.”

SECTION 28. Article 5, Section 5.11, entitled “Franchisee Route Review Contamination Monitoring,” is added to read as follows:

“5.11 Franchisee Route Review Contamination Monitoring

On or before January 1, 2022, Franchisee, at its sole expense, will conduct route reviews for container contaminants in Collection Containers in a manner that is deemed safe by the Franchisee; is approved by City; and, is conducted in a manner that results in all Franchisee routes being reviewed annually or more frequently. Franchisee will conduct route reviews that include inspection of the contents of Customers’ Collection Containers for container contaminants in a manner such that a minimum of ten percent (10%) of Containers on each and every route are inspected annually. The Containers will be randomly selected.

Franchisee will develop a route review methodology to accomplish the above Container inspection requirements and such methodology will comply with the requirements of 14 CCR Section 18984.5(b). Franchisee will submit its proposed route review methodology for the coming year to City no later than December 15 of each year commencing in 2022, describing its proposed methodology for the calendar year and schedule for performance of each route’s annual review. Franchisee’s proposed route review methodology will include not only its plan for Container inspections, but may or will also include its plan for prioritizing the inspection of Customers that are more likely to be out of compliance.

City will review and approve the proposed methodology. Franchisee may commence with the proposed methodology upon approval. If City notifies Franchisee that the methodology is inadequate to meet the requirements of 14 CCR Section 18984.5(b), Franchisee may, at its sole expense, revise the methodology and, after obtaining City approval, conduct additional route reviews, increased Container inspections, or implement other changes using the revised procedure.

If Franchisee's proposed methodology meets the requirements of 14 CCR Section 18984.5(b), but has been deemed inadequate by City, Franchisee will, at the expense of City, revise the methodology and implement the necessary changes using the revised procedure.

City may request, and Franchisee will accept, limited modifications to the schedule to permit observation of the route reviews by City. In addition, Franchisee will provide an email notice to City no less than ten (10) working days prior to each scheduled route review that includes the approximate time(s), which will be within City's normal business hours, and location(s).

Upon finding prohibited Container contaminants in a Container, Franchisee will follow the contamination noticing procedures and contaminated Container handling protocols set forth in this Agreement."

SECTION 29. Article 5, Section 5.12, entitled "Assistance with AB 341, AB 1826, and SB 1383," is added to read as follows:

"5.12 Assistance with AB 341, AB 1826, and SB 1383

5.12.1 General

Franchisee will provide compliance services as outlined below. City understands that while it has designated Franchisee to fulfill some of its responsibilities for compliance with AB 341, AB 1826, and SB 1383, City will remain ultimately responsible for compliance with specific CalRecycle requirements. Franchisee will conduct site assessments of all City facilities. Based on the site assessments, Franchisee will provide City with recommended compliance plans for each facility, including recommended services to comply with AB 341, AB 1826, and SB 1383. Upon approval from City, Franchisee will coordinate new services, deliver equipment, and provide on-site employee training if requested by City. City understands that such additional services may require consideration of additional rate increases; provided, however, that such consideration of an additional rate increase is in the sole and absolute discretion of City and nothing herein shall be construed to indicate consideration or approval of such rate increase.

5.12.2 Food Rescue and Recovery Network

Franchisee will research local Food Recovery Organizations as defined by the implementing regulations for SB 1383. Franchisee will work with City and other entities to create and maintain a database of available capacity of Food Recovery Organizations. Franchisee will work with City and other entities to create a food donation network and track local donations. However, the creation and maintenance of such database and donation network shall be the ultimate responsibility of Franchisee. In addition, Franchisee will work with City's Public Works staff and Los Angeles County task forces addressing Food Recovery capacity to ensure Food Recovery capacity meets Food Recovery needs.

5.12.3 Food Recovery Assistance

Franchisee will cooperate with and will not impede, interfere, or attempt to impede or interfere with the implementation, expansion, or operation of Food Recovery efforts in the City. At least annually, Franchisee will conduct inspections of Commercial Edible Food Generators, Food Recovery Organizations, and Food Recovery Services to assess compliance with the requirements of 14 CCR, Division 7, Chapter 12, Article 10. At least annually, upon request, Franchisee will provide Commercial Edible Food Generators with the following information:

- i. Information about Franchisee's Edible Food Recovery program;
- ii. Information about the Commercial Edible Food Generator requirements under 14 CCR, Division 7, Chapter 12, Article 10;
- iii. Information about Food Recovery Organizations and Food Recovery Services operating within City, and where a list of those Food Recovery Organizations and Food Recovery Services can be found; and
- iv. Information about actions that Commercial Edible Food Generators can take to prevent the creation of Food Waste.

Franchisee may provide the education information required by this Section by including it with regularly scheduled notices, education materials, billing inserts, or other information disseminated to Commercial Businesses. Franchisee will host an annual food donation workshop for Commercial Edible Food Generators and Food Recovery Organizations. Upon City's request, Franchisee will provide education to Commercial Edible Food Generators about Food Recovery Organizations and services and educate Commercial Edible Food Generators about how to source-reduce their Edible Food. Franchisee will work with the City and other entities to collect and report annual required documentation from Food Recovery Organizations and services located within City that collect or receive Edible Food from Commercial Edible Food Generators.

5.12.4 Commercial Business Assessments

Franchisee will perform annual assessments of Commercial Businesses subject to the requirements of AB 341, AB 1826, and SB 1383. Franchisee will provide documentation of annual assessments including documentation required to complete the CalRecycle Annual Review. As part of the assessment process, Franchisee will develop a de minimis waiver eligibility process and track Customers that meet thresholds for exemption. This information will be provided to City to make final determination of eligibility. Franchisee will perform site assessments and provide technical assistance for Commercial Businesses implementing Recycling, Green Waste and/or Food Waste programs. Franchisee will complete annual compliance review of all Refuse accounts to determine compliance with Organic Waste generator and/or self-haul requirements. Franchisee will report Commercial Businesses not in compliance to City for enforcement action. Franchisee will

also ensure containers are correctly labeled, in accordance with SB 1383, and provide training aids with pictures or words showing what is and is not accepted in the container(s).

5.12.5 Annual Compliance Reviews for Customers of Commercial Premises and Multi-Family Dwellings; and Commercial Edible Food Generators

Franchisee will conduct annual compliance reviews of all Customers of Commercial Premises or Multi-Family Dwellings that are subject to the requirements of AB 1826 and SB 1383 to confirm that the proper Organic Waste Collection services are being provided to such Customers of Commercial Premises or Multi-Family Dwellings; and for Commercial Edible Food Generators to confirm that they are in compliance with the requirements of SB 1383. The compliance reviews will be “desk” reviews of records to determine Customers’ compliance with the above requirements and does not necessarily require on-site observation of service; however, City may request that Franchisee perform an on-site observation of service in addition to or in lieu of the desk review if needed to obtain the required information. Franchisee will complete the initial compliance review on or before January 1, 2022, and at least annually thereafter, unless otherwise requested sooner by the City.

5.12.6 De Minimis, Physical Space Constraint, and Collection Frequency Waiver Inspections

On or after January 1, 2022, if City allows Customers to submit de minimis, physical space constraint, or Collection frequency waiver requests for the collection of Organic Waste, then Franchisee will verify de minimis and physical space constraint waiver requests from Customers, at least once every five (5) years from the date of issuance of the waiver, and verify Collection frequency waivers at least once every year from the date of issuance of the waiver.

5.12.7 AB 341, AB 1826, and SB 1383 Compliance Review

Franchisee will conduct a sufficient number of compliance reviews, route reviews, and inspections of Commercial Premises, Multi-Family Dwellings, and Commercial Edible Food Generators to adequately determine overall compliance with the requirements of AB 341, AB 1826, and SB 1383. City may require Franchisee to prioritize inspections of entities that City determines are more likely to be out of compliance. From January 1, 2022 through December 31, 2023, when compliance reviews are performed by Franchisee, Franchisee will provide educational materials in response to violations. Franchisee will provide these educational materials to the non-compliant Customers or Commercial Edible Food Generators within seven (7) days of determination of non-compliance or immediately upon determination of non-compliance if such non-compliance is determined during an inspection or route review.

Franchisee will document the non-compliant Customers or Commercial Edible Food Generators and the date and type of education materials provided,

and will report such information to City. Beginning January 1, 2024, Franchisee will, in addition to providing the education materials described in this subsection, document non-compliant Customers or Edible Food Generators and will report all Customers or Commercial Edible Food Generators with violations of SB 1383 regulations to City. City will be solely responsible for subsequent enforcement action against the non-compliant Customers or Commercial Edible Food Generators.

5.12.8 Tracking of Data and Information; Reporting to CalRecycle

Franchisee will provide a software tracking system to compile AB 341, AB 1826, and SB 1383 data and information required for reporting to CalRecycle. Franchisee will also assist City with preparation of the CalRecycle Electronic Annual Report, including annual Source Reduction and Recycling Element (SRRE), Household Hazardous Waste Element (HHWE), AB 341, AB 1826, and SB 1383 reporting.”

SECTION 30. Article 7, Sections 7.1 through 7.3 are hereby deleted and replaced in their entirety with Sections 7.1, entitled “Maximum Rate Schedule,” and 7.2, “Adjustments to Maximum Rate Schedule,” as set forth below:

“7.1 Maximum Rate Schedule

Franchisee shall provide services to Customers pursuant to this Agreement, at rates it sets, charges to, and collects from Customers, which rates shall not exceed those set forth in City Council Resolution No. 025-2021, as attached hereto as Exhibit A and incorporated herein by this reference (“Maximum Rate Schedule”), as such maximum rates may be adjusted from time to time pursuant to Resolution No. 025-201 and the terms of hereof. The maximum rates set forth in Exhibit A are inclusive of all services to be provided, including transportation, disposal, and Container costs, as well as City Fees, and no other charges shall be imposed by Franchisee for such services.

City and Franchisee acknowledge that the City, in accordance with Section 6(A) of Article XIID of the California Constitution (Proposition 218), will provide required Notices regarding proposed rate increases and an opportunity for protest and a hearing, as applicable.

7.2 Adjustments to Maximum Rate Schedule

Immediately following a Proposition 218 public protest hearing conducted on September 14, 2021, at which there was not a majority protest, the City Council adopted Resolution No. 025-2021 (Exhibit A), which approved rate adjustments to be applied over all service sectors, as identified therein. As further specified in and accordance with Resolution No. 025-2021, these rates are also subject to (i) Consumer Price Adjustment increases, and (ii) pass-through increases, pursuant to Government Code Section 53756. The methodology and/or restrictions by which such adjustments can occur is prescribed below in §7.2.1, §7.2.2, and §7.2.3; provided, however, that in the event of any conflict between Resolution No. 025-2021 and/or Proposition 218,

on the one hand, and this Amendment, on the other hand, the provisions of Resolution No. 025-2021 and/or Proposition 218 shall apply.

7.2.1 Annual Consumer Price Index Adjustments

Commencing on July 1, 2022, for all rates contained in the Maximum Rate Schedule, as attached hereto as Exhibit A, Franchisee may request an annual rate adjustment, to be applied on this anniversary date (i.e., July 1) during the Term hereof, by multiplying each rate in effect on June 30 of each year by the percentage change in the Consumer Price Index (“CPI”) for All Urban Consumers (CUUR0000SA0), All Items, not seasonally adjusted – U.S. City Average for the twelve (12) month period ending on the date of March 31st, immediately prior to the applicable Adjustment Date. For the avoidance of doubt, all future rate increases for CPI shall occur on July 1 of each year, unless otherwise authorized by this Agreement.

At least fifty (50) days prior to seeking to charge Customers any rate increases due to changes in CPI, Franchisee may request the City Manager's approval to do so by providing written notice of its intent to increase rates for CPI. The City Manager shall approve such request within ten (10) business days, so as to allow for a thirty (30) day advance notice to customers pursuant to Section 53756(d) of the Government Code; provided that, such approval must be in compliance with Proposition 218 and the Proposition 218 Omnibus Implementation Act (Gov. Code § 53750 *et seq.*); and provided further, that, such request shall not be approved if it is determined by the City, based upon substantial evidence, that the requested adjustment to the Maximum Rates does not meet the requirements as set forth herein. If Franchisee does not receive a written objection from the City Manager within ten (10) days from the date of Franchisee's request for approval, the CPI rate adjustment shall be deemed automatically approved. Franchisee shall be responsible for mailing the advance written notice required in this section in accordance with Government Code section 53756.

The CPI adjustment to the Maximum Rates need not comply with the notice provisions of article XIII D, section 6(a) of the California Constitution through July 1, 2025, provided that the conditions of this Agreement and Resolution No. 025-2021 have been met. The CPI adjustments may not be implemented after July 1, 2025, unless and until the City has adopted new authority for such increases in accordance with article XIII D, section 6(a) of the California Constitution and Government Code section 53756, unless a change in law renders such requirements inapplicable.

7.2.2 Adjustment to Disposal Component of Rates

The rates set out in Exhibit A also are subject to increase or decrease to account for pass-through disposal fee changes at solid waste landfills or other facilities generally in Los Angeles County. The disposal fee change shall be a pro-rata pass through of change in fees charged by the Los Angeles County Sanitation Districts or any other public agency providing disposal

services. Such costs include, but are not limited to, landfill tipping fees or other disposal, processing, recycling, or diversion costs as required or allowed by state law. All future rate increases for pass-through disposal fee changes shall generally occur on July 1 of each year, through and including July 1, 2025, unless in the event of an unanticipated, extraordinary fee change by the provider of disposal services, in which event Franchisee may seek a rate increase up to the maximum amount at any other times throughout the year through and including June 30, 2026, unless and until the City has adopted new authority for such increases in accordance with article XIII D, section 6(a) of the California Constitution and Government Code section 53756, unless a change in law renders such requirements inapplicable.

At least fifty (50) days prior to seeking to charge Customers any rate increases due to any change in the cost of disposal fees, Franchisee may request, in writing, a rate increase by submitting documentation substantiating the cost increases, in conjunction with pertinent rate adjustment calculations based on the proportional impact that the disposal cost changes have on the maximum rates, to the City Manager for review, verification, and consent. The City Manager shall approve such request within ten (10) business days, so as to allow for a thirty (30) day advance notice to customers pursuant to Section 53756(d) of the Government Code; provided that, such approval must be in compliance with Proposition 218 and the Proposition 218 Omnibus Implementation Act; and provided further, that, such request shall not be approved if it is determined by the City, based upon substantial evidence, that the requested adjustment to the maximum rates does not meet the requirements as set forth herein. If Franchisee does not receive a written response from the City Manager within ten (10) days from the date of submittal, said documentation shall be deemed automatically verified and consent secured. Franchisee shall be responsible for mailing the advance written notice required in this section in accordance with Government Code section 53756.

7.2.3 Limitations to Adjustment Increases

In no event shall the rates set out in Exhibit A be increased for either the CPI or the Disposal Component pass-through in any single year by more than an aggregate 25%; and provided further, that in no event may a pass-through of the Disposal Component exceed the City's cost of providing Solid Waste Handling Services hereunder.

7.2.4 Extraordinary Rate Adjustments

Franchisee may request an adjustment to the maximum rates set forth in Exhibit A, at reasonable times other than as set forth above, for unusual changes in the cost of providing service under this Agreement, which shall include changes in the scope of Solid Waste Handling Services or Programs provided hereunder, if such changes are due to new or expanded recycling legislation mandating heightened diversion or recovery standards for Solid Waste materials handled by Franchisee pursuant to this Agreement. For each request for an adjustment to the maximum rates brought pursuant to this

Section, Franchisee shall prepare a schedule documenting the extraordinary costs. Such request shall be prepared in a form acceptable to City with support for assumptions made by Franchisee in preparing the estimate. City shall review Franchisee's request and, in the City Council's sole judgment and absolute discretion, make the final determination as to whether an adjustment to the maximum rates will be made, subject to compliance with Proposition 218; and, if an adjustment is permitted, the appropriate amount of the adjustment. City may consider increases or decreases in Franchisee's total revenues and total cost of services when reviewing a Discretionary Rate Adjustment request. Franchisee may not request a discretionary rate adjustment in the maximum rates as a result of changes in fees or taxes such as Social Security; disability or income tax; changes in the market value of Recyclables or processing costs for Recyclables or Green Waste; inaccurate estimates by Franchisee of its cost of operations; or costs of compliance with South Coast Air Quality Management District and Air Resource Board rules and standards for Collection Vehicles.

SECTION 31. Article 7, Sections 7.4.1, entitled "Compliance with Proposition 218 Required," 7.4.3, entitled "Pass-Through of Proposition 218 Compliance Costs," and 7.4.4, entitled "Notice of Increases," are hereby deleted and replaced in their entirety to read as follows:

7.4.1 Compliance with Proposition 218 Required

As set forth in Exhibit 1, the City has approved the Maximum Rate Schedule, which may be charged by Franchisee to its customers in the City . The Maximum Rate Schedule will become effective as of October 1, 2021. Franchisee shall not receive any other fees or compensation for services to be performed pursuant to this Agreement in excess of those authorized by the Maximum Rate Schedule and by the terms hereof. Further adjustments and/or increases beyond those authorized by the Maximum Rate Schedule are strictly subject to the consent of the City, in its sole and absolute discretion, and the compliance with Proposition 218, the Proposition 218 Omnibus Implementation Act, and all applicable laws.

7.4.3 Pass-Through of Proposition 218 Compliance Costs

Except as otherwise provided in this Amendment No.1, Franchisee shall pay for all costs of Proposition 218 notices and hearings. Franchisee may, if permitted by law, pass its actual costs of Proposition 218 compliance on to customers through service rates if, and only if, such pass-through is duly noticed and included as part of the service rates adopted through a Proposition 218 process.

7.4.4 Notice of Increases

Franchisee shall give prior, written notice of any duly adopted rate increase to all customers of the increase before its effective date, as provided by law, including without limitation, as required by Proposition 218, as determined by the City.

SECTION 32. Article 11, Section 11.1.4, entitled “Umbrella Insurance,” is amended to read as follows:

Umbrella coverage to bring total aggregate insurance coverage for all underlying insurance coverage to TEN MILLION DOLLARS (\$10,000,000.00).

SECTION 33. Article 11, Section 11.3, entitled “Performance Bond,” shall be modified by replacing the entire first sentence with the following:

Effective January 1, 2022, the City requires the Franchisee to deliver to the City a performance bond or letter of credit in the sum of FIVE HUNDRED THOUSAND DOLLARS (\$500,000.00), in a form to be approved by the City in its sole discretion. For the avoidance of doubt, Franchisee will retain its THREE HUNDRED THOUSAND DOLLARS (\$300,000.00) letter of credit until the aforementioned FIVE HUNDRED THOUSAND DOLLARS (\$500,000.00) bond or letter of credit is delivered in accordance with this provision.

SECTION 34. Article 11, Section 11.5, entitled “AB 939 Education,” is amended to read as follows:

Franchisee and City jointly shall develop and implement a public awareness and education program that is consistent with the City’s Source Reduction and Recycling Element (“SRRE”) and its Household Hazardous Waste Element (“HHWE”).

SECTION 35. This Amendment may be executed in any number or counterparts, each of which will be an original, but all of which together constitute one instrument executed on the same date.

SECTION 36. The Parties agree that Tolling Agreement was a temporary measure to alleviate immediate impacts from COVID-19 on Franchisee and was never intended to be a permanent amendment to the Agreement. Accordingly, the Parties hereby agree to now terminate the Tolling Agreement, subject to the payment of all Tolled Franchise Fees and all Tolled Annual Fees (as those terms are defined in the Tolling Agreement). If such Tolled Franchise Fees and Tolled Annual Fees are paid by July 1, 2023, those Tolled Franchise Fees and Tolled Annual Fees shall not be subject to any late payment penalties; provided, however, that Tolled Franchise Fees or Tolled Annual Fees paid by July 1, 2023 following the Effective Date hereof shall be subject to the late payment penalties specified in the Franchise Agreement. Moreover, both the Franchise Fee and Annual Program Fee Payment obligations, as well as the other obligations addressed under the Tolling Agreement, shall resume on the Effective Date hereof. For the avoidance of doubt, the termination of the Tolling Agreement shall not result in any reduction in any Franchise Fees or Annual Fees due to the City at any time, including but not limited to since the date of the Tolling Agreement.

SECTION 37. Except as modified by this Amendment, all other terms and conditions of the Agreement remain the same. Notwithstanding the foregoing, the City Manager is hereby given authority to enter into further ministerial amendments to the Franchise Agreement, on behalf of the City, to ensure the Franchise Agreement’s compliance with the relevant provisions of State law, including without limitation SB 1383.

{signatures on following page}

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the day and year first hereinabove written.

“CITY”

“FRANCHISEE”


CITY OF HAWAIIAN GARDENS

WASTE RESOURCES, INC.

By: 
Ernesto Marquez
City Manager

By: 
Tommy Gendal
Chief Operating Officer/E.V.P.

ATTEST:

By: 
Linda Hollinsworth, City Clerk

APPROVED AS TO FORM:

By: 
Megan Garibaldi, City Attorney

AMENDED

**Commercial & Multi Family
Effective October 1, 2021**

Container Type/Size	Weekly Service Frequency							Additional Same Day
	1x	2x	3x	4x	5x	6x	7x	
64/96-Gallon (Commercial)	\$37.40	\$64.02	\$90.17	\$114.96	\$139.73	\$164.50	\$240.08	32.01
64/96-Gallon (Multi-Family)	\$24.59	\$49.18	\$73.77	\$98.36	\$122.95	N/A	N/A	32.01
1 Cubic Yard	\$112.81	\$177.14	\$236.57	\$305.76	\$370.04	\$434.35	\$904.60	53.35
2 Cubic Yard	\$124.77	\$201.10	\$277.43	\$353.69	\$429.95	\$506.13	\$962.63	53.35
3 Cubic Yard	\$211.88	\$300.11	\$388.38	\$477.78	\$552.77	\$640.99	\$983.88	53.35
3 Cubic Yard - MRF	\$309.64	\$399.67	\$487.86	\$618.27	\$785.25	\$929.76	\$1,229.85	66.69
4 Cubic Yard	\$245.64	\$369.74	\$440.29	\$544.62	\$678.20	\$793.81	\$1,033.88	53.35
6 Cubic Yard	\$495.42	\$639.46	\$780.56	\$989.24	\$1,256.39	\$1,487.60	\$1,967.75	53.35
Compactor 30 +/- C.Y.	960.30	1,920.60	2,880.90	3,841.20	4,801.50	5,761.80	6,722.10	960.30
Standard 40 C.Y. Box	746.00	1,493.80	2,240.70	2,987.60	3,734.50	4,481.40	5,228.30	900.00
Locking Lids	\$8.00	\$16.01	\$24.01	\$32.01	\$40.01	\$48.02	\$56.02	\$8.00
Extra Dump Charge	80.03	160.05	240.08	320.10	400.13	N/A	N/A	
64/96 Gallon Organic _ G/W	\$84.08	\$143.83	\$203.58	\$263.33	\$323.08	\$382.83	N/A	
2-Cubic Yard Organic	\$99.82	\$160.88	\$221.94	\$282.96	\$343.95	\$404.90	N/A	
3-Cubic Yard Greenwaste	\$169.51	\$240.09	\$310.70	\$382.22	\$442.22	\$512.80	N/A	
96-Gallon Recycling	\$44.88	\$64.02	\$96.03	\$128.04	\$160.05	\$200.06	N/A	
3-Cubic Yard Recycling	\$123.86	\$159.87	\$195.14	\$247.31	\$314.10	\$371.90	N/A	
40-C.Y.Recycling	480.15	960.30	1,440.45	1,920.60	2,400.75	2,880.90	N/A	
On-Call Bulky (Comm)	\$35.23	Service Fee, Plus \$15.00 per Item						
E-Waste/U-Waste	\$29.55	Service Fee, Plus \$5.00 per Item						

Industrial

Effective October 1, 2021

Permanent Roll-Off	Rate
30+ Yard Trash Compactor (up to 9 tons)	\$960.30
40-Yard Trash Roll-off (up to 7 tons)	\$746.90
Overage rate per ton	\$87.69
30+ Yard Recycling Compactor	\$480.15
40-Yard Recycling Roll-off	\$480.15

Temporary Roll-Off	Delivery/ Pick-up	Haul	*Per Ton Dump	Daily Rental After 7-days	Dry Run
40-Yard Debris Roll-Off	\$75.00	\$355.00	\$87.69	\$20.00	\$105.00
30-Yard Debris Roll-Off	\$75.00	\$355.00	\$87.69	\$20.00	\$105.00
10-Yard Inert Roll-Off	\$75.00	\$355.00	\$95.00	\$20.00	\$105.00
3-Cubic Yard CUB (Max 7 Days)	\$75.00	\$155.00	N/A	\$10.00	\$39.00

* Minimum 1-Ton Fee

**Exhibit A
Proposed Rate Tables**

City of Hawaiian Gardens					
Residential Services	Projected Rate (Less CPI & Landfill Increases)				
	October 1, 2021	July 1, 2022	July 1, 2023	July 1, 2024	July 1, 2025
Standard Service (Single Family & 5 Units or Less)	\$20.95	\$20.95	\$22.10	\$23.32	\$24.60
Mobile Home Park Senior Rate	\$12.01	\$12.01	\$12.67	\$13.37	\$14.10
Low-Income Senior (Single Family & 5 Units of Less)	\$10.81	\$10.81	\$11.40	\$12.03	\$12.69
Standard-Organics Recycling (SB 1383 January 1 2022)	\$4.00	\$4.00	\$4.22	\$4.45	\$4.70
Low Income-Organics Recycling (SB 1383 January 1 2022)	\$3.60	\$3.60	\$3.80	\$4.01	\$4.23
Additional Refuse Cart- above one (96-gallon)	\$13.95	\$13.95	\$14.72	\$15.53	\$16.38
Additional Refuse Cart- above one (64-gallon)	\$10.48	\$10.48	\$11.05	\$11.66	\$12.30
Additional Green Waste Cart - above two (64-gallon)	\$6.96	\$6.96	\$7.34	\$7.75	\$8.17
Valet Service-Authorized Disabled Customers Only	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Additional Special Overage Pickup (Excess of 2-Items)	\$7.83	\$7.83	\$8.26	\$8.71	\$9.19

Commercial & Multi Family								
Effective July 1, 2022								
Container Type/Size	Weekly Service Frequency							Additional Same Day
	1x	2x	3x	4x	5x	6x	7x	
64/96-Gallon (Commercial)	\$37.40	\$64.02	\$96.03	\$128.04	\$160.05	\$192.06	\$240.08	\$32.01
64/96-Gallon (Multi-Family)	\$24.59	\$49.18	\$73.77	\$98.36	\$122.95	N/A	N/A	\$32.01
1 Cubic Yard	\$160.30	\$232.39	\$304.42	\$408.45	\$536.49	\$664.53	\$904.60	\$53.35
2 Cubic Yard	\$218.39	\$290.42	\$362.44	\$466.47	\$594.51	\$722.55	\$962.63	\$53.35
3 Cubic Yard	\$247.71	\$319.74	\$390.29	\$494.62	\$628.20	\$743.81	\$983.88	\$53.35
3 Cubic Yard -MRF	\$309.64	\$399.67	\$487.86	\$618.27	\$785.25	\$929.76	\$1,229.85	\$66.69
4 Cubic Yard	\$297.71	\$369.74	\$440.29	\$544.62	\$678.20	\$793.81	\$1,033.88	\$53.35
6 Cubic Yard	\$495.42	\$639.46	\$780.56	\$989.24	\$1,256.39	\$1,487.60	\$1,967.75	\$53.35
Compactor 30 +/- C.Y.	\$960.30	\$1,920.60	\$2,880.90	\$3,841.20	\$4,801.50	\$5,761.80	\$6,722.10	\$960.30
Standard 40 C.Y. Box	\$960.30	\$1,920.60	\$2,880.90	\$3,841.20	\$4,801.50	\$5,761.80	\$6,722.10	\$960.30
Locking Lids	\$8.00	\$16.01	\$24.01	\$32.01	\$40.01	\$48.02	\$56.02	\$8.00
Extra Dump Charge	\$80.03	\$160.05	\$240.08	\$320.10	\$400.13	N/A	N/A	
64/96 Gallon Organic G/W	\$84.08	\$143.83	\$203.58	\$263.33	\$323.08	\$382.83	N/A	
2-Cubic Yard Organic G/W	\$242.24	\$451.90	\$661.57	\$871.24	\$1,080.91	\$1,290.56	N/A	
3-Cubic Yard Greenwaste	\$304.10	\$500.96	\$697.82	\$894.68	\$1,091.54	\$1,455.84	N/A	
96-Gallon Recycling	\$44.88	\$64.02	\$96.03	\$128.04	\$160.05	\$200.06	N/A	
3-Cubic Yard Recycling	\$123.86	\$159.87	\$195.14	\$247.31	\$314.10	\$371.90	N/A	
40-C.Y. Recycling	\$480.15	\$960.30	\$1,440.45	\$1,920.60	\$2,400.75	\$2,880.90	N/A	
On-Call Bulky (Comm)	\$59.55	Service Fee, plus \$15.00 per Item						
E-Waste/U-Waste	\$29.55	Service Fee, plus \$5.00 per Item						

Industrial						
Effective July 1, 2022						
Permanent Roll-Off		Rate				
30+ Yard Trash Compactor (up to 9 tons)		\$960.30				
40-Yard Trash Roll-Off (up to 7 tons)		\$746.90				
Overage rate per ton		\$87.69				
30+ Yard Recycling Compactor		\$480.15				
40-Yard Recycling Roll-Off		\$480.15				
Temporary Roll-Off		Delivery/ Pick-up	Haul	*Per Ton Dump	Daily Rental After 7-Days	Dry Run
40-Yard Debris Roll-Off		\$75.00	\$355.00	\$87.69	\$20.00	\$105.00
30-Yard Debris Roll-Off		\$75.00	\$355.00	\$87.69	\$20.00	\$105.00
10-Yard Inert Roll-Off		\$75.00	\$355.00	\$95.00	\$20.00	\$105.00
3-Cubic Yard CUB (Max. 7 Days)		\$75.00	\$155.00	N/A	\$10.00	\$39.00
*Minimum 1-Ton Fee						

**Commercial & Multi Family
Effective July 1, 2023**

Container Type/Size	Weekly Service Frequency							Additional Same Day
	1x	2x	3x	4x	5x	6x	7x	
64/96-Gallon (Commercial)	\$39.46	\$67.54	\$101.31	\$135.08	\$168.85	\$202.62	\$253.28	\$33.77
64/96-Gallon (Multi-Family)	\$25.94	\$51.88	\$77.83	\$103.77	\$129.71	N/A	N/A	\$33.77
1 Cubic Yard	\$169.11	\$245.17	\$321.16	\$430.91	\$565.99	\$701.08	\$954.36	\$56.28
2 Cubic Yard	\$230.41	\$306.39	\$382.37	\$492.13	\$627.21	\$762.29	\$1,015.57	\$56.28
3 Cubic Yard	\$261.34	\$337.32	\$411.75	\$521.82	\$662.75	\$784.72	\$1,037.99	\$56.28
3 Cubic Yard -MRF	\$326.67	\$421.65	\$514.69	\$652.28	\$828.43	\$980.89	\$1,297.49	\$70.36
4 Cubic Yard	\$314.09	\$390.07	\$464.50	\$574.57	\$715.50	\$837.47	\$1,090.74	\$56.28
6 Cubic Yard	\$522.67	\$674.63	\$823.49	\$1,043.65	\$1,325.49	\$1,569.42	\$2,075.98	\$56.28
Compactor 30 +/- C.Y.	\$1,013.12	\$2,026.23	\$3,039.35	\$4,052.47	\$5,065.58	\$6,078.70	\$7,091.82	\$1,013.12
Standard 40 C.Y. Box	\$1,013.12	\$2,026.23	\$3,039.35	\$4,052.47	\$5,065.58	\$6,078.70	\$7,091.82	\$1,013.12
Locking Lids	\$8.44	\$16.89	\$25.33	\$33.77	\$42.21	\$50.66	\$59.10	\$8.44
Extra Dump Charge	\$84.43	\$168.85	\$253.28	\$337.71	\$422.13	N/A	N/A	
64/96 Gallon Organic G/W	\$88.70	\$151.74	\$214.78	\$277.81	\$340.85	\$403.89	N/A	
2-Cubic Yard Organic G/W	\$255.56	\$476.75	\$697.96	\$919.16	\$1,140.36	\$1,361.54	N/A	
3-Cubic Yard Greenwaste	\$320.82	\$528.51	\$736.20	\$943.89	\$1,151.58	\$1,535.91	N/A	
96-Gallon Recycling	\$47.35	\$67.54	\$101.31	\$135.08	\$168.85	\$211.07	N/A	
3-Cubic Yard Recycling	\$130.67	\$168.66	\$205.88	\$260.91	\$331.38	\$392.36	N/A	
40-C.Y. Recycling	\$506.56	\$1,013.12	\$1,519.67	\$2,026.23	\$2,532.79	\$3,039.35	N/A	
On-Call Bulky (Comm)	\$62.83	Service Fee, plus \$15.00 per Item						
E-Waste/U-Waste	\$31.18	Service Fee, plus \$5.00 per Item						

Industrial

Effective July 1, 2023

Permanent Roll-Off	Rate
30+ Yard Trash Compactor (up to 9 tons)	\$1,013.12
40-Yard Trash Roll-Off (up to 7 tons)	\$787.98
Overage rate per ton	\$87.69
30+ Yard Recycling Compactor	\$506.56
40-Yard Recycling Roll-Off	\$506.56

Temporary Roll-Off	Delivery/ Pick-up	Haul	*Per Ton Dump	Daily Rental After 7-Days	Dry Run
40-Yard Debris Roll-Off	\$79.13	\$374.53	\$87.69	\$21.10	\$110.78
30-Yard Debris Roll-Off	\$79.13	\$374.53	\$87.69	\$21.10	\$110.78
10-Yard Inert Roll-Off	\$79.13	\$374.53	\$95.00	\$21.10	\$110.78
3-Cubic Yard CUB (Max. 7 Days)	\$79.13	\$163.53	N/A	\$10.55	\$41.15

*Minimum 1-Ton Fee

Commercial & Multi Family								
Effective July 1, 2024								
Container Type/Size	Weekly Service Frequency							Additional Same Day
	1x	2x	3x	4x	5x	6x	7x	
64/96-Gallon (Commercial)	\$41.63	\$71.26	\$106.88	\$142.51	\$178.14	\$213.77	\$267.21	\$35.63
64/96-Gallon (Multi-Family)	\$27.37	\$54.74	\$82.11	\$109.48	\$136.85	N/A	N/A	\$35.63
1 Cubic Yard	\$178.41	\$258.66	\$338.82	\$454.61	\$597.12	\$739.64	\$1,006.85	\$59.38
2 Cubic Yard	\$243.08	\$323.24	\$403.40	\$519.19	\$661.71	\$804.22	\$1,071.43	\$59.38
3 Cubic Yard	\$275.71	\$355.88	\$434.40	\$550.52	\$699.20	\$827.87	\$1,095.08	\$59.38
3 Cubic Yard -MRF	\$344.64	\$444.84	\$543.00	\$688.15	\$874.00	\$1,034.84	\$1,368.85	\$74.22
4 Cubic Yard	\$331.36	\$411.53	\$490.05	\$606.17	\$754.85	\$883.53	\$1,150.74	\$59.38
6 Cubic Yard	\$551.41	\$711.74	\$868.79	\$1,101.05	\$1,398.40	\$1,655.74	\$2,190.16	\$59.38
Compactor 30 +/- C.Y.	\$1,068.84	\$2,137.68	\$3,206.51	\$4,275.35	\$5,344.19	\$6,413.03	\$7,481.87	\$1,068.84
Standard 40 C.Y. Box	\$1,068.84	\$2,137.68	\$3,206.51	\$4,275.35	\$5,344.19	\$6,413.03	\$7,481.87	\$1,068.84
Locking Lids	\$8.91	\$17.81	\$26.72	\$35.63	\$44.53	\$53.44	\$62.35	\$8.91
Extra Dump Charge	\$89.07	\$178.14	\$267.21	\$356.28	\$445.35	N/A	N/A	
64/96 Gallon Organic G/W	\$93.58	\$160.09	\$226.59	\$293.09	\$359.60	\$426.10	N/A	
2-Cubic Yard Organic G/W	\$269.62	\$502.98	\$736.34	\$969.71	\$1,203.08	\$1,436.43	N/A	
3-Cubic Yard Greenwaste	\$338.47	\$557.58	\$776.69	\$995.80	\$1,214.91	\$1,620.39	N/A	
96-Gallon Recycling	\$49.95	\$71.26	\$106.88	\$142.51	\$178.14	\$222.67	N/A	
3-Cubic Yard Recycling	\$137.86	\$177.94	\$217.20	\$275.26	\$349.61	\$413.94	N/A	
40-C.Y. Recycling	\$534.42	\$1,068.84	\$1,603.26	\$2,137.68	\$2,672.09	\$3,206.51	N/A	
On-Call Bulky (Comm)	\$66.28	Service Fee, plus \$15.00 per Item						
E-Waste/U-Waste	\$32.89	Service Fee, plus \$5.00 per Item						

Industrial						
Effective July 1, 2024						
Permanent Roll-Off		Rate				
30+ Yard Trash Compactor (up to 9 tons)		\$1,068.84				
40-Yard Trash Roll-Off (up to 7 tons)		\$831.32				
Overage rate per ton		\$87.69				
30+ Yard Recycling Compactor		\$534.42				
40-Yard Recycling Roll-Off		\$534.42				
Temporary Roll-Off		Delivery/ Pick-up	Haul	*Per Ton Dump	Daily Rental After 7-Days	Dry Run
40-Yard Debris Roll-Off		\$83.48	\$395.13	\$87.69	\$22.26	\$116.87
30-Yard Debris Roll-Off		\$83.48	\$395.13	\$87.69	\$22.26	\$116.87
10-Yard Inert Roll-Off		\$83.48	\$395.13	\$95.00	\$22.26	\$116.87
3-Cubic Yard CUB (Max. 7 Days)		\$83.48	\$172.52	N/A	\$11.13	\$43.41

*Minimum 1-Ton Fee

Commercial & Multi Family								
Effective July 1, 2025								
Container Type/Size	Weekly Service Frequency							Additional Same Day
	1x	2x	3x	4x	5x	6x	7x	
64/96-Gallon (Commercial)	\$43.92	\$75.17	\$112.76	\$150.35	\$187.94	\$225.52	\$281.91	\$37.59
64/96-Gallon (Multi-Family)	\$28.87	\$57.75	\$86.62	\$115.50	\$144.37	N/A	N/A	\$37.59
1 Cubic Yard	\$188.23	\$272.89	\$357.46	\$479.62	\$629.97	\$780.32	\$1,062.22	\$62.65
2 Cubic Yard	\$256.45	\$341.02	\$425.59	\$547.75	\$698.10	\$848.45	\$1,130.36	\$62.65
3 Cubic Yard	\$290.88	\$375.45	\$458.29	\$580.80	\$737.65	\$873.41	\$1,155.31	\$62.65
3 Cubic Yard -MRF	\$363.60	\$469.31	\$572.86	\$726.00	\$922.07	\$1,091.76	\$1,444.14	\$78.31
4 Cubic Yard	\$349.59	\$434.16	\$517.00	\$639.51	\$796.37	\$932.12	\$1,214.03	\$62.65
6 Cubic Yard	\$581.74	\$750.88	\$916.57	\$1,161.60	\$1,475.31	\$1,746.80	\$2,310.61	\$62.65
Compactor 30 +/- C.Y.	\$1,127.62	\$2,255.25	\$3,382.87	\$4,510.50	\$5,638.12	\$6,765.74	\$7,893.37	\$1,127.62
Standard 40 C.Y. Box	\$1,127.62	\$2,255.25	\$3,382.87	\$4,510.50	\$5,638.12	\$6,765.74	\$7,893.37	\$1,127.62
Locking Lids	\$9.40	\$18.79	\$28.19	\$37.59	\$46.98	\$56.38	\$65.78	\$9.40
Extra Dump Charge	\$93.97	\$187.94	\$281.91	\$375.87	\$469.84	N/A	N/A	
64/96 Gallon Organic G/W	\$98.73	\$168.89	\$239.05	\$309.21	\$379.38	\$449.54	N/A	
2-Cubic Yard Organic G/W	\$284.45	\$530.64	\$776.84	\$1,023.05	\$1,269.25	\$1,515.43	N/A	
3-Cubic Yard Greenwaste	\$357.08	\$588.24	\$819.41	\$1,050.57	\$1,281.73	\$1,709.51	N/A	
96-Gallon Recycling	\$52.70	\$75.17	\$112.76	\$150.35	\$187.94	\$234.92	N/A	
3-Cubic Yard Recycling	\$145.44	\$187.72	\$229.15	\$290.40	\$368.83	\$436.70	N/A	
40-C.Y. Recycling	\$563.81	\$1,127.62	\$1,691.44	\$2,255.25	\$2,819.06	\$3,382.87	N/A	
On-Call Bulky (Comm)	\$69.93	Service Fee, plus \$15.00 per Item						
E-Waste/U-Waste	\$34.70	Service Fee, plus \$5.00 per Item						

Industrial							
Effective July 1, 2025							
Permanent Roll-Off		Rate					
30+ Yard Trash Compactor (up to 9 tons)		\$1,127.62					
40-Yard Trash Roll-Off (up to 7 tons)		\$877.04					
Overage rate per ton		\$87.69					
30+ Yard Recycling Compactor		\$563.81					
40-Yard Recycling Roll-Off		\$563.81					
Temporary Roll-Off			Delivery/ Pick-up	Haul	*Per Ton Dump	Daily Rental After 7-Days	Dry Run
40-Yard Debris Roll-Off			\$88.07	\$416.86	\$87.69	\$23.48	\$123.30
30-Yard Debris Roll-Off			\$88.07	\$416.86	\$87.69	\$23.48	\$123.30
10-Yard Inert Roll-Off			\$88.07	\$416.86	\$95.00	\$23.48	\$123.30
3-Cubic Yard CUB (Max. 7 Days)			\$88.07	\$182.01	N/A	\$11.74	\$45.80
*Minimum 1-Ton Fee							

**Exhibit 1
Rate Tables**

City of Hawaiian Gardens					
Residential Services	Projected Rate (Less CPI & Landfill Increases)				
	October 1, 2021	July 1, 2022	July 1, 2023	July 1, 2024	July 1, 2025
Standard Service (Single Family & 5 Units or Less)	\$20.95	\$20.95	\$22.10	\$23.32	\$24.60
Mobile Home Park Senior Rate	\$12.01	\$12.01	\$12.67	\$13.37	\$14.10
Low-Income Senior (Single Family & 5 Units of Less)	\$10.81	\$10.81	\$11.40	\$12.03	\$12.69
Standard-Organics Recycling (SB 1383 January 1 2022)	\$4.00	\$4.00	\$4.22	\$4.45	\$4.70
Low Income-Organics Recycling (SB 1383 January 1 2022)	\$3.60	\$3.60	\$3.80	\$4.01	\$4.23
Additional Refuse Cart- above one (96-gallon)	\$13.95	\$13.95	\$14.72	\$15.53	\$16.38
Additional Refuse Cart- above one (64-gallon)	\$10.48	\$10.48	\$11.05	\$11.66	\$12.30
Additional Green Waste Cart - above two (64-gallon)	\$6.96	\$6.96	\$7.34	\$7.75	\$8.17
Valet Service-Authorized Disabled Customers Only	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Additional Special Overage Pickup (Excess of 2-Items)	\$7.83	\$7.83	\$8.26	\$8.71	\$9.19

Commercial & Multi Family								
Effective October 1, 2021								
Container Type/Size	Weekly Service Frequency							Additional Same Day
	1x	2x	3x	4x	5x	6x	7x	
64/96-Gallon (Commercial)	\$37.40	\$64.02	\$96.03	\$128.04	\$160.05	\$192.06	\$240.08	\$32.01
64/96-Gallon (Multi-Family)	\$24.59	\$49.18	\$73.77	\$98.36	\$122.95	N/A	N/A	\$32.01
1 Cubic Yard	\$160.30	\$232.39	\$304.42	\$408.45	\$536.49	\$664.53	\$904.60	\$53.35
2 Cubic Yard	\$218.39	\$290.42	\$362.44	\$466.47	\$594.51	\$722.55	\$962.63	\$53.35
3 Cubic Yard	\$247.71	\$319.74	\$390.29	\$494.62	\$628.20	\$743.81	\$983.88	\$53.35
3 Cubic Yard -MRF	\$309.64	\$399.67	\$487.86	\$618.27	\$785.25	\$929.76	\$1,229.85	\$66.69
4 Cubic Yard	\$297.71	\$369.74	\$440.29	\$544.62	\$678.20	\$793.81	\$1,033.88	\$53.35
6 Cubic Yard	\$495.42	\$639.46	\$780.56	\$989.24	\$1,256.39	\$1,487.60	\$1,967.75	\$53.35
Compactor 30 +/- C.Y.	\$960.30	\$1,920.60	\$2,880.90	\$3,841.20	\$4,801.50	\$5,761.80	\$6,722.10	\$960.30
Standard 40 C.Y. Box	\$960.30	\$1,920.60	\$2,880.90	\$3,841.20	\$4,801.50	\$5,761.80	\$6,722.10	\$960.30
Locking Lids	\$8.00	\$16.01	\$24.01	\$32.01	\$40.01	\$48.02	\$56.02	\$8.00
Extra Dump Charge	\$80.03	\$160.05	\$240.08	\$320.10	\$400.13	N/A	N/A	
64/96 Gallon Organic G/W	\$84.08	\$143.83	\$203.58	\$263.33	\$323.08	\$382.83	N/A	
2-Cubic Yard Organic G/W	\$242.24	\$451.90	\$661.57	\$871.24	\$1,080.91	\$1,290.56	N/A	
3-Cubic Yard Greenwaste	\$304.10	\$500.96	\$697.82	\$894.68	\$1,091.54	\$1,455.84	N/A	
96-Gallon Recycling	\$44.88	\$64.02	\$96.03	\$128.04	\$160.05	\$200.06	N/A	
3-Cubic Yard Recycling	\$123.86	\$159.87	\$195.14	\$247.31	\$314.10	\$371.90	N/A	
40-C.Y. Recycling	\$480.15	\$960.30	\$1,440.45	\$1,920.60	\$2,400.75	\$2,880.90	N/A	
On-Call Bulky (Comm)	\$59.55	Service Fee, plus \$15.00 per Item						
E-Waste/U-Waste	\$29.55	Service Fee, plus \$5.00 per Item						

Industrial						
Effective October 1, 2021						
Permanent Roll-Off		Rate				
30+ Yard Trash Compactor (up to 9 tons)		\$960.30				
40-Yard Trash Roll-Off (up to 7 tons)		\$746.90				
Overage rate per ton		\$87.69				
30+ Yard Recycling Compactor		\$480.15				
40-Yard Recycling Roll-Off		\$480.15				
Temporary Roll-Off		Delivery/ Pick-up	Haul	*Per Ton Dump	Daily Rental After 7-Days	Dry Run
40-Yard Debris Roll-Off		\$75.00	\$355.00	\$87.69	\$20.00	\$105.00
30-Yard Debris Roll-Off		\$75.00	\$355.00	\$87.69	\$20.00	\$105.00
10-Yard Inert Roll-Off		\$75.00	\$355.00	\$95.00	\$20.00	\$105.00
3-Cubic Yard CUB (Max. 7 Days)		\$75.00	\$155.00	N/A	\$10.00	\$39.00
*Minimum 1-Ton Fee						

Commercial & Multi Family								
Effective July 1, 2022								
Container Type/Size	Weekly Service Frequency							Additional Same Day
	1x	2x	3x	4x	5x	6x	7x	
64/96-Gallon (Commercial)	\$37.40	\$64.02	\$96.03	\$128.04	\$160.05	\$192.06	\$240.08	\$32.01
64/96-Gallon (Multi-Family)	\$24.59	\$49.18	\$73.77	\$98.36	\$122.95	N/A	N/A	\$32.01
1 Cubic Yard	\$160.30	\$232.39	\$304.42	\$408.45	\$536.49	\$664.53	\$904.60	\$53.35
2 Cubic Yard	\$218.39	\$290.42	\$362.44	\$466.47	\$594.51	\$722.55	\$962.63	\$53.35
3 Cubic Yard	\$247.71	\$319.74	\$390.29	\$494.62	\$628.20	\$743.81	\$983.88	\$53.35
3 Cubic Yard -MRF	\$309.64	\$399.67	\$487.86	\$618.27	\$785.25	\$929.76	\$1,229.85	\$66.69
4 Cubic Yard	\$297.71	\$369.74	\$440.29	\$544.62	\$678.20	\$793.81	\$1,033.88	\$53.35
6 Cubic Yard	\$495.42	\$639.46	\$780.56	\$989.24	\$1,256.39	\$1,487.60	\$1,967.75	\$53.35
Compactor 30 +/- C.Y.	\$960.30	\$1,920.60	\$2,880.90	\$3,841.20	\$4,801.50	\$5,761.80	\$6,722.10	\$960.30
Standard 40 C.Y. Box	\$960.30	\$1,920.60	\$2,880.90	\$3,841.20	\$4,801.50	\$5,761.80	\$6,722.10	\$960.30
Locking Lids	\$8.00	\$16.01	\$24.01	\$32.01	\$40.01	\$48.02	\$56.02	\$8.00
Extra Dump Charge	\$80.03	\$160.05	\$240.08	\$320.10	\$400.13	N/A	N/A	
64/96 Gallon Organic G/W	\$84.08	\$143.83	\$203.58	\$263.33	\$323.08	\$382.83	N/A	
2-Cubic Yard Organic G/W	\$242.24	\$451.90	\$661.57	\$871.24	\$1,080.91	\$1,290.56	N/A	
3-Cubic Yard Greenwaste	\$304.10	\$500.96	\$697.82	\$894.68	\$1,091.54	\$1,455.84	N/A	
96-Gallon Recycling	\$44.88	\$64.02	\$96.03	\$128.04	\$160.05	\$200.06	N/A	
3-Cubic Yard Recycling	\$123.86	\$159.87	\$195.14	\$247.31	\$314.10	\$371.90	N/A	
40-C.Y. Recycling	\$480.15	\$960.30	\$1,440.45	\$1,920.60	\$2,400.75	\$2,880.90	N/A	
On-Call Bulky (Comm)	\$59.55	Service Fee, plus \$15.00 per Item						
E-Waste/U-Waste	\$29.55	Service Fee, plus \$5.00 per Item						

Industrial						
Effective July 1, 2022						
Permanent Roll-Off		Rate				
30+ Yard Trash Compactor (up to 9 tons)		\$960.30				
40-Yard Trash Roll-Off (up to 7 tons)		\$746.90				
Overage rate per ton		\$87.69				
30+ Yard Recycling Compactor		\$480.15				
40-Yard Recycling Roll-Off		\$480.15				
Temporary Roll-Off		Delivery/ Pick-up	Haul	*Per Ton Dump	Daily Rental After 7-Days	Dry Run
40-Yard Debris Roll-Off		\$75.00	\$355.00	\$87.69	\$20.00	\$105.00
30-Yard Debris Roll-Off		\$75.00	\$355.00	\$87.69	\$20.00	\$105.00
10-Yard Inert Roll-Off		\$75.00	\$355.00	\$95.00	\$20.00	\$105.00
3-Cubic Yard CUB (Max. 7 Days)		\$75.00	\$155.00	N/A	\$10.00	\$39.00
*Minimum 1-Ton Fee						

Commercial & Multi Family								
Effective July 1, 2023								
Container Type/Size	Weekly Service Frequency							Additional Same Day
	1x	2x	3x	4x	5x	6x	7x	
64/96-Gallon (Commercial)	\$39.46	\$67.54	\$101.31	\$135.08	\$168.85	\$202.62	\$253.28	\$33.77
64/96-Gallon (Multi-Family)	\$25.94	\$51.88	\$77.83	\$103.77	\$129.71	N/A	N/A	\$33.77
1 Cubic Yard	\$169.11	\$245.17	\$321.16	\$430.91	\$565.99	\$701.08	\$954.36	\$56.28
2 Cubic Yard	\$230.41	\$306.39	\$382.37	\$492.13	\$627.21	\$762.29	\$1,015.57	\$56.28
3 Cubic Yard	\$261.34	\$337.32	\$411.75	\$521.82	\$662.75	\$784.72	\$1,037.99	\$56.28
3 Cubic Yard -MRF	\$326.67	\$421.65	\$514.69	\$652.28	\$828.43	\$980.89	\$1,297.49	\$70.36
4 Cubic Yard	\$314.09	\$390.07	\$464.50	\$574.57	\$715.50	\$837.47	\$1,090.74	\$56.28
6 Cubic Yard	\$522.67	\$674.63	\$823.49	\$1,043.65	\$1,325.49	\$1,569.42	\$2,075.98	\$56.28
Compactor 30 +/- C.Y.	\$1,013.12	\$2,026.23	\$3,039.35	\$4,052.47	\$5,065.58	\$6,078.70	\$7,091.82	\$1,013.12
Standard 40 C.Y. Box	\$1,013.12	\$2,026.23	\$3,039.35	\$4,052.47	\$5,065.58	\$6,078.70	\$7,091.82	\$1,013.12
Locking Lids	\$8.44	\$16.89	\$25.33	\$33.77	\$42.21	\$50.66	\$59.10	\$8.44
Extra Dump Charge	\$84.43	\$168.85	\$253.28	\$337.71	\$422.13	N/A	N/A	
64/96 Gallon Organic G/W	\$88.70	\$151.74	\$214.78	\$277.81	\$340.85	\$403.89	N/A	
2-Cubic Yard Organic G/W	\$255.56	\$476.75	\$697.96	\$919.16	\$1,140.36	\$1,361.54	N/A	
3-Cubic Yard Greenwaste	\$320.82	\$528.51	\$736.20	\$943.89	\$1,151.58	\$1,535.91	N/A	
96-Gallon Recycling	\$47.35	\$67.54	\$101.31	\$135.08	\$168.85	\$211.07	N/A	
3-Cubic Yard Recycling	\$130.67	\$168.66	\$205.88	\$260.91	\$331.38	\$392.36	N/A	
40-C.Y. Recycling	\$506.56	\$1,013.12	\$1,519.67	\$2,026.23	\$2,532.79	\$3,039.35	N/A	
On-Call Bulky (Comm)	\$62.83	Service Fee, plus \$15.00 per Item						
E-Waste/U-Waste	\$31.18	Service Fee, plus \$5.00 per Item						

Industrial						
Effective July 1, 2023						
Permanent Roll-Off		Rate				
30+ Yard Trash Compactor (up to 9 tons)		\$1,013.12				
40-Yard Trash Roll-Off (up to 7 tons)		\$787.98				
Overage rate per ton		\$87.69				
30+ Yard Recycling Compactor		\$506.56				
40-Yard Recycling Roll-Off		\$506.56				
Temporary Roll-Off		Delivery/ Pick-up	Haul	*Per Ton Dump	Daily Rental After 7-Days	Dry Run
40-Yard Debris Roll-Off		\$79.13	\$374.53	\$87.69	\$21.10	\$110.78
30-Yard Debris Roll-Off		\$79.13	\$374.53	\$87.69	\$21.10	\$110.78
10-Yard Inert Roll-Off		\$79.13	\$374.53	\$95.00	\$21.10	\$110.78
3-Cubic Yard CUB (Max. 7 Days)		\$79.13	\$163.53	N/A	\$10.55	\$41.15
*Minimum 1-Ton Fee						

Commercial & Multi Family								
Effective July 1, 2024								
Container Type/Size	Weekly Service Frequency							Additional Same Day
	1x	2x	3x	4x	5x	6x	7x	
64/96-Gallon (Commercial)	\$41.63	\$71.26	\$106.88	\$142.51	\$178.14	\$213.77	\$267.21	\$35.63
64/96-Gallon (Multi-Family)	\$27.37	\$54.74	\$82.11	\$109.48	\$136.85	N/A	N/A	\$35.63
1 Cubic Yard	\$178.41	\$258.66	\$338.82	\$454.61	\$597.12	\$739.64	\$1,006.85	\$59.38
2 Cubic Yard	\$243.08	\$323.24	\$403.40	\$519.19	\$661.71	\$804.22	\$1,071.43	\$59.38
3 Cubic Yard	\$275.71	\$355.88	\$434.40	\$550.52	\$699.20	\$827.87	\$1,095.08	\$59.38
3 Cubic Yard -MRF	\$344.64	\$444.84	\$543.00	\$688.15	\$874.00	\$1,034.84	\$1,368.85	\$74.22
4 Cubic Yard	\$331.36	\$411.53	\$490.05	\$606.17	\$754.85	\$883.53	\$1,150.74	\$59.38
6 Cubic Yard	\$551.41	\$711.74	\$868.79	\$1,101.05	\$1,398.40	\$1,655.74	\$2,190.16	\$59.38
Compactor 30 +/- C.Y.	\$1,068.84	\$2,137.68	\$3,206.51	\$4,275.35	\$5,344.19	\$6,413.03	\$7,481.87	\$1,068.84
Standard 40 C.Y. Box	\$1,068.84	\$2,137.68	\$3,206.51	\$4,275.35	\$5,344.19	\$6,413.03	\$7,481.87	\$1,068.84
Locking Lids	\$8.91	\$17.81	\$26.72	\$35.63	\$44.53	\$53.44	\$62.35	\$8.91
Extra Dump Charge	\$89.07	\$178.14	\$267.21	\$356.28	\$445.35	N/A	N/A	
64/96 Gallon Organic G/W	\$93.58	\$160.09	\$226.59	\$293.09	\$359.60	\$426.10	N/A	
2-Cubic Yard Organic G/W	\$269.62	\$502.98	\$736.34	\$969.71	\$1,203.08	\$1,436.43	N/A	
3-Cubic Yard Greenwaste	\$338.47	\$557.58	\$776.69	\$995.80	\$1,214.91	\$1,620.39	N/A	
96-Gallon Recycling	\$49.95	\$71.26	\$106.88	\$142.51	\$178.14	\$222.67	N/A	
3-Cubic Yard Recycling	\$137.86	\$177.94	\$217.20	\$275.26	\$349.61	\$413.94	N/A	
40-C.Y. Recycling	\$534.42	\$1,068.84	\$1,603.26	\$2,137.68	\$2,672.09	\$3,206.51	N/A	
On-Call Bulky (Comm)	\$66.28	Service Fee, plus \$15.00 per Item						
E-Waste/U-Waste	\$32.89	Service Fee, plus \$5.00 per Item						

Industrial						
Effective July 1, 2024						
Permanent Roll-Off		Rate				
30+ Yard Trash Compactor (up to 9 tons)		\$1,068.84				
40-Yard Trash Roll-Off (up to 7 tons)		\$831.32				
Overage rate per ton		\$87.69				
30+ Yard Recycling Compactor		\$534.42				
40-Yard Recycling Roll-Off		\$534.42				
Temporary Roll-Off		Delivery/ Pick-up	Haul	*Per Ton Dump	Daily Rental After 7-Days	Dry Run
40-Yard Debris Roll-Off		\$83.48	\$395.13	\$87.69	\$22.26	\$116.87
30-Yard Debris Roll-Off		\$83.48	\$395.13	\$87.69	\$22.26	\$116.87
10-Yard Inert Roll-Off		\$83.48	\$395.13	\$95.00	\$22.26	\$116.87
3-Cubic Yard CUB (Max. 7 Days)		\$83.48	\$172.52	N/A	\$11.13	\$43.41
<i>*Minimum 1-Ton Fee</i>						

Commercial & Multi Family								
Effective July 1, 2025								
Container Type/Size	Weekly Service Frequency							Additional Same Day
	1x	2x	3x	4x	5x	6x	7x	
64/96-Gallon (Commercial)	\$43.92	\$75.17	\$112.76	\$150.35	\$187.94	\$225.52	\$281.91	\$37.59
64/96-Gallon (Multi-Family)	\$28.87	\$57.75	\$86.62	\$115.50	\$144.37	N/A	N/A	\$37.59
1 Cubic Yard	\$188.23	\$272.89	\$357.46	\$479.62	\$629.97	\$780.32	\$1,062.22	\$62.65
2 Cubic Yard	\$256.45	\$341.02	\$425.59	\$547.75	\$698.10	\$848.45	\$1,130.36	\$62.65
3 Cubic Yard	\$290.88	\$375.45	\$458.29	\$580.80	\$737.65	\$873.41	\$1,155.31	\$62.65
3 Cubic Yard -MRF	\$363.60	\$469.31	\$572.86	\$726.00	\$922.07	\$1,091.76	\$1,444.14	\$78.31
4 Cubic Yard	\$349.59	\$434.16	\$517.00	\$639.51	\$796.37	\$932.12	\$1,214.03	\$62.65
6 Cubic Yard	\$581.74	\$750.88	\$916.57	\$1,161.60	\$1,475.31	\$1,746.80	\$2,310.61	\$62.65
Compactor 30 +/- C.Y.	\$1,127.62	\$2,255.25	\$3,382.87	\$4,510.50	\$5,638.12	\$6,765.74	\$7,893.37	\$1,127.62
Standard 40 C.Y. Box	\$1,127.62	\$2,255.25	\$3,382.87	\$4,510.50	\$5,638.12	\$6,765.74	\$7,893.37	\$1,127.62
Locking Lids	\$9.40	\$18.79	\$28.19	\$37.59	\$46.98	\$56.38	\$65.78	\$9.40
Extra Dump Charge	\$93.97	\$187.94	\$281.91	\$375.87	\$469.84	N/A	N/A	
64/96 Gallon Organic G/W	\$98.73	\$168.89	\$239.05	\$309.21	\$379.38	\$449.54	N/A	
2-Cubic Yard Organic G/W	\$284.45	\$530.64	\$776.84	\$1,023.05	\$1,269.25	\$1,515.43	N/A	
3-Cubic Yard Greenwaste	\$357.08	\$588.24	\$819.41	\$1,050.57	\$1,281.73	\$1,709.51	N/A	
96-Gallon Recycling	\$52.70	\$75.17	\$112.76	\$150.35	\$187.94	\$234.92	N/A	
3-Cubic Yard Recycling	\$145.44	\$187.72	\$229.15	\$290.40	\$368.83	\$436.70	N/A	
40-C.Y. Recycling	\$563.81	\$1,127.62	\$1,691.44	\$2,255.25	\$2,819.06	\$3,382.87	N/A	
On-Call Bulky (Comm)	\$69.93	Service Fee, plus \$15.00 per Item						
E-Waste/U-Waste	\$34.70	Service Fee, plus \$5.00 per Item						

Industrial						
Effective July 1, 2025						
Permanent Roll-Off		Rate				
30+ Yard Trash Compactor (up to 9 tons)		\$1,127.62				
40-Yard Trash Roll-Off (up to 7 tons)		\$877.04				
Overage rate per ton		\$87.69				
30+ Yard Recycling Compactor		\$563.81				
40-Yard Recycling Roll-Off		\$563.81				
Temporary Roll-Off		Delivery/ Pick-up	Haul	*Per Ton Dump	Daily Rental After 7-Days	Dry Run
40-Yard Debris Roll-Off		\$88.07	\$416.86	\$87.69	\$23.48	\$123.30
30-Yard Debris Roll-Off		\$88.07	\$416.86	\$87.69	\$23.48	\$123.30
10-Yard Inert Roll-Off		\$88.07	\$416.86	\$95.00	\$23.48	\$123.30
3-Cubic Yard CUB (Max. 7 Days)		\$88.07	\$182.01	N/A	\$11.74	\$45.80
*Minimum 1-Ton Fee						

**EXCLUSIVE SOLID WASTE SERVICES
FRANCHISE AGREEMENT
BETWEEN THE
CITY OF HAWAIIAN GARDENS
AND
COMMERCIAL WASTE SERVICES, INC.**

DATED July 1 , 2018

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EXCLUSIVE FRANCHISE AGREEMENT FOR COMPREHENSIVE SOLID WASTE SERVICES

THIS AGREEMENT is made and entered into effective the 1st day of July 2018, by and between the CITY OF HAWAIIAN GARDENS, a municipal corporation, hereinafter referred to as City, and COMMERCIAL WASTE SERVICES, INC., a California Corporation hereinafter referred to as Franchisee. City and Franchisee agree each with the other, that a period of seven (7) years from and after July 1, 2018, is the established term of this Agreement. Franchisee shall have sole right to collect, haul, and dispose of all solid waste and conduct a comprehensive recycling program in the City through June 30, 2025, in accordance with the following terms and conditions. This exclusive franchise may be extended for up to three additional one (1) year terms at the mutual consent of the City and the Franchisee.

RECITALS

WHEREAS, Article XI, § 7 of the California Constitution authorizes cities to protect public health and safety by taking measures in furtherance of their authority over police and sanitary matters; and

WHEREAS, the Legislature of the State of California, by enactment of the California Integrated Waste Management Act of 1989, (“**AB 939**” or the “**Act**”) established a Solid Waste management process which requires cities and other local jurisdictions to implement plans for source reduction, reuse and recycling as integrated waste management practices for Solid Waste attributed to sources within their respective jurisdictions; and

WHEREAS, California Public Resources Code § 40059 provides that aspects of Solid Waste handling of local concern include but are not limited to frequency of collection, means of collection and transportation, level of services, charges and fees, and nature, location and extent of providing solid waste services, and whether the services are to be provided by means of nonexclusive, partially exclusive or wholly exclusive franchise, contract, license or otherwise which may be granted by local government under terms and conditions prescribed by the governing body of the local agency; and

WHEREAS, City is obligated to protect the public health and safety of the residents and businesses in the City, and arrangements made by solid waste enterprises and recyclers for the collection of Residential and commercial Solid Wastes should be made in a manner consistent with the exercise of the City’s police power for the protection of public health and safety; and

WHEREAS, City and Franchisee are mindful of the provisions of the laws governing the safe collection, transport, recycling and disposal of Residential and commercial Solid Waste, including AB 939, the Resource Conservation and Recovery Act (“**RCRA**”), 42 U.S.C. §§ 6901 *et seq.*, the Comprehensive Environmental Response, Compensation and Liability Act (“**CERCLA**”), 42 U.S.C. §§ 9601 *et seq.*; the Electronic Waste Recycling Act of 2003 (SB 20, Chapter 526, Statutes of 2003; SB 50, Chapter 863, Statutes of 2004;

AB 575 Chapter 59, Statutes of 2011), laws governing Universal Waste, including, but not limited to, Universal Waste Electronics Devices (“UWED”), non-empty aerosol cans, fluorescent tubes, high intensity discharge lamps, sodium vapor lamps, and any other lamp exhibiting a characteristic of a hazardous waste, batteries (rechargeable nickel-cadmium batteries, silver button batteries, mercury batteries, small sealed lead acid batteries, alkaline batteries, carbon-zinc batteries and any other batteries which exhibit the characteristic of a hazardous waste), mercury thermometers, mercury-containing switches; and

WHEREAS, City and Franchisee desire to leave no doubts as to their respective roles and to make it clear that by entering into this Agreement, City is not thereby becoming a “generator” or an “arranger” as those terms are used in the context of CERCLA § 107(a)(3) and that it is the Franchisee, an independent entity, not City, which will arrange to collect Solid Waste from single family dwellings, multiple family dwellings, City and Commercial Customers in the City, transport for recycling and disposal and dispose of Solid Wastes which may contain small amounts of household products with the characteristics of hazardous wastes, collect and compost Green Waste and collect and recycle Recyclable Materials from single family dwellings, multiple family dwellings, City, and commercial customers in the City of Hawaiian Gardens, and collect and recycle or dispose of Construction and Demolition Materials (“C&D Materials”); and

WHEREAS, City and Franchisee agree that, subject to City’s exercise of its reserved flow control right under of this Agreement, the Franchisee will only utilize landfill or transformation facility destinations for the non-recyclable residential and commercial Solid Waste and Construction and Demolition Materials, which Franchisee will arrange to collect, that City’s Chief Administrative Officer has approved in writing; the Franchisee is free at all times to petition the City for the inclusion or addition of any lawfully permitted facility and nothing in this Agreement or other action of the City shall be construed to give rise to any inference that the City has any title, ownership or right of possession of such Solid Waste; and

WHEREAS, Franchisee represents and warrants to City that Franchisee has the experience and qualifications to conduct recycling and waste diversion programs, to provide City with information sufficient to meet the City’s reporting requirements to CalRecycle and any other State, County, or additional agencies with jurisdiction over the portion of the City’s waste stream that is collected by the Franchisee, and that Franchisee shall submit any such data required by the City to meet its reporting obligations in a format approved by the City; and

WHEREAS, Franchisee represents that it employs qualified persons responsible for the day-to-day collection, safe transportation, and disposal of Solid Wastes and that such persons will operate equipment and otherwise conduct all activities in a safe manner which shall minimize the adverse effects of collection vehicles on air quality and traffic, and that Franchisee has the ability to indemnify City in accordance with this Agreement; and

WHEREAS, the City Council finds and determines pursuant to California Public Resources Code § 40059(a)(1) that the public interest, health, safety and well-being, including the minimization of adverse impacts on air quality and traffic from excessive numbers of collection vehicles, the implementation of measures consistent with the City’s Source Reduction and Recycling Element, would be served if Franchisee were to be

awarded an exclusive Franchise for collection, recycling, diversion and disposal of Solid Waste from Customers in the City,

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

ARTICLE 1: DEFINITIONS

Whenever any term used in this Agreement has been defined by the provisions of Chapter 6.12, 6.13, 6.14 and 6.15 of the Municipal Code or by Division 30, Part I of the California Public Resources Code, the definitions in the Municipal Code or the Public Resources Code shall apply unless the term is otherwise defined in this Agreement, in which case this Agreement shall control.

Except as provided in Section 1, words beginning with lower case letters are being used with their common ordinary meanings, not as defined terms. Otherwise, the following capitalized words and terms shall have the following respective meanings:

1.1 AB 939

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

1.2 AB 939 Program Payment

“AB 939 Program Payment” shall mean that annual fee established by the City and collected from the Franchisee to fund the administrative and related costs of the City for compliance with the Waste Diversion mandates of the State.

1.3 Agreed Upon Procedure

“Agreed Upon Procedure” shall mean the procedures and methodology approved by the City’s Chief Administrative Officer for review and audit of Franchisee’s records in addition to any and all additional documentation or reports that the City may request in connection with this Agreement for the purposes of conducting an audit.

1.4 Agreement

“Agreement” shall mean this Agreement for Provision of Comprehensive Solid Waste Services.

1.5 Bin

“Bin” shall mean any Solid Waste container of a capacity exceeding 100 gallons (i.e., a “dumpster”) and provided to customers by Franchisee.

1.6 Bulky Waste

“Bulky Waste” shall mean any large or small household appliance, electronic waste, universal waste, furniture, tires, carpet, mattress or similar large item discarded as Municipal Solid Waste from a Single-Family Residential Unit or Multi-Family Residential Unit.

1.7 Duty

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

1.8 Breach of Duty

If Franchisee, at any point during the term of this agreement, cannot fulfil one or more of its duties under this agreement, either partially or wholly, shall be considered a "Breach of Duty." Once a breach occurs, the City shall be entitled to terminate this agreement upon thirty (30) days' notice in addition to other fees, penalties, etc., as identified in Sections 9 through 12. Notice of Breach must state reasons for termination and explanation of Franchisees failure in its duties, as required, under this agreement.

Notice of Breach and Notice to terminate may be combined into one document. Any and all notices shall be subject to the Notice requirements of Section 12.4. See section 11 for Enforcement methods, procedures, and penalties.

1.9 Cart

"Cart" shall mean any molded Container provided by Franchisee of a size not to exceed 100 gallons with two or more wheels for easy carting by an individual.

1.10 Chief Administrative Officer

"Chief Administrative Officer" shall mean the Manager of the City or his or her designee(s).

1.11 City

"City" shall mean the City of Hawaiian Gardens, a municipal corporation organized under the laws of the State of California, and all of the territory lying within the municipal boundaries of the City as presently existing and, subject to the provisions of Attachment A, all geographic areas which may be added or annexed thereto during the Term of this Agreement.

1.12 City Facility

"City Facility" shall mean any building, park or other site owned, leased or used by the City.

1.13 Commercial and Industrial Units

"Commercial and Industrial Units" shall mean the Premises of a business that is not a City Facility, Single-Family Residential Unit or Multi-Family Residential Unit.

1.14 Compensation Schedule

"Compensation Schedule" shall mean that set of prices established by the City to compensate the Franchisee for the full costs of the collection, processing, recycling, composting, and/or transformation or landfill disposal of solid wastes, inclusive of all City fees and program costs.

1.15 Company

“Company” shall mean a corporation, entity or partnership organized and operating under the laws of the State of California and its officers, directors, employees, agents, companies and subcontractors.

1.16 Contract Year

“Contract Year” shall mean each annual period starting from the Effective Date and recurring thereafter from the Effective Date’s anniversary.

1.17 Contract Term

“Contract Term” shall mean a period of seven (7) years with an effective date of July 1, 2018 and will expire June 30, 2025. This exclusive franchise may be extended for up to three additional one (1) year terms at the sole option of the City.

1.18 Contractor

“Contractor” shall mean California Waste Services, Inc., a corporation organized and operating under the laws of the State of California, and its officers, director, employees, agents, companies and subcontractors, as permitted under the Agreement.

1.19 Contractors Proposal

"Contractor's Proposal" shall mean the proposal submitted by Contractor to City on, April 23, 2018 in response to a Request for Proposals dated February 26, 2018. Contractor represents and warrants that all representations set forth in such proposal are true and correct. Contractors Proposal is incorporated by reference to this Agreement and becomes part of this Agreement. Franchisee shall be held to all proposed services, programs, rates, etc., and shall not be entitled to amend any provision therein without the express written consent of the Public Works Director and the Chief Administrative Officer. Any failure to provide or complete any provision or service of Proposal shall be considered a Material Breach and City will be entitled to seek immediate agreement termination as well as any and all Enforcement actions as identified in this agreement.

1.20 Construction and Demolition Debris (C&D)

“Construction and Demolition Material” or “C&D Material,” shall mean any combination of building materials and Solid Waste resulting from construction, remodeling, repair, cleanup, or demolition operations as defined in California Code of Regulations, Title 22 Section 66261.3 et seq. This term includes, but is not limited to, asphalt, concrete, Portland cement concrete, brick, lumber, gypsum wallboard, cardboard, and other associated packaging, roofing material, ceramic tile, carpeting; plastic pipe and steel. The material may be commingled with rock, soil, tree stumps; and other vegetative matter resulting from land clearing and landscaping for construction or land development projects.

1.21 County

“County” shall mean the County of Los Angeles.

1.22 Curbside Recycling Fee

“Curbside Recycling Fee” shall mean that percentage of shared revenue, gross receipts, or other compensation from the sale, barter, or otherwise obtained by Franchisee due to

the Franchisee's status as operator of the City of Hawaiian Gardens curbside recycling program, paid to the City on a schedule established hereto.

1.23 CPI

"CPI" shall mean the Consumer Price Index (CUUR0000SA0L1E) for All Urban Consumers (CPI-U), all items less food and energy index - U.S. city average, not seasonally adjusted.

1.24 Day

"Day" shall mean calendar day, unless otherwise stated in this Agreement.

1.25 Disposal Fee

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

1.26 Disposal Site

"Disposal Site" shall mean a permitted Solid Waste facility, transfer station, Material Recovery Facility or pre-processing facility.

1.27 Diversion

"Diversion" shall mean any combination of waste prevention (source reduction), recycling, reuse and composting activities that reduces waste disposed at landfills, provided such activities are recognized by CalRecycle as Diversion in its determination of the City's Diversion rate and compliance with AB 939. CalRecycle may limit Diversion considered to be achieved through Transformation/waste-to-energy, use of Green Waste as alternative daily cover ("ADC") and other activities.

1.28 Effective Date

The "Effective Date" shall be the Franchise Start Date which will commence at 12:01 a.m. of July 1, 2018.

1.29 Facility

"Facility" shall mean any plant or site, owned or leased and maintained, operated or used by Franchisee.

1.30 Franchisee

"Franchisee" shall mean, Commercial Waste Services, Inc., a corporation, entity or partnership organized and operating under the laws of the State of California and its officers, directors, employees, agents, companies and subcontractors.

1.31 Franchise Documents

"Franchise Documents" shall mean Chapter 6.12, 6.13, 6.14, and 6.15 as the same exists or may be amended in the future of the Municipal Code of the City of Hawaiian Gardens, this Agreement, and any attachments hereto.

1.32 Franchise Start Date

“Franchise Start Date” shall mean the date on which the exclusive franchise granted by the Agreement with the City to commence to start services as identified in this agreement, which date shall be at 12:01 a.m. of July 1, 2018.

1.33 Franchise Term

“Franchise Term” shall mean the term of the exclusive franchise granted to Franchisee by this Agreement, which Franchise Term shall commence on the Franchise Start Date (12:01 a.m., July 1, 2018) and continue until 11:59 p.m., December 31, 2018.

1.34 Franchise Fee

“Franchise Fee” shall mean an amount paid Quarterly to City equal to Ten Percent (10%) of Gross Receipts collected during the preceding Quarter for any franchise service, or related service, provided under this Agreement. This franchise fee is a specific public benefit remitted to the City as part of its consideration for the right granted to provide exclusive Solid Waste Handling Services in recognition of this franchise and is not subject to any percentage reduction or “net-of-fees” computation. “

1.35 Green Waste

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

1.36 Gross Receipts

“Gross Receipts” shall mean all monies, consideration and revenue received by Franchisee in connection with the services carried out under this Agreement and shall include all Tipping Fees and/or other fees and/or taxes charged to and collected by Franchisee and thereafter passed-on to Franchisee’s customers under this Agreement, subject to any requirements of Proposition 218. Copies and/or proof of gross monthly receipts may be requested at the sole discretion of the City within twenty-four (24) hours’ notice. Failure to provide or cooperate with City in providing these documents equates to a material breach under this agreement.

1.37 Hazardous Waste

“Hazardous Waste” shall mean any hazardous or toxic substance, material or waste which is or becomes regulated by any local governmental authority, the State of California, or the United States Government. The term “Hazardous Material” includes, without limitation, any material or substance which is: (i) petroleum or oil or gas or any direct or derivate product or byproduct thereof; (ii) defined as a “hazardous waste,” “extremely hazardous waste” or “restricted hazardous waste” under Sections 25115, 25117 or 25122.7, or listed pursuant to Section 25140, of the California Health and Safety Code, Division 20, Chapter 6.5 (Hazardous Waste Control Law); (iii) defined as a “hazardous substance” under Section 25316 of the California Health and Safety Code, Division 20, Chapter 6.8 (Carpenter-Presley-Tanner Hazardous Substance Account Act); (iv) defined as a “hazardous

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

1.38 Holiday

“Holiday” shall mean holidays prescribed by the City of Hawaiian Gardens specific to Franchisee service. These prescribed holidays include: New Year’s Day, Labor Day, Memorial Day, Thanksgiving Day, Independence Day, and Christmas Day. All collection activities scheduled during a prescribed Holiday shall be collected on the following non-holiday collection day.

1.38.1 Residential Holiday Exception

Contract effective date is July 1, 2018, however the normal collection date for the residential route is Wednesday, which falls on July 4, 2018, a holiday. City requires that Franchisee provide services as normal on July 4, 2018 even though it is a national holiday. This is required in order to maintain a smooth transition from previous franchisee to new franchisee. Additionally, all noted holidays that fall on Wednesday for residential collection, except as defined in Section 1.38 “Holiday”, shall be collected on Wednesday; there will be no exceptions to this collection schedule. City will not be responsible for any additional costs associated with Franchisee performing services on any aforementioned holiday.

1.39 Household Hazardous Waste or HHW

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

1.40 Household Waste

“Household Waste” shall mean that waste normally generated by a Single-Family Residential Unit or a Multi-Family Residential Unit.

1.41 Infectious Waste

“Infectious Waste” shall mean waste capable of producing an infection or pertaining to or characterized by the presence of pathogens including, but not limited to, certain wastes generated by medical practitioners, hospitals, nursing homes, medical testing labs, mortuaries, taxidermists, veterinarians, veterinary hospitals and medical testing labs and any waste that includes animal wastes.

1.42 Materials Recovery Facility

“Material Recovery Facility or MRF” shall mean a transfer station which is designed to, and as a condition of its permit, shall, recover for reuse or recycling, at least fifteen percent (15%) of the total volume of material recovered by the facility as set forth in Public Resources Code Section 50000(a)(4).

1.43 Material Breach

A breach is considered “material” under this agreement if the following situations occur (this list is not all-inclusive, but shall include): failure to submit payments on-time and/or in the proper amount, failure to act in good faith, failure to provide adequate service to the City’s businesses and/or residents, failure meet the required diversion amount, failure to report accurately, failure to cooperate with request for documents, failure to cooperate with audit, etc. Any fees and/or penalties including but not limited to liquidated damages, shall become due immediately upon notification of Material Breach. City may charge 10% interest per month for each month Franchisee fails to submit payment.

1.44 Maximum Rate Schedule

“Maximum Rate Schedule” shall mean that schedule of rates charged to Residential Units and Commercial and Industrial customers located in the City (and/or annexed property) by Franchisee for Franchisee’s waste hauling services, which Maximum Rates are effective as of the Effective Date of this Agreement and attached hereto in “Attachment B”. **There shall be no rate increase for a period of one (1) year from effective date of Agreement.** Any rate increase requests following this period shall be subject to the Maximum Rates are identified in Attachment B of this agreement.

1.45 Multi-Family

“Multi-Family” shall mean a development of five (5) or more Residential Units, including a condominium project, duplex, townhouse project, apartment house, or mobile home park, irrespective of whether residence therein is transient, temporary or permanent, such that all Residential Units dispose of Solid Waste and/or Recyclable Materials in a communal Bin(s) at centralized locations.

1.46 Oil Waste

“Oil Waste” shall mean used motor oil and used oil filters.

1.47 Owner

“Owner” shall mean the person, organization or corporation holding the legal title to the real property constituting the Premises to which solid waste management services are provided or required to be provided. For the purposes of provisions in this Agreement pertaining to the sending of notices, billings or other communications by Franchisee to an Owner, Franchisee may regard as the Owner the person, organization, corporation or other entity shown in the records of the Assessor of the County or as may be indicated by documents recorded in the Office of the Recorder of the County.

1.48 Premises

“Premises” shall mean any parcel of land, building(s) and/or structure(s), or portion thereof, in the City where Municipal Solid Waste is produced, generated or accumulated and which is billed as one customer or one Multi-Family complex.

1.49 Performance Bond

“Performance Bond” shall guarantee Franchisee’s faithful performance of waste hauling services under the auspices of this Agreement, including without limitation, payment of any penalty and the funding of any work to cure a breach of this Agreement. The bond shall be unconditional and remain in full force and affect during the entire term of this Agreement and shall be null and void, if and only if, City in its sole discretion, determines that Franchisee has performed all duties and paid all fees and payments as identified in this agreement. The Performance Bond shall be in the sum of SEVEN HUNDRED AND FIFTY THOUSAND DOLLARS (\$750,000.00), in the form provided by the Chief Administrative Officer.

1.50 Proposition 218

“Proposition 218” shall mean Articles XIIC and XIID of the California Constitution and any implementing legislation promulgated thereunder, as may be amended from time to time.

1.51 Rate Increase

Franchisee shall be entitled to request a rate adjustment annually on the agreement effective date of July 1 per the requirements of the Maximum Rate Schedule as identified in Attachment B. There shall be no Extraordinary Rate increases during the entire term of this agreement. An Extraordinary rate increase shall be considered “extraordinary” if the request is: over the allowable adjustment percentage/formula as stated in Attachment B, and/or is unsubstantiated in any way. Any attempt to amend this contract for the purposes of Franchisee seeking an Extraordinary Rate Increase(s) shall be considered a Material Breach.

1.52 Recyclable Container

“Recyclable Container” shall mean any Bin or Cart provided by the Franchisee for the collection of Recyclable Materials.

1.53 Recyclable Material

“Recyclable Materials” shall mean any product salvaged or collected for the purpose of reprocessing or remanufacturing including, but not limited to, glass, newsprint, aluminum, cardboard, plastics or metal.

1.54 Recycling/Recycle

“Recycling” shall mean the processing of Recyclable Materials for the purpose of returning them to the economy in the form of raw materials for new, reused, or reconstituted products. Recycling does not include use of Solid Waste for conversion to energy.

1.55 Refuse

“Refuse” shall mean putrescible and non-putrescible Solid Waste.

1.56 Residential Unit

“Residential Unit” shall mean any individual dwelling unit used for or designated as a single-family residential as either (i) a Single-Family Unit or (ii) a single unit in a Multi-Family Unit.

1.57 Solid Waste

“Solid Waste” shall mean all solid wastes generated by residential, commercial, and industrial sources, and all solid waste generated at construction and demolition sites, and at treatment works for water and waste water, which are collected and transported under the authorization of the City or are self-hauled by residents or contractors. Municipal Solid Waste does not include agricultural crop residues, mining waste and fuel extraction waste, forestry wastes, ash from industrial boilers, furnaces and incinerators or Hazardous Waste, any waste which is not permitted to be disposed of at a Class III landfill and which fall within the definition of “Nonhazardous Solid Waste” set forth in Title 23, Chapter 15, Section 2523(a) of the California Code of Regulations as amended or designated Class II wastes.

1.58 Single-Family

“Single-Family” shall mean Premises used or designated for residential use and consisting of four (4) or fewer Residential Units, such that each Residential Unit receives its own set of Carts and individual curbside collection services therefore.

1.59 Source Reduction

“Source Reduction” shall mean the process of reducing the amount of waste produced by the person or organization generating such waste. Source Reduction occurs through the use of alternative goods and products and/or the reuse of goods and products.

1.60 Source Separated

“Source Separated” shall mean the segregation, by the generator, of materials designated for separate collection for some form of materials recovery or special handling.

1.61 Term

“Term” shall mean the effective period of this Agreement as defined in Section 2.5.

1.62 Tipping Fee

“Tipping Fee” shall mean the common name for and has the same meaning as Disposal Fee.

1.63 Transformation

“Transformation” shall mean incineration, pyrolysis, distillation, gasification, or biological conversion other than composting.

1.64 Waste Diversion or Diversion

“Waste Diversion” or “Diversion” shall mean diversion from Disposal Sites or transformation facilities (including incineration, pyrolysis, distillation, gasification or biological conversion) through source reduction, Recycling and composting, as provided in Section 41780 of the Act, provided that “Divert” or “Diversion” shall include delivery to transformation facilities if the overall Diversion achieved by the Town is at a level where delivery to such facilities shall be considered Diversion pursuant to the California Integrated Waste Management Act of 1989 (Public Resources Code Sections 40000 *et seq.*).

1.65 Waste Generator

“Waste Generator” shall mean a person as defined by the Public Resources Code, whose act of process produced Solid Waste as defined in the Public Resources Code, or whose act first causes Solid Waste to become subject to regulation.

1.66 Work Plan

“Work Plan” shall mean the Franchisee’s prepared proposal pursuant to the Request for Proposals (RFP) and identified as “Attachment G” of this Agreement.

ARTICLE 2: GRANTS AND ACCEPTANCE OF FRANCHISE

2.1 Documents

The Franchise Documents consist of Chapter 6.12 through Chapter 6.15 as the same exists or may be amended in the future of the Municipal Code of the City of Hawaiian Gardens, this Agreement, the request for proposal response of the selected firm awarded the Franchise, and any attachments hereto. All of the provisions of the Franchise Documents are incorporated and made a part of this Agreement as though set forth in full. Nothing shall prevent the City from amending Chapters 6.12-6.15 of the Municipal Code or from adopting such other and further legislation as the City deems necessary or appropriate; provided, however, that the City shall give Franchisee ten (10) days, notice prior to considering any amendment to Chapter 6, if such amendment would affect costs of revenue under this Agreement; provided, however, failure to give such notice shall not invalidate the amendment.

2.2 Enforcement of Exclusivity

Contractor shall be responsible for enforcing the exclusivity of this Agreement (except as provided in Section 2.11 below). City shall have the right to enforce the exclusivity provisions hereof if, in its absolute and sole discretion, it chooses to do so, but shall have no obligation to do so for the benefit of Contractor or otherwise. City additionally shall have the right, but not the obligation, to request that Contractor enforce the exclusivity provisions hereof. Contractor shall have an affirmative obligation to enforce such exclusivity provisions when requested to do so by City. For example, Contractor may be asked to notify City of inappropriately placed Containers and to place warning tags on such Containers. City may direct Contractor to impound such Containers in accordance with the City's Municipal Code; Contractor may be entitled to charge Container owners City-approved fees for such impounding with advance written City approval. If Contractor requests that City take administrative, law enforcement, or other legal action to protect Contractor's exclusive rights, or otherwise enforce the exclusivity of this Agreement (including the adoption of any resolution or ordinance intended to facilitate the enforcement of the exclusive rights granted herein), Contractor shall reimburse City for all administrative, law enforcement, or other legal costs and fees related to any such action. Contractor's obligation to reimburse City shall not apply to any criminal enforcement by City.

2.3 Effective Date

The term "Effective Date" shall be the agreement start date which will commence on at 12:01 a.m. of July 1, 2018, regardless of the date which the agreement is executed.

2.4 Execution Date

The date of execution is the date at which both parties sign ("execute") the agreement.

2.5 Franchise Term

The term of this Agreement (the "Term") shall commence at 12:01 a.m., July 1, 2018 and shall expire on 11:59 p.m. June 30, 2025.

2.6 Option to Extend

The City and the Franchisee may mutually consent to extend this Agreement by three (3) additional one-year periods, thus creating a maximum ten-year Term. Franchisee may also make a proposal to the City Council to extend, renew, or enter into a new Agreement six (6) months prior to the end of the Term. The City is under no obligation to grant any requested extension or new agreement proposed by the Franchisee. Under no circumstance shall this agreement or any terms contained herein be modified verbally by either party.

2.7 Grant of Franchise

The City grants to Franchisee and Franchisee shall have during the Franchise Term, the exclusive franchise, right, license and privilege (except as provided in Section 2.11 below) to engage in, the business of collecting and transporting all Solid Waste and Recyclable Materials generated within the City. It is expressly understood that the Solid Waste management business is conducted by Franchisee and not City, and while City grants the right to conduct the business within the terms of this Agreement, the Franchisee must determine what personnel to employ, terms and conditions of employment; what equipment to utilize and at what cost, rates, and charges to establish for customers; and all methods, costs, obligations, and mechanisms to undertake the terms of the franchise.

2.8 Duty

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

2.9 Breach of Duty

If Franchisee, at any point during the term of this agreement, cannot fulfil one or more of its duties under this agreement, either partially or wholly, shall be considered a "Breach of Duty." Once a breach occurs, the City shall be entitled to terminate this agreement upon thirty (30) days' notice in addition to other fees, penalties, etc. Notice of Breach must state reasons for termination and explanation of Franchisees failure in its duties, as required, under this agreement.

Notice of Breach and Notice to terminate may be combined into one document. Any and all notices shall be subject to the Notice requirements of Section 12.4. See section 11 for Enforcement methods, procedures, and penalties.

2.10 Annexations

This Agreement shall extend to any territory annexed to the City during the Term that is not covered by an existing Solid Waste permit, license, agreement or franchise granted by another public entity shall be added hereto, except to the extent that collection by Franchisee within that annexed territory would violate the provisions of Public Resources Code Section 49520. In such event, this Agreement shall become effective as to such area at the earliest possible date permitted by law, and City agrees that it shall cooperate with Franchisee to fulfill any requirement necessary for Franchisee to serve the annexed area. The "Maximum Rate Schedule" in Attachment B, shall be applicable to any annexed territory that Franchisee services during the term of this agreement.

2.11 Scope of Franchise; Mandatory Service and Exclusions

The franchise granted to Franchisee shall be exclusive within City limits such that Franchisee shall be the sole provider of general Solid Waste and Recyclable Materials hauling services to City residents and businesses. To this end, at all times during the Term of this Agreement, the City shall require the Owner of each Single-Family Residential Unit, Multi-Family Residential Unit, Commercial Unit, and Industrial Unit where Solid Waste is produced to subscribe to the collection service provided for in this Agreement and in Chapters 6.12-6.15 of the Municipal Code. The hauling services franchise herein granted shall be subject to the following exclusions:

2.11.1 Intergovernmental Immunity

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

2.11.2 Self-Hauling Exclusions

Self-hauling by City residents, commercial businesses, and contractors within the City who may elect to opt out of the services provided for by the Franchisee include the following:

- i. Self-haul materials, which are generated by a residential or commercial entity and delivered by that entity directly to a recycling facility, transfer station, or disposal facility.
- ii. Removal of materials from a premise by a contractor as an incidental part of a gardening, landscaping, tree trimming, pruning, cleaning, maintenance, construction, or similar service offered by that contractor rather than as a hauling service, provided that the hauling is performed by the contractor itself and not a subcontracted hauling company.
- iii. Removal of construction and demolition debris from a construction site by the construction contractor, provided that the hauling is performed by the contractor itself and not a subcontracted hauling company. (Ord. 518 § 1, 2007).
- iv. Sale or Gift of Recyclable Materials. This Agreement does not prohibit any person from selling Recyclable Materials or giving Recyclable Materials away to persons or entities other than the Franchisee; however, in either instance: (1) the Recyclable Materials must be segregated from and not mixed with Solid Waste; and (2) the segregated solid waste material cannot have a contamination level of greater than 10%, measured by weight or volume. Specifically, "contamination" would encompass any putrescible or non-putrescible material not specifically targeted for segregation. A discount or reduction in price for collection, disposal and/or recycling services for any form of unsegregated or segregated Solid Waste, regardless of contamination level, is not a sale or donation of Recyclable Materials and such Solid Waste does not qualify for this exception; and
- v. Other Services; Niche Recycling Services. City reserves the right to enter into agreements with other entities for the collection, recycling, and disposal services not provided for in this Agreement, including but not limited to catch basin clean-outs, household hazardous waste collection, and "niche" recycling services which Contractor does not currently provide; and

- vi. Recyclable Materials Drop Off. Recyclable Materials not “discarded” by an Owner of Premises which is disposed of at legally mandated public redemption centers that comply with all reporting and other requirements imposed by any political entity having jurisdiction over those redemption centers; and
- vii. Emergency Collections. The casual or emergency collection, removal, disposal or Diversion of Solid Waste by the City through City officers or employees in the normal course of their employment; and
- viii. Legally-Required Exemptions. Other collection, removal or disposal activities required to be exempt from mandatory franchise services pursuant to law, or entities exempt from such franchise pursuant to State or Federal law, including but not limited to Non-City governmental entities located within City boundaries.

2.12 City’s Right to Direct Charges

2.12.1 General

City may direct Contractor to perform additional services (including new Recycling or other Diversion programs, additional Solid Waste processing, etc.) or modify the manner in which it performs existing services or Bills for services. Pilot programs and innovative services which may entail new Collection methods, and different kinds of services and/or new requirements for Waste Generators are included among the kinds of changes which City may direct. Contractor acknowledges that State law may increase the Diversion requirement or require new programs during the term of this agreement and Contractor agrees to propose services to meet such new requirements. Contractor shall be entitled to either a rate adjustment or additional Contractor Compensation for providing such additional or modified services, including a pre-tax profit factor equal to ten percent (10%) of the incremental cost of such additional or modified services. If City and Contractor cannot agree on compensation for new or additional services within ninety (90) days from the date City first requests a proposal from Contractor, then City may contract with other parties for such services, which shall be considered exempt from the exclusivity provisions of Section 2.11.

2.12.2 New Diversion Programs

Contractor shall present, within thirty (30) days of a request to do so by City, a proposal to provide additional or expanded Diversion services. The proposal shall contain a complete description of the following:

- Collection methodology to be employed
- Processing methods
- Equipment to be utilized (number of vehicles, types, etc.)
- Labor requirements (number of employees by classification)
- Type(s) of Containers to be utilized
- Type(s) of material to be collected
- Provision for program publicity/education/marketing
- One-year projection of the financial results of the program's operations in an operating statement format, including documentation of the key assumptions underlying the projections, and the support for those assumptions

2.13 Representations and Warranties of Franchisee

2.13.1 Corporate Status

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

2.13.2 Corporate Authorization

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

2.13.3 Accuracy of Representations

The representations and warranties made by Franchisee in its Work Plan and/or and any additional services as noted in this agreement and its Attachments are true and correct on and as of the Effective Date of this Agreement.

ARTICLE 3: ADMINISTRATIVE, FRANCHISE & FEES

3.1 Franchise Fee

Franchisee shall pay a quarterly fee to City equal to Ten Percent (10%) of Gross Receipts collected the preceding quarter for any franchise service, or related service, provided under this Agreement. This franchise fee is a specific public benefit remitted to the City in recognition of the granting of this franchise and is not subject to any percentage reduction or "net-of-fees" computation without the express approval of the City Council. Franchise Fee payments are due 30 days after each preceding quarter's end, up to and including the final month of this Agreement. Any under-payment or non-payment of franchise fees is subject to a late payment penalty of 10% per month, or any fraction of a month beyond the prescribed due date. This is an agreed upon penalty that is cumulative upon any balances owing or subsequently found as owing through audit or other means. Gross Receipt breakdown shall be submitted with the Quarterly Franchise Fee payment. Failure to timely and accurately pay the Franchise Fee is considered a material breach of this Agreement.

3.2 Annual Program Payments

Contractor shall make the following annual payments to the City on the anniversary date of this Agreement. Failure to make annual payments on the prescribed date is considered a material breach of this Agreement:

- i. AB 939 Program Payment: An "AB939 Program Payment" in the amount of twenty thousand dollars \$20,000 is to be remitted by the Franchise on an annual basis to reimburse the City for costs related to compliance with State recycling mandates, City staff expense for oversight and review of Contractor recycling activities, and the cost of professional consulting services determined as necessary and/or beneficial by the City.; and
- ii. Performance Audit Program Payment: An annual payment in the amount of twenty-five thousand dollars \$25,000 for a third-party review and audit of contractor performance, record keeping, and fee calculations. Such an audit will verify the accuracy of franchise and curbside recycling fee payments as well as the Contractor's implementation of programs, maintenance of records, and general compliance with the terms of this Agreement.; and

3.3 Current Fees, Bond(s), Payments – Due upon Contract Execution

The following actions shall constitute conditions precedent to the effectiveness of this Agreement:

- i. The approval, execution and effectiveness of this Agreement shall have been successfully completed as described in Section 2.3 & 2.4 hereof; and
- ii. In exchange for a the City granting the franchise pursuant to this Agreement, Franchisee shall pay to City a one-time administrative fee, **to be paid on the Agreement Execution Date** as described in Section 2.4 hereof, to reimburse the City for all costs related to the preparation of the Request for Proposals that led to the selection of the Franchisee, and the City's legal fees (attorneys' fees and costs) and professional fees (consultant fees and costs), incurred in the negotiation, research and drafting of this Agreement which amount shall be one hundred

thousand dollars (\$100,000.00). Failure to submit this payment to City within the prescribed time-period equates to a material breach, and all provisions of this agreement apply.

- iii. The Franchisee, in executing this agreement, agrees to deposit, into an escrow account, a payment for the potential enforcement action of liquidated damages in the amount of two-hundred and fifty thousand dollars (\$250,000). Proof of the availability of this amount for liquidated damages **shall be due on the franchise agreement date of execution**. The purpose of this fee shall be to cover the immediate fees and expenses that the City may incur if Franchisee materially breaches this agreement. This money shall become immediately available and paid to City within ten (10) days of Notification of Breach. Terms of withdrawal of liquidated damages by the City from this escrow account shall be subject to the approval by the Chief Administrative Officer.
- iv. The Franchisee shall submit a surety Performance Bond for the seven-hundred and fifty thousand dollars (\$750,000).

3.4 Future Fees

In the event that City implements a new fee (or increases an existing fee beyond the amount contemplated under this Agreement) Contractor shall be entitled to a rate adjustment in an amount sufficient to recover the fee from Customers. City may elect to have Contractor pay monthly, or on another schedule as City identifies. City may set deadlines and late fees, and additional fees would be subject to audit. Conditions to Effectiveness of Agreement.

Each payment of the Annual Program Payment(s) and Franchise Fee Payments shall be accompanied by a statement setting forth the Franchisee's computations and the total of fee due. Each statement shall include the following certification executed by an officer of the Franchisee:

"I hereby certify that the foregoing statement is made by me, that I am authorized to make such statement, and that, to the best of my knowledge and belief, it is true, correct and complete."

ARTICLE 4: SOLID WASTE COLLECTION SERVICE OPERATING REQUIREMENTS

4.1 General Standards

The work to be performed pursuant to this Agreement shall include the furnishing of all supervision, labor, materials, equipment, tools, expertise and any other items necessary to perform the services described in this Agreement. All work shall be accomplished in a courteous, thorough and workmanlike manner and adhere to the highest standards consistent with the best practice in the industry.

4.2 Collection Routes.

The Contractor shall establish and maintain Collection routes in such manner to provide for the uniform and efficient collection of City Solid Waste from all Residential Premises and Commercial Premises on a Monday-through-Saturday basis. Residential Cart Collection routes shall maintain the Collection days in effect immediately prior to the start of service under this Agreement, unless and until City approves a change request. See Attachment A for City map by Residential Cart Collection day. City shall not be obligated to adjust parking restrictions to accommodate Collection routes. The Contractor shall not schedule City Solid Waste collection on Sundays, except as specified in this Agreement or as authorized by the Public Works Director. At all Residential Premises and Commercial Premises which require more than one (1) collection per week, the Contractor shall schedule collections at equally spaced intervals throughout the work week, or as approved by the Public Works Director.

4.3 Compliance with Transition Plan and Services

In performing its obligations under this Agreement, the Contractor shall comply with the Transition Plan contained in Attachment G and shall at all times comply with the Service requirements contained in this Agreement. Failure to meet any deadlines or requirements in the Transition Plan may result in the imposition of liquidated damages per Section 9. Any changes to services shall be reflected in a formal amendment to this Agreement. The City shall have the right at any time to direct the Contractor to change, amend, modify or otherwise revise the services; provided, however, that the Contractor shall be entitled to an adjustment in an amount equal to any increased costs resulting from such amendment, modification or revision of the services to the extent provided in Attachment B. The Contractor also may request the City to approve any such revision, which the Contractor may propose. The City's approval of any such request may be withheld or delayed in the City's sole and absolute discretion. Any such revision directed or approved by the City shall be incorporated into this Agreement and shall be evidenced by formal amendment thereto. Upon such direction or approval by the City, the Contractor shall notify all affected Service Recipients at least seven (7) days prior to implementing the revision.

4.4 Standards of Performance

4.4.1 Availability of Franchisee

Franchisee has established and shall continue to maintain a local office for the purpose of receiving customer payments and handling customer inquiries, orders and complaints. The "local" office must remain in a location within fifteen (15) miles of the City boundary and having the same telephone area code as that existing in the City. The local office shall be

open to the public between the hours of 8:00 a.m. to 5:00 p.m., five (5) days per week, Monday through Friday, including Holidays. A representative of Franchisee shall be available during office hours for communication with the public at such local office. Additionally, the Franchisee shall continue to employ the services of a telephone answering exchange for calls during non-business hours and provide a telephone system sufficient and adequate to handle calls during peak periods. The Franchisee shall provide the City's Chief Administrative Officer and the City's Police and Fire Departments with any updated emergency telephone numbers. Franchisee shall have a representative or answering service available at said telephone number every day for each 24-hour period, regardless of holidays, except those identified in Section 1.38.

4.5 Residential Collections

4.5.1 Residential Cart Services

Collection service for Single-Family Residential Units and Multi-Family Residential Units shall occur once per week (*every Wednesday citywide*) on a schedule approved by the Chief Administrative Officer.

Franchisee shall have the option of proposing a new residential collection route/schedule upon approval of Chief Administrative Officer, but shall under no circumstance be allowed to charge more than the "Maximum Rate Schedule" in Attachment B.

4.5.2 Collection Quantities

The basic service level and rates specified in the Compensation Schedule shall be the default collection quantity. For single-family residential customers, and multi-family customers as designated by the City, that is the designated 96-gallon refuse, 96-gallon recycling, and 64-gallon green waste carts listed therein. For multi-family, commercial, and industrial customers that is a one (1) to six (6) cubic-yard bin. Collection of lesser or additional collection quantities, including the use of alternatively sized containers shall be the right of the Franchisee's customers, provided the container size is listed in the Compensation Schedule and ascribed a specific franchise rate, and that any lesser service collection quantity is reasonably compatible with the customer's waste generation quantities. The City shall be the ultimate arbiter of collection quantity disputes between the Franchisee and its customers.

4.5.3 Containers

- i. ***Multi-Family Containers & Collections.*** Multi-Family complexes utilize one or more Franchisee Provided Container(s) (generally at least one Bin for Solid Waste) located at a central on-site location and shared by multiple Residential Units. The location of Containers and the location for automated collection therefrom in Multi-Family complexes shall be mutually-agreed as between the Multi-Family site management and Franchisee, excepting that any storage or placement of Multi-Family Containers in public streets or rights-of-way shall be subject to the prior written approval of the City.

Multi-Family complexes consisting of five (5) units or more are by mandate, required to recycle pursuant to AB 341 "*Mandatory Commercial Recycling*". Franchisee shall process all Multi-Family Bin Waste at a fully permitted Materials

Recovery Facility (MRF) and shall divert a minimum of fifty-percent (50%) of the collected waste.

- ii. ***Residential Containers & Collections.*** Automated collections for residential units (i.e., stand-alone Single-Family Units or Multi-Family units designated by City as eligible for cart services) shall be made from the curbside or from alleyways adjacent to the Residential Unit. Residents may elect to place Containers at an alternate collection location, if approved by Franchisee, provided that the placement and retrieval of containers complies with the requirements of the Municipal Code. Each Single-Family unit shall receive from Franchisee, at a minimum, one Solid Waste Cart, one Recyclable Cart, and one Green Waste Cart, pursuant this document.
- iii. ***Charges for Franchisee-Provided Containers.*** The cost to customers for each Franchisee Provided Container (Carts, Bins or Recycle Containers) is built-in to the Maximum Services Rates attached hereto in Attachment B.

4.6 Valet Service

Residents physically unable to roll their automated Carts to and from the point of collection may request valet service. Contractor will be required to remove the Carts from the backyard or other location(s) of Cart storage, to the curb for collection, and return said Carts to their original storage locations by 6:00 p.m. the same day of service at no additional cost.

An annual verification process will be initiated, providing evidence of physical disabilities. City and Contractor will utilize the California Department of Motor Vehicles handicap license as evidence of physical disability. If customer does not possess a driver's license, then City and Contractor shall determine another course of verification.

4.7 Low-Income Senior Citizen Discount

Franchisee shall offer a low-income senior discount available to qualifying customers age 65 and older who also qualify for Edison's low-income discount (Care Program). Customers will have to show their qualifying utility bill or related information. The discount will be available only for automated residential Cart customers and will be 10% off the standard service rate attached hereto in Exhibit "B". Low-Income Senior service level shall be 64-gallon residue Cart, 64-gallon Recycling Cart and a 64-gallon Green Waste Cart.

4.8 Organics and Food Waste Recycling (Optional)

Franchisee shall provide an Organics program to all Multi-Family units that are required to have a program based on AB 1826.

Franchisee shall provide an optional program and pricing for implementing a Residential "Program" that includes Food Waste recycling pursuant to the recycling requirements of SB 1383 (2016). This proposal and implementation of this Program shall not be required until the first anniversary of the effective date of this agreement.

4.9 Collection of Bulky Waste

4.9.1 Residential Bulky Waste

Franchisee shall provide Bulky Waste collection to both single and multi-family residential customers, at no additional charge, on a five (5) time per year basis. Bulky Waste as defined by the City shall include electronic and universal waste items. A Customer shall have the right to five (5) Bulky Items pickups per year, with up to six (6) items per pickup. Such pickups shall take place on the regularly scheduled collection day of resident so as reduce resident confusion. Franchisee will establish the bulky waste collection schedule with the Chief Administrative Officer prior to each contract year. Franchisee will include this schedule of bulky waste collection in their residential customer billings and bi-annual newsletter.

4.9.2 Abandoned Bulky Waste Collections

Franchisee shall collect and remove at no charge any abandoned bulky waste items dropped in City public right-of-way areas, at City parks, and other public locations. Collection shall be made within 24 hours of notice by the City or a customer of the Franchisee. City expects that the Franchisee will provide a suitable collection vehicle and have such vehicle available to perform needed collections for up to three hours per day, Monday through Friday, between 7:00 a.m. and 4:00 p.m., with no service on holidays.

4.9.3 Additional Bulky Items Service

Should a residential customer require additional bulky item collection service in excess of the five bulky item collections per year or items in excess of six (6) items per pick-up, customer shall be charged a fee for such service per the Maximum Customer Rates (Attachment B).

4.9.4 Bulky Item Reporting

Franchisee shall submit a monthly payment to the City identifying the following:

- Name of customer
- Address of customer
- Identification and number of item picked up

4.10 Christmas tree Pickup

Franchisee agrees to collect Christmas trees at no additional charge to residents for a four (4) week period beginning December 26th of the applicable calendar year.

4.11 Mulch Give-A-Way

Franchisee shall not be required to conduct this program during the first year of service. However, Franchisee shall be required to conduct no less than two (2) mulch give-a-way opportunities per calendar year beginning on the first anniversary of the effective date of Franchise agreement for city residents and no additional cost. Commercial entities and landscape firms are not subject to this program no cost program.

4.12 Public Outreach Programs

Franchisee shall implement a City-approved Multi-Lingual (English/Spanish/Korean) format: public outreach to coincide with the start of Residential collection services. This public outreach must clearly establish the billing procedures, explain the billing format, clearly describe the customer's responsibilities, and provide a customer service number for

the Franchisee. In addition, Franchisee shall establish and maintain the following public educational programs and efforts in Multi-Lingual (English/Spanish/Korean).

- i. **Initial Mailing:** At least thirty (30) days prior to the start of franchise services and collection under this agreement, Franchisee shall prepare and mail to each service recipient an initial mailing explaining the transition from the existing service program to the new program as defined in this Agreement. The initial mailing shall describe changes, route changes (if any), schedule of important program dates, Recycling programs, and other pertinent information.
- ii. **Instructional "How-to" Packet:** Franchisee shall prepare a "How-to" An information packet shall be provided to each Customer at the start of service under this Agreement and to each new Customer throughout the Agreement term. This packet shall: describe available services (including available Recycling and Diversion programs and their benefits); provide instructions for proper use of the Carts and Bins provided (such as how to place Carts or other permitted items for Collection and the types of materials to be placed in each Cart); detail holiday Collection schedules; and provide Billing and Customer service telephone numbers. This packet will contain updated information on how to use Containers, when, where and how to place Solid Waste for Collection, and whom to contact with service or Billing questions, and for Bulky Item pickups. The packet should also clearly indicate what materials, such as syringes and other HHW, should not be disposed of in these Containers.
 - a. Additionally, beginning on the first anniversary of the effective date of Agreement, Franchisee shall be required to send another brochure including all information as required above, as well as instructions on how Customers should dispose of HHW and Sharps, such as information on the HHW drop-off facilities, Sharps program, and other available programs that are not currently considered "core" services. "Core" services shall include all programs identified in this agreement unless otherwise identified as having a start date beginning on the anniversary of the effective date of the Agreement.
- iii. **City-Wide Newsletter:** Franchisee shall prepare a semi-annual newsletter to be distributed to all single-family, multi-family, and commercial customers in the City. The City-wide newsletter shall be mailed to Franchisee's customers within two months of the anniversary date of this Agreement, and approximately six months thereafter, and shall be subject the review and approval by the City prior to each distribution. The newsletter shall discuss various important topics in waste management, including but not limited to local recycling programs, source reduction opportunities, and important developments in waste management practices that are pertinent to City residents.
- iv. **Franchisee Website:** Franchisee shall develop and maintain an up-to-date website about Franchisee, its services, the parameters of any recycling or source reduction programs administered by Franchisee, and a description of any methods by which customers can contribute to higher levels of recycling and source reduction.
- v. **Bulky Waste Program:** Franchisee shall implement that Bulky Waste outreach programs described in Section 4.9 hereof.

- vi. **Waste Diversion Outreach:** Franchisee shall implement those educational efforts regarding Waste Diversion and strategies therefore as described in Section 5, Waste Diversion, hereof.
- vii. **Billing Changes:** Franchisee will implement billing services. Franchisee shall provide/mail all customers a notification within thirty (30) days of the start of the franchise Agreement, informing each customer the billing schedule and payment procedures. The notices shall be reviewed and approved by the City.
- viii. **Oil Waste:** Franchisee shall include public outreach efforts regarding Oil Waste in the semi-annual newsletter.
- ix. **Billing Inserts:** Franchisee shall include any City requested billing insert, at no cost to the City or any customer of the Franchisee, for the term of this Agreement, provided said insert does not increase the Franchisee's cost of postage.
- x. **Corrective Action "Red-Tag" Notice:** Contractor shall develop a corrective action notification form, or "Red-Tag" notice, for use in instances where a Customer sets out inappropriate materials for Collection, that explains the appropriate manner for Disposal of such items

4.12.1 Collection Schedule

- **Notice of Residential Collection Schedule:** Once annually, Franchisee shall provide written route schedules and maps of the routes to the City's Chief Administrative Officer.
- **Changes in Residential Collection Schedule:** Any changes in the route schedule shall require the prior written approval of the Chief Administrative Office. City may require changes in the route schedule for, among other things, to improve service or resolve complaints. Prior to the change of a route schedule, Franchisee shall provide written notice of the change to affected customers thirty (30) days in advance.

4.13 Commercial and Industrial Collections

Contractor shall collect and remove all refuse that is placed in bins at least once per week. Contractor shall provide 1, 2, 3, 6, 30 and 40 cubic yard bins, depending upon each customer's individual needs. Contractor will also service bins equipped with compaction devices or "compactors" that facilitate those few customers that require large self-enclosed roll-off serviced compactor. Contractor shall process all solid waste collected compactor and roll-off boxes for optimum recovery of recyclable materials prior to landfilling.

Contractor shall provide clean freshly painted Bins and Roll-off Boxes, free from graffiti, equipped with reflectors, and shall have the name and phone number of Contractor in letters not less than three (3) inches high on the exterior of each Bin and/or Box so as to be visible when the Container is placed for use. All Bins and Boxes must be kept graffiti free at all times. Within four (4) hours of visible or informed sighting, Contractor shall touch-up or replace any bin or box tagged with graffiti.

4.13.1 Frequency of Commercial and Industrial Service

Commercial and Industrial Units shall be provided with a minimum one-time weekly collection.

4.13.2 Commercial and Industrial Collection Locations

Unless expressly instructed by the City, Franchisee shall provide Franchisee Provided Containers only to those Commercial or Industrial Units that provide an appropriate location for such container in accordance with the Municipal Code.

4.13.3 Commercial Recycling

Pursuant to AB 341, Mandatory Commercial Recycling, contractor will offer both single-stream and comingled source separated recycling opportunities to all commercial customers. Any commercial customer wishing to implement an on-site recycling program will be provided the opportunity to add commercial bin or Cart recycling to their service. Customer may be charged a fee for such service per the Maximum Customer Rates (Attachment B). Proposer shall include a complete narrative of their proposed commercial recycling program in the Work Plan section of their proposal.

4.13.4 Commercial Organics Recycling

Pursuant to AB 1826, Mandatory Organics Recycling, contractor shall provide organics recycling to all commercial customers. Organics recycling, as defined by AB 1826, includes food waste, wood waste, green waste and food soiled paper. Proposer shall include a complete narrative of their proposed Organics Recycling Program in the Work Plan section of their proposal.

4.13.5 Commercial AB 341 and AB 1826 MRF Processing

Commercial properties, meeting the thresholds determined by CalRecycle for Mandatory Recycling, selecting not to implement an on-site AB 314 Mandatory Commercial Program Recycling or an AB 1826 Mandatory Organics Recycling Program, shall have all residue materials processed at a Materials Recovery Facility (MRF). Franchisee shall recover and recycle at least 50% of the collected waste.

Those customers that implement AB 341 and/or AB 1826 recycling through a third-party recycler, must provide evidence to the Contractor and City that their respective program meets the requirements of CalRecycle requirements. Pricing, for the purpose of meeting AB 341 and/or AB 1826 requirements for customers refusing to implement said program, shall be charged a MRF processing and recovery fee pursuant to the Maximum Customer Rates (Attachment B).

4.14 Temporary Bin and Roll-Off Services

Temporary Bin service and temporary Cart services (i.e., a Container delivered to a residential, commercial, or industrial site for the collection and removal of Solid Waste or debris) shall be provided at the frequency and location desired by the customer in accordance with the requirements of the Municipal Code.

4.14.1 Temporary Bin and Roll-Off MRF Processing

Contractor shall provide exclusive permanent and temporary Bin and Roll-off Box Collection service upon request. Contractor shall process all Solid Waste Collected in Bins and Roll-Off Boxes to recover Recyclable Materials prior to landfilling. Contractor will provide standard 3, 10, 20, 30 and 40-cubic-yard standard Bins and Roll-off Boxes. The provision of compactor Roll-off Boxes, which are enclosed Containers attached to a compaction device, is not included in this Agreement. Providing Collection services for such compactor Roll-off Boxes is included. Roll-off Box service shall be billed at a rate

inclusive of service and disposal or processing of up to seven (7) tons for standard Roll-off Boxes, up to nine (9) tons for compactor Roll-off Boxes, and up to ten (10) tons for clean dirt Roll-off Boxes. Tonnage above included tons shall be billed at the approved per ton rate based upon actual additional tonnage or fraction thereof. All Bins and Boxes must be kept graffiti free at all times. Within four (4) hours of visible or informed sighting, Contractor shall touch-up or replace any bin or box tagged with graffiti.

4.15 Free Service to City Facilities

The Franchisee shall collect not less than once per week, at no cost to the City, all Solid Waste, Green Waste and Construction and Demolition Debris from all City Facilities and City-owned public trash receptacles and recycling containers. A listing of such City Facilities and their reasonably expected service levels are included in Attachment "D" of this Agreement. Any additional events or service requirements requested by City during the term of this Agreement shall be provided at no cost.

4.16 Development Review

Franchisee, upon City's request, shall assist the City in the review of applicants' plans for projects covered by Public Resources Code § 42911, including commercial and multi-family projects, to provide for effective and economical accumulation and collection of Solid Waste, Organic Waste and Recyclable Materials.

4.17 Good Corporate Citizenship

Contractor's commitment to good corporate citizenship as the holder of an exclusive franchise in the City is set forth in Exhibit E.

4.18 Citizen Complaints

The Franchisee shall respond to all complaints within twenty-four (24) hours and shall exercise due diligence to resolve all complaints. The City may, but is not obligated to, respond to complaints that have not been resolved within twenty-four (24) hours and may charge the Franchisee for the actual costs incurred. In connection herewith, Franchisee shall adequately staff its telephone system so that it is capable of handling all calls during peak business hours.

4.18.1 Record of Complaints

Franchisee shall maintain a record of all complaints received by mail, by telephone or in person (including date, name, address of complainant and nature of complaint) for a period of three (3) years. Franchisee will maintain records listing the date of consumer complaints, the customer, describing the nature of the complaint or request, and when and what action was taken by the Franchisee to resolve the complaint.

4.18.2 Disputes

Disputes between the Franchisee and its customers regarding the services provided in accordance with this Agreement may be resolved by the City; provided, however, the City shall not be obligated to resolve any such disputes. The Chief Administrative Officer or his/her designee shall have the ability to direct changes and/or resolution to any matters. Franchisee has the right to appeal to City Council, and Council by resolution may prescribe

the procedures for processing customer complaints. City Council's decision shall be final and binding unless challenged in a court of competent jurisdiction.

4.18.3 Record of Non-Collected Materials

The Franchisee shall notify customers in the event any item left for disposal is not picked up. Said notification shall be in writing, state Franchisee's telephone, address, and shall give the reason for non-collection. Reasons for non-collection may include but is not limited to the following: containers inaccessible to Franchisee (after Franchisee has made a reasonable effort to secure access); improper container or use of a non-Franchisee Provided Container; container overfilled; heavy container; or, the container includes Hazardous Waste. The Franchisee shall maintain a record of all items not collected and provide a copy of said record to the Chief Administrative Officer or his or her designee on a monthly basis.

4.18.4 Property Damage Caused by Franchisee

The Franchisee shall be responsible for the cost of repairing any property damaged by the negligent or intentional conduct of its employees or agents.

4.18.5 Quality of Service Surveys

The City requires that the Franchisee provide at its own expense, annually a "quality of service" survey of Franchisee's customers during the term of the Agreement. Prior to finalizing the survey form, the City shall review the survey with the Franchisee. Results of the quality of service survey shall be reviewed with the Franchisee and used to discuss improvements in service delivery.

4.19 Collection Route Audits

The City reserves the right to conduct audits of Franchisee's collection routes. The Franchisee shall cooperate with the City in connection therewith, including permitting City employees or agents, designated by the City, to follow behind the collection vehicles, and/or to dump the loads from targeted collection routes at a material recovery facility designated by the City, in order to determine waste composition. The Franchisee shall have no responsibility or liability for the salary, wages, benefits or worker compensation claims of any person designated by the City to conduct such audits. The Franchisee will be required to pay the tipping fee at a City designated material recovery facility, for the purposes of a route audit, up to the amount contractually paid by the Contractor at the designated material recovery facility authorized under this Agreement. It will be the City's responsibility to pay any additional tipping fees.

4.20 Curbside Recycling Audits

Franchisee is required to conduct quarterly waste composition audits, at no charge to the City, of the solid waste collected from residents in curbside recycling containers. The purpose of this audit is to establish the materials and their relative percentages by weight, in the residential curbside waste stream. The City and/or its designee shall have the right to be present to oversee the Franchisee while this audit is conducted.

4.21 "On-Call" Equipment and Personnel

During normal business hours, the Franchisee shall have "on-call" at least one (1) truck to handle called-in pick-ups or missed collections. After normal business hours, the Franchisee shall have "on-call" the necessary manpower and equipment to respond to customer emergencies that are an immediate threat to life or property. Franchisee's on-call equipment and personnel shall also be available to assist the City with debris collection and removal within a reasonable time resulting from emergencies and natural disasters, excepting that nothing in this Section shall require Franchisee to collect, haul or dispose of waste that Franchisee is not permitted to handle.

4.22 Emergency Services

Franchisee shall assist City in the event of terrorist attack or major disaster, such as an earthquake, storm, riot or civil disturbance, by providing collection vehicles and drivers normally assigned to the City, at Contractor's actual costs. Contractor shall cooperate with City, county, state and federal officials in filing information related to a regional, state or federally-declared state of emergency or disaster or terrorist attack as to which Contractor has provided equipment and drivers pursuant to this Agreement.

4.23 Hours of Operation

4.23.1 Residential Hours

Collection services at each Single-Family Residential Unit and Multi-Family Residential Unit shall not start before 6:00 a.m. nor continue after 6:00 p.m. of any day.

4.23.2 Commercial Hours

Collection services at Commercial and Industrial Units shall not start before 6:00 a.m. nor continue after 6:00 p.m. of any day.

4.23.3 Revisions to Hours

City may, from time to time, revise the collection hours specified in this Agreement by duly adopted resolution.

ARTICLE 5: WASTE DIVERSION

5.1 Solid Waste Diversion

AB 939 currently sets the directive of diverting fifty percent (50%) of the City's Solid Waste. If the City fails to implement its required plans to achieve the aforementioned directive under AB 939, the California Integrated Waste Management Board ("Board") may impose administrative civil penalties of up to TEN THOUSAND DOLLARS (\$10,000.00) per day until the City implements its plans. The City requires the franchisee to meet or exceed this State mandate by diverting fifty percent (50%) of the solid waste collected under this franchise agreement. Furthermore, City anticipates that the State Legislature will adopt new legislation that will increase the minimum diversion requirement. Upon the effective date of any new legislation that affects the diversion requirements currently imposed by AB 939, Franchisee agrees to implement a revised or new diversion program meeting such amended legislative requirements. Failure to implement an amended Diversion program based upon new State legislation mandating waste diversion levels shall constitute a Material Breach of this Agreement.

5.2 Construction and Demolition Waste Diversion

In addition to meeting the solid waste diversion requirements of Section 5.1 above, City wishes to meet the construction and demolition waste diversion goals, established by SB 1374 (2002) and the current year California Green Building Code recycling requirement, by diverting 75% of construction and demolition waste materials. The Franchisee is required to meet a 75% diversion level for all construction and demolition wastes collected under this Agreement. A failure to reach this diversion goal, equates to a material breach of this agreement.

5.3 Waste-to-Energy Diversion

As directed by the City, Franchisee shall take residue from the processing of refuse to a waste-to-energy facility so that the City receives the maximum allowable diversion or disposal avoidance credit available through CalRecycle or its successor agency.

5.4 SHARPS Diversion

This program shall become effective on the first anniversary of the effective date of this agreement. Franchisee shall provide mail-in containers to residents requesting such containers for the purpose of properly disposing of medical needles or other wastes defined as SHARPS by CalRecycle or its successor agency. This service shall be known as the "SHARPS Program" and will be provided at no cost to the City or its residents. Franchisee shall publicize the SHARPS Program in all semi-annual newsletters and on its website to ensure that City residents are aware of this program and how to participate.

5.5 Maintenance of City AB 939 Programs

The Franchisee shall be responsible to maintain all of the recycling and diversion programs established within and by this Agreement. A failure to maintain the diversion programs established by this agreement, equates to a material breach of this agreement.

5.6 Franchisee Waste Diversion Responsibilities

5.6.1 Cooperation and Education

The Franchisee shall cooperate with the City's efforts to develop and implement public education and information programs designed to promote Source Reduction, Recycling and other waste reduction activities in general as well as specific Waste Diversion strategies. Franchisee shall have a bi-lingual (English/Spanish/Korean) public education program in place where it will distribute flyers and leaflets to residences of the City (free of charge) pursuant to Section 4 of this Agreement. Additionally, Franchisee will visit schools and make presentations on the proper disposal of waste and the importance of Recycling.

5.6.2 Information / "How-To" Video

Contractor shall develop, produce and provide for customer viewing, an informative How-To video at its sole expense. The produced video shall inform residential and commercial customers of program services available, recycling opportunities, and general information on billing and customer service information.

5.7 Implementation of Strategies and Penalties

The Franchisee shall implement the strategies jointly developed and agreed to by the Franchisee and the City. City acknowledges that to meet the mandates of AB 939, additional and significant legislation affecting the disposal of Solid Waste not covered by this Agreement may be required. A failure to perform its obligations under this section, equates to a material breach of this agreement and City shall be entitled to all enforcement actions under this agreement.

Additionally, if Franchisee's failure to perform its obligations under this Agreement results in the imposition of penalties against the City pursuant to any state-mandated program, Franchisee shall reimburse the City for any such fine within thirty (30) days of imposition of such fine or penalty.

5.8 Waste Diversion and Disposal Reporting Requirements

The Franchisee shall comply with the Waste Diversion reporting requirements established by the City. Franchisee shall provide City with monthly, quarterly and annual reports in a form acceptable to the City and adequate to meet City's reporting requirements to CalRecycle on compliance with AB 939, including a breakdown of the tons collected, tons diverted, and tons disposed, by service type prescribed by this Agreement.

Franchisee further agrees to provide program specific data required by the City to meet reporting requirements to any Federal, State, or local entity having the authority to request such data.

Franchisee shall maintain accurate records of all data required to fulfill the requirements of this section. All reports and reporting formats shall be approved by the Chief Administrative Officer or his/her designee. All report submittals shall be in an electronic format approved by City, compatible with City's software at no additional charge.

Monthly reports shall be submitted within thirty (30) days after the end of the reporting month. Quarterly reports shall be submitted within thirty (30) days of the reporting quarter.

Annual reports (for which a date is not otherwise specified in this Agreement) shall be submitted within twenty (20) calendar days after the end of the calendar year, by January 20th.

5.8.1 Monthly Reports

Monthly reports shall include, at a minimum:

- i. Solid Waste tonnage collected by Franchisee, separated by service sector (Residential, Commercial, Industrial, Construction & Demolition, and Temporary Services. Report will indicate the tons collected, tons processed, tons recycled and the tonnage at the location of final disposition.
- ii. Tonnage reports shall indicate the type of waste collected, (e.g. Refuse, Recycling, Green Waste) diverted, and the facilities where the tons were processed or disposed.
 - a. Any and All Certified Weight Tickets must be retained for the entire period of Agreement plus 4 years.
 - b. If Franchisee utilizes any facility(s) that does not have Certified Scales and/or the ability to print certified weight tickets, Franchisee must have written authorization from the Chief Administrative Officer prior to utilizing said facility(s). Activities contrary to this section constitutes a materials breach.
- iii. Customer Counts: The number of residents, commercial, industrial, and construction/Demolition accounts serviced
- iv. Number of missed pickups and the actions taken to remedy the missed collection
- v. Warning "Tag" notice report detailing the address, service type, issue/incident of warning tag and resolution
- vi. Complete list of each disposal and non-disposal facility utilized for the reporting period
- vii. Complaint log for the reporting period per this document
- viii. Description of all outreach activities conducted by Contractor, with copies of outreach materials
- ix. On-Site Technical assistance log, including location address, date, contacted person and discussion notes
- x. Franchisee recommendations for City

5.8.2 Quarterly Reports

Quarterly reports shall include, at a minimum, the information otherwise reported monthly, including the following:

- i. Customer Counts: The number of residents, commercial, industrial, and construction/Demolition accounts serviced
- ii. Number of missed pickups and the actions taken to remedy the missed collection
- iii. Warning "Tag" notice report detailing the address, service type, issue/incident of warning tag and resolution
- iv. Complete list of each disposal and non-disposal facility utilized for the reporting period
- v. Complaint log for the reporting period this document
- vi. Description of all outreach activities conducted by Contractor, with copies of outreach materials

- vii. On-Site Technical assistance log, including location address, date, contacted person and discussion notes
- viii. Franchisee recommendations for City

5.8.3 Annual Report

Annual reports shall include, at a minimum, the information otherwise reported monthly and quarterly, including the following:

- i. Number of Containers in service as of the last day of the calendar reporting year. (December 31st) including the Cart size, Bin Size, frequency, and type of material serviced.
- ii. Updated route schedules
- iii. Vehicle list for each waste sectors; report shall include vehicle type, model year, fuel type, vehicle number and license plate number

5.9 Failure to Meet Diversion Requirement

If Franchisee fails to divert the required amount of the City's Solid Waste, as described in this Agreement, this shall be considered a Material Breach, and City may elect, in its sole discretion, to terminate this Agreement with notice in writing (Section 12.4) if Franchisee breaches this agreement as identified under this agreement. Franchisee agrees to continue performance under this Agreement, if requested by City, until City hires a new contractor.

5.10 Recycling Program

5.10.1 Recycling Containers

Franchisee shall conduct a single stream commingled collection of Recyclable Materials. One 96-gallon Franchisee provided Cart shall be used at each Residential Unit receiving curbside service for collection of commingled Recyclable Materials ("Recyclable Container"). Every Recyclable Container shall be clearly labeled. Residential Units shall place all Recyclable Materials within such Recyclable Containers as directed by the Franchisee; to this end, concurrent with Franchisee's delivery of a Recyclable Container to any Residential Unit, Franchisee shall provide instructions on the use of the Recyclable Container. Franchisee shall, at no charge, replace any Franchisee Provided Containers which become unusable by reason of normal conditions of wear and tear.

5.10.2 Ownership of Solid Waste and Recyclable Materials

Except as otherwise provided by law, once Solid Waste, Refuse, Recyclable Materials and/or Green Waste have been collected by Franchisee, ownership transfers to Franchisee, Franchisee is hereby granted the right to retain, recycle, compost, dispose of and otherwise use such waste, or any part thereof, in any lawful fashion or for any lawful purpose desired by Franchisee. Subject to the provisions of this Agreement and excepting any material which is not a waste material, and which was inadvertently discarded, Franchisee shall have the right to retain any benefit or profit resulting from its right to retain, recycle, compost, dispose of or use the refuse which it collects. Solid Waste and any other material which is disposed of at a Disposal Site or sites (whether landfill, transformation facility, transfer station or material recovery facility) shall, as between the City and Franchisee, remain the responsibility of the Franchisee, and Franchisee shall retain ownership of the same.

5.10.3 Recycling Frequency

Franchisee shall collect Recyclable Materials from Residential Units once each week from Franchisee Provided Containers. Franchisee shall collect Recyclable Materials from Multi-Family Residential Units, Commercial and Industrial Units at a reasonable frequency to be determined by the Franchisee.

5.10.4 Residential Recycling Location

Franchisee shall collect Recyclable Materials set out in Recyclable Containers by Residential Units or City-designated Multi-Family Units from the curb or other Franchisee-approved location.

5.10.5 Recycling Revenue

Franchisee shall be entitled to all revenue produced from the sale of Recyclable Materials collected, salvaged or purchased by Franchisee. Furthermore, Recycling Revenues are not considered gross receipts subject to City Franchise Fee.

5.10.6 Franchisee as Authorized Recycling Agent

City hereby designates Franchisee as its authorized recycling agent for the purposes of conducting recycling activities within the City pursuant to the terms of Public Resources Code Section 40105. Notwithstanding the foregoing, Franchisee at all times, shall be and remain independent from the City.

ARTICLE 6: VEHICLES, EQUIPMENT AND PERSONNEL

6.1 Vehicles

6.1.1 General

On or before the Execution Date of this Agreement, Franchisee shall provide evidence of a fleet of used clean-air collection vehicles sufficient in number and capacity to perform efficiently the work required by this Agreement in strict accordance with its terms. Franchisee, during the first twelve (12) months of the Agreement, may operate with used clean-air collection vehicles no older than seven years of age. If the fleet is composed of used vehicles, they shall be no older than eight (8) years of age at any time during years two (2) through ten (10) of the Agreement. Collection vehicles must meet all applicable local, state, and federal air quality laws, rules, and regulations, including, but not limited to, South Coast Air Quality Management District Rule 1193 relating to alternative fueled trash collection equipment.

Additionally, **no later than the Franchise Execution Date of this Agreement**, Franchisee shall provide evidence of a purchase order for a fleet of new clean-air collection vehicles sufficient in number and capacity to perform efficiently the work required by this Agreement in strict accordance with its terms. The delivery of new vehicles must be on or before the thirteenth (13) month of this Agreement. Any failure to perform completely under this section will be considered a Material Breach.

6.1.2 Truck Bodies

All truck bodies used by Franchisee shall be constructed of metal, shall be watertight and leak-proof, and shall be so constructed as to prevent odors or the falling, leaking or spilling of Solid Waste, Recyclables, or other materials. Each vehicle shall carry at all times a broom and shovel to be used for the immediate removal of any spilled material. Each vehicle shall also carry a fire extinguisher and first aid kit.

6.1.3 Backup Alarm

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

6.1.4 Gross Vehicle-Weight Limit

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

6.1.5 Vehicle Identification

All vehicles used in the performance of this Agreement shall bear the Franchisee's name, phone number and vehicle number in minimum lettering of three (3) inches. Contractor shall have a vehicle billboard on at least one side with frames capable of securing signs measuring 29 3/16 inches by 93 3/16 inches or other dimensions approved by City.

Franchisee shall prepare and install signs promoting Recycling and Diversion with text and graphics approved by City.

6.1.6 Residential Service Vehicles

Vehicles used for Residential collection services shall be fully automated side-loading refuse trucks, using a fully mechanized arm to pick up and dump automated waste collection containers. Drivers shall not be required to exit the vehicle to assist with securing the containers to, or lifting the containers into, the refuse collection truck.

6.1.7 Alternative Fuel Vehicles

The Franchisee shall use alternative fuel vehicles per the terms of Section 6.1 of this agreement, and as approved by the South Coast Air Quality Management District for all collection services. Vehicles shall meet all requirements specified per AQMD Rule 1193 as it may be amended from time to time.

6.2 Vehicle Maintenance and Appearance

6.2.1 Vehicle Inventory

Within thirty (30) days of the Effective Date of this Agreement, again on such date within twelve months of the Effective date when the entire alternatively fueled fleet of collection vehicles are in service, and on an annual basis thereafter on the anniversary of the Agreement effective date, Franchisee shall provide City with an inventory of vehicles used in the performance of this Agreement.

6.2.2 Preventive Maintenance and Repair Program

Franchisee shall develop and have available for City review a complete and comprehensive preventive maintenance and repair program. Franchisee shall perform all scheduled maintenance functions in accordance with the manufacturer's specifications and schedule and shall inspect each vehicle daily to ensure that all equipment is in good working order. Franchisee shall keep accurate records of all vehicle maintenance and repairs, recorded according to date and mileage, nature of maintenance or repair and the signature of a maintenance supervisor or mechanic that the maintenance or repair has been properly performed. Franchisee shall make such maintenance records available to City on request.

6.2.3 Vehicle Cleaning

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

6.2.4 Vehicle Storage

No vehicle used by Franchisee in performance of this Agreement shall be stored on any public street or other public property in the City.

6.2.5 Container Condition

Franchisee at its sole cost and expense shall maintain all Franchisee Bins and Carts in good condition and repair as needed and shall clean and paint each container annually. More frequent cleaning and painting shall be conducted by Franchisee if needed. Franchisee shall, at no charge, replace any Franchisee Provided Containers (Carts or Bins) which

become unusable by reason of normal conditions of wear and tear. During all times that a Franchisee Provided Container is in the custody and control of Franchisee, Franchisee shall not store such Container in or on public streets or rights-of-way. All Bins and Boxes must be kept graffiti free at all times. Within four (4) hours of visible or informed sighting, Contractor shall touch-up or replace any bin or box tagged with graffiti.

6.3 Inspections

6.3.1 Initial City Inspection

Within the first thirty (30) days and at any time during the term of this agreement, within a twenty-four (24) hour period, and/or following the date Franchisee provides a copy of its Vehicle Acquisition Plan to City or any update thereto; the City may inspect Franchisee's vehicles for the purpose of determining the adequacy of Franchisee's Vehicle Acquisition Plan for any reason to confirm vehicles are in compliance with this agreement, in addition to inspecting vehicles for safety, sanitary purposes, and are of good appearance.

6.3.2 City Inspections

Franchisee shall give the City at least fifteen (15) days prior written notice of any vehicle inspection to be performed by the California Highway Patrol ("CHP") and the City may elect to observe the CHP inspection. Without limiting the City's right to observe the CHP inspections, City reserves the right to cause any vehicle used in performance of this Agreement to be inspected and tested at any commercially reasonable time and in such manner as may be appropriate to determine that the vehicle is being maintained in compliance with the provisions of the Municipal Code and the State Vehicle Code, including but not limited to California Vehicle Code Sections 27000(b), 23114, 23115, 42030, 42032, and all Vehicle Code Sections regarding smog equipment requirements. City may direct the removal of any vehicle from service if that vehicle is found to be in nonconformance with applicable codes. No vehicle directed to be removed from service shall be returned to service until it conforms with applicable codes and such conformance has been acknowledged by City. The City may elect in its sole discretion to hire an independent contractor to perform a comprehensive inspection of Franchisee's vehicles. If the City hires an independent contractor to perform the inspection on behalf of the City, the Franchisee shall pay for the cost of such inspection. City shall act prudently in requesting any such inspection.

6.3.3 Brake Inspections

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

6.3.4 Correction of Defects

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

6.4 Personnel

6.4.1 General

Franchisee shall furnish such qualified drivers, mechanical, supervisory, clerical and other personnel as may be necessary to provide the services required by this Agreement in a courteous, safe and efficient manner.

6.4.2 Driver Qualifications

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

6.4.3 Uniforms and Identification Badges

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

6.4.4 Employee Appearance and Conduct

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

6.4.5 Background Check

The City reserves the right to perform a security and identification check through the City's Police Department upon Franchisee and all its present and future employees, in accordance with accepted procedures established by the City, or for probable cause.

6.4.6 Safety Training

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

6.4.7 Safety

All work performed pursuant to this Agreement shall be performed in a manner that provides safety to the public and meets or exceeds safety standards outlined by the California Construction Safety Orders under the State of California Code of Regulations ("CAL-OSHA"). City reserves the right to issue restraint or cease and desist orders to

Franchisee when unsafe or harmful acts are observed or reported to City. Franchisee shall instruct its employees to report immediately any hazardous conditions or Hazardous Wastes they observe within the City during the course of their work to the City.

6.4.8 No Gratuities

Franchisee shall not permit its employees to demand or solicit, directly or indirectly, any additional compensation or gratuity from members of the public for the work performed by those employees pursuant to this Agreement.

ARTICLE 7: FRANCHISEE'S COMPENSATION

7.1 Maximum Rate Schedule

In Attachment B, which is incorporated herein by this reference ("Maximum Rate Schedule"), the City has approved the maximum service rates which may be charged by Franchisee to its customers in the City. The Maximum Rate Schedule will become effective on Franchise effective start date. Franchisee shall not receive any other fees or compensation for the services to be performed pursuant to this Agreement in excess of those provided in the Maximum Rate. But, under no circumstance shall Franchisee be permitted to adjust any rate proposed in their submitted Proposal during the first year of services.

7.2 Rate Composition

During the Term of this Agreement, all franchise rates will be divided into two rate components: "Collection" and "Disposal". Each component breakdown must be disclosed to the City with the initial rates for this Agreement and as part of any subsequent request for rate increase by the Franchisee. Such collection components are not required to be listed in franchise rate sheets or included on billings to the Franchisee's customers.

7.3 Adjustments to Maximum Rate Schedule

7.3.1 General

Franchisee shall be entitled to request a rate adjustment on July 1, 2019 and annually thereafter, per the requirements of the Maximum Rate Schedule as identified in Attachment B. The Maximum Permissible Rates may be adjusted as identified in Attachment B and per the requirements of this Section. A rate increase shall be subject to the acceptance of the City and compliance with Proposition 218 as provided in Section 7.4.

7.3.2 Adjustment to Collection Component of Rates

Subject to adoption in accordance with Proposition 218, the "Collection Component" of rates shall be adjusted to reflect 90% of the "Percentage Change in CPI". "Percentage Change in CPI" shall mean the percentage change in the All Urban Customers, Los Angeles, Riverside, Orange County index, for the previous 12-Month period ending in September.

7.3.3 Adjustment to Disposal Component of Rates

Subject to adoption in accordance with Proposition 218, the "Disposal Component" of rates shall be adjusted only for increased costs to the Franchisee from landfill, transfer, Materials Recovery Facility (MRF) and/or transformation facility tip fee adjustments. For the rate adjustment period under review, the Franchisee is responsible for submitting substantiation of any such cost increases for City review. The City shall have the right to solicit bids from other landfill(s), transfer, or transformation facilities and to require the Franchisee to utilize said facility and/or incorporate said facility rate into the Disposal Component adjustment of franchise rates. Throughout the term of this agreement, City shall maintain its ability to direct changes to Franchisees route and choice of facilities for purposes of processing and/disposing of material.

7.3.4 Extraordinary Rate Increase

There shall be no Extraordinary Rate increases during the entire term of this agreement. An Extraordinary rate increase shall be considered "extraordinary" if the request is: over the allowable adjustment percentage/formula as stated in this section, and/or Attachment B, and/or is unsubstantiated in any way. Any attempt to amend this contract for the purposes of Franchisee seeking an Extraordinary Rate Increase(s) shall be considered a Material Breach.

7.4 Proposition 218 Process for Adjustments to Maximum Rate Schedule

7.4.1 Compliance with Proposition 218 Required

Further adjustments and/or increases to the Maximum Rate Schedule in addition to those identified in Section 7.3, above, are strictly subject to the assent of the City and compliance with Proposition 218. To this end, the City will only approve, and process proposed adjustments to service rates applicable to Residential Units if such proposed adjustments are consistent with the agreed-upon methodology established in Section 7.3. More generally, City intends to comply with all applicable laws, including without limitation Proposition 218, concerning the setting of adjustments to the Maximum Rate Schedule under this Agreement.

7.4.2 Indemnification

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

7.4.3 Pass-Through of Proposition 218 Compliance Costs

Franchisee shall pay for all costs of Proposition 218 compliance, including but not limited to the costs of Proposition 218 notices and hearings. Franchisee may, if permitted by law, pass its actual costs of Proposition 218 compliance on to customers through service rates if and only if, such pass-through is duly noticed and included as part of the service rates adopted through a Proposition 218 process.

7.4.4 Notice of Increases

Franchisee shall give thirty (30) days prior written notice of any duly-adopted rate increases to all customers of the increase before such increase may become effective.

7.4.5 City Not Obligated to Approve Increase

City has no legal obligation to accept Maximum Rate Schedule adjustments proposed by Franchisee. While Franchisees' failure to comply with the terms hereof could be a Material Breach leading to termination of this Agreement, in no case will City's failure to approve any specific Maximum Rate Schedule adjustment be a default hereunder, and City bears no liability to Franchisee for any damages suffered by Franchisee as a result of the failure to pass new Maximum Rate Schedules or adjustments thereto. Accordingly, the City Council is completely free within its police powers to exercise its discretion in considering such matters, and the City has not contracted away any of its police powers or duties to protect the public health, safety or general welfare of its citizens pursuant to State and Federal law.

7.5 Billing

Franchisee shall be responsible for all billing and collection concerning placement of delinquent accounts on the tax rolls. Notice of billing procedures shall be given to all customers pursuant to Section 7 and 8 above, and annually thereafter. Franchisee shall have procedures for on-line payment, payment by credit card, and similar customer services.

Franchisee shall provide itemized bills, clearly showing charges for all classifications of services, including any charges for late payment. Multi-Family Residential Units, Commercial and Industrial Unit accounts receiving collection services from Franchisee shall be billed by the Franchisee at the end of the month in which service is provided. Single Family Residential Unit accounts receiving collection services from Franchisee may be billed by the Franchisee quarterly as follows: For the quarter in which services are rendered, Franchisee shall bill thirty (30) days into the quarter, and the bill shall be due sixty (60) days thereafter at the end of that quarter. Franchisee shall meet with City to make specific arrangements for commencement of billing.

7.6 Delinquent Accounts

7.6.1 Residential Units

Franchisee shall provide at least three (3) monthly, written notices of delinquency/past-due account status to the occupants of any Residential Unit with a delinquent account and Franchisee shall otherwise make diligent efforts to resolve said account delinquencies, including but not limited to the reasonable use of a collection agency. Further, Franchisee shall be entitled to collect late charges at the rate of 1.5% per month and, in addition, to charge a reasonable rate for the redelivery of Franchisee Provided Containers. If, after Franchisee's exercise of diligent efforts to collect a delinquent account, a Residential Unit remains delinquent, Franchisee shall have the right (without obligation) to request placement of the delinquent account onto City tax rolls. Said right to place delinquent accounts onto City tax rolls shall occur no more than once-per-year at a time, and in a manner, coordinated with the City's regular processing of tax liens.

7.6.2 Industrial and Multi-Family Residential Unit Accounts

City may permit Franchisee to discontinue service to Commercial, Industrial, and Multi-Family Residential Units whose accounts are more than ninety (90) days past due. Franchisee shall be entitled to collect late charges at the rate of one and one-half percent (1½%) per month and, in addition, to charge a reasonable rate for the redelivery of Franchisee Provided Containers. These delinquent accounts may also be placed on tax rolls.

7.7 No Waiver of City Remedies to Address Public Nuisance

Should Franchisee terminate service to any customer in the City, nothing herein waives or supersedes the City's rights to initiate code enforcement action(s) in response to the build-up, long-term stagnation, or misplacement of Solid Waste as a result of said termination of Franchisee's service. In addition, the City and Franchisee shall, at the option of either party, meet and confer in good faith to resolve any matters of public nuisance or Solid Waste build-up that resulted from a termination of service by Franchisee.

ARTICLE 8: ACCOUNTING AND RECORDS

8.1 Financial Statements

City's Chief Administrative Officer may elect to review Franchisee's annual financial statements. Franchisee shall have financial statements annually prepared. Within thirty (30) days of a City request, Franchisee shall allow the Chief Administrative Officer, his/her designee and/or an auditor selected by the City to review copies of the financial statements at the Franchisee's local office or other such mutually-agreeable premises of Franchisee. City and Franchisee agree to use reasonable efforts to protect the confidential nature of the Franchisee's financial statements.

8.2 Inspection and Retention of Franchisee's Accounts and Records

Franchisee's records of customer complaints, AB 939 compliance records, maps, billing records, gross income, franchise fee payments, curbside recycling payments, and customer payment histories shall be available at the Franchisee's principal local office as set forth in this agreement at any time during regular business hours for inspection on twenty-four (24) hours' notice, and/or performance of financial review of Franchisee's records by the City or its duly authorized representative in accordance with the Agreed Upon Procedures ("Audit" and is associated with standard audit procedures), for a period of five (5) years following the close of the Franchisee's fiscal year.

Franchisee shall provide City with a copy of any requested record at no cost to City. Nothing in this Agreement shall interfere with any legal requirement that such records be kept for a longer period of time.

Franchisee shall not destroy or discard any records pertaining to this Agreement without the Approval of the City. Franchisee shall keep all records related to this agreement on file for a period of four (4) years past the termination of this agreement.

8.3 Cost of Agreed Upon Procedures

The cost of the annual Agreed Upon Procedure ("Audit") of Franchisee's books and records is compensated through the Performance Audit Program Fee paid annually to the City by the Franchisee. This Performance Audit Program Fee is also payment for reasonably expected City costs to review Franchisee's request for an increase in rates under the Maximum Rate Schedule. Should the City's performance of an Agreed Upon Procedure disclose that a requested rate increase contains any inaccurate data or cost claims that are not properly substantiated, the Franchisee will be responsible to reimburse the City for all costs incurred to correct data submissions or substantiate cost claims and shall be considered a Material Breach.

8.4 Audit Findings: Payments and Refunds

Should the performance of an Audit by the City, disclose that any City fee payable by the Franchisee was underpaid or that customers were overcharged for the period under review, Franchisee shall pay to City any underpayments and/or refund to Franchisee's customers any overcharges within 15 days of a City issued notice. Should the Audit identify a discrepancy of 3% or more in any section of the audit; this will be considered a Material Breach and all provision under this agreement related to breach shall be applicable, including but not limited to: agreement termination, liquidated damages, hiring of

replacement franchisee, etc. Should the performance of an Audit by the City disclose that any City Fees were overpaid, City shall promptly refund to Franchisee the amount of the overpayment.

ARTICLE 9: ENFORCEMENT OF AGREEMENT

9.1 City Right to Terminate

After engaging in the procedures set forth in Sections 9.2 – 9.6, the City shall have the right to terminate Franchisee's franchise and this Agreement upon Franchisee's breach of any of its material obligations under this Agreement. The City's right to terminate shall be in addition to any other remedy provided in this Agreement or provided by law and shall include, but not be limited to, any of the events of default set forth in this Section 9.1. Notwithstanding the foregoing, the following specific events of default by Franchisee may at the City's discretion result in immediate termination of the franchise without compliance with Sections 9.2 – 9.6 of this Agreement:

- i. If 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 this Agreement shall constitute a breach.
- ii. Should the Franchisee or any of its officers, directors, shareholders, subsidiaries, affiliates, employees or agents be or have been found guilty of felonious conduct related to this franchise agreement, illegal transport or disposal of Hazardous Waste, or bribery of public officials, the City reserves the unilateral right to terminate this Agreement or to impose such other sanctions (which may include financial sanctions, temporary suspensions, or any other condition deemed appropriate short of termination) as it shall deem proper. The term "found guilty" shall be deemed to include any judicial determination of guilt including, but not limited to, pleas of "guilty", "nole contendere", "no contest", or "guilty to a lesser charge" entered as part of a plea bargain.
- iii. If Franchisee willfully violates any orders or rulings of any regulatory body having jurisdiction over Franchisee, provided that Franchisee may reasonably contest any such orders or rulings by appropriate proceedings conducted in good faith, in which case no breach of this Agreement shall be deemed to have occurred
- iv. If Franchisee fails to make any payments or to pay any penalties required to be made or paid by Franchisee pursuant to this Agreement
- v. If Franchisee for any reason ceases to provide Solid Waste management services as required under this Agreement over all or a substantial portion of its franchise area for a period of thirty (30) days
- vi. If Franchisee is found by any judicial or regulatory body to have violated the terms, conditions or requirements of the Municipal Code or AB 939 or successor legislation, as they may be amended from time to time, or violates any order, directive, rule or regulation issued pursuant to the foregoing legislation, where the violation is not remedied within the time set in the written notice of the violation
- vii. If Franchisee refuses to provide City with required information, reports, or test results in a timely manner as required by this Agreement

9.2 Rights of Non-Defaulting Party after Default

The Parties acknowledge that both Parties shall have hereunder all legal and equitable remedies as provided by law following the occurrence of a default or to enforce any covenant or agreement herein.

9.3 Notice of Default and Opportunity to Cure

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

9.4 Penalty for Monetary Default

In the event Franchisee fails to perform any monetary obligation under this Agreement, Franchisee shall pay a pre-determined penalty thereon at the rate of ten percent (10%) per month, or any fraction of a month, from and after the due date of said monetary obligation until payment is actually received by City.

9.5 City’s Right to Perform Service

9.5.1 City Rights

In addition to any and all other legal or equitable remedies, in the event that Franchisee, for any reason whatsoever, fails, refuses or is unable to collect, transport or deliver to a Disposal Site, as appropriate, any or all Solid Waste or Recyclables, to collect and transport, at the time and in the manner provided in this Agreement, for , and if, as a result thereof, Solid Waste should accumulate in the City to such an extent, in such a manner, or for such a time that the Chief Administrative Officer in his or her sole discretion should find that such accumulation endangers or menaces the public health, safety or welfare of any resident or business, then the Chief Administrative Officer shall have the sole right, but not the obligation, to require Franchisee to perform said services at no cost to the City. The Chief Administrative Officer may:

- i. Cause to be performed, such services itself with its own personnel or employ Franchisee’s personnel, without liability to Franchisee
- ii. To take possession of any or all of Franchisee’s equipment and other property used or useful in the collection and transportation of Solid Waste and to use such property at the expense of Franchisee to collect and transport any Solid Waste which Franchisee would otherwise be obligated to collect and transport pursuant to this Agreement

9.5.2 Franchisee and City Responsibilities

Franchisee further agrees that in such event:

- i. It will fully cooperate with City to affect the transfer of possession or property to the City for City’s use
- ii. It will, if the Chief Administrative Officer so requests, and to the extent feasible, keep in good repair and condition all of such property, provide all motor vehicles

with fuel, oil and other service, and provide such other service as may be necessary to maintain said property in operational condition

- iii. The City or its designee may elect to take complete possession of franchisees equipment and/or facilities for proper and normal use in order to continue normal collection services until another franchisee can take over complete operations of Franchise as identified in this agreement.

9.5.3 Franchise Waivers

Franchisee agrees that the City's exercise of its rights under this Article 9:

- i. Does not constitute a taking of private property for which compensation must be paid, but is rather an exercise of the City's police power
- ii. Will not create any liability on the part of City to Franchisee, including but not limited to, any right to compensation for use of Franchisee's equipment
- iii. Does not exempt Franchisee from the indemnity provisions of Section 11, which are meant to extend to circumstances arising under this Section, provided that Franchisee is not required to indemnify City against claims and damages arising from the sole negligence of City, its officers, employees, agents, or volunteers acting under this agreement
- iv. Does not terminate this Agreement, unless termination occurs under other provisions of this Agreement

9.6 City's Right to Lease Franchisee's Equipment Following Termination

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

9.7 Cooperation Following Termination

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

9.8 Duration of City's Possession

City has no obligation to maintain possession of Franchisee's property and/or continue its use in collecting and transporting Solid Waste for any period of time and may, at any time, in its sole discretion, relinquish possession to the Franchisee. Should the City desire to retain possession of Franchisee's property, the City's right to retain temporary possession, and to provide Solid Waste collection services, shall continue until City is able to contract and replace Franchisee to provide the same services as identified in this agreement.

9.9 Forfeiture of Performance Bond and Withdrawal from Liquidated Damages Escrow Account.

In the event Franchisee shall for any reason become unable to or fail in any way to, as solely determined by the Chief Administrative Officer, perform as required by this Agreement, after engaging in the procedures set forth in Sections 9.2 – 9.6. City may

declare the performance bond forfeited, as established pursuant to Section 11, which is necessary to compensate and make whole the City. In addition, the City shall have the right and authority to withdraw any or all amounts from the Liquidated Damages Escrow Account created in Section 3.3(iii).

9.10 Nuisance Conditions

Repeated, substantiated complaints of, or continued conditions of, poor service quality and/or nuisance conditions may be handled in the manner prescribed below. For purposes of this Section, the term “nuisance conditions” shall mean the following breaches of Agreement:

- i. Failure to duly collect Solid Waste or Recyclables that have been properly set-out for collection through the willful or negligent conduct of Franchisee employees
- ii. Uncured damage to the property of third parties or customers through the willful or negligent conduct of Franchisee employees
- iii. Failure to perform service surveys and route audits as required by Section 4.17.5 and 4.18, respectively.
- iv. Unreasonable leakage or spillage of Solid Waste or other collected materials from Franchisee’s vehicles
- v. Failure to immediately or promptly collect Solid Waste or other materials that spilled or fell from Franchisee’s vehicles onto public streets or third-party property
- vi. Poor maintenance of Franchisee’s vehicles in violation of Section 6 hereof
- vii. Violations of personnel standards and qualifications in contravention of Section 6 hereof

9.10.1 Notice of Violation

Initially, when the Public Works Director or a designee is notified or observes a violation, a notification in writing, as required under Section 12.4, shall serve as the notice of violation to the Franchisee. At which point, Franchisee is considered to be in “Breach” of the agreement and City will be entitled to, but not limited to some and/or all remedies identified under this agreement.

9.10.2 City’s Remedies for Nuisance Violations: Liquidated Damages

The provision of poor public service or the production of any nuisance condition will subject Franchisee to administrative procedures, potential liquidated damages and, ultimately, termination, for severe and repeated violations. If fines or penalties are involved, franchisee will be subject to all fees and penalties as well as the requirement to pay the City Liquidated Damages for breach of this specific clause. If Notice of Violation is not withdrawn, then liquidated damages may thereafter be assessed against Franchisee (as liquidated damages and not a penalty) by the Public Works Director and/or Chief Administrative Officer designee as set forth in this Agreement.

9.10.3 Complaints

Public complaints (whether received by the City regarding Franchisee’s performance or received directly by Franchisee) will be handled as prescribed in Section 12.4 hereof. Numerous and/or consistent and severe complaints shall give the City the Sole discretion

to terminate the agreement. The City would also be eligible to collect or pursue any other enforcement or financial and equitable remedies as described in this agreement.

9.10.4 Notice

The notice will include a brief description of the incident(s)/non-performance. Contractor may review (and make copies at its own expense of) all information in the possession of City relating to incident(s)/non-performance. Contractor may, within ten (10) days after receiving the notice, request a meeting with City. Contractor may present evidence in writing and through testimony of its employees and others relevant to the incident(s)/non-performance. City will provide Contractor with a written explanation of its determination on each incident(s)/non-performance prior to authorizing the assessment of liquidated damages. The decision of City shall be final.

9.10.5 Franchisee's Right to Contest

Within five (5) business days after receiving the Notice of Violation, Franchisee may submit a written response (the "Response") to the Notice of Violation to the Public Works Director. The Director shall review Franchisee's Response and may further investigate the claimed violation. The Director shall make a final determination regarding the Notice of Violation and the Public Works Director shall deliver to Franchisee a written conclusion concerning the Notice of Violation.

9.10.6 City's Remedies for Franchisee's Failure to Meet Standards

- i. **Performance Bond:** The Performance Bond shall guarantee Franchisee's faithful performance of waste hauling services under the auspices of this Agreement, including without limitation, payment of any penalty and the funding of any work to cure a breach of this Agreement. If City, at its sole discretion, determines that Franchisee has breached any portion of this agreement, it shall notify Franchisee per notice requirements in section 12.4 and may collect on the Performance Bond guaranteed by Franchisee. City shall be entitled to immediately seek a new Contractor to replace Franchisee and all performance duties identified under this agreement. This bond serves to cover the cost of these immediate and necessary services, and City shall be entitled to collect on the seven-hundred and fifty thousand dollars (\$750,000) Performance Bond posted by Franchisee.
- ii. **Liquidated Damages:**
 - a. **General:** At the time of the execution of this Agreement, the parties acknowledge that consistent, reliable Solid Waste Handling Service is of the utmost importance to the City and that City has considered and has relied on Franchisee's representations as to its quality of service commitment in entering this Agreement with it. The parties further recognize that some quantified standards of performance are necessary and appropriate to ensure consistent and reliable service and performance. The parties further recognize that if Contractor/Franchisee fails to achieve performance standards or fails to submit required documents in a timely manner, City and its residents will suffer damages and that it is and will be impractical, if not impossible, to reasonably ascertain the extent of damages which shall be incurred by City as a result of a breach by Contractor. The factors relating to the impracticability of ascertaining damages include, but are not limited to, the

fact that: (i) substantial damage results to members of the public who are denied services or denied quality or reliable service; (ii) such breaches cause inconvenience, anxiety, frustration, and deprivation of the benefits of the Agreement to individual members of the general public for whose benefit this Agreement exists, in subjective ways and in varying degrees of intensity which are incapable of measurement in precise monetary terms; (iii) that the services that are the subject of this Agreement might be available at substantially lower costs than alternative services and the monetary loss resulting from denial of services or denial of quality or reliable services is impossible to calculate in precise monetary terms; and (iv) the termination of this Agreement for material breaches, and other remedies are, at best, a means of future correction and not remedies which make the public whole for past breaches. Therefore, without prejudice to the City's right to treat such failures as a Material breach, the Parties agree to that the liquidated damage amount represent a reasonable estimate of the amount of such damages for such breaches, considering all of the circumstances existing on the date the this contract was executed, including the relationship of the sums to the range of harm to City that reasonably could be anticipated and the anticipation the proof of actual damages would be costly or impractical. City may determine the occurrence of events giving rise to liquidated damages through the observation of its own employees or representative or investigation of Customer complaints.

- b. **Amount:** If City shall find the Franchisee has Materially breached this agreement, City shall be entitled to collect two-hundred and fifty thousand dollars (\$250,000) in Liquidated Damages from Franchisee due to their failure to perform wholly or partially under this agreement.

9.10.7 Basis for Liquidated Damages

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

Franchisee's Initials _____ City Initials _____

9.10.8 Further Remedies for Severe or Persistent Violations

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

9.11 No Waiver of City's Police Powers or Legal Rights

Nothing in this Agreement is intended to limit the power and ability of the City or any Local Enforcement Agency (LEA) to initiate administrative and/or judicial proceedings for the abatement of nuisance conditions or violations of any applicable law. Nothing herein shall waive or limit any other legal rights or recourses the City may have in response to Franchisee's repeated, material violations of Performance Standards or failure to mitigate nuisance conditions.

ARTICLE 10: TRANSFERS OF INTEREST

10.1 Restrictions on Transfers

The City, in entering into this Agreement, has placed a special value, faith and confidence in the experience, background, and expertise of the Franchisee in the field of waste and recycling collection. Therefore, City denies any attempted Transfer of Interest from the Franchisee, Commercial Waste Services, Inc., to another party during the term of this agreement. Any attempt to transfer any interest shall equate to a breach of contract and any financial, equitable and/or criminal charges shall be agreed upon by the Franchisee. Additionally, if during and/or after contract expiration, Franchisee shall become unable to pay its fees due to City; City may collect its fees due, from Franchisee: any amount due, from Franchisee Commercial Waste Inc., and/or any private assets of executive officer's assets (whether or not defined in proposal) of Franchisee in order to make City financially whole as to be determined by the Chief Administrative Officer and/or its designee.

10.2 Definition of Transfer

As used in this Section, the term "Transfer" shall include any hypothecation, mortgage, pledge, or encumbrance of this Agreement by Franchisee. A Transfer shall also include the transfer to any person or group of persons acting in concert of more than thirty percent (30%) of the present equity ownership and/or more than thirty percent (30%) of the voting control of Franchisee (jointly and severally referred to herein as the "Trigger Percentages"), taking all transfers into account on a cumulative basis, except transfers of such ownership or control interest to an affiliate owned or controlled by the present beneficial owners of Franchisee or members of their immediate family, or between members of the same immediate family, or transfers to a trust, testamentary or otherwise, in which the beneficiaries are limited to members of the transferor's immediate family. A transfer of interests (on a cumulative basis) in the equity ownership and/or voting control of Franchisee in amounts less than Trigger Percentages shall not constitute a Transfer subject to the restrictions set forth herein. In the event Franchisee or its successor is a corporation or trust, such Transfer shall refer to the transfer of the issued and outstanding capital stock of Franchisee, or of beneficial interests of such trust; in the event that Franchisee or any general partner comprising Franchisee is a limited or general partnership or a limited liability company, such Transfer shall refer to the transfer of more than the Trigger Percentages in the limited or general partnership or limited liability company interest; in the event that Franchisee or any general partner is a joint venture, such Transfer shall refer to the transfer of more than the Trigger Percentages of such joint venture partner, taking all transfers into account on a cumulative basis.

10.3 Heirs and Successors

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

ARTICLE 11: INSURANCE, INDEMNITY AND PERFORMANCE BOND

11.1 Insurance

Franchisee shall procure and maintain, at its sole cost and expense, in a form and content satisfactory to City, during the entire term of this Agreement including any extension thereof, the following policies of insurance:

11.1.1 Comprehensive General Liability Insurance

A policy of comprehensive general liability insurance written on a per occurrence basis. The policy of insurance shall be in an amount not less than either (i) a combined single limit of \$2,000,000.00, or (ii) bodily injury limits of \$1,000,000.00 per person, \$2,000,000.00 per occurrence and \$1,000,000.00 products and completed operations and property damage limits of \$2,000,000.00 per occurrence and \$2,000,000.00 in the aggregate.

11.1.2 Workers' Compensation Insurance

A policy of workers' compensation insurance in such amount as will fully comply with the laws of the State of California and which shall indemnify, insure and provide legal defense for both the Franchisee and the City against any loss, claim or damage arising from any injuries or occupational diseases occurring to any worker employed by or any persons retained by the Franchisee in the course of carrying out the work or services contemplated in this Agreement.

11.1.3 Automotive Insurance

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

11.1.4 Umbrella Insurance

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

11.1.5 General Insurance Provisions

All of the above policies of insurance shall be primary insurance and shall name the City, its officers, employees, and agents as additional insureds. The insurer shall waive all rights of subrogation and contribution it may have against the City, its officers, employees, and agents and their respective insurers. All of said policies of insurance shall provide that said insurance may not be amended or cancelled without providing thirty (30) days' prior written notice by registered mail to the City. In the event any of said policies of insurance are cancelled, the Franchisee shall, prior to the cancellation date, submit new evidence of insurance in conformance with this Section 11.1 to the Chief Administrative Officer. No work or services under this Agreement shall commence until the Franchisee has provided the City with Certificates of Insurance or appropriate insurance binders evidencing the

above insurance coverage and said Certificates of Insurance or binders are approved by the City.

11.1.6 No Limitation

Franchisee agrees that the provisions of this Article 11 shall not be construed as limiting in any way the extent to which the Franchisee may be held responsible for the payment of damages to any persons or property resulting from the Franchisee's activities or the activities of any person or persons for which the Franchisee is otherwise responsible.

11.1.7 Rating

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

11.1.8 Primary Insurance

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

11.1.9 Changes in Market

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

11.2 Indemnification

Without regard to the limits of any insurance coverage, Franchisee agrees to indemnify, defend with counsel appointed by the City, pay any fees or penalties caused by Franchisee's willful or negligent actions, and shall protect and hold harmless the City, its representatives, officers, agents and employees against any and all fines, response costs, assessments, actions, suits, injunctive relief, claims, damages to persons or property, losses, costs penalties, obligations, errors, omissions or liabilities, ("claims or liabilities") that may be asserted or claimed by any person, firm or entity arising out of or in connection with (i) violations of the commerce clause of the U.S. Constitution, AB 939, the Comprehensive Environmental Response, Compensation and Liability Act, Title 42 U.S.C. §9601 *et seq.* ("CERCLA"), HSAA, RCRA, any other Hazardous Waste laws, or other federal, state or local environmental statutes, ordinances and regulations which arise from this Agreement; (ii) the negligent performance of the work or services of Franchisee, its agents, employees, subcontractors, or invitees, provided for in this Agreement; (iii) the negligent acts or omissions of Franchisee hereunder, or arising from Franchisee's negligent performance of

or failure to perform any term, provision, covenant or condition of this Agreement, whether or not there is concurrent passive or active negligence on the part of the City, its representatives, officers, agents or employees but excluding such claims or liabilities arising from the sole negligence or willful misconduct of the City, its representatives, officers, agents or employees, who are directly responsible to the City, and in connection therewith:

- i. Franchisee will defend any action or actions filed in connection with any of said claims or liabilities and will pay all costs and expenses, including legal costs and attorneys' fees incurred in connection therewith
- ii. Franchisee will promptly pay any judgment rendered against the City, its officers, agents or employees for any such claims or liabilities arising out of or in connection with the negligent performance of or failure to perform such work or services of Franchisee hereunder; and Franchisee agrees to save and hold the City, its officers, agents and employees harmless therefrom
- iii. In the event the City, its officers, agents, or employees is made a party to any action or proceeding filed or prosecuted against Franchisee for such damages or other claims arising out of or in connection with the negligent performance of or failure to perform the work or services of Franchisee hereunder, Franchisee agrees to pay to the City, its officers, agents, or employees, any and all costs and expenses incurred by the City, its officers, agents, or employees in such action or proceeding, including but not limited to, legal costs and attorneys' fees
- iv. Franchisee's obligations hereunder shall survive the termination or expiration of this Agreement

11.3 Performance Bond

The City requires the Franchisee to deliver to the City a performance bond in the sum of the amount of SEVEN HUNDRED AND FIFTY THOUSAND DOLLARS (\$750,000.00), in the form provided by the Chief Administrative Officer. Said performance bond shall guarantee Franchisee's faithful performance of waste hauling services under the auspices of this Agreement, including without limitation, payment of any penalty and the funding of any work to cure a breach of this Agreement. The bond shall be unconditional and remain enforce during the entire term of this Agreement and shall be null and void only if the Franchisee promptly and faithfully performs all terms and conditions of this Agreement.

11.4 AB 939 Guarantee and Indemnification

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

- i. Defend, with counsel approved by City, indemnify and hold harmless the City against all fines and/or penalties imposed by the Board, if Franchisee fails or refuses to provide information relating to its operations which is required under this Agreement and such failure or refusal prevents or delays City from submitting reports required by AB 939 in a timely manner
- ii. Assist City in preparing for, and participating in, the Board's biannual review of the City's source reduction and recycling element pursuant to Public Resources Code Section 41825
- iii. Assist City in responding to inquiries from the Board in applying for an extension under Public Resources Code Section 41820, if so directed by City; in conducting any hearing conducted by the Board relating to AB 939; or in any other investigative or enforcement manner undertaken by any agency
- iv. Defend, with counsel acceptable to City, and Indemnify and hold harmless the City against any fines or penalties levied against it for violation of AB 939's diversion requirements, excepting any fine or penalty imposed if City's failure to meet the Act's diversion requirements is the result of an order
- v. In cooperating with the City, should it seek to become its own enforcement agency, to the extent it may be permitted under state law

11.5 AB 939 Education

Franchisee and City shall jointly develop and implement a public awareness and education program that is consistent with the City's Source Reduction and Recycling Element ("CRRE") and its Household Hazardous Waste Element ("HHWE").

ARTICLE 12: GENERAL PROVISIONS

12.1 Late Payment Fee

City shall give Franchisee written notice of any delinquent payment of any sum owing to City by Franchisee under this Agreement. In the event that Franchisee does not pay City such delinquent sum within ten (10) days of the date of the written notice, Franchisee shall pay the City the pre-determined penalty of one and ten percent (10%) interest per month, or any fraction of a month, on the amount of delinquent sum commencing from the date such sum was originally due.

12.2 Rate Composition

During the Term of this Agreement, all franchise rates will be divided into two rate components: "Collection" and "Disposal". Such a "component" breakdown must be disclosed to the City within the initial rates for this Agreement and as part of any subsequent rate increase request by the Franchisee. Such collection components are not required to be listed in franchise rate sheets or included on billings to the Franchisee's customers.

12.3 Force Majeure

The time period(s) specified for performance of the provisions of this Agreement shall be extended because of any delays due to unforeseeable causes beyond the control and without the fault or negligence of the Franchisee, including, but not restricted to, acts of God or of the public enemy, unusually severe weather, fires, earthquakes, floods, epidemics, quarantine restrictions, riots, strikes, freight embargoes, wars, litigation, and/or acts of any governmental agency, including the City, if the Franchisee shall within ten (10) days of the commencement of such delay notify the Chief Administrative Officer in writing of the causes of the delay; no extension of time for performance shall be granted, however, by reason of the unavailability of any Disposal Site or by reason of strikes, lockouts, or other labor disturbances, or breakage or accidents to vehicles, equipment, machinery or plants. The Chief Administrative Officer shall ascertain the facts and the extent of delay and extend the time for performing the services for the period of the enforced delay when and if in the judgment of the Chief Administrative Officer such delay is justified. In no event shall Franchisee be entitled to recover damages against the City for any delay in the performance of this Agreement, however caused, Franchisee's sole remedy being extension of the Agreement which shall be an extension of one (1) month at the sole option of the Chief Administrative Officer. Any further extension shall require a new contract with amended and/or additional terms.

12.4 Notices

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

If to Franchisee: _____

If to City: CITY OF HAWAIIAN GARDENS
Chief Administrative Officer

A copy to: Alvarez-Glasman & Colvin
13181 Crossroads Parkway North Suite 400
Industry, Ca 91746

Attention: Arnold M. Alvarez-Glasman, City Attorney

or to such other address as either Party may from time to time designate by notice to the other given in accordance with this section. Notice shall be deemed effective on the date such notice is deposited in the United States mail.

12.5 Non-discrimination

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

12.6 Compliance with Immigration Laws

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

12.7 No Liability of City Officials

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

12.8 Laws and Regulations

Franchisee shall observe all the terms of any City ordinance or resolution now in effect, or as the same may be subsequently adopted or amended by the City, governing or affecting the collection, removal and disposal of Municipal Solid Waste in the City of Hawaiian Gardens. Franchisee further agrees to comply with all applicable county, state or federal laws or regulations as they exist now or may subsequently be adopted or amended, governing the collection, removal and disposal of Municipal Solid Waste. Franchisee further agrees to comply with all applicable state and federal laws governing employment, wages, working conditions, use of materials, equipment, supplies and the like.

12.9 Proprietary Information: Public Records

The City acknowledges that a number of the records and reports of the Franchisee are proprietary and confidential. Franchisee is obligated to permit City inspection of certain of its records, as provided herein, on demand and to provide copies to City where requested. City will endeavor to maintain the confidentiality of all proprietary information provided by Franchisee and shall not voluntarily disclose such proprietary information. Notwithstanding the foregoing, any documents provided by Franchisee to City that are public records may be disclosed pursuant to a proper public records request.

12.10 Waiver of Existing Claims

In entering into this Agreement, the City and the Franchisee waive their respective rights to any claim, known or unknown, for damages or rights arising out of any previous Agreement, either written or oral. The Parties expressly understand and acknowledge that it is possible that unknown losses or claims exist or that present losses may have been underestimated in amount or severity, and each said Party represents and warrants that this uncertainty was taken into account in determining the consideration to be paid for the giving of this Agreement, and that a portion of said consideration having been bargained for between the Parties with the knowledge of the possibility of such unknown claims was given in exchange for full accord, satisfaction and discharge of all such claims. Franchisee specifically acknowledges that it is familiar with the provisions of California Civil Code Section 1542 which provides as follows:

“A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM, MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR.”

12.11 Waiver of Future Claims

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

12.12 Conflict of Interest

No officer or employee of the City shall have any financial interest, direct or indirect, in this Agreement nor shall any such officer or employee participate in any decision relating to the Agreement which affects his financial interest or the financial interest of any corporation, partnership or association in which he is, directly or indirectly, interested, in violation of any State statute or regulation. The Franchisee warrants that it has not paid or given and will not pay or give any officer, official, employee or agent of the City any money or other consideration for obtaining this Agreement. If it is later discovered that Franchisee directly or indirectly influenced any party that had an interested in this agreement, Franchisee shall be subject to all penalties, fees, and enforcement actions identified in this agreement as well as any other legal or equitable actions City may have

against Franchisee. In addition to any criminal or additional legal actions that any party may have against the Franchisee.

12.13 Interpretation

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

12.14 Amendment: No Oral Amendments

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

12.15 Severability

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

12.16 Attorneys' Fees

If either Party to this Agreement is required to initiate or defend or is made by a party to any action or proceeding in any way connected with this Agreement, the prevailing party in such action or proceeding, in addition to any other relief which may be granted, whether legal or equitable, shall also be entitled to, but not limited to: reasonable attorney's fees, and expert witness fees, etc.

12.17 No Joint Venture

Neither the City nor any of its employees shall have any control over the manner, mode or means by which Franchisee, its agents or employees, perform the services required herein, except as otherwise set forth. Franchisee shall perform all services required herein independent from the City and shall remain at all times as to City a wholly independent entity with only such obligations as are consistent with that role. Franchisee shall not at any time or in any manner represent that it or any of its agents or employees are agents or employees of City. City shall not in any way or for any purpose become or be deemed to be a partner of Franchisee in its business or otherwise or a joint venture or a member of any joint enterprise with Franchisee.

12.18 Rights and Remedies are Cumulative

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

12.19 Governing Law

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

12.20 Jurisdiction and Venue

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

12.21 Legal Action

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

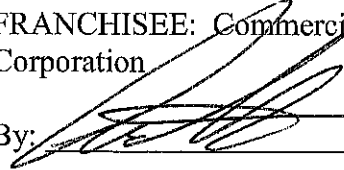
12.21 Entire Agreement

This Agreement represents the full and entire Agreement between the parties with respect to the matters contained herein. Any prior agreements, promises, negotiations or representations not expressly set forth herein are of no force or effect. Subsequent modifications to this Agreement shall be effective only if in writing and signed by each party.

[Signatures on Following Page]

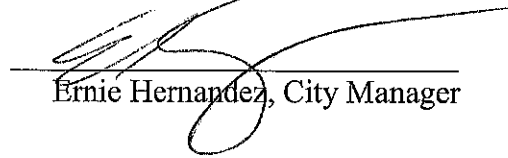
IN WITNESS WHEREOF, the Parties hereto do hereby set their hands and seals as of the day and the year first written above.

FRANCHISEE: Commercial Waste Services, Inc., a California Corporation


By:  By: _____

Title: PRESIDENT Title: _____

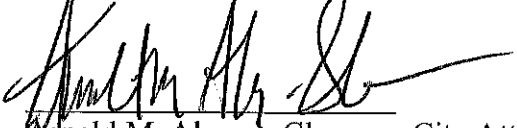
CITY OF HAWAIIAN GARDENS
CHIEF ADMINISTRATIVE OFFICER

By: 
Ernie Hernandez, City Manager

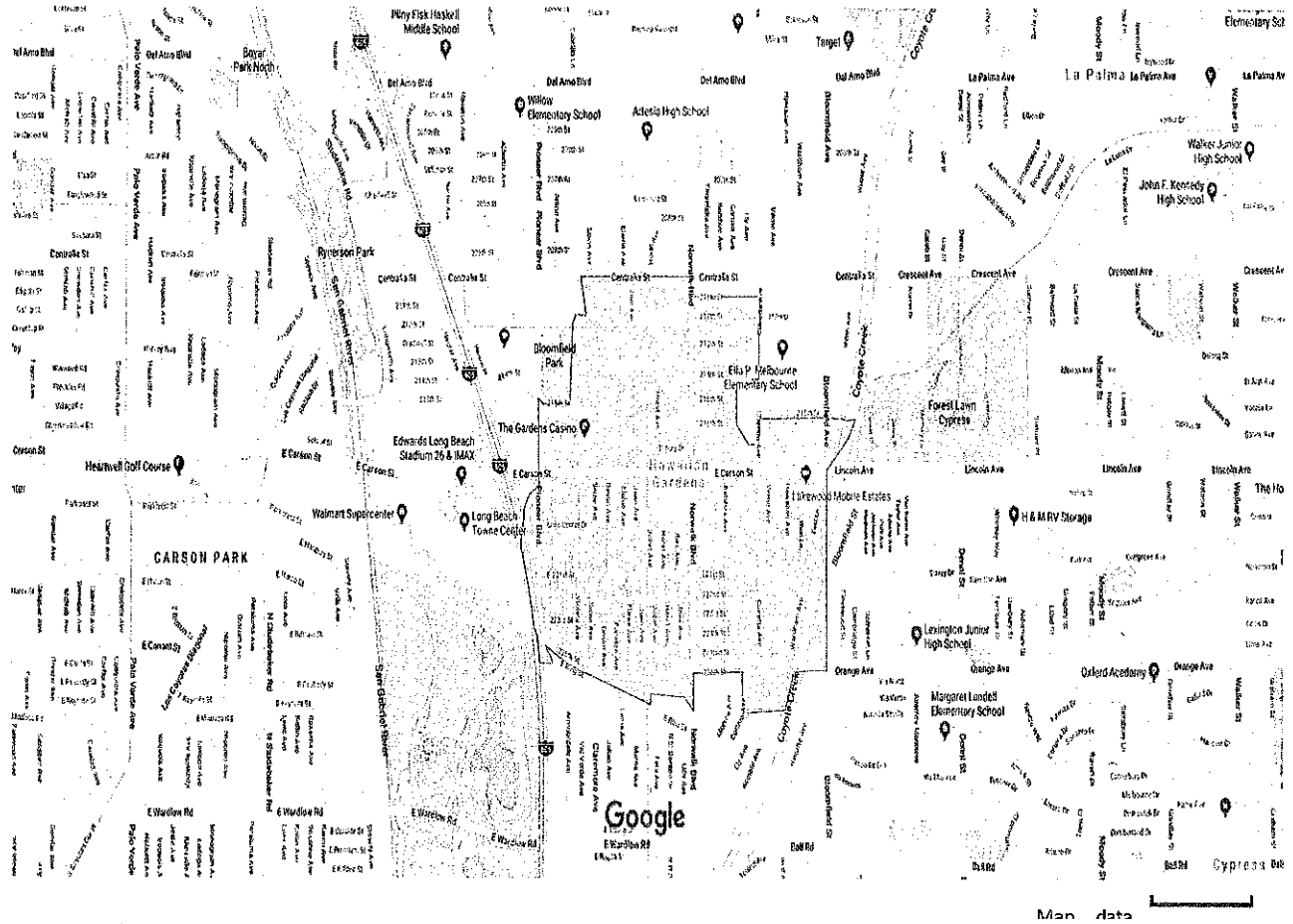
ATTEST:


City Clerk, ACTING

APPROVED AS TO FORM:


Arnold M. Alvarez-Glasman, City Attorney

ATTACHMENT A: Hawaiian Gardens: City Boundaries



**ATTACHMENT B- 1 THROUGH ATTACHMENT B-4: Maximum Permitted Rate Schedule
Residential, Commercial, Multi-Family, Temporary**

(Separate Attachment)

ATTACHMENT C-1: SOLID WASTE & RECYCLING COLLECTION ROLL-OUT

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
	Calendar of Events distribution				Equip. roll-out schedule and draft community outreach materials due	
	Review new 6 mo. Draft Agreement	Draft outreach comments back to Contractor	Surety performance bond due	Submit Draft Customer Invoices, all Sectors	Facility operator letters due.	
	Comments due on new 6 mo. Draft Agreement		Route Maps Due	Vehicle and Equipment inspection by City	Clean-Air vehicles commitment dates for production and delivery.	
	1 st Community Outreach materials in mail (all sectors)	Council action on New Agreement	Customer Service Training/Inspection	Sign Agreement/Remit \$100,000.00 check to City	Customer Service Opens	Last day of Republic Service collection.
July 1 Bin and Rolloff Equipment placement	Commence commercial and multi-family services		Commence Residential collection services			

CALENDAR

Execution of Agreement

Sign approved/amended Agreement June 28th/
Remit \$100,000.00 check to City

Effective Date

Effective Agreement Start Date July 1st

Commence Services

Commercial Waste Services to commence Commercial and Multi-Family services on Monday, July 2nd and Residential collection Services on July 4th.

ATTACHMENT C-2: Waste & Recycling Collection Roll-Out Tasks

TASK	DUE DATE	DONE	INITIALS
Equipment procurement/placement schedule	June 8 th		
Draft community outreach materials due for review (Commercial/Multi-Family/Residential) English version	June 8 th		
Receive and review Draft Agreement	June 11 th		
Community Outreach Comments back to Contractor	June 12 th		
Surety Performance Bond & Insurance Certs. Due	June 13 th		
Submit Draft Customer Invoices all Sectors	June 14 th		
Letter from each diversion facility operator stating A.) That there is sufficient tonnage capacity for city, and B.) Identifying the facility diversion rate that would be specifically applied to Hawaiian Gardens in their diversion reporting	June 15 th		
Diversion Rate table: Identifying 50%-70% diversion rate	June 15 th		
Comments Due on new Draft Agreement	June 18 th		
Route Maps Due	June 20 th		
Vehicle and Equipment Inspection by City	June 21 st		
Clean-air vehicle production and delivery schedule due	June 22 nd		
Mail Community Outreach in all languages/all sectors	June 25 th		
Council Action on New Agreement	June 26 th		
Customer Service Training & City Inspection	June 27 th		
Execute New 6 Mo. Agreement/Remit \$100,000 to City	June 28 th		
Customer Service Department Opens	June 29 th		
Commercial Bins and Roll-Off placement	July 1 st		
Commence Commercial Bins Services	July 2 nd		
Commence Residential Automated Collection Services	July 4 th		

ATTACHMENT D: Special City Events/City Facilities

Contractor shall provide solid waste collection services at special city events, as provided in the following list, at no cost. The city currently has twelve (12) special events per year. Contractor may be required to provide cardboard box litter receptacles and plastic liners for certain events. Contractor will provide rolloff boxes and/or commercial bins for the collection of waste at each event. City staff will be responsible for placing the waste in the collection bins or boxes. All collected waste will be processed at a MRF for optimum recycling.

CURRENT SPECIAL ANNUAL EVENTS

- 1) Safe Community Month
- 2) Easter Egg Hunt
- 3) Carnival & Parade
- 4) Independence Day Celebration
- 5) Car Show
- 6) National Night Out
- 7) Robert Canada Friendship Pow Wow
- 8) 3K Fun Run
- 9) Halloween Program
- 10) Veterans Day Ceremony
- 11) Christmas Tree Lighting

Location	Address	Count	Size	Material
City Hall	21815 Pioneer Blvd.	1 ea.	3 c.y.	Waste
Recreation Senior Center	21815 Pioneer Blvd.	2 ea.	3 c.y.	Waste
Public Safety/Library	11940 Carson St.	1 ea.	3 c.y.	Waste
LeeWare, MAOF Pre-School	22150 Wardham Ave.	1 ea.	3 c.y.	Waste
City Yard	On-Call	2 ea.	40 c.y.	Waste
LeeWare Pool	22310 Wardham Ave.	1 ea.	3 c.y.	Waste
Hawaiian Gardens Teen Ctr.		1 ea.	3 c.y.	Waste

ATTACHMENT E: GOOD CORPORATE CITIZEN STATEMENT

1. Good corporate citizens enhance Hawaiian Gardens through employment practices:
 - Hire Hawaiian Gardens residents when possible
 - Provide training and promotion opportunities for all workers
 - Provide adequate wages and benefits
 - Provide safe, clean, and healthy work environment
 - Provide family friendly benefits that support family life such as maternity/paternity leave, child care and day care
2. Good corporate citizens enhance Hawaiian Gardens through environmental responsibility:
 - Use Hawaiian Gardens sources for goods
 - Minimize use of resources
 - Used recycled content products wherever possible
 - Use energy efficient systems
 - Support opportunities for employees to use car pools/public transportation
3. Good corporate citizens enhance Hawaiian Gardens through excellent customer service practices:
 - Being responsive to Hawaiian Gardens residents' complaints
 - Being courteous and helpful
 - Being bi-lingual
 - Extending a helping hand to the seniors and handicapped
4. Good corporate citizens enhance Hawaiian Gardens through financial practice:
 - Purchase supplies locally
 - Support Hawaiian Gardens youth teams, local schools, and community organizations.
 - Support volunteerism and community involvement by employees
 - Support and participate in Hawaiian Gardens community events

ATTACHMENT F: CONTRACTOR SUBMITTALS

ATTACHMENT G: "Work Plan"



6. WORK PLAN AND METHODOLOGY

Commercial Waste Services (CWS) recognizes the importance of a smooth transition; benefiting both the City and the haulers involved. The key components of this work plan proposed by Commercial Waste Services center around three key concepts:

1. Education;
2. Consideration; and
3. Execution

Education is an integral part of Commercial Waste Services' mission to enhance the future of waste handling services. CWS believes an educated community is a prepared community.

6.1 Residential "Core" Cart Service

6.1.1 Automated Carts

Commercial Waste Services (CWS) believes a crucial part of the initial stages of implementation is to familiarize themselves with the community. CWS plans to achieve this by utilizing the residential data set supplied by the City to populate the customer database and prepare a City-specific distribution plan. The distribution plan's main function is to distribute Public Education Materials (PEMs) notifying the residents about the change in service, new benefits, and eligible programs.

PEMs will provide information regarding the distribution of new carts/bins/containers, when the residents can expect them to arrive, and the service provider contact information. As compliant with state recycling mandates, CWS will include information on proper material sorting and which materials are allowed in each container. PEMs (e.g. pamphlets, flyers, ads) will be hand delivered to every residential customers to ensure that all residents receive notification.

CWS will work with the City to receive and review current solid waste and recycling services, as well as route and tonnage data. An analysis of the current waste removal schedule will be conducted to strategize and establish the most efficient and non-disruptive execution of this hauler transition.

CWS has the ability to provide the requested fully automated solid waste, recyclable materials, and green waste carts for residential customers. CWS will provide the City color options for approval, and ensure City name and logo placement are satisfactory prior to distributing carts to customers.

The following is CWS' proposed execution plan for its residential automated cart collection services:

1. During the initial carts, bins, and boxes distribution, CWS will designate a crew to deliver to 500 customers per day until all customers are serviced. This is the combined goal of all execution plans. Flatbed vehicles will be used to deliver carts, bins, and boxes.



6. Work Plan and Methodology

1. All new carts will be accompanied by a PEM (e.g. notice, flyer, or pamphlet) describing the City's new automated collection services. The PEM will contain, at a minimum:
 - Purpose and proper use of each cart;
 - Proper placement of carts for collection;
 - Recommended cart care;
 - Collection schedule;
 - Service guidelines and rules;
 - Procedures for requesting additional and/or replacement carts; and
 - CWS contact information for each resident including appropriate telephone numbers and email addresses

2. All carts will be identifiable by a unique barcode with a corresponding serial number. Upon delivery of the containers and for each collection pick-up, these barcodes are scanned to keep records that each resident is serviced promptly and as scheduled. The barcode reader is equipped with internet access to communicate instantaneous with CWS headquarters' database and verify the customers' addresses.

3. The initial distribution team will file regular reports on the completion of each route segment to ensure full and proper cart distribution.

6.1.2 Refuse Cart Collection

See Section 6.1.1 for CWS' proposed cart execution plan.

CWS has the ability to distribute the 96-gallon Refuse Carts, 96-gallon Recycling Carts, and 64-gallon Green Waste Carts to all existing residential Cart customers. CWS will adhere to the approved Maximum Customer Rate Schedule (Attachment B of the RFP) when providing the default Carts, downsizing Carts, or providing additional Carts.

6.1.3 Recycling Cart Collection

See Section 6.1.1 for CWS' proposed cart execution plan.

Additional Recycling Carts will be available at no cost to the rate payer for up to two (2) additional 96-gallon Carts.

6.1.4 Green Waste Cart Collection

See Section 6.1.1 for CWS' proposed cart execution plan.

Additional Green Waste Carts will be available at no cost to the rate payer for up to one (1) additional 64-gallon Cart. CWS has experience in collecting bundled green waste too large to fit within the Cart, and will provide this service to its residential customers at least twice per year.

6.1.5 Refuse Cart Overage

CWS will offer at least two (2) annual pickups for refuse that does not fit within the provided automated refuse Carts at no additional cost to the rate payer.



6.1.6 Cart Colors and Markings

Through Schaefer Containers, CWS is able to provide a wide variety of colors, sizes, and markings for its residential Carts. CWS will not move forward with a color or design without receiving written approval from the City. Cart specifications and cut-sheets are provided in **Attachment J** of this proposal.

6.1.7 Public Outreach Program

Initial Public Outreach

Prior to beginning collection services, CWS shall hold a community meeting to introduce residents, multi-family residents, businesses, and other customers of the City's new collection services and programs.

At least two week prior to this and all future scheduled community meetings, CWS will notify all customers through either mail, phone, print advertisement, or a combination. By engaging with the community in-person early in the transition process, we aim to make customers feel comfortable and well-informed about the upcoming changes. Demonstration carts and Public Education Materials (PEMs) will be available for customers to review and see the services available to them first hand. Additional information meetings will be held as needed during the life of the contract.

On-Going Public Outreach

Commercial Waste Services has made it its mission to educate its customers on how to effectively identify and separate recyclable materials and organics from the solid waste stream. CWS has established public education and outreach programs in other jurisdictions that have shown success with an interdisciplinary approach. This approach utilizes the support from current regulations, creative social resources, and industry minimum requirements to foster different levels of communication, sharing, and knowledge. This strategy can be paired with multiple languages (e.g. English/Spanish/Korean) and across several platforms (e.g. flyers, newspaper, workshops, and social media).

6.1.8 Bulky Item Collection

The City has requested its future hauler to provide at least six bulky item pick-ups per year, for up to five items each pick-up at no additional charge to the customer. CWS believes that this program can help to reduce illegal dumping, and therefore reduce collection vehicle miles traveled and street congestion. To fulfill its duty in providing the best service to the City possible, CWS proposes to provide up to fifty-two (52) bulky item pick-ups per year, for up to five items each pick up at no additional cost. This will give residents the flexibility and capacity to ensure their large items are removed in a timely manner instead of abandoned on the side of the road, or in other areas of the City. CWS firmly believes offering close to "unlimited" bulky item pick-ups will reduce illegal dumping, as residents will always have a free and easy way to get rid of their unwanted items.

If notified by the City or a customer of any abandoned bulky waste item(s), CWS will collect and remove the item(s) at no additional charge within 24 hours of the notice. However, no service will be provided on Saturdays, Sundays, and holidays as outlined in the RFP.

CWS is committed to achieving the maximum diversion from landfill, and will employ the full waste hierarchy of diversion until disposal is considered. Most bulky items will be sent to the Ace Diversion. Ace Diversion (SWIS No. 19-AA-1131) is located at 1530 Date Street in the City of Montebello. Ace Diversion can receive up to 175 tons of material per day. See *Section 7* of this proposal for more detail on this processing facility.



6.1.9 Additional Bulky Item Service

The purpose of providing up to fifty-two (52) free bulky item pick-ups is for customers to feel free to use this service every week of the year. CWS does not expect a customer to require more than one bulky item pick-up per year, although if needed, CWS will charge a fee consistent with the Maximum Customer Rates (Attachment B of the RFP).

6.1.10 Temporary Bins

Residential customers will be provided temporary bins or boxes within 48 hours of request (not including weekends or holidays) for construction and demolition debris. CWS will use the customer rates as provided in the Maximum Customer Rates (Attachment B of the RFP).

CWS will use Distributors' Unlimited to supply all bins or boxes, and ensure to have sufficient bins or boxes readily available for customers.

6.1.11 Universal Waste & Electronic Waste

Through the bulky item collection as described in Section 6.1.8, CWS will collect u-waste and e-waste.

6.1.12 Roll-off Box and Temporary Processing

CWS is willing and able to provide permanent and temporary bin and roll-off container collection service upon request. Bins and roll-off containers will be provided to CWS by Distributors' Unlimited.

CWS will first utilize the South East Resource Recovery Facility (SERRF) which achieves 100% diversion while recovering heat value and converting this heat into renewable electricity. CWS will also utilize Puente Hills Material Recovery Facility (MRF), which is owned and operated by the County of Los Angeles to recover recyclable materials prior to landfill. CWS has a long standing relationship with the County of Los Angeles, which has a proven track record of processing mixed recyclables from businesses and residents. Non-recoverable material will be sent to the Chiquita Canyon Landfill.

SERRF (SWIS No. 19-AK-0083) is located at 120 Pier S. Avenue in the City of Long Beach. It is permitted to accept 1,380 tons per day. Puente Hills MRF (SWIS No. 19-AA-1043) is located at 13130 Crossroads Parkway South in the City of Industry. It is permitted to receive 4,400 tons per day. Chiquita Canyon Landfill (SWIS No. 19-AA-0052) is located at 29201 Henry Mayo Drive in the City of Castaic. It is permitted to accept up to 6,000 tons per day. See Section 7 of this proposal for more detail on these processing facilities.

6.1.13 SHARPS Collection

Consistent with the City's Draft Franchise Agreement, CWS will provide each residential dwelling unit, including multi-family and mobile homes, with the appropriate pre-paid postage mail back sharps collection service at no additional cost to the customer.

6.1.14 Valet Service

CWS will develop a valet service for eligible customers to move the customers' carts to and from the point of collection. Eligible customers must provide California DMV handicap credentials on an annual basis. CWS will work with the customer to ensure a smooth collection service. This service will be at no cost to the eligible customer.



6.1.15 Low-Income Senior Citizen Discount

All qualifying customers will be offered a low-income senior discount of 10% off their automated residential cart service. Qualifying customers are those age 65 and older who also qualify for Southern California Edison's CARE Program.

6.1.16 Holiday Tree Collection and Recycling

Outside of the provided bulky item pickup service, CWS will provide holiday tree collection and recycling for four consecutive weeks following December 26th. The holiday trees will be taken to Oak Tree Worm Farm to be converted in mulch, soil amendments, and/or compost. Oak Tree Worm Farm (SWIS No. 19-AA-136) is located at 13326 Little Tujunga Canyon and is allowed to accept up to 250 tons per day of organic materials. The facility has adequate capacity to handle all potential organics from the City of Hawaiian Gardens. See Section 7 of this proposal for more detail on this processing facility.

6.1.17 Mulch Give-A-Way Program

Oak Tree Worm Farm will provide free mulch, soil amendment, and/or compost for at least two mulch give-a-way events per calendar year. CWS will provide all coordination and hauling services for the mulch, soil amendments, and/or compost.

6.1.18 Holiday Schedule

CWS will provide collection services schedule during an identified Holiday on the following non-holiday calendar day. CWS will work with the customers to ensure for a smooth collection service during these Holidays.

6.1.19 Removal and Recycling of Existing Carts

When embarking on a change of service as large as this, it is crucial to be considerate of the community, the City, and the previously contracted hauler. The first step to ensuring a smooth transition is for CWS to meet with the current hauler. CWS will share its proposed cart and container delivery schedule with the current hauler, to allow the hauler to provide comment and feedback on any potential deficiencies or time gaps. This will help give the current hauler the guidance and timeline needed to organize the removal of their own carts.

If the current hauler fails to remove their own carts, CWS has an available transitional storage facility to store these carts immediately. CWS will offer this storage space to the current hauler to encourage a smooth, quick, and efficient transition.

CWS will develop a transition facility to store equipment, bins, containers, and carts temporarily to minimize any delays in the proposed transition schedule and missed collections. This storage facility will aid in streamlining the transition process between haulers by providing adequate space for all the carts and bins required to service the City of Hawaiian Gardens. A temporary storage location will also reduce traffic by reducing the miles CWS vehicles must travel back and forth for collection equipment. Reducing traffic has compounded benefits including eliminating unnecessary wear and tear on City streets and reducing truck emissions (greenhouse gases).



6.2 Residential "Optional" Collection Services

6.2.1 Organics and Food Waste Recycling

Commercial Waste Services will offer an optional organics and food waste recycling program to its residential customers. CWS will contract with Clements Environmental Corp. (Clements) to provide all organics program education, outreach, and waste characterization work. CWS, in collaboration with Clements, proposes the following for its food waste recycling program:

1. All residential customers will receive an invitation to participate in the optional food waste recycling program upon start of service, along with program-specific informational pamphlets (PEMs), and instructions on what materials are allowed and are not allowed in the cart. The program will utilize the existing residential 64-gallon green waste cart.
2. Prior to starting food waste collection services, a Clements account representative will visit the residential home to provide a one-on-one introductory presentation on food waste recycling, what to do, and what to expect.
3. On this initial site visit, the account representative will also conduct a foodwaste survey to determine an estimated foodwaste quantity and type from the enrolled household. This survey takes into consideration number of residents within the household, household grocery budget, and diet.
4. Residential customers enrolled in this program will be allowed to place their foodwaste materials in their green waste carts. Depending on the level of participation, a separate collection vehicle may service these accounts.
5. These organic materials will be delivered to Oak Tree Worm Farm to be processed into nutrient-rich compost through the vermicomposting process.
6. At least once a year, a Clements account representative will conduct a waste characterization study on the residential household's organics cart to assess the ratio of foodwaste to greenwaste, and percentage of contamination (e.g. non-organics).
7. At least one a year, Clements will facilitate a waste characterization study on the organic waste tipped at Oak Tree Worm Farm as part of this program to provide the City with information on the effectiveness and potential deficiencies of this program.
8. Residents enrolled in this program will receive quarterly PEMs relating to organic and food waste recycling, relevant state regulations (e.g. AB 1826 and SB 1383), and any program progress reports.

6.2.2 Citywide Quarterly Clean-up Program

CWS will provide four (4) free Citywide Quarterly Clean-up events per year at no cost to the City of Hawaiian Garden. For Citywide Clean-up events in excess of the four annual events, please see **Attachment B** of this proposal for pricing estimates for the total cost for collection, recycling, and disposal services.



6.3 Multi-Family Residential "Core" Collection Service

6.3.1 Bins and Boxes

Consistent with the City requirements, CWS will ensure that all bins and boxes be kept graffiti free at all times, and within four hours of visible or informed sighting, will touch-up or replace any bin or box.

Similar to CWS' residential cart execution plan in *Section 6.1.1*, CWS proposes the following multi-family execution plan:

2. During the initial carts, bins, and boxes distribution, CWS will designate a crew to deliver to 5,000 customers per day until all customers are serviced. This is the combined goal of all execution plans. Flatbed vehicles will be used to deliver carts, bins, and boxes.
3. All new bins or boxes (dumpsters) will be accompanied by a PEM (e.g. notice, flyer, or pamphlet) describing the City's new collection services. The PEM will contain, at a minimum:
 - Purpose and proper use of each dumpster;
 - Proper placement of dumpsters for collection;
 - Recommended dumpster care;
 - Collection schedule;
 - Service guidelines and rules;
 - Procedures for requesting additional and/or replacement dumpsters; and
 - CWS contact information for each multi-family unit including appropriate telephone numbers and email addresses
4. All dumpsters will be identifiable by a unique barcode with a corresponding serial number. Upon delivery of the containers and for each collection pick-up, these barcodes are scanned to keep records that each resident is serviced promptly and as scheduled. The barcode reader is equipped with Internet access to communicate instantaneous with CWS headquarters' database and verify the customers' addresses.
5. The initial distribution team will file regular reports on the completion of each route segment to ensure full and proper dumpster distribution.

6.3.2 Multi-Family MRF Processing

CWS will deliver multi-family containers to the SERRF plant and Puente Hills MRF. SERRF processing qualifies for 100% diversion, while the Puente Hills MRF achieves 20% diversion for solid waste and 100% for comingled recyclable loads. Between these two processing plants, CWS will achieve at least 50% diversion for all collected multi-family waste materials.

6.3.3 Bulky Item Collection

As stated in *Section 6.1.8*, CWS proposes to offer fifty-two (52) bulky item pick-ups per year, for up to five items each pick up at no additional cost to the customer. This will include universal and electronic wastes.



6.3.4 Bulky Item Diversion

CWS is committed to achieving the maximum diversion from landfill, and will employ the full waste hierarchy of diversion until disposal is considered. Most bulky items will be sent to the Ace Diversion. Ace Diversion (SWIS No. 19-AA-1131) is located at 1530 Date Street in the City of Montebello. Ace Diversion can receive up to 175 tons of material per day. See *Section 7* of this proposal for more detail on this processing facility.

6.3.5 Universal Waste & Electronic Waste

Both universal waste and electronic waste will be collected through the bulky item collection as described in *Section 6.3.3*.

6.3.6 Sharps Collection Program

Pre-paid postage mail back sharps collection service will be provided to each residential dwelling unit at no additional cost to the customer.

6.3.7 Holiday Tree Collection and Recycling

Outside of the provided bulky item pickup service, CWS will provide holiday tree collection and recycling for three consecutive weeks following December 25th as outlined in the RFP. Holiday trees will be taken to Oak Tree Worm Farm to be converted in mulch, soil amendments, and/or compost. Oak Tree Worm Farm (SWIS No. 19-AA-136) is located at 13326 Little Tujunga Canyon and is allowed to accept up to 250 tons per day of organic materials. The facility has adequate capacity to handle all potential organics from the City of Hawaiian Gardens. See *Section 7* of this proposal for more detail on this processing facility.

6.3.8 Green Waste / Organics Recycling Collection

To help the City meet the requirements of AB 1826, the mandatory commercial and multi-family organics recycling regulations, CWS will enroll all multi-family businesses in an organics recycling program. With the help of Clements, CWS proposes the following for the multi-family organics recycling program:

1. All multi-family complex owners and residents will receive an invitation to participate in the organics program upon start of service, along with program-specific informational pamphlets (PEMs), and instructions on what materials are allowed and are not allowed in the cart. This program will offer a new 96-gallon green waste cart.
2. In addition to the PEMs, all multi-family complex owners and residents will initially receive information about AB 1826 regulatory requirements. As new regulations are adopted, these customers will receive updated information as applicable to their collection service.
3. Prior to starting food waste collection services, a Clements account representative will visit the multi-family complex to provide a one-on-one introductory presentation on food waste recycling, what to do, and what to expect.
4. On this initial site visit, the account representative will also conduct a foodwaste survey to determine an estimated foodwaste quantity and type from the enrolled household. This survey takes into consideration number of residents within the household, household grocery budget, and diet.



5. Multi-family customers enrolled in this program will be allowed to place their foodwaste materials in their green waste carts. Depending on the level of participation, a separate collection vehicle may service these accounts.
6. These organic materials will be delivered to Oak Tree Worm Farm to be processed into nutrient-rich compost through the vermicomposting process.
7. At least once a year, a Clements account representative will conduct a waste characterization study on the residential household's organics cart to assess the ratio of foodwaste to greenwaste, and percentage of contamination (e.g. non-organics).
8. At least one a year, Clements will facilitate a waste characterization study on the organic waste tipped at Oak Tree Worm Farm as part of this program to provide the City with information on the effectiveness and potential deficiencies of this program.
9. Residents enrolled in this program will receive quarterly PEMs relating to organic and food waste recycling, relevant state regulations (e.g. AB 1826 and SB 1383), and any program progress reports.

6.4 Commercial "Core" Collection Service

6.4.1 Bin Refuse Collection and Processing

Commercial Waste Services (CWS) will utilize Distributors' Unlimited to supply all collection bins (e.g. 2, 3, 6, 30, and 40 cubic yard bins) for commercial accounts. CWS will have sufficient collection bins in stock to create new recycling accounts for all commercial customers.

CWS proposes the following for the commercial bin execution plan:

1. CWS will work in cooperation with the current contracted hauler to minimize service disruption and ensure a seamless transition for City customers.
2. A variety of container trucks will be used to deliver these containers to each customer. Container trucks are designed to deliver the commercial containers without damaging the surface of the customer's property.
 - a. The trucks are considered "light duty" and equipped with noise mufflers to not disturb residents. If need be, these trucks can be used to pull out dumpsters from tight alleyways or other hard to service areas.
3. Depending on the commercial accounts' needs, CWS will use container storage trucks to deliver one dumpster at a time, or multiple containers simultaneously.

CWS strives to provide the safest, environmentally protective, and most efficient truck fleet possible by equipping collection vehicles with one or more of the following:

- "Park at idle systems" and Engine Idle time limiter to reduce emissions
- Automatic transmissions that reduce emissions and allow drivers to focus more on their surroundings and safety versus shifting gears
- Retarders to assist in braking.
- Larger than industry standard brake lining to improve overall braking performance



**CITY OF HAWAIIAN GARDENS
CITY COUNCIL
STAFF REPORT**

Agenda Item #{{section.number}}1

DATE: September 28, 2021
TO: Honorable Mayor and Members of the City Council
FROM: Ernesto Marquez, City Manager
BY: Megan Garibaldi, City Attorney

RECOMMENDATION:

RECOMMENDATION TO APPROVE THE FIRST AMENDMENT TO THE SOLID WASTE COLLECTION SERVICES FRANCHISE AGREEMENT TO IMPLEMENT RATE INCREASE PURSUANT TO RESOLUTION NO. 025-2021, EXTEND TERM OF AGREEMENT, AND MAKE ADDITIONAL CHANGES

SUMMARY

The City contracts for solid waste services through the use of an exclusive Franchise Agreement. All properties within the City are required to subscribe to the solid waste services set forth in the Franchise Agreement. Under the Franchise Agreement, the Franchisee (i.e., Waste Resources, Inc. or “WRI”) is responsible for all aspects of solid waste services within the City.

As part of the Franchise Agreement, rates—which are negotiated between the City and WRI—are established and WRI charges customers (i.e., residential, multi-family, commercial, and industrial) the agreed upon rates to provide the solid waste services. Solid waste rates are determined based upon on the type of service provided, the size and type of container, and the frequency of collection. Under California law and the Franchise Agreement, to increase the rates beyond what is currently permissible in the Franchise Agreement, the proposed rate increase is subject to the requirements of Proposition 218.

Accordingly, at the September 14, 2021 City Council meeting, the City Council conducted a public majority protest hearing to consider proposed rate increases for solid waste services, in accordance with Proposition 218. Following the public hearing and after determining there was not a majority protest, the City Council voted to approve Resolution

No. 025-2021, which authorized new maximum rates for all types of waste services in the City. The rates increase annually through 2025, at which time they plateau; however, note that the rates are also subject to potential additional annual increases, not to exceed 25% in aggregate, for CPI and pass-through costs for disposal rates (as further detailed in Resolution No. 025-2021).

To allow WRI to implement these new rates up to the maximum, the next step in the process is to amend the Franchise Agreement to incorporate the rates approved at the last City Council meeting. In order for the rate increase to be effective as of October 1, 2021, the City Council must approve the Franchise Agreement amendment (as to the rate increase) this evening. In addition to the rate increase, additional changes to the Franchise Agreement have been proposed in this amendment, pursuant to the requests of WRI and the recommendations of the Ad-hoc Committee and/or MuniEnvironmental. A summary of the major changes is set forth below.

Franchise Agreement Amendment – Factual Background

In September of 2020, the City Council established a Solid Waste Ad-hoc committee to evaluate the request by Waste Resources Inc., for a rate adjustment. The Solid Waste Ad-hoc Committee considered the proposed rate increase, as well as proposed other changes to the Franchise Agreement. The City and its consultant, MuniEnvironmental, LLC, worked with WRI to negotiate possible rate adjustments that reflect a rate schedule which accurately reflects the reasonable costs of service, as well as the added scope of work required to achieve compliance with the new State mandated food and organic waste recovery regulations set forth in Senate Bill 1383 (“SB 1383”) (discussed below) and other changes.

The Solid Waste Ad-hoc Committee ultimately made recommendations which were presented to the Council on March 23, 2021, and Council directed staff to proceed with a rate increase proceeding. On May 25, 2021, the City Council approved (amongst other things) a contract amendment to MuniEnvironmental’s consulting agreement with the City to proceed with the rate increase process and to prepare the Franchise Agreement amendment. On September 14, 2021, following a duly-noticed public hearing and conclusion there was not a majority protest, in accordance with Proposition 218, the City Council adopted Resolution No. 025-2021, which authorized a rate increase for solid waste services for residential, multi-family, commercial, and industrial properties. The maximum rates increase annually through 2025, at which time they plateau; the rates are also subject to annual increases each year, not to exceed a total of 25%, for increases due to CPI and pass-through costs relating to disposal fees in Los Angeles County as detailed in Resolution No. 025-2021 and the attached Franchise Agreement Amendment (and consistent with the Proposition 218 Notice).

Franchise Agreement – Proposed Amendments

As set forth above, the Franchise Agreement establishes the maximum rate schedules for the amount that WRI may charge for solid waste services. The Franchise Agreement requires that adjustments to the maximum rate schedule for collection of solid waste be considered for adoption in accordance with Proposition 218 (i.e., California Constitution, Art. XIII C & D). (See Franchise Agreement sections 7.3.1, 7.3.2, & 7.4.1). If a rate increase is approved in compliance with Proposition 218, a corresponding amendment to the Franchise Agreement is necessary in order for WRI to implement the rate increase.

As a result of the City Council's approval of the rate increase pursuant to Resolution No. 025-2021 at the September 14, 2021 meeting, following a duly-noticed protest hearing in compliance with Proposition 218, the proposed First Amendment to the Franchise Agreement ("First Amendment") with WRI is before the City Council for consideration tonight. In addition to the rate increase, other changes – including the extension of the term of the Franchise Agreement and changes required as a result of a new law relating to organic waste – are also proposed. (These changes were proposed by WRI and vetted by MuniEnvironmental and/or the Ad-Hoc Committee.) For reference in evaluating the proposed changes, the original Franchise Agreement is attached hereto as Attachment "1," and the First Amendment is attached hereto as Attachment "2."

While not an exhaustive list or discussion of all changes, below is a high-level summary of some of the major changes proposed in the First Amendment:

1. Rate Increase and Changes to Provisions re Rates

In addition to complying with Proposition 218, for WRI to proceed with the rate increase, the Council will also have to approve the amendments to the Franchise Agreement to permit and adopt the new maximum rates.

The First Amendment reflects the rate increase as approved by Resolution No. 025-2021. The rate increase includes authorizing annual increases beyond the base rates set in the chart, by up to 25%, for CPI increases and pass-through costs for disposal fee increases. In addition to increasing the authorized maximum rates, the First Amendment specifies the methodology and implementation for these rate increases, and authorizes the possibility of further increases for extraordinary rate adjustments, which had previously been prohibited in the original Agreement. (See Section 30 of the First Amendment.) The First Amendment further specifies the obligations for compliance with Proposition 218 and noticing. (See Section 31 of the First Amendment.)

2. Term Extension

The original Franchise Agreement was set to expire on June 30, 2025, and allowed for a three-year further extension upon mutual agreement of the City and WRI. In the First Amendment, this language has been amended to extend the Franchise Agreement until

June 30, 2028, and includes an automatic extension for three years (until June 30, 2031), so long as WRI is not in breach of the Franchise Agreement. (See Sections 11 and 12 of the First Amendment.)

Note that the annual rate increases extend through 2025, at which time those annual increases for maximum rates and other adjustment increases plateau, as well.

3. SB 1383

In September of 2016, the State of California adopted SB 1383. The legislation calls for a 75% statewide reduction in organic waste deposited in landfills and a 20% improvement in edible food recovery by 2025. It further directs CalRecycle to prepare regulations to implement and achieve these goals. The rulemaking process took two years, with final regulations published in November 2020. The SB 1383 regulations will take effect on January 1, 2022, and require local governments to facilitate organics recycling compliance. Therefore, local governments must amend franchise agreements to include the provision of organics recycling services. In addition, jurisdictions must establish an edible food recovery program, conduct outreach and education, conduct capacity planning, procure recycled organics products, adopt an organics diversion ordinance, and maintain certain records.

Therefore, in addition to the rate increase, which includes rate increases resulting from SB 1383 compliance, the Council is asked to further consider approving the First Amendment, which, in part, mandates food waste recycling services for residential, multi-family, and commercial properties. In addition to the establishment of food waste recycling services, the First Amendment also added new outreach and compliance-related tasks to the scope of work to ensure continued compliance with SB 1383. To summarize, the changes relevant to SB 1383 are reflected in Sections 1-10, 13-29, and 34 of the First Amendment.

An update to the City's waste hauling ordinance will also come back to the Council later this year to implement the changes required by SB 1383

4. Miscellaneous Changes

Additionally, the First Amendment proposes to reduce (i) the umbrella insurance policy limit from \$20 million to \$10 million (see Section 32 of the First Amendment) and (ii) the performance bond requirement from \$1 million to \$500,000, and to further allow the performance bond provided to be made either in the form of a bond or line of credit (see Section 33 of the First Amendment). Finally, the First Amendment ends the tolling of Franchise Fees and Annual Program Fees that had been in effect since the beginning of the pandemic (approximately April 2020) and requires those tolled fees to be paid by July 1, 2023 and to resume regularly-scheduled payment of those fees moving forward (see Section 36 of the First Amendment).

FISCAL IMPACT

Approval of the recommended action will increase the maximum rates for solid waste services under the Franchise Agreement. This will result in a rate increase to WRI customers in the City beginning on October 1, 2021. Because the City receives a franchise fee of 10% of WRI's gross revenues collected within the City, and because the rates will increase effective October 1, 2021, if approved, the franchise fees remitted by WRI to the City would increase by approximately \$100,000.00 per year.

SUGGESTED ACTION

Approve Recommendation.

ALTERNATIVES:

Alternatively, the City Council could choose:

1. Not to approve the First Amendment, in which event the rate increase adopted through Resolution No. 025-2021, and other proposed amendments, will not be imposed.
2. Modify the proposed First Amendment, in the event that the City Council desires to make some of the changes proposed but not others, and approve the First Amendment, as amended.

ATTACHMENTS

A. Franchise Agreement

B. First Amendment to the Franchise Agreement

- a. Exhibit A to First Amendment: Resolution No. 025-2021