

**REFUSE, RECYCLING AND YARD  
WASTE SERVICES FRANCHISE**  
Revised and Restated

**Granted By**

**THE CITIES OF  
GONZALES, GREENFIELD, AND  
SOLEDAD, CALIFORNIA**

to

**TRI-CITIES DISPOSAL  
AND RECYCLING SERVICE, INC.**

Approved by: The Cities of Gonzales, Greenfield, and  
Soledad, California, and Tri-Cities Disposal  
and Recycling Service, Inc. in 2012

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**REFUSE, RECYCLING AND YARD WASTE SERVICES FRANCHISE**  
**Revised and Restated**

THIS Revised and Restated FRANCHISE (the "Franchise") is granted this First day of February 2012, by the CITIES OF GONZALES, GREENFIELD AND SOLEDAD, municipal corporations within the State of California (hereafter "Cities"), to Tri-Cities Disposal and Recycling Service, Inc., a California corporation (hereafter "Franchisee").

**RECITALS:**

**WHEREAS**, the Legislature of the State of California, by enactment of the California Integrated Waste Management Act of 1989 ("AB 939") established a solid waste management process which requires cities and other local jurisdictions to implement source reduction, reuse and recycling as integrated waste management practices; and

**WHEREAS**, AB 939 authorizes and requires local agencies to make adequate provisions for solid waste handling within their jurisdictions; and

**WHEREAS**, the Cities are obligated to protect the public health and safety of the residents of the Cities and have determined that arrangements by waste haulers for the collection of Solid Waste should be made in a manner consistent with the protection of public health and safety; and

**WHEREAS**, the Franchisee has previously been granted a Franchise for similar services by the Cities, and has demonstrated to the Cities that it has the experience, responsibility, and qualifications to conduct the services detailed herein for the collection, safe transportation and processing or disposal of Franchise Materials as described herein; and

**WHEREAS**, the Cities' Councils shall determine and find that the public interest, health, safety and well being would be served if the Franchisee performs the Solid Waste handling services described herein for single family residential, multi-family dwellings and commercial service recipients; and

**WHEREAS**, the Cities' Councils have each adopted separate resolutions authorizing the execution of this Agreement.

The Cities therefore grant the Franchisee the revised and restated franchise described herein on the terms and conditions established hereby:

## ARTICLE I DEFINITIONS

### SECTION 1.1 DEFINITIONS

The following capitalized names and terms shall have the meanings set forth below:

**Act** means the California Integrated Waste Management Act of 1989 (Division 30 of the California Public Resources Code), as amended, supplemented, superseded and replaced from time to time.

**Appendix** means an Appendix to this Franchise, as the same may be amended or modified from time to time in accordance with the terms hereof.

**Applicable Law** means any law, rule, regulation, requirement, guideline, permit, action, determination or order of any Governmental Body having jurisdiction, applicable from time to time to the Franchise Services; the Franchise Operating Assets; the siting, design, acquisition, permitting, construction, equipping, financing, ownership, possession, shakedown, testing, operation or maintenance of any of the Franchise Operating Assets; or any other transaction or matter contemplated hereby (including any of the foregoing which concern health, safety, fire, environmental protection, labor relations, mitigation monitoring plans, building codes, non-discrimination and the payment of minimum wages, and further including the Monterey County Integrated Waste Management Plan).

**Bulky Goods** means large and small household appliances, furniture, tires, carpets, mattresses and similar large items of Solid Waste.

**Change in Law** means any of the following events or conditions which has a material and adverse effect on the performance by the parties of their respective obligations under this Franchise (except for payment obligations), or on the siting, design, permitting, acquisition, construction, equipping, financing, ownership, possession, management, operation or maintenance of the Franchise Operating Assets or other matters to which Applicable Law applies:

1. the enactment, adoption, promulgation, issuance, modification, or written change in administrative or judicial interpretation on or after the Franchise Date of any Applicable Law; or
2. the order or judgment of any Governmental Body, on or after the Franchise Date, to the extent such order or judgment is not the result of willful or negligent action, error or omission or lack of reasonable diligence of the Cities or of the Franchisee, whichever is asserting the occurrence of a Change in Law; provided, however, that the contesting in good faith or the failure in good faith to contest any such order or judgment shall not constitute or be construed as such a willful or negligent action, error or omission or lack of reasonable diligence.

**Cities** means, jointly, the cities of Gonzales, Greenfield and Soledad municipal corporations within the State.

**City Facility** means any building, park, rights of way or other site owned, leased or used regularly and significantly by employees or contractors of the City.

**City Indemnified Parties** has the meaning specified in Section 10.1 hereof.

**City Managers** means the City Managers of the Cities.

**Commercial Customer** means any person who subscribes to Commercial Service provided by the Franchisee pursuant to this Franchise.

**Commercial Premises** means any building or site in the Franchise Area, other than a Residential or Multiple-Dwelling Premises, from which any business, service, non-profit, governmental, institutional, commercial or industrial activity is conducted, including without limitation motels, hotels, recreational vehicle parks, restaurants, professional offices, clubhouses, places of entertainment, manufacturing plants, and private schools.

**Construction and Demolition Debris (C&D)** means recyclable and non-recyclable waste building materials, packaging and rubble resulting from construction, remodeling, repair and demolition operations on pavements, houses, commercial buildings and other structures, and includes Mixed Waste. (California Code of Regulations, Section 20150-20164. Article 1-2. Chapter 2. Title 27)

**Containers** means collection containers for Solid Waste, Recyclables, Yard Waste, and/or Food Waste as specified in Appendix C.

**Customer** means any Residential Customer or Commercial Customer.

**Customer Rates** means those rates or charges to be billed on behalf of Franchisee by each City and paid by Franchisee Customers for collection, processing, transportation, disposal and other related services received. Customer rates will be established by the Cities, based on Franchisee's representations concerning the cost of providing the referenced services, and the Cities may at their sole discretion adjust such customer rates at any time during the term of the Franchise to ensure coverage of such costs.

**Designated Site** means the facility or facilities designated by the Cities for the disposal of Franchise Solid Waste as specified in Section 4.7 A.

**Designated Yard Waste Site** means the facility or facilities designated by the City for the processing of Franchise Yard Waste as specified in Section 4.7 A.

**Excluded Materials** means (1) Hazardous Waste, (2) Medical Waste, (3) Qualified Household Hazardous Waste, (4) Self-Hauled Waste, and (5) Excluded Recyclable Materials.

**Excluded Recyclable Materials** has the meaning specified in Section 3.1 C 1.

**Fees-and-Costs** means reasonable fees and expenses of employees, attorneys, architects, engineers, expert witnesses, contractors, consultants and other persons, and costs of transcripts, printing of briefs and records on appeal, copying and other reimbursed expenses, and expenses of any Legal Proceeding.

**Food Waste** means all source-separated material originally acquired for animal or human consumption included but not limited to: vegetable waste, fruit waste, grain waste, dairy waste, meat waste, fish waste; and compositable paper.

**Franchise** means this Revised and Restated Solid Waste, Refuse, Recycling and Yard Waste Services Agreement between the Cities and the Franchisee, dated February 1, 2012.

**Franchise Area** shall be that geographic area comprising the city limits of Gonzales, Greenfield and Soledad, which may be periodically amended to reflect changes to the geographic limits of any of the Cities.

**Franchise Date** means the date of execution of this Franchise by all parties hereto.

**Franchisee** means Tri-Cities Disposal and Recycling Service, Inc., a California corporation, and its successors and assigns permitted hereby.

**Franchisee Operating Assets** means all real and personal property of any kind, which is owned, leased, managed or operated by or under contract to the Franchisee for providing the Franchise Services, including without limitation, containers, vehicles, transfer stations, processing facilities, maintenance and storage facilities, administrative facilities, and other equipment, machinery, parts, supplies and tools.

**Franchise Materials** means materials generated in the Franchise Area, and shall include Franchise Solid Waste, Franchise Recyclable Materials and Franchise Yard Waste; provided, however, that Franchise Materials shall not include Excluded Materials.

**Franchise Recyclable Materials** means that portion of Franchise Materials (other than Franchise Yard Waste) which is separated from other Franchise Materials for Recycling. Franchise Recyclable Materials include newspaper, cardboard, office paper, mixed waste paper (including junk mail, catalogs, Kraft bags and Kraft paper, paperboard, egg cartons, phone books, brown paper, grocery bags, colored paper, construction paper, envelopes, legal pad backings, shoe boxes, cereal and other similar food boxes), computer paper, magazines, aseptic packaging, milk and juice cartons, glass (including brown, clear, and green glass bottles and jars), aluminum, tin, steel, small metal scrap, polyethylene therephthalate (PETE), high-density polyethylene (HDPE), and mixed plastic containers (#3 through #7) except #6 polystyrene, clean PE film plastics, used motor oil, used automotive oil filters, and any other materials mutually agreed by the parties.

**Franchise Services** means all of the duties and obligations of the Franchisee hereunder.

**Franchise Solid Waste** means that portion of Franchise Materials which does not constitute Franchise Recyclable Materials or Franchise Yard Waste.



**Franchise Yard Waste** means that portion of Franchise Materials consisting of all tree and plant trimmings, grass cuttings, dead plants, weeds, leaves, branches, wood waste and dead trees and similar materials and any other similar materials mutually agreed by the parties; provided, however, that Franchise Yard Waste shall not include any materials identified in Section 3.1 C or otherwise mutually agreed by the parties to be excluded from the definition.

**Franchise Year** means the fiscal year beginning on July 1 and ending on the following June 30, except that the first Franchise Year shall begin on the Franchise Date and end on the following June 30 and the last Franchise Year shall begin on the July 1 preceding the last day of the Term of this Franchise and end on such last day of the Term.

**Governmental Body** means any federal, State, county, city, local or regional legislative, executive, judicial or other governmental board, agency, authority, commission, administration, court or other body, or any officer thereof acting within the scope of his or her authority.

**Hazardous Waste** means (a) any waste which by reason of its quality, concentration, composition or physical, chemical or infectious characteristics may do either of the following: cause, or significantly contribute to, an increase in mortality or an increase in serious irreversible, or incapacitating reversible, illness, or pose a substantial threat or potential hazard to human health or the environment when improperly treated, stored, transported or disposed of or otherwise mismanaged, or (b) any waste which is defined or regulated as a Hazardous Waste, toxic substance, hazardous chemical substance or mixture, or asbestos under Applicable Law, as amended from time to time including, but not limited to:

1. the Resource Conservation and Recovery Act and the regulations contained in 40 CFR Parts 260-281;
2. the Toxic Substance Control Act (15 U.S.C. Section 2601 et seq.) and the regulations contained in 40 CFR Parts 761-766;
3. the California Health and Safety Code, §25117;
4. the California Public Resources Code, §40141; and
5. future additional or substitute federal, state or local laws pertaining to the identification, treatment, storage or disposal of toxic substances or Hazardous Wastes; and (b) radioactive materials which are source, special nuclear or by-product material as defined by the Atomic Energy Act of 1954 (42 U.S.C. Section 2011 et M.) and the regulations contained in 10 CFR Part 40.

**Insurance Requirement** means any rule, regulation, code, or requirement issued by any fire insurance rating bureau or any body having similar functions or by any insurance company which has issued a policy with respect to the Franchise Operating Assets or the Franchise Services.

**Legal Entitlement** means all permits, licenses, approvals, authorizations, consents and entitlements of whatever kind and however described which are required under Applicable Law

to be obtained or maintained by any person with respect to the Franchise Operating Assets or the performance of any obligation under this Franchise or the matters covered hereby.

**Legal Proceeding** means every action, suit, litigation, arbitration, administrative proceeding, and other legal or equitable proceeding having a bearing upon this Franchise.

**Loss-and-Expense** means any and all loss, liability, obligation, damage, delay, penalty, judgment, deposit, cost, claim, demand, charge, tax, or expense, including all Fees-And-Costs.

**Medical Waste** means (a) any waste capable of producing an infection or pertaining to or characterized by the presence of pathogens, including without limitation certain wastes generated by medical practitioners, hospitals, nursing homes, medical testing labs, mortuaries, taxidermists, veterinarians, veterinary hospitals and medical testing labs and (b) any waste which includes animal wastes or parts from slaughterhouses or rendering plants.

**Multiple-Dwelling Customer** means any person who subscribes to Multiple-Dwelling Service provided by the Franchisee pursuant to this Franchise.

**Multiple-Dwelling Premises** means any building or structure, or portion thereof used for residential purposes and having three (3) or more distinct living units.

**Premises** means any Residential, Multiple-Dwelling, or Commercial Premises.

**Public Solid Waste and Recycling Containers** means containers designated by the Cities for the collection of Franchise Solid Waste, and Franchise Recyclable Materials or Recyclables at City Facilities or public places.

**Qualified Household Hazardous Waste** means waste materials determined by the State Integrated Waste Management Board, the Department of Health Services, the State Water Resources Control Board, or the Air Resources Board to be:

1. Of a nature that they must be listed as hazardous in State statutes and regulations;
2. Toxic/ignitable/corrosive/reactive; and
3. Carcinogenic/mutagenic/teratogenic;

which are discarded from households as opposed to businesses. Qualified Household Hazardous Waste shall not include Hazardous Waste.

**Recycle, Recycled or Recycling** means the process of separating, collecting, sorting, cleansing, treating, reconstituting or otherwise processing materials that are or would otherwise be disposed of in a landfill and returning them to the economic mainstream in the form of raw material for new, reused or reconstituted products which meet the quality standards necessary to be used in the marketplace.

**Recycling Revenues** means all revenues, including the California Department of Resources Recycling and Recovery's (CalRecycle) Beverage Container Recycling Curbside Payment Program, net of transportation, brokerage and processing costs, resulting from the sale of

Residential, Multiple Dwelling and Commercial Recyclable Materials collected through provision of Franchise Services.

**Residential Customer** means any person who subscribes to Residential Service provided by the Franchisee pursuant to this Franchise.

**Residential Premises** means any building in the Cities used for or designated as a residential dwelling, including condominium projects, duplexes, townhouse projects, or mobile home parks.

**Residue** means materials which remain after processing Franchise Recyclable Materials or Franchise Yard Waste which cannot be recycled, marketed, or otherwise utilized, including but not limited to materials such as rocks, contaminated paper, putrescibles, and other debris.

**Routing and Collection System** means the routing and collection system (a description of which is attached hereto as Appendix G) for Franchise Materials which is utilized by the Franchisee to provide the Franchise Services, as it may be modified from time to time in accordance with Section 4.2 A hereof.

**Self-Hauled Waste** means Solid Waste or Yard Waste collected and hauled by Self-Haulers.

**Self-Hauler** means any person not engaged commercially in waste haulage that infrequently collects and hauls Solid Waste, Recyclables, C&D and Yard Waste generated from residential, commercial, or industrial activities conducted solely by such person.

**Service Coordinator** means the City Managers or their designee.

**Service Fee** means the fees as specified in Section 7.1 A and in the fee schedules in Appendix D.

**Service Fee Schedule** means the Service Fee Schedule attached hereto as Appendix D.

**Solid Waste** means all garbage, refuse, rubbish and other materials and substances discarded or rejected as being spent, useless, worthless or in excess to the generator thereof at the time of such discard or rejection and which are normally disposed of by or collected from residential (single family and multi-family), commercial, industrial, governmental and institutional establishments, which are acceptable at Class III landfills under Applicable Law.

**State** means the State of California.

**Term** has the meaning specified in Article IX hereof.

**Ton** means a "short ton" of 2,000 pounds.

**Uncontrollable Circumstance** means only the following acts, events or conditions, whether affecting the Franchise Operating Assets, the Cities, or the Franchisee, to the extent that it materially and adversely affects the ability of either party to perform any obligation under the Franchise (except for payment obligations), if such act, event or condition is beyond the reasonable control and is not also the result of the willful or negligent act, error or omission or failure to exercise reasonable diligence on the part of the party relying thereon as justification for not performing an obligation or complying with any condition required of such party under this Franchise; provided, however, that the contesting in good faith or the failure in good faith to

contest such action or inaction shall not be construed as willful or negligent action or a lack of reasonable diligence of either party:

1. An act of God (but not including reasonably anticipated weather conditions for the geographic area of the Facility), hurricane, landslide, lightning, earthquake, fire, explosion, flood, sabotage or similar occurrence, acts of a public enemy, extortion, war, blockade or insurrection, riot or civil disturbance;
2. A Change in Law;
3. The failure of any appropriate Governmental Body or private utility having operational jurisdiction in the area in which the Franchise Operating Assets are located to provide and maintain the Designated Disposal Site, utilities, services, water and sewer lines and power transmission lines to the Franchise Operating Assets, which are required for the performance of the Franchise Services and which directly results in a delay or curtailment of the performance of the Franchise Services; and
4. Pre-emption of materials or services by a Governmental Body in connection with a public emergency or any condemnation or other taking by eminent domain of any portion of the Franchise Operating Assets.

It is specifically understood that none of the following acts or conditions shall constitute Uncontrollable Circumstances:

1. General economic conditions, interest or inflation rates, or currency fluctuation or changes in the cost or availability of fuel, commodities, supplies or equipment;
2. Changes in the financial condition of the Cities, the Franchisee or any of its affiliates or any subcontractor affecting their ability to perform their obligations;
3. The consequences of errors, neglect or omissions by the Franchisee, any of its affiliates or any subcontractor of any tier in the performance of the Franchise Services;
4. The failure of the Franchisee to secure patents or licenses in connection with the technology necessary to perform its obligations hereunder;
5. Union work rules, requirements or demands which have the effect of increasing the number of employees employed in connection with the Franchise Operating Assets or otherwise increase the cost to the Franchisee of operating and maintaining the Franchise Operating Assets or providing the Franchise Services;
6. Strikes, work stoppages or other labor disputes or disturbances occurring with respect to any activity performed or to be performed by the Franchisee or any of the Franchisee's subcontractors or suppliers in connection with the Franchise Operating Assets or the Franchise Services;
7. Any failure of any subcontractor or supplier to furnish labor, materials, service or equipment for any reason;
8. Equipment failure;

9. Any impact of prevailing wage law, customs or practices on the Franchisee's construction or operating costs;
10. changes in market prices for, or the unavailability of markets for, the sale or purchase of Franchise Recyclable Materials or Franchise Yard Waste, or
11. Any act, event or circumstance occurring outside of the State of California.

**Wood Waste** means dimensional lumber, post-consumer, and other wood products, pallets and tree trunks, all of which are without paint or chemical treatment of any kind.

**Yard Waste** means all tree and plant trimmings, grass cuttings, dead plants, weeds, leaves, branches, and dead trees and similar materials and any other similar materials mutually agreed by the parties; provided, however, that the parties hereto may, from time to time, mutually agree to exclude certain materials from the definition.

## **SECTION 1.2 INTERPRETATION**

In this Franchise, unless the context otherwise requires:

**A. References Hereto:** The terms "hereby," "hereof," "herein," "hereunder" and any similar terms refer to this Franchise, and the "hereafter" means after, and the term "heretofore" means before, the date of execution of this Franchise.

**B. Gender and Plurality:** Words of the masculine gender mean and include correlative words of the feminine and neuter genders and words importing the singular number mean and include the plural number and vice versa.

**C. Persons:** Words importing persons include firms, companies, associations, general partnerships, limited partnerships, trusts, business trusts, corporations, non-profit corporations and other legal entities, including Governmental Bodies, as well as individuals.

**D. Headings:** The table of contents and any headings preceding the text of the Articles, Sections, and subsections of this Franchise shall be solely for convenience of reference and shall not constitute a part of this Franchise, nor shall they affect its meaning, construction, or effect.

**E. Entire Franchise:** This Franchise contains the entire agreement between the parties hereto with respect to the transactions contemplated by this Franchise and nothing in this Franchise is intended to confer on any person other than the parties hereto and their respective permitted successors and assigns hereunder any rights or remedies under or by reason of this Franchise.

**F. Reference to Days:** All references to days herein are to calendar days, including Saturdays, Sundays and holidays, except as otherwise specifically provided.

**G. Counterparts:** This Franchise may be executed in any number of original counterparts. All such counterparts shall constitute but one and the same Franchise.

**H. Applicable Law:** This Franchise shall be governed by and construed in accordance with the applicable laws of the State of California.

**I. Severability:** If any clause, provision, subsection, Section or Article of this Franchise shall be determined to be invalid by any court of competent jurisdiction, then the parties hereto shall:

1. Promptly meet and negotiate a substitute for such clause, provision, section or Article which shall, to the greatest extent legally permissible, effect the intent of the parties therein;
2. If necessary or desirable to accomplish item (1) above, apply to the court having declared such invalidity, for a judicial construction of, the invalidated portion of this Franchise;
3. Negotiate such changes in, substitutions for or additions to the remaining provisions of this Franchise as may be necessary in addition to and in conjunction with items (1) and (2) above to effect the intent of the parties in the invalid provision. The invalidity of such clause, provision, subsection, Section or Article shall not affect any of the remaining provisions hereof, and this Franchise shall be construed and enforced as if such invalid portion did not exist. Notwithstanding the foregoing, however, the provisions of this Franchise reserving to the Cities the right and power to designate the Designated Disposal Site for Franchise Solid Waste, as provided in Section 4.7 A hereof and otherwise herein, shall not be deemed to be severable from the other provisions hereof. In the event such provisions are held in any Legal Proceeding which is binding upon the Cities to be null, void, in excess of the Cities' powers or otherwise invalid or unenforceable, and the Franchisee as a result thereof, utilizes a disposal site other than the Designated Disposal Site, this entire Franchise shall immediately terminate without any liability of the Cities to the Franchisee.

**J. Defined Terms:** The definitions set forth in Section 1.1 hereof shall control in the event of any conflict with the definitions used in the recitals hereto. Should there appear to be any uncertainty, ambiguity or discrepancy in terms or provisions hereof, or should any misunderstanding arise as to the interpretation to be placed upon any portion hereof or the performance required hereunder, the City Managers shall be consulted and their decision thereon shall be final and conclusive.

**ARTICLE II**  
**REPRESENTATIONS AND WARRANTIES OF THE FRANCHISEE**

**SECTION 2.1 REPRESENTATIONS AND WARRANTIES OF THE FRANCHISEE**

The Franchisee, by acceptance of this Franchise, represents and warrants that:

**A. Existence and Powers:** The Franchisee is duly organized and validly existing as a corporation under the laws of the State of California, with full legal right, power and authority to enter into and perform its obligations under this Franchise.

**B. Due Authorization and Binding-Obligation:** The Franchisee has duly authorized the execution and delivery of this Franchise. This Franchise has been duly executed and delivered by the Franchisee and constitutes the legal, valid and binding obligation of the Franchisee, enforceable against the Franchisee in accordance with its terms except insofar as such enforcement may be affected by bankruptcy, insolvency, moratorium and other laws affecting creditors' rights generally.

**C. No Conflict:** Neither the execution nor the delivery by the Franchisee of this Franchise nor the performance by the Franchisee of its obligations hereunder

1. Conflicts with, violates or results in a breach of any law or governmental regulations applicable to the Franchisee;
2. Conflicts with, violates or results in a breach of any term or condition of any judgment, decree, agreement (including, without limitation, the certificate of incorporation of the Franchisee) or instrument to which the Franchisee is a party or by which the Franchisee or any of its properties or assets are bound, or constitutes a default under any such judgment, decree, agreement or instrument, or
3. Will result in the creation or imposition of any encumbrance of any nature whatsoever upon any of the properties or assets of the Franchisee.

**D. No Litigation:** There is no action, suit or other proceeding as of the Franchise Date, at law or in equity, before or by any court or governmental authority, pending or, to the Franchisee's best knowledge, threatened against the Franchisee which is likely to result in an unfavorable decision, ruling or finding which would materially and adversely affect the validity or enforceability of this Franchise or any such agreement or instrument entered into by the Franchisee in connection with the transactions contemplated hereby, or which would materially and adversely affect the performance by the Franchisee of its obligations hereunder or by the Franchisee under any such other agreement or instrument.

**E. No Legal Prohibition:** The Franchisee has no knowledge of any Applicable Law in effect on the Franchise Date which would prohibit the performance by the Franchisee of this Franchise and the transactions contemplated hereby.

**F. Information Supplied by the Franchisee.** The information supplied by the Franchisee in all submittals made in connection with negotiation and execution of this Franchise is correct and complete in all material respects.

**G. Waiver of Certain Rights:** The Franchisee hereby:

1. Waives any right it may possess to contest the legal right, power or authority of the Cities to enter into and perform this Franchise, including particularly the provisions thereof providing for the delivery to the Designated Disposal Site of Franchise Materials which are not diverted from landfill disposal, and Franchise Yard Waste to the Designated Yard Waste Site and agrees to cooperate with and assist the Cities in supporting the legal validity of and authorization for such provisions in the event of any legal challenge thereto brought or made in any manner by a third party; and
2. Agrees to observe and comply with the operating rules and regulations established by the Cities with respect to the Designated Disposal Site, including without limitation those governing delivery procedures, receiving hours, vehicle and waste inspection, Hazardous Waste screening, litter control and safety measures.

**H. Free Market Decision:** The Franchisee, without constraint and as a free market business decision in accepting this Franchise, agrees to use the Designated Disposal Site for disposal of Franchise Solid Waste and the Designated Yard Waste Site for processing of Franchise Yard Waste and such decision in no way constitutes a restraint of trade notwithstanding any change in law regarding flow control limitations or any definition thereof.

**I. Franchisee Investigation:** The Franchisee has made an independent investigation to its satisfaction of matters, conditions, and circumstances relating to its execution and delivery of this Franchise and its obligations hereunder, including the nature and amount of Franchise Materials generated within the Cities and the source reduction and recycling programs now in effect or currently planned to be put into effect in the Cities. Franchisee acknowledges that the Cities make no warranties with respect to any data contained in the Request for Proposals. The Cities expressly disclaim any warranties, either express or implied, as to the accuracy or reliability for any particular purpose of any data supplied by the Cities.

## ARTICLE III FRANCHISE

### SECTION 3.1 GRANT AND ACCEPTANCE OF FRANCHISE

**A. Franchise Service:** Pursuant to Sections 40059 of the Act, the Cities hereby grant an exclusive franchise, license, and privilege, on the terms and conditions set forth herein, to the Franchisee for the service in the Franchise Area of collecting, transporting, handling, processing and/or disposing of Franchise Materials. By its executed acceptance hereof the Franchisee



accepts the franchise, license and privilege so granted by the Cities on and subject to the terms and conditions contained herein and agrees to perform all of the duties and obligations of a franchisee thereunder. Specifically, the Franchisee agrees to provide Franchise Services to any person within the Franchise Area requesting such service, subject to the payment by such person of the Customer Rates specified in this Franchise. The Franchisee shall provide residential and commercial service, as requested by the Customer, per the service specified in this Franchise.

**B. Franchise Area:** The area with respect to which this Franchise is granted is the Franchise Area.

**C. Exceptions to Franchise:** The franchise, license, and privilege granted in subsection 3.1.A hereof shall not give the Franchisee any right or responsibility with respect to Excluded Materials or to the materials described below. The granting of this Franchise shall not preclude the categories of materials described below from being delivered to and collected and transported by others, provided that nothing in this Franchise is intended to or shall be construed to excuse any person from any authorization from the Cities which is otherwise required by law:

1. Materials (Materials described in this clause shall constitute "Excluded Recyclable Materials") which would otherwise constitute Franchise Recyclable Materials but which are not deposited in Containers provided by the Franchisee, or properly bundled or packaged and placed alongside same, and are (i) collected by youth, civic, or charitable organizations, and private recyclers (with or without payment or compensation of any type by the generator of such materials to such collectors) and (ii) comprised of loads at least 90% of each load of which are actually Recycled, and are not deposited in landfills for disposal;
2. Materials which would otherwise constitute Franchise Materials removed from a premises by a contractor as an incidental part of a gardening, landscaping, tree trimming, cleaning, maintenance, construction or similar service offered by that contractor rather than as a hauling service;
3. Dead animals and animal waste and remains from slaughterhouses or butcher shops;
4. By-products of sewage treatment, including sludge, grit, and screenings.

Further, the provisions of this Franchise shall not preclude or prohibit Cities, or any officer or employer thereof, or any employee of the State of California, or any governmental subdivision thereof, from collecting, removing, and disposing of Solid Waste from Cities or State facilities. In addition, the provisions of this Franchise shall not preclude or prohibit the owner or occupant of any Premises from collecting, removing, and disposing of Solid Waste, Recyclables, Wood Waste or Yard Waste generated on such Premises.

**D. Haulage by Third Parties:** This Franchise shall not prohibit haulers of Solid Waste other than Franchise Materials from hauling such waste over city streets in accordance with Applicable Law.

### **SECTION 3.2 ASSIGNMENT AND TRANSFER OF FRANCHISE**

**A. Consent of Cities Required:** This Franchise shall not be transferred, sold, pledged, hypothecated, leased, or assigned, nor shall any of the rights or privileges herein be transferred, sold, pledged, hypothecated, leased or assigned, either in whole or in part, nor shall title hereto or thereto, either legal or equitable, or any right, interest, or property herein or therein, pass to or vest in any person, except the Franchisee, either by action or inaction of the Franchisee or by operation of law, without the prior written consent of the Cities, which may be withheld or delayed in its sole and absolute discretion with or without cause. Any attempt by the Franchisee to effectuate any of the foregoing without the consent of the Cities shall be null and void.

**B. Imposition of Conditions:** The Cities may impose conditions and restrictions on any approval it may elect to give of any transaction described in Sections 3.2 A and 3.3 hereof, including without limitation conditions relating to payment of all costs relating to such transfer and an additional fee of \$10,000 and requiring acceptance of amendments of this Franchise.

### **SECTION 3.3 CHANGE IN FRANCHISEE OWNERSHIP OR CONTROL**

**A. Current Ownership and Control:** The Franchisee represents that, as of the Franchise Date, the voting stock of the Franchisee is owned solely by Gary Parola.

**B. Maintenance of Corporate Existence:** The Franchisee covenants that during the Term of this Franchise it will maintain its corporate existence, will not dissolve or otherwise dispose of all or substantially all of its assets, and will not take any other action which would materially impair the ability of the Franchisee to perform the Franchise Service.

**C Consolidation, Merger, Sale, Transfer and Change in Control:** The Franchisee shall not, without the prior written consent of the Cities which may be withheld or delayed in its sole and absolute discretion, acquire any entity, consolidate with or merge with another entity, or permit one or more other entities to consolidate with or merge into it, which results in loss by the Franchisee of operational or voting control of Franchisee.

**D. Transfer of Voting Stock:** The Cities' prior written consent, which may be withheld or delayed in its sole and absolute discretion, shall be required for the sale or transfer by any means, whether by agreement or by operation of law (including transfers resulting from death, bankruptcy or divorce) of any of the voting stock of the Franchisee, which results in loss by the Franchisee of operational or voting control of Franchisee.

## **SECTION 3.4 PAYMENT OF CERTAIN COSTS BY FRANCHISEE**

If the Franchisee requests the consent of the Cities for any transaction described in Section 3.2 or Section 3.3 hereof, the Franchisee shall reimburse the Cities for all costs and expenses incurred by the Cities in reviewing, examining, analyzing and acting on the request, including all direct and indirect administrative expenses of the Cities and consultants and attorneys' fees and expenses. In addition, the Franchisee shall pay a transfer fee in the amount of \$10,000 as described in Section 3.2.B. Bills shall be supported with evidence of the expense or cost incurred. The Franchisee shall pay such bills within thirty (30) days of receipt.

## **ARTICLE IV SERVICES**

### **SECTION 4.1 COLLECTION AND PROCESSING SERVICES**

**A. Commencement of Service:** Commencing February 1, 2012, the Franchisee shall provide the Franchise Services, as more particularly described below and implemented according to the schedule provided in Appendix B.

**B. Residential Services:**

1. **Franchise Solid Waste Collection:** The Franchisee shall collect and deliver to the Designated Disposal Site all Franchise Solid Waste generated by Residential Customers and placed curbside for collection not less than once per week. Collection will be performed with fully automated collection vehicles (as described in Appendix C) appropriate in each case to provide service to the particular Residential Customers in the Franchise Area.
2. **Franchise Recyclable Materials Collection:** The Franchisee shall collect, process and market all Franchise Recyclables generated by Residential Customers and delivered for collection not less than weekly. Collection will be performed with dedicated Recycling collection vehicles or other vehicles (as described in Appendix C) appropriate in each case to provide service to the particular Residential Customers in the Franchise Area. Additional Containers for Franchise Recyclable Materials are to be made available to Residential Customers upon request at the rates specified in Appendix D.
3. **Franchise Yard Waste Collection Program:** The Franchisee shall collect and deliver to the Designated Disposal Site all Franchise Yard Waste generated by Residential Customers at the Residential Customer's curbside at least once per week. Collection will be performed with fully automated collection vehicles (as described in Appendix C). The Franchisee shall provide, industry standard Containers (as described in Appendix C).

4. **Special Services:** The Franchisee shall provide, without charge or comparison, special manual carry-out services for those Residential Customers who are determined by the City Managers, to have difficulty doing so themselves due to physical disabilities or frailty.
5. **Overages:** When Customers have more Solid Waste or Yard Waste than can fit in the Containers, Franchisee shall collect bags of Solid Waste or Yard Waste placed alongside or on top of the Containers. Yard Waste placed in bags will be taken as Solid Waste since bags cannot be taken into Yard Waste stream. The Franchisee shall be paid the per bag charge indicated in Appendix D for the collection of bagged overages. Customer Containers with overages shall be tagged per Section 4.5 E and the Cities shall be notified of the overages for billing purposes.

**C. Commercial Services:**

1. **Franchise Solid Waste Collection:** The Franchisee shall provide the number and kind of industry standard Containers, collect and deliver to the Designated Disposal Site all Franchise Solid Waste generated by Commercial Customers, as scheduled with such Commercial Customers, but not less, than once per week or as required by Applicable Law. The collection will be performed with collection vehicles using Containers provided by the Franchisee.
2. **Commercial Recycling Collection:** The Franchisee shall, without charge or compensation, provide the number and kind of industry standard Containers and collect, process and market Recyclables generated by Commercial Customers, as scheduled with such Commercial Customers, but not less than once per week. The collection will be performed with collection vehicles using Containers provided by the Franchisee.
3. **Drop-Box/Roll-Off:** If requested by a Residential or Commercial Customer, the Franchisee shall provide drop-box/roll-off service according to the fees specified in Appendix D. The Franchisee shall bill the Customer directly for this service and shall include both the direct disposal costs and a twenty (20) percent franchise fee on the entire bill. The franchise fee shall be paid by the Franchisee to the City in which the Customer is located. The Franchisee shall be responsible for paying the direct disposal costs for drop-box/roll-off service at the Designated Disposal Site.
4. **Push, Enclosure, and Long Walk Services,:** Upon receipt of a customer request for a roll-out bin, the Franchisee shall provide push service (up to 15 feet on smooth level surface) for all commercial customers, who are required to roll out containers (up to 4 cubic yards) to a designated location for collection, such as but not limited to alley ways, narrow streets, etc. The Franchisee shall dismount

vehicle, roll out containers for collection and then return containers to secure enclosure location. The Franchisee shall provide enclosure service for those customers whose containers must be removed and replaced in an enclosure not meeting the requirements of Section 4.4 B of this agreement, in order to be serviced. The Franchisee shall provide long walk services, as determined by the Franchisee, where the Franchisee must travel in excess of 15 feet from the centerline of the road used by the collection vehicle in order to service the container. The Franchisee shall be entitled to charge additional fees in accordance with Appendix D for providing these services.

**D. City Services:**

1. **City Facilities:** The Franchisee shall, without charge or compensation, collect Franchise Solid Waste and Franchise Recyclable Materials from all City Facilities located within the boundaries of the Cities and identified in Appendix E.
2. **Public Solid Waste and Recycling Containers:** The Franchisee shall, without charge or compensation, collect Solid Waste and Recyclables from Public Solid Waste Containers and Public Recycling Containers located at city centers, parks and other City Facilities at locations and schedule identified in Appendix E and as such locations and schedule may be modified from time to time by the City Managers.
3. **Special Events:** Each year, the Franchisee shall provide, without charge or additional fees, adequately sized containers for the disposal of Solid Waste and adequately sized Containers for the collection of Recyclables and Food Waste (if applicable) for up to six (6) special events in each City. The Franchisee shall empty such Containers, as needed, during such special events. The Franchisee shall deliver drop boxes to specified sites and then dispose of the Solid Waste at the Designated Disposal Site and process and market the Recyclables. The Franchisee shall not be responsible for paying for the disposal costs relating to the Franchise Solid Waste collected pursuant to this provision; provided, however, the Franchisee will bear the costs of processing and marketing the Recyclables. The Franchisee shall also make available for City Staff or event promoters a supply of individual recycling and food waste bins (after food waste program has been established) to be paired with solid waste bins for placement throughout the event area.
4. **Illegal Dumping Abatement:** Upon request of the City Managers, the Franchisee shall within two normal business days collect and remove from City streets, alleys, parks and other public areas which are located within the boundaries of the Cities, Bulky Goods and Solid Waste in any volume which has been unlawfully abandoned or discarded. For any such collection the Franchisee shall

receive compensation from the Cities on the basis of time and materials at rates as approved by the City Managers. The Franchisee shall create a specific work order in response to each call received by the City Managers with a monthly "Summary of Unlawfully Discarded Solid Waste Work Order Completed." The summary shall include, but not be limited to, the date, time, hours spent, and type of unlawfully discarded Solid Waste Collected and disposed of.

**E. Bulky Goods:** The Franchisee shall collect Bulky Goods and excess amounts of Franchise Materials from Residential Customers and Commercial Customers in accordance with this Section at the rates specified in Appendix D. To arrange for a Bulky Goods pickup, a Customer must call the local office of the Franchisee Monday through Friday between the hours of 8:00 a.m. and 5:00 p.m. to arrange for a mutually acceptable time and day for the collection of said material. The Franchisee shall then pick up the material at the agreed upon day and time. Unless otherwise agreed by the Customer, this day and time shall be within the week following the date when the Customer first called for this service.

**F. Annual City Cleanups:**

1. Once each Franchise year, in each City, on a week designated by each City Manager, the Franchisee shall, without charge or additional fees, undertake an "Annual City Cleanup" program, pursuant to which the Franchisee shall provide three (3) 40-cubic yard collection containers to be placed at a location or locations designated by the City Managers, for the collection of all Franchise Materials and Bulky Goods by any Residential or Multifamily Premises Customer during a one week period. The Franchisee will work with the City Managers to coordinate the cleanup weeks at least one month in advance and will be responsible for advertising the events at least two weeks in advance and will notify all Customers regarding the specific date for collection and allowable materials in accordance with Appendix F. The locations will be monitored by City Staff and each Container will be dumped once per day Monday through Saturday. All materials will be delivered to the Designated Disposal Site.
2. In addition to the cleanup referenced above, the Franchisee shall work with the City Managers to establish a time and coordinated effort for the removal of litter and debris from designated public right-of-ways in each City. This is to be done twice annually for a maximum of two (2) miles of roadway per City.

**G. Processing Services:**

1. Recyclables Processing and Marketing: The Franchisee shall be responsible for the following activities:
  - a) the receipt, storage, and processing of all Franchise Recyclable Materials collected by the Franchisee;

- b) the marketing of products recovered from the processing of Franchise Recyclable Materials in accordance with the marketing plan submitted by the Franchisee under this Franchise for approval by the City Managers.
2. Payment of Recyclables Processing Marketing and Residue Disposal Costs: The Franchisee shall be responsible for the payment of all costs and expenses associated with the transportation, processing and marketing of Franchise Recyclable Materials collected or delivered under this Franchise, including any costs incurred by the Franchisee for processing. In addition, the Franchisee will bear the costs of, and is solely responsible for, the proper and lawful disposal of all processing Residues at the Designated Disposal Site.
3. City Designation of Facility in Certain Circumstances: The Cities may designate an alternative processing facility for the temporary or permanent receipt, storage, and/or processing of Recyclables collected or delivered under this Franchise in the event that the Franchisee is unable, or otherwise fails, to receive and process such Recyclables in accordance to this Franchise. The Franchisee shall be responsible for all costs associated with the use of such alternate facility, including the cost of transportation and the payment of any tipping or processing fees or other costs payable to the owner or operator of any such alternate facility designated by the Cities due to the unavailability of the Franchisee's processing facility.
4. Franchisee Responsibility for Marketing: The Cities shall have no responsibility for the availability of markets for recycled-products, nor shall they have any liability associated with or resulting from the markets for, or end-uses of, Recycled products, and the Franchisee shall indemnify and hold the Cities harmless from same. In addition, the Franchisee agrees to aggressively explore its ability to collect, process, and market additional materials, such as film plastic and textiles.
5. Recycling Market Development Zone: The Franchisee shall make recyclables available to remanufacturing businesses, identified by the City Managers, within the Central Coast Recycling Market Development Zone at the prevailing market prices for those Franchise Recyclable Materials, or at such other prices agreed to by the parties hereto. The Franchisee will use reasonable efforts to process Franchise Recyclable Materials to the specifications desired by such businesses in the Central Coast Recycling Market Development Zone.

**H. Public Outreach and Education:** The Franchisee shall provide, without charge or compensation, a public outreach and education program to properly utilize the Franchise Services, enhance program participation and maximize diversion of Recyclables and Yard Waste Sixty (60) days prior to the commencement of the collection program. The Franchisee shall submit a public outreach and education plan for review and approval of the Cities. The

Franchisee shall work with an appropriate contractor or designated staff approved by the City Managers trained in public relations to provide focused, quality public education and awareness efforts. At a minimum, the public outreach and education plan will include: research and planning, media relations and advertising, video and radio programming, publications, special events, displays and programs, community presentations, school activities, newsletters, and consumer surveys as further defined in Appendix F. All public outreach and education materials produced by the Franchisee shall be bi-lingual in both English and Spanish and must be reviewed by the Cities in advance of distribution. The plans and budgets for each Franchise Year shall be submitted to the Cities Managers for approval prior to implementation of such plans, as further defined in Appendix K, Reporting Requirements.

**I. Customer Service Level Determination:** The Franchisee shall provide subscription data to the Cities as directed by the City Managers. The service fee shall constitute the exclusive compensation to the Franchisee for the Franchise Services provided to Residential and Commercial Customers.

**J. Changes in Classification:** The Franchisee may make any change in the classification of service requested by any Residential Customer or any Commercial Customer upon written notice by the Franchisee to, but without the approval of, the City Managers. Any such change shall become effective on the first day of the week following the date of the request.

**K. Christmas Trees:** The Franchisee shall collect all Christmas trees discarded by all Residential Customers. Trees to be placed curbside will be collected on the regularly scheduled collection day the week after New Year's Day, free of additional charge to the Cities or such Customer. Christmas Trees placed for collection after the collection period will be collected in the Yard Waste Container. Customers will be required to cut the trees, if necessary, to fit in their yard waste carts or to place trees on the curb for collection. All Christmas Trees will be delivered by Franchisee to the Designated Disposal Site to divert the trees from landfill disposal. The Franchisee shall be responsible for individual customer notification and newspaper advertisement prior to the collection program informing residents of the dates of collection.

**L. Additional Services:** The Franchisee shall provide special services identified in the Service Fee Schedule identified in Appendix D. Franchisee shall also have the right, but not the obligation, to provide additional special services requested by any Customer which are directly related and ancillary to any of the other Franchise Services authorized hereunder. Such special services may include, without limitation, steam cleaning of Containers, providing roll-off Containers to Customers for special events or other special collection needs, and compactor maintenance services.

**M. Service Coordinator:** The Cities and the Franchisee each shall designate in writing on or immediately following the Franchise Date a person to transmit instructions, receive information and otherwise coordinate service matters arising pursuant to this Franchise (each a Service Coordinator). The City Service Coordinators shall be the City Managers or designees.



Either party may designate a successor or substitute Service Coordinator at any time by written notice to the other party.

**N. Used Motor Oil and Filter Collection:** Franchisee shall, without charge or additional fees, collect used motor oil and filters in a sealed container set out curbside by Residential Customers on their normal collection day. Franchisee shall use the containers and filter bags provided by the Monterey County Health Department's Used Motor Oil and Filter Recycling Program (Program). If the Program is unable to provide containers and filter bags, Franchisee shall provide containers and bags of a similar design and function. Franchisee shall use reasonable business efforts to recycle used oil and filters collected with State-authorized recyclers. Franchisee shall not collect used oil and filters that are contaminated as they constitute Hazardous Waste. Franchisee shall tag any oil and/or filters that are determined to be contaminated, provide an explanation as to why the material(s) are considered contaminated, and provide Residential Customers with directions for the proper disposal of such material(s).

**O. Home Composting Bin Distribution:** Franchisee shall notify Residential Customers at least once each Franchise Year, in accordance with Appendix F, that Franchisee is offering composting bins for sale to Customers at specified cost and locations for each City. Franchisee shall charge no more than its direct costs of purchasing the bins and the surcharge, if any, for handling, storage, and/or delivery as specified in Appendix D. Franchisee shall purchase bins approved by Cities. Franchisee shall maintain records of number of bins purchased, sold, and inventoried in accordance with Appendix K.

**P. Future Collection of Food Waste for Composting:** The Cities and the Franchisee agree that both parties will reopen this Agreement upon the Cities' request solely for the purpose of defining the terms and conditions, and Service Fees, for future collection of Food Waste, as defined in this agreement, from residential and commercial sources using cart and/or bin collection. Both parties further agree to participate in a food waste composting pilot project, as referenced in Appendix L of this Agreement, to identify and resolve collection, processing, and marketing issues and to identify costs associated with collection, processing, and marketing of compost produced from food waste.

## **SECTION 4.2 COLLECTION SERVICE OPERATING REQUIREMENTS**

**A. Collection Routes:** The Franchisee shall establish and maintain collection routes in such manner to provide for the uniform and efficient collection of Franchise Materials from all Residential Customers on a Monday through-Friday basis and Commercial Customers on a Monday-through-Saturday basis. The Franchisee shall not schedule Franchise Materials collection on Sundays, except as authorized by the City Managers. For all Residential Customers and Commercial Customers who require more than one (1) collection per week, the Franchisee shall schedule collections at appropriately spaced intervals throughout the work week, or as requested by the Customer and approved by the City Managers.

**B. Collection Schedule Revisions:** The Franchisee may request the Cities to approve any revision to the collection schedule which the Franchisee may propose. The Cities' approval of any such request may be withheld or delayed in the Cities' sole and absolute discretion. Upon such direction or approval by the Cities, the Franchisee shall notify all affected Customers at least seven (7) days prior to implementing the revision.

**C. Route Books and Maps:** The Franchisee shall prepare route books and maps for each route, which outline specific routing information regarding the daily collection of Franchise Materials. The route books shall be kept current and made available to the City Managers for inspection and copying. A copy of the route maps shall be provided to the City Managers a minimum of two (2) weeks prior to implementation of each new route. Revised copies shall also be provided whenever the routes are revised.

**D. Hours of Service:** Except for special pickups, collecting missed pickups, or due to emergencies, the Franchisee shall schedule no collections from any Customer earlier than 5:00 a.m., or later than 5:00 p.m. Monday through Friday and earlier than 8 a.m. or later than 5 p.m. on Saturdays (except during Holiday Collection Schedule, Clean-up Weeks, or Special Events). In addition, the Franchisee shall use reasonable efforts to revise collection routes to address noise complaints.

**E. Holidays:** Collection of Franchise Materials shall not be required on the following legal holidays: New Year's Day, Thanksgiving Day and Christmas Day, except in case of emergency or as otherwise required by the City Managers. (The Franchisee acknowledges that the Designated Disposal Site is not open on those days.) Whenever a regular collection falls on such a holiday, the collection shall be made on the following working day, and collections shall become current within one (1) week thereafter.

**F. Non-Collection of Contaminated Yard Waste or Franchise Recyclable Materials:** The Franchisee shall use reasonable efforts to not collect Franchise Recyclable Materials or Franchise Yard Waste from Containers which also contain significant, visible amounts of materials which do not constitute Franchise Recyclable Materials or Franchise Yard Waste, as applicable.

In the event the Franchisee observes Customers with repeated loads of contaminated yard waste or recyclables, the following action shall be taken:

1<sup>st</sup> Offense: Customer's container will be tagged and expressly notified as to the type of contamination. No financial penalty. Customer will remove the contaminating material from the container. Franchisee will service the container on the following week.

2<sup>nd</sup> Offense: Customer's container will be tagged and expressly notified as to the type of contamination. No financial penalty. Customer must remove the contaminating material from the container. Franchisee will service the container on the following week. In addition, the customer

will be advised that the next offense will result in the container being serviced as “garbage” and that customer will be charged the appropriate garbage rate for that sized container.

3<sup>rd</sup> Offense (and all subsequent offenses that occur within 12 months of the 1<sup>st</sup> Offense): Container will be serviced as previously indicated. Customer’s container will be tagged with a charge slip and notice provided to the Cities concerning charges for the garbage rate for the size container and repeat offenders conduct.

### **SECTION 4.3 CONTAINERS**

**A. City Regulations:** The type, size and other specific physical requirements for Franchisee supplied Containers are specified in Appendix C hereto and may not be changed without the prior written approval of the City Managers. The Franchisee shall not be required to collect Franchise Materials from Containers which do not conform to the requirements of Appendix C.

**B. General Requirements:** After emptying any Container, the Franchisee shall replace the Container in an upright position at the place where such Container was placed for collection. The Franchisee shall repair or replace at its own expense, any container provided by the Franchisee which becomes unusable by any reason of normal wear and tear or is damaged by the collection operations. The Franchisee shall be responsible for replacement or repair of containers which are stolen or damaged by any event not caused by the Franchisee and shall charge Customer the Container replacement charge designated in Appendix D. Such repair or replacement must occur by the end of the next business day following notification to the Franchisee of the need therefore.

#### **C. Franchisee Provision of Containers to Residential Customers and Commercial Customers:**

1. Provision of Containers: The Franchisee shall supply each Residential Customer for Franchise Solid Waste and Franchise Yard Waste with separate, industry standard Containers for Franchise Solid Waste and Franchise Yard Waste collection as described in Appendix C. The Franchisee shall continue to supply Residential Customers with Recycling Containers as described in Appendix C.
2. Provision of Containers: The Franchisee shall supply each Commercial Customer with separate Containers for Franchise Solid Waste and Recyclable Materials. The Commercial Customer may choose the size of the Container(s) for Franchise Solid Waste based on the options listed in Appendices C and D. All such Bins shall remain the property of the Franchisee.
3. Minimum Container Requirements: All Containers shall meet the requirements of Appendix C. Each such Container which is used primarily for the disposal of Franchise Solid Waste containing liquids shall be watertight.

4. Franchisee Responsible for Cost of Containers: The Franchisee shall provide all Containers at the Franchisee's cost and expense without any compensation in addition to the Service Fee and all such Containers shall constitute the property of the Franchisee.
5. Assembly and Distribution of Containers: The Franchisee shall assemble and distribute all Containers required pursuant to this Franchisee at the Franchisee's cost and expense without any compensation in addition to the Service Fee.
6. Maintenance and Repair of Containers: The Franchisee shall be responsible for the general maintenance and repair of Containers so provided to Commercial Customers, and shall institute and maintain an effective program to repair, steam clean and repaint all such Containers once each year without interruption in service. If more frequent repairing, maintenance, steam cleaning, and or repainting is required as a result of abuse, neglect or misuse on the part of any Customer, the Franchisee shall be entitled to charge such Customer a fee, as approved by the City Managers, to compensate the Franchisee for the cost thereof. The Franchisee shall, within five (5) working days from the date such request is received or the Franchisee otherwise becomes aware of the need for such repair or replacement, repair or replace any damaged or dilapidated Container.
7. At the end of the term or earlier termination of the Franchise, the Cities shall have the right, but not the obligation, to purchase from the Franchisee all or a portion of the Containers owned by the Franchisee and utilized by the Franchisee to provide Franchise Services. In the event the Cities elect to exercise such option to purchase, the purchase price payable by the Cities with respect to each Container that it elects to purchase shall be the then current fair market value of such Container; provided, however, that the Franchisee agrees that such fair market value shall not exceed 10% of the initial purchase price of any such Container. The Franchisee shall be responsible, at its own cost and expense, for the removal of any Containers which the Cities do not elect to purchase.

#### **SECTION 4.4 COLLECTION LOCATIONS**

**A. General:** The Franchisee is responsible for the collection of all Franchise Materials placed for collection in a legal manner at the roadside, or in the event that physical conditions prohibit roadside placement, at a location within a reasonable distance of roadside, visible to the Franchisee. The Franchisee shall immediately notify the Service Coordinator of any condition at or near any collection location which creates a safety hazard or accessibility problem. In such circumstances, upon authorization by the City Managers, the Franchisee shall arrange with the Customer for a temporary collection location until the safety hazard or accessibility problem is

corrected. The Franchisee shall, where necessary, traverse private roads in order to collect Containers deposited by Customers for collection; provided, however, that the Franchisee shall not be required to utilize private roads if the owner of such road prohibits the use of such road by the Franchisee. The Franchisee shall also provide any other special services reasonably requested by a Customer; provided, however, that the Franchisee shall be entitled to reasonable compensation for providing such services, as specified in Appendix D.

**B. Enclosures:** Where the collection location is within an enclosure constructed pursuant to the requirements of the Cities and the Franchisee, the Franchisee shall be responsible for the removal and replacement of all Containers placed therein. The Franchisee shall use sufficient care in the handling of such Containers so as to prevent any damage to the enclosure, the enclosure doors, and adjacent facilities or improvements. The Franchisee shall repair at its own expense and within thirty (30) working days after notification from the Service Coordinator any such enclosure or adjacent facilities or improvements damaged by it.

#### **SECTION 4.5 GENERAL REQUIREMENTS RELATING TO COLLECTION**

**A. Clean Up:** The Franchisee shall cause all spills of Franchise Materials occurring during the collection process (including waste spills due to tipping by animals or vandals of Containers legally placed for collection) to be cleaned up immediately upon the occurrence of the spill. Franchisee shall close all gates after making collections and shall avoid crossing private or public planting areas and grounds or jumping over hedges and fences.

**B. Employees; Uniform:** The Franchisee shall take all steps necessary to ensure that its employees performing collection services conduct themselves in a workmanlike manner, and as quietly as possible. All such employees shall at all times of employment be dressed in clean uniforms with suitable identification. No employee may remove any portion of his or her uniform while working. The style and appearance of employee uniforms shall be subject to the approval of the City Managers.

**C. Improper Loading and Placement of Containers:** All Containers are to be collected at the curbside and emptied with a fully automated lifting mechanism. The Franchisee shall collect any Franchise Material that is properly loaded into the correct container. When Franchisee encounters Containers that are overloaded (lid does not sit flush with Container body) that could result in spillage, or any Container where Franchise Materials will, of its own weight, fall out when emptied, it may empty the Container and charge an overage fee as set forth in Appendix D, or it may choose not to empty the Container and to tag the same per Section 4.5 E. Franchisee shall clean up any spillage as a result of emptying overloaded Containers. The Franchise shall also notify the Cities of the overage charges for Customer billing purposes.

**D. Authorized Non-Collection of Certain Waste:** The Franchisee shall not be required to collect Excluded Materials.

**E. Record of Non-Collection:** When any Franchise Material deposited for collection is not collected by the Franchisee, the Franchisee shall leave a tag indicating the reasons for such non-collection and the local, toll-free phone number of the Franchisee at which the Customer can inquire as to the circumstances relating to the non-collection. This information shall either be in writing or by means of a checkmark on a form tag. The Franchisee shall maintain, at its place of business, a log book listing all such circumstances in which collection is denied. The log book shall contain the names of the Premises involved, the date of such tagging, the reason for non-collection, and the date and manner of disposition of each case. The log shall be kept so that it may be conveniently inspected by the Service Coordinator upon request. The log relating to any particular tagging shall be retained for a period of one year following such tagging.

**F. Fees and Gratuities:** The Franchisee shall not, nor shall it permit any agent, employee or subcontractor employed by it, to request, solicit, demand or accept, either directly or indirectly, any compensation or gratuity for the collection of Franchise Materials or other Franchise Services, except such compensation as is specifically provided for herein.

#### **SECTION 4.6 OTHER WASTES**

The Cities acknowledge that this Franchise is granted only with respect to those services described in Section 3.1 A hereof and does not include the collection, transportation, processing or disposal of Excluded Materials. This Franchise does not, however, limit the right of the Franchisee to provide any such other services. If the Franchisee elects to provide any such other services, it shall not be governed by the terms of this Franchise, but shall be subject to Applicable Law.

#### **SECTION 4.7 DISPOSAL AND YARD WASTE PROCESSING**

**A. Disposal Location:** The Cities shall have the right during the Term hereof to designate the Designated Disposal Site and Designated Yard Waste Site, or multiple concurrent Designated Disposal or Designated Yard Waste Sites, in their sole and absolute discretion. The initial Designated Disposal Site and Designated Yard Waste Site shall be the Johnson Canyon Landfill owned by the Salinas Valley Solid Waste Authority. The Cities shall notify the Franchisee in writing of any changes in or additions to the Designated Disposal or Designated Yard Waste Site(s). The Franchisee shall transport and dispose of all Franchise Materials which it collects but does not divert from landfill disposal at the Designated Disposal Site and shall transport and deliver all Franchise Yard Waste which it collects to the Designated Yard Waste Site in accordance with the requirements of Applicable Law, and shall comply with the requirements, rules and regulations of the owner or operator of the Designated Disposal and Yard Waste Site(s). The Franchisee agrees that it shall not dispose of Franchise Recyclable Materials or Franchise Yard Waste at any disposal site, through any other type of disposal or, in the case of Recyclable Materials, through incineration, except as may be required in emergencies resulting from Uncontrollable Circumstances with the prior written approval of the City Managers.

If a Cities-imposed change to the Designated Disposal and Designated Yard Waste Site(s) results in longer travel time and/or fuel usage by Franchisee, service fees may be adjusted by mutual agreement to cover additional Franchisee expenses.

**B. Disposal Records:** The Franchisee shall keep and maintain such logs, records, manifest, bills of lading or other documents as the City Managers may deem to be necessary or appropriate to confirm compliance by the Franchisee with this Franchise and shall retain all weight slips or other call information provided to the Franchisee's drivers by the owner or operator of the Designated Disposal Site.

**C. Payment of Disposal and Yard Waste Processing Fees:** The Cities shall pay, or make arrangements for the payment of, all tipping fees and other transfer, processing, or disposal charges imposed by the owner or operator of the Designated Disposal and Designated Yard Waste Site(s) for the disposal or processing of Franchise Solid Waste and Franchise Yard Waste.

**D. Solid Waste Origin and Weight Tracking:** The Franchisee shall submit monthly tonnage reports which track both disposal and diversion by jurisdiction and generator type. The Franchisee shall work cooperatively with the owner or operator of the Designated Disposal Site to assure all incoming Solid Waste is recorded and assigned to the Franchise Area or other jurisdiction. The Franchisee shall keep, maintain, and provide the City Managers with a list of all collection vehicles operating within the Franchise Area including each vehicle's license number, Designated Disposal and Designated Yard Waste Site(s), tare number, and general geographic areas of operation and collection. The Franchisee shall immediately notify the Service Coordinator and owner or operator of the Designated Disposal and Designated Yard Waste Site(s) in writing when new collection vehicles are added to the Franchise Area, collection vehicles are utilized in a different geographic location with the Franchise Area, tare weights are altered due to equipment modifications, collection vehicles are removed from the Franchise Area, collection vehicles are used both inside and outside the Franchise Area and collection vehicles integrate both Franchise and non-franchise materials in a single load.

## ARTICLE V

### FRANCHISEE OPERATING ASSETS

#### SECTION 5.1 FRANCHISEE OPERATING ASSETS

**A. Obligation to Provide:** The Franchisee shall acquire and maintain at its own cost and expense Franchisee Operating Assets which in number, nature and capacity, shall be sufficient to enable the Franchisee to provide the Franchise Services in accordance with the terms hereof.

**B. Vehicle and Equipment Identification:** The Franchisee's name, local, toll-free phone number, and vehicle or equipment number shall be visibly displayed on both sides of its vehicles or other collection equipment used by the Franchisee. No other signs or markings shall be placed on the Franchisee's vehicles or other collection equipment without the prior approval of the City

Managers except signs or markings relative to use of such equipment including traffic safety signs or markings or instructions regarding filling or placement of collection bins.

**C. Vehicle Specifications, Maintenance and Appearance:** All vehicles used by the Franchisee in providing the Franchise Services shall be registered with the Department of Motor Vehicles of the State of California, shall be approved by the City Managers, shall be kept clean and in good repair, and shall be uniformly painted. Vehicles used to collect or transport Franchise Materials shall be kept covered at all times except when such material is actually being loaded or unloaded or when the vehicles are moving along a collection route in the course of collection. Any cover or screen shall be so constructed and used that Solid Waste shall not blow, fall or leak out of the vehicle onto the street. Franchise Materials collection vehicles shall be washed at least once every seven (7) days and cleaned and painted as required to maintain a like-new appearance. No advertisement or other display shall be carried on any Franchise Materials collection vehicle without the written approval of the City Managers. All Franchisee vehicles used in connection with this Franchise may be required to be inspected and approved by the Cities on a yearly basis. The Franchisee shall have such inspection conducted by the California Highway Patrol, or other designated agency, and shall provide the results of such inspection to the City Managers within ten (10) days of receipt.

**D. Inventory of Franchisee Operating Assets:** The Franchisee shall furnish the City Managers with an inventory of Franchisee Operating Assets used by the Franchisee to provide Franchise Services under this Franchise, and shall update the inventory so provided at least annually. Such inventory shall indicate the type, capacity, and location of each vehicle and of each piece of equipment, and the date of acquisition and disposition.

## **SECTION 5.2 OPERATION AND MAINTENANCE OF THE FRANCHISEE OPERATING ASSETS**

The Franchisee, at its sole cost and expense, shall at all times: operate, or cause to be operated, the Franchisee Operating Assets properly and in a sound and economical manner; maintain, preserve, and keep the Franchisee Operating Assets or cause the Franchisee Operating Assets to be maintained, preserved and kept in good repair, working order and condition; staff the Franchisee Operating Assets with the appropriate number of hourly and salaried employees consistent with good management practice; and from time to time make, or cause to be made, all necessary and proper repairs, replacements and renewals so that at all times the operation of the Franchisee Operating Assets may be properly and advantageously conducted. The Franchisee shall maintain the safety of the Franchisee Operating Assets at a level consistent with Applicable Law, Insurance Requirements, and prudent Solid Waste management practices.

## **SECTION 5.3 COMPLIANCE WITH APPLICABLE LAW**

The Franchisee shall comply with the rules and regulations governing the operation, use and services of the Designated Disposal Site, shall observe and perform all of the terms and



conditions contained in the Act, the Municipal Code and all other Applicable Law, shall obtain and maintain all Legal Entitlements required for the Operating Assets and the Franchise Services, and shall comply with all valid acts, rules, regulations, order and directions of any Governmental Body applicable to the Operating Assets and the Franchise Services provided hereunder.

#### **SECTION 5.4 TAXES, FEES AND UTILITY CHARGES**

The Franchisee shall pay all Taxes and Fees lawfully levied or assessed upon or in respect of the Operating Assets or the Franchise Services, or upon any part thereof or upon any revenues of the Franchisee there from, and provide and pay the cost of all Utilities necessary for the operation of the Operating Assets and the provision of the Franchise Services, when the same shall become due.

#### **SECTION 5.5 INSURANCE**

The Franchisee shall at all times during the Term of this Franchise, at its own cost and expense, obtain and maintain insurance on all the Operating Assets in a form and amount to be approved by the Cities. If any useful part of the Operating Assets shall be damaged or destroyed, the Franchisee shall, as expeditiously as may be possible, commence, and diligently prosecute the repair or replacement of the damaged property so as to restore the same to use, to the extent required to perform the Franchise Services in accordance with this Franchise.

### **ARTICLE VI GENERAL REQUIREMENTS**

#### **SECTION 6.1 PUBLIC ACCESS TO THE FRANCHISEE**

**A. Office Facilities:** The Franchisee shall establish and maintain at all times during the Term hereof a local office. The Franchisee's local toll-free customer service telephone number (888-678-6798) shall be identified on all publications, bills, and correspondence.

**B. Office Hours:** The Franchisee's office hours shall be, at a minimum, from 8:00 a.m. to 5:00 p.m. daily, except Saturdays, Sundays and holidays.

**C. Availability of Representatives:** A representative of the Franchisee shall be available at the Franchisee's office during office hours for communication with the City Managers or the public.

**D. Emergency Telephone Number:** The Franchisee shall maintain an emergency telephone number for use during other than normal business hours. The Franchisee shall have a representative, or an answering service to contact such representative, available at the emergency telephone number during all hours other than normal office hours. The Franchisee

shall provide the City Managers with night and weekend telephone numbers for senior officials of the Franchisee for use by the City Managers in emergencies.

## **SECTION 6.2 SERVICE COMPLAINTS AND DEFICIENCIES**

**A. Complaints to Franchisee:** The Franchisee shall maintain during office hours a complaint service and a telephone answering system having an answering capacity satisfactory to the City Managers. All service complaints will be directed to the Franchisee. The Franchisee shall provide bilingual, Spanish speaking customer service representatives. Copies of all complaints shall be given to the City Managers as required by the reporting requirements established in Appendix K. The Franchisee shall record all complaints, including date and time, complainant name and address, and nature and date and time of resolution of complaint, in a computer-based log. This log shall be available to the Cities as described in Section 6.3 E below.

**B. Required Response to Complaints:** The Franchisee has until 4:00 p.m. of the next business day after its receipt of notice from a Customer, or the City Managers, to respond to a reported failure to provide Franchise service as required by the terms of this Agreement. Missed pick-ups shall be picked up no later than 4:00 p.m. the following normal business day, provided materials are placed in appropriate containers and left in approved collection locations. Drivers shall call in to the Dispatch office between 11:30 a.m. and 1:00 p.m. daily to receive and act on missed pick-ups. Customer services representatives shall call customers after complaint resolution to confirm that the results are satisfactory.

**C. Annual Review of Performance and Quality of Service:** At the Cities' sole option, with thirty (30) days written notification to the Franchisee, it may conduct a public hearing at which the Franchisee will be present and will participate, to review the Franchisee's performance and quality of service and provide for evaluation of technological and regulatory changes. The reports required by the Franchise regarding Customer complaints may be utilized as a basis for review. Performance and service quality review hearings may be scheduled by the Cities at its discretion throughout the Term of this Franchise. Within thirty (30) days after the conclusion of the public hearing, the Cities will issue a report on the adequacy of performance and quality of service. If any noncompliance with the Franchise is found, the Cities may direct the Franchisee to correct the inadequacies in accordance with the terms of the Franchise.

**D. Damages For Failure to Meet Requirements of Franchise:** The City Managers may levy a charge in the amounts listed below for Franchisee's failure to meet the requirements of this Franchise. The City Managers' decision to levy any such charge shall not be deemed an election of remedies but shall be cumulative with any other remedies provided for in this Franchise or in Applicable Law. The City Managers' decision to not levy any such charge shall not be deemed a waiver of any breach by the Franchisee under this Franchise. Specifically, without limitation, the City Managers may impose the fines listed below for the corresponding deficiency in performance by the Franchisee:

1. Failure to correct a missed service by 4:00 p.m. of the next business day of notice of the missed service: \$200 per occurrence; each additional 24-hour period: \$200;
2. Failure to provide Yard Waste Containers to Residential Customers within ten (10) days of request for service: \$200 per occurrence;
3. Failure to provide Automated Solid Waste Containers to Residential Customers within ten (10) days of request for service: \$200 per occurrence;
4. Failure to repair or replace any Container by 4:00 p.m. of the next business day after notification of the necessity thereof: \$200 per occurrence;
5. Undertaking collection operations earlier than 5 a.m. or later than 5 p.m.: \$200 per occurrence;
6. Failure to maintain Operating Assets in neat and orderly manner, after notice by the City Managers and reasonable time to cure: \$200 per day;
7. Failure to record a response to a customer complaint or request within 24 hours of resolution: \$200 per occurrence;
8. Franchisee imposes a special service not in accordance with Agreement or not requested by the Customer: \$200 per occurrence;
9. Failure to clean up spillage or litter during collection activity: \$200 per occurrence;
10. Failure to remit City fees by the fifteenth of the month: \$200 per occurrence;
11. Penalty assessed for each day past due date Franchisee does not provide required reports: \$200 per occurrence;
12. Failure to resolve a billing complaint within seven (7) working days from the complaint: \$200 per occurrence; each additional day problem not resolved: \$200;
13. Assessment when Franchisee receives more than 25 service-related complaints in one month: \$1,000;
14. Failure to tag materials not collected due to contamination or inappropriately prepared: \$200 per occurrence.

The City Managers shall also have the right to impose reasonable fines or other charges for nonperformance by the Franchisee of other terms and conditions of this Franchise. Any damages due under this section shall be compensated to the Cities in accordance with Section 7.1 B).

### **SECTION 6.3 ACCOUNTING AND RECORDS**

**A. Maintenance and Audit of Records:** The Franchisee shall maintain in its principal office full and complete financial and accounting records prepared on an accrual basis in accordance with generally accepted accounting principles. Such records shall be subject to

audit and inspection by the Cities and its authorized officers, agents or employees, at any reasonable time at the Franchisee's principal office. The gross receipts derived from the Franchise Services under this Franchise, whether such services are performed by the Franchisee or by a subcontractor or subcontractors, shall be recorded as revenues in the accounts of the Franchisee. The Franchisee shall maintain and preserve all disposal records for a period of not less than three (3) years following the expiration or termination of the Franchise. At the request of the Cities, annual financial statements and reports submitted by the Franchisee will be audited and certified by an independent certified public accounting firm. This audit may include a Customer audit in order to verify that each Customer is receiving the level of service for which they are being billed.

**B. Inspection of Franchisee's Accounts and Records:** The Franchisee's service levels and disposal records shall be available at the Franchisee's local office at any time during regular business hours for inspection and audit by any or all of the City during the Term of this Franchise and for a period of three (3) years following the expiration or termination of the Franchise.

**C. Delivery of Financial Reports to Cities:** The Franchisee shall furnish at its sole cost and expense complete annual financial statements of the Franchisee to the City Managers necessary in order for the Cities to reconcile any financial determinations related to this Franchise, including the Franchisee fee, Customer revenues, and the Franchise Service fee. Such statements should include those records applicable to the services defined in this Agreement. The statement shall be examined by independent public accountants acceptable to the Cities, and shall include the unqualified opinion of such accountant as to whether such statement is a fair representation of the data included therein. The financial information shall include a report on the service classification of each Customer within the Franchise Area. The Cities shall have the right to undertake an independent audit of the records maintained by the Franchisee.

**D. Recycling and Yard Waste/Wood Waste Information:** The Franchisee shall maintain in its principal office full and complete financial and accounting records pertaining to cash, billing, purchase, processing, shipping and sale of all Franchise Recyclable Materials, Franchise Yard Waste, Wood Waste, and other yard waste collected, processed and sold by Franchisee under the provisions of this Franchise. Said records shall be subject to the inspection provisions described in Section 6.3 B, above.

**E. Computer System:** The Franchisee shall maintain a computer database which specifies the service address of each Customer within the Franchise Area, the service classification applicable to each Premise, and any special services provided to such Premises. The Franchisee computer system shall allow the Cities to review for each Customer:

1. The complaint log required to be maintained by the Franchisee,
2. Record of missed pickups,

3. Records of daily Container (Solid Waste, Recycling, Yard Waste, home composting) delivery,
4. Route identification,
5. Container servicing, and
6. Tagging for contamination, placement, or other reasons. The Franchisee shall provide the Cities convenient access to this information.

#### **SECTION 6.4 RULES AND REGULATIONS OF THE CITY MANAGERS**

The City Managers shall have the power to establish rules and regulations relating to the accumulation, collection, Recycling and disposal of Franchise Materials not inconsistent with the provisions of this Franchise, providing such rules and regulations are found to be reasonably necessary by the City Managers for enforcement of the provisions of this Franchise, or any and all Applicable Laws, and for the preservation of the public peace, health and safety.

#### **SECTION 6.5 PERFORMANCE BOND**

The Franchisee shall furnish to each City and maintain and file with each City a corporate surety bond, or other acceptable surety, approved as to form by the City Attorneys executed by the Franchisee as principal and by a corporate surety, in the sum of \$1,000,000.00 (One Million Dollars). Such bond shall permit the Cities to draw upon it in the event the Franchisee fails to perform its obligations hereunder and fails to pay any liquidated damages required to be paid as a result of such non-performance. The surety bond shall serve to secure the performance of the Franchise Services, and the amount thereof shall in no way limit the damages which may be payable hereunder upon any breach hereof by the Franchisee. The form of the Performance Bond is included as Appendix I.

#### **SECTION 6.6 SUBCONTRACTOR**

The Franchisee shall not utilize any subcontractors for the performance of the Franchise Services except with the consent of the Cities, which may be withheld or delayed in its sole and absolute discretion.

#### **SECTION 6.7 MONITORING AND REPORTING**

**A. Records:** The Franchisee shall maintain in its local office records for each City of the quantities of

1. Solid Waste collected and disposed under the terms of this Franchise,
2. Recyclable materials, by type, collected, purchased, processed, sold, donated or given for no compensation, and residue disposed, and
3. Yard Waste and Wood Waste materials collected, received, purchased, processed, sold, donated, or given for no compensation, and residue disposed.

Quantities by type of Recyclable Materials collected by Franchisee may be determined by estimates based on load sampling to characterize the contents of each commingled material load, using a sample protocol established by mutual agreement of Cities and Franchisee. Said records shall be subject to the inspection provisions described in Section 6.3B, above.

**B. Waste Disposal and Characterization Studies:** The Franchisee shall, at no additional compensation, cooperate with and assist the Cities in the performance of periodic waste disposal and characterization studies, to be defined by the City Managers.

**C. Collection Monitoring:** The Franchisee shall monitor its collection of Solid Waste, Recyclable Materials, and Yard Waste as provided in Section 4.2 F and identify occurrences of, and prevent, contamination of Recyclable Materials and Yard Waste, the latter in particular for plastic and other inorganics. The Franchisee shall allow a person designated by the City Managers to ride with the Franchisee collection vehicles on any route or routes. The City Managers will inform the Franchisee at least one (1) week in advance prior to date of route monitoring.

**D. Reporting:** The Franchisee shall submit all reports to the City Managers in accordance with Appendix K, Reporting Requirements;

1. Monthly Report Submittals: Monthly reports shall be submitted no later than the 25th of the month following the reporting period.
2. Annual Report Submittals: Annual reports shall be submitted no later than 90 days following the end of the Franchise Year.
3. Additional Reports: The Franchisee shall furnish the Cities with financial reports pursuant to Section 6.3 and any additional monthly or annual reports as may be required to set forth all information required under the Act or otherwise by the Cities pertaining to the Recycling and diversion of Franchise Materials which is collected and/or processed by the Franchisee. Said reports shall be in the form required by the Cities and shall categorize Recycling and diversion activity in the manner required by the Cities

## **SECTION 6.8 RESEARCH AND DEVELOPMENT**

Franchisee agrees to take a proactive approach on its own initiative and, in addition, to cooperate with the Cities in pursuing new technologies, management techniques and markets through pilot programs or other similar activities to improve cost efficiencies and product quality and to increase material recovery from the collection and processing services described herein. The Franchisee and the Cities, by mutual agreement, will determine the scope of work, timing, costs, and reimbursement, if any, due Franchisee to accomplish the purposes of this paragraph. The Franchisee shall provide the Cities, on request, with a written summary report identifying the

results and conclusions of such research or pilot programs. In the context of the objectives of this paragraph, the Franchisee will meet with the Cities, as requested, to evaluate the performance of the Franchise Services and to examine new market opportunities for the processed materials produced by the Franchise Services.

## **SECTION 6.9 CONTRACT ADMINISTRATION**

The Cities, at their sole discretion may elect to have all or a portion of the administration of this Franchise performed by a third party consultant(s). The Franchisee shall pay to each City an administration fee of \$20,000 annually for the Term of the Franchise. The Franchisee shall pay the first annual sum on July 1, 2012 and on July 1 of each year thereafter. The Contract Administration Fee shall be adjusted annually, each July 1, by the change in the San Francisco Bay Area Consumer Price Index (CPI). The Cities or their designee may review and adjust the Contract Administration Fee in the third and fifth year of the Franchise, if their costs exceed the fee amount. In the event that the Administration Fee is increased beyond the CPI and the increase is not due to Franchisee's poor performance, Franchisee may pass through the amount of increase above the CPI in its next applicable rate increase period.

## **ARTICLE VII SERVICE FEES AND CUSTOMER RATES**

### **SECTION 7.1 SERVICE FEE**

**A Formula:** Commencing February 1, 2012 and for each month thereafter during the Term of this Franchise, the Franchisee shall be entitled to receive, from the Customer revenue and other funds described in Section 7.4, a monthly Service Fee for the Franchise Services provided by the Franchisee hereunder in accordance with Service Fee Schedule attached hereto as Appendix D. The Service Fee shall be computed in accordance with the provisions of this Article and may be adjusted from time to time as provided in this Franchise. Except as provided for under subsection 4.1 C) (iii), the monthly Service Fee constitutes the entire compensation of the Franchisee for the Franchise Services. The Franchisee waives any right it has or may have at any time during the Term of this Franchise to seek to have the monthly Service Fee increased under any theory of fact or law by any Governmental Body.

**B. Damages:** The Service Fee shall be reduced in each month to reflect any fines or damages payable by the Franchisee during such month.

**C. Escalation of the Service Fee Schedules:** Commencing on July 1, 2012 and on July 1 of each subsequent year during the Term of the Franchise, each amount contained in the Service Fee Schedules provided in Appendix D shall be adjusted by the application of the Escalation Index, which employs application of the Consumer Price Index for the previous 12 months, as provided in Appendix J hereto. All such adjustments are subject to ratification by the City Council of each City by resolution.

**D. Service Fee As Compensation for All Obligations of Franchisee:** The parties agree that the Service Fee is intended to compensate the Franchisee for all steps, activities, procedures, and obligations in the process of the collection, transportation, processing, disposal or any other disposition of Franchise Materials or other materials specifically identified herein and the Franchisee shall only be entitled to amounts in addition to the Service Fee to the extent that the Franchise expressly provides for the payment of such additional amounts.

## **SECTION 7.2 MONTHLY SERVICE FEE STATEMENT**

**A. General:** For each month the Franchisee shall prepare and provide to the Service Coordinator on behalf of each of the Cities, a statement (a "Billing Statement") by the 15th day of the following month, which Billing Statement shall set forth a calculation of the monthly Service Fee, as determined by using the Service Fee Schedule, and taking into account any delinquencies as provided in Section 7.3B. The Billing Statement shall reflect the "Customer Revenues," defined as all amounts received directly by the Franchisee from Customers for the provision of Franchise services during such month. Franchisee agrees to work with the City Managers to customize billing statements, as necessary, to meet the individual needs of each City.

**B. Recycling Revenues:** The Franchisee shall report the monthly Residential, Commercial, and Multi-family Recycling Revenues earned from the sale of Recyclable Materials.

**C. Billing Estimates and Adjustments:** To the extent that the actual value of charge, credit, index value or any other item in any Billing Statement cannot be accurately determined at the Billing Statement date, such item shall be billed on a good faith estimated basis reflecting actual operating experience and reasonable projections for the balance of the Franchise Year, and an adjustment shall be made to reflect the difference between such estimated amount and the actual amount of such item on the Billing Statement next following the date on which the Franchisee learns the exact amount of such item.

**D. Annual Estimates:** Ninety (90) days prior to the end of each fiscal year during the Term of this Franchise, the Franchisee shall provide to the Cities a written statement setting forth its reasonable estimate of the aggregate Service Fee for the next year, which statement shall not be binding on the Franchisee. The Franchisee shall also estimate the number of Customers it expects the following year, as well as the type and level of service which it expects those Customers to subscribe to. The annual estimate prepared by the Franchisee shall be considered by the Cities in the Cities' ratification of Franchisee's recommended Customer Rates for such year.

**E. Recycling Revenue Sharing Plan.** The Parties hereto agree that all recycling revenues are subject to recycling fees and may be a part of each City's annual franchise fee in the future. The Parties agree that this Agreement may be reopened upon the request of any party



solely for the purpose of discussing, negotiating and establishing appropriate terms and conditions for recycling revenue sharing and services to be performed by Franchisee.

### **SECTION 7.3 BILLING OF CUSTOMER CHARGES BY THE CITIES**

**A. Billing by the Cities:** The Cities shall bill Customers for Franchise Services provided hereunder. The Franchisee will specify the amount to be billed to each Customer for Franchise Services based on the classification of service which the Customer receives, and any additional services provided to the Customer, such as Bulky Goods collection or the collection of Franchise Materials in excess of the service classification of the Customer. Such amounts in addition to the disposal, administrative and other costs borne by each City shall constitute Customer Rates and shall be established and recommended by the Franchisee and ratified by the Councils in accordance with Section 7.3 C. Other than the bills rendered to the Cities described above in Section 7.2, the Franchisee shall have no right to, and shall not, impose any fee or charge on any Customer or other person for Franchise Services except as provided in subsections 4.1 B, 4.1 C and 4.1 E hereof.

**B. Receipt of Payments:** The Cities shall deposit all amounts received from Customers related to Franchise Services into a special account to be established by the Cities entitled the "Customer Revenue Account." Such amounts shall constitute Customer revenues. Such Customer Revenues shall constitute the property of each City, subject to the reconciliation of such Customer Revenues with the aggregate Service Fee described below. The Cities shall reconcile payments made by Customers to amounts billed to such Customers and shall send up to two (2) delinquency notices to Customers which do not make timely payment of amounts billed. The Cities shall, by the 25th day of each month, provide the Franchisee with a report detailing delinquent accounts. Under no circumstances shall the Franchisee be entitled to Service Fees for Customers until and unless any delinquencies relating to such Customers' accounts are paid in full.

**C. Setting of Customer Rates:** The Rates contained in Appendix D ("Service Fee Schedule and Approved Rates") as proposed by Franchisee, will be ratified by resolution of the Councils. The Franchisee shall bill the Cities in accordance with the Rates set forth in Appendix D and pursuant to Article 7. The Rates will be established in such a manner as to ensure that the Franchisee receives the specified Service Fee for each account or special service for which the Cities collect payment. The Rates set forth in Appendix D are subject to annual adjustment by resolution of the Councils.

**D. Monthly Reconciliation:** Within fourteen (14) days of the close of each month, the Franchisee shall deliver to the Cities a monthly settlement statement (the "Monthly Settlement Statement") setting forth the aggregate monthly Service Fees payable with respect to such Franchise Year and a reconciliation of such amount with the Customer Revenues for such month. In the event that the aggregate monthly Service Fees for such month exceed the amount of Customer Revenues for such month, the Customer Rates shall be increased so as to generate

sufficient additional Customer Revenues to make up such shortfall. If any amount is then in dispute, the Monthly Settlement Statement shall set forth the Franchisee's estimate of such amount and a final reconciliation of such amount shall be made in the Billing Statement for the Billing Period immediately following the resolution of such dispute.

**E. Transition Plan:** The Parties hereto agree that the Cities are interested in exploring the concept of transferring all billing responsibilities directly to Franchisee. Franchisee agrees that it will prepare a report by December 31, 2012, detailing the process that would be used in transferring billing responsibilities from the Cities to the Franchisee, including a detailed description of billing procedures that would be used by Franchisee and an estimate of both the initial costs for the transfer and all associated billing costs thereafter. The Cities and the Franchisee agree that thereafter, the Parties will reopen this Agreement, upon Cities' request, solely for the purpose of establishing appropriate terms and conditions for future billing services to be performed by Franchisee.

#### **SECTION 7.4 FRANCHISE FEE**

The Franchisee shall pay the Cities a Franchise fee equal to twenty percent (20%) of the sum of:

1. gross amount of collected revenue from Customers of the Franchisee for all Franchise Services described herein and in accordance with Appendix D, Service Fee Schedule;
2. gross funds collected on all past due accounts for Franchise Services;
3. gross revenues derived from the sale of all Franchise Recyclable Materials; and
4. the gross revenues for any other services performed under this Franchise Agreement, excluding the "Processing Fee for Yard Waste and Wood Waste not collected Franchise Yard Waste."

Each City may, at its sole and absolute discretion, modify its franchise fee at any time. Franchise fees shall be retained by the Cities from Customer payments made to the Cities. The Franchisee shall pay the Franchise fees to the Cities for any customer payments received by the Franchisee.

#### **SECTION 7.5 CITY SURCHARGES**

Each City may, at its sole and absolute discretion, include in its bills to Customers any applicable fees or surcharges in the manner authorized by law, whether related to managing wastes or not, as may be imposed by each individual City Council, including but not limited to Recycling fees, disposal fees or AB 939 fees.

#### **SECTION 7.6 DISPUTES**

If the Franchisee disputes any amount billed by the Cities in any Billing Statement, the Franchisee shall provide the Cities with written objection within fifteen (15) days of the receipt of such Billing Statement indicating the portion of the billed amount that is being disputed and

providing all reasons then known to the Franchisee for its objection to or disagreement with such amount. If the Cities and the Franchisee are not able to resolve such dispute within thirty (30) days after the Franchisee's objection, either party may refer such dispute to review pursuant to Section 8.8 hereof. Nothing contained in this subsection shall limit the authority of any authorized officer of the Cities or any other governmental agency to raise a further objection to any amount billed by the Cities pursuant to an audit conducted pursuant to Applicable Law.

## **ARTICLE VIII DEFAULT, TERMINATION FOR CAUSE AND DISPUTE RESOLUTION**

### **SECTION 8.1 REMEDIES FOR BREACH**

The parties agree that, in the event that either party breaches any other obligation under this Franchise or any representation made by either party hereunder is untrue in any material respect, the other party shall have the right to take any action and seek any remedy at law or in equity it may have to enforce the payment of any damages for the performance of such other obligation hereunder. The Franchisee acknowledges that the Cities intend to rely on the Franchisee to provide Franchise Materials collection, transportation to the Designated Disposal and Designated Yard Waste Site(s), Recycling and other services hereunder for the protection of the public health, safety and welfare, and that therefore the Cities may enforce any action for specific performance of the Franchisee's obligations hereunder to provide the Franchise Services on the terms and conditions provided herein. Neither party shall have the right to terminate this Franchise for cause except after an Event of Default determined in accordance with the provisions of this Article VIII shall have occurred and be continuing or unremedied.

### **SECTION 8.2 RIGHT OF THE CITIES TO PERFORM SERVICES IN CERTAIN CIRCUMSTANCES**

**A. Franchisee Failure to Collect for any Reason:** Should the Franchisee, for any reason whatsoever, fail, refuse or be unable to collect, transport and dispose of any or all Franchise Materials which it is herein obligated to collect, transport and dispose of in the time and manner and as herein in this Franchise provided, for a period of more than seventy-two (72) hours, or if in any lesser time period Franchise Materials should accumulate in the Cities to such an extent, in such manner, or for such time that the City Managers or City Councils should find that such accumulation endangers or menaces the public health, safety or welfare, then, in any of those events, the Cities shall have the right, upon notice to the Franchisee, during such period, to take possession of any or all of the Franchisee Operating Assets necessary in the collection, transportation, processing and disposal of the Franchise Materials produced, kept or accumulated in the Cities, and to use such property to collect, transport and dispose of any or all Franchise Materials which the Franchisee would otherwise be obligated to collect, transport and dispose of pursuant to this Franchise. The Franchisee agrees that in such event it will fully cooperate with Cities to affect such a transfer of possession of the Franchisee Operating Assets

for Cities' use of the same for the collection, transportation and disposal of Franchise Materials. The Franchisee agrees that; in such event, the Cities may take possession of and use all of the Franchisee Operating Assets for the above-mentioned purposes without paying the Franchisee or any other person any rental or any other charges or compensation whatsoever for such possession and use. The Cities may in such circumstances operate the Franchisee Operating Assets with its employees, or cause the Franchisee Operating Assets to be operated by subcontractors to the Cities.

**B. Franchisee Repair:** The Franchisee further agrees that, in the circumstances described in subsection (A) above, the Franchisee shall, if the Cities so request, keep in good repair and condition all of the Franchisee Operating Assets, service all motor vehicles necessary for continued operations with gasoline, oil and other necessary service, and provide such other service as may be necessary to render the Franchisee Operating Assets operational and ready for use in collecting and transporting and disposing of Franchise Materials, all free of any and all costs or expenses to the Cities.

**C. City Use of Franchisee Personnel:** The Franchisee further agrees that, in such an event, the Cities, if it so desires, may immediately engage any or all personnel necessary for the collection, transportation and disposal of Franchise Materials produced, kept or accumulated in the Cities, and that such employees or personnel may include, if the Cities so desires, employees or personnel theretofore or then employed by the Franchisee. The Franchisee further agrees that, if the Cities should so request, the Franchisee shall furnish to the Cities, free of cost, services of any or all management or office personnel then in the employ of the Franchisee whose services are necessary for such operations.

**D. Franchisee Reimbursement:** The Franchisee further agrees that, in such an event, it shall reimburse the Cities for any and all costs and expenses incurred by the Cities in taking over possession of the Franchisee Operating Assets and in the collection, transportation and disposal of Franchise Materials in such manner and to such an extent as would otherwise be required of the Franchisee under the terms of this Franchise, which costs and expenses are in excess of the amount that the Cities would have been required to pay the Franchisee for providing services. In such event the Cities shall submit a reimbursement statement to the Franchisee. Each statement shall list such costs and expenses, and the reimbursement shall be made no later than five (5) days from and after each such submission. In the event the reimbursement is not made, the Cities may draw upon any security required to be maintained thereunder.

**E. Franchisee Resumption of Service:** It is further agreed that the Cities, upon seven (7) days written notice, may at any time, at their discretion, relinquish possession of any or all of the Franchisee Operating Assets to the Franchisee and thereupon demand that the Franchisee resume the collection, transportation and disposal of Franchise Materials as provided in this Franchise, whereupon the Franchisee shall be bound to resume the same.

**F. City Performance Not a Taking:** It is specifically understood and agreed that the Cities' exercise of their rights under this Section:

1. Does not constitute a taking of private property for which payment must be made;
2. Shall not create any liability on the part of the Cities to the Franchisee; and
3. That the indemnity provisions of Section 10.1 of this Franchise are meant to include circumstances arising under this Section.

**G. Duration of Cities' Rights:** The Cities' right under Section 8.2 hereof to retain temporary possession of the Franchisee Operating Assets, and to render collection, transportation and disposal services, shall terminate at the earlier of:

1. The time when such services can, in the reasonable judgment of the Cities, be resumed by the Franchisee, or (if earlier),
2. The time when the Cities no longer reasonably requires such Franchisee Operating Assets, as determined by the Cities, or
3. The expiration of twelve (12) months from the date the Cities took possession, or
4. The Franchise can be re-let if, in the sole determination of the Cities, the Franchisee is no longer able to perform franchise services.

**H. Security for Cities' Rights:** Franchisee is required to provide a performance bond, in accordance with the provisions of Section 6.5, in order to secure the Cities' rights under this Section. The Cities may (but shall not be required to) cure any default of Franchise in the manner described in subsections A), B) and C) above, and may then look to Franchisee or Franchisee's performance bond for repayment.

### **SECTION 8.3 EVENTS OF DEFAULT OF FRANCHISEE**

**A. Event of Default Defined:** Each of the following shall constitute an Event of Default on the part of the Franchisee:

1. **Certain Events of Non-Compliance:** Any transaction, without any requirement of notice or cure opportunity, not complying with the requirements of Section 3.2 or Section 3.3 hereof.
2. **Failure of Deliveries to Designated Disposal Site:** Except for Uncontrollable Circumstances, the failure by the Franchisee for any reason, without any requirement of notice or cure opportunity, to deliver to the Designated Disposal Site, on a consecutive or cumulative basis throughout the Term of this Franchise, Franchise Materials which it collects in any amount.

3. Missed Collections: The failure of the Franchisee, except as may be excused by Uncontrollable Circumstances, to make at least 99.95% of the gross number of scheduled collections for each City in any Franchise Year.
4. Improper Disposal of Franchise Recyclable Materials or Franchise Yard Waste: Disposal by the Franchisee in any landfill of Franchise Yard Waste or Franchise Recyclable Materials.
5. Refusal to Timely Provide or Falsification of Report: Intentional refusal to timely provide or falsification by the Franchisee of any report or document required to be provided by the Franchisee under this Franchise.
6. Other Failure to Perform: Failure or refusal of the Franchisee to perform any term, covenant, obligation or condition contained in this Franchise other than a failure or refusal described in items 1), 2), 3), 4) or 5) above, except that no such failure or refusal shall give the Cities the right to terminate this Franchise under this Section unless:
  - a) The Cities have given prior written notice to the Franchisee, stating that a specific failure or refusal to perform exists which will, unless corrected, constitute a material breach of this Franchise on the part of the Franchisee and which will, in its opinion, give the Cities a right to terminate this Franchise for cause under this Section unless such default is corrected within fifteen (15) days, and
  - b) The Franchisee has neither challenged in an appropriate forum the Cities' conclusion that such failure or refusal to perform has occurred or constitutes a material breach of this Franchise nor corrected or diligently taken steps to correct such default within such fifteen (15) day period from receipt of the notice given pursuant to the clause (a) of this subsection (but if the Franchisee shall have diligently taken steps to correct such default within a reasonable period of time, the same shall not constitute an Event of Default for as long as the Franchisee is continuing to take such steps to correct such default).
7. Voluntary Bankruptcy: The written admission by either the Franchisee or Guarantor that it is bankrupt, or the filing by the Franchisee or either Guarantor of a voluntary petition under the Federal Bankruptcy Code, or the consent by the Franchisee or either Guarantor to the appointment by a court of a receiver or trustee for all or a substantial portion of its property or business, or the making by the Franchisee or either Guarantor of any arrangement with or for the benefit of its creditors involving an assignment to a trustee, receiver or similar fiduciary, regardless of how designated, of all or a substantial portion of the Franchisee's or either Guarantor's property or business.

8. **Involuntary Bankruptcy:** The final adjudication of the Franchisee or either Guarantor as a bankrupt after the filing of an involuntary petition under the Bankruptcy Act, but no such adjudication shall be regarded as final unless and until the same is no longer being contested by the Franchisee nor until the order of the adjudication shall be regarded as final unless and until the same is no longer being contested by the Franchisee nor until the order of the adjudication is no longer appealable.
9. **Failure to Provide Performance Bond:** The failure of the Franchisee to provide or maintain the performance bond required pursuant to Section 6.5 hereof, without any requirement of notice or cure opportunity.

**B. Termination Liquidated Damages Payable to the Cities:** If this Franchise is terminated by the Cities for cause as a result of an Event of Default by the Franchisee hereunder, the Franchisee immediately upon receipt of the Cities' termination notice shall pay to the Cities as liquidated damages:

1. All amounts payable to the Cities by the Franchisee as liquidated damages up to such date of termination,
2. An amount equal to the sum of all increased payments, damages, penalties incurred by or on behalf of the Cities under or Applicable Law as a result of the termination of this Franchise, and
3. The sum of \$500,000.

**C. Adequacy of Termination Liquidation Damages:** The parties agree that the Cities' actual damages upon termination of the Franchisee for cause under this Section would be difficult or impossible to ascertain, that the termination liquidated damages provided for in subsection (B) hereof are intended to place the Cities in an economic position equivalent to that which it would have been in the Event of Default or material breach permitting termination for cause not occurred, and that such termination liquidated damages shall constitute the only damages payable by the Franchisee upon such termination for cause, regardless of legal theory. The obligation to pay such termination liquidated damages shall not impair or limit the obligation of the Franchisee to the Cities under any other provision of this Franchise which expressly survives termination hereunder.

**D. Waiver of Defenses:** The Franchisee acknowledges that it is solely responsible for providing the Franchise Services described herein, and hereby irrevocably and unconditionally waives the following defenses to the payment and performance of its obligations under this Franchise: any defense based upon failure of consideration, contract of adhesion, impossibility or impracticability of performance, commercial frustration of purpose, or the existence, non-existence, occurrence or non-occurrence of any foreseen or unforeseen fact, event or contingency that may be a basic assumption of the Franchisee with regard to any provision of this Franchise.

**E. Enforcement Costs:** The Franchisee agrees to pay to the Cities all fees and expenses incurred by or on behalf of the Cities and the Service Coordinator in enforcing payment or performance of the Franchisee's obligations hereunder if such non-performance results in a judicially determined Event of Default by the Franchisee.

#### **SECTION 8.4 EVENT OF DEFAULT BY THE CITIES**

A. Event of City Default Defined: Each of the following shall constitute an Event of Default on the part of the Cities:

1. Bankruptcy or Insolvency: The filing by the Cities of a petition seeking relief, a final adjudication of insolvency or bankruptcy, or an assumption by a cognizant regulatory body of supervision of the Cities' finances, in any case under the Federal Bankruptcy Code, or any federal or state statute intended to provide relief or otherwise become effective for political subdivisions with respect to enterprise funds, system revenue funds or any similar funds which are insolvent, financially unsound or unable to meet their obligations as they mature.
2. Failure to Pay: The failure of the Cities to pay undisputed amounts due and owing to the Franchisee under this Franchise within ninety (90) days following receipt of a Franchisee invoice therefore.

#### **SECTION 8.5 NO WAIVERS**

No action of the Cities or Franchisee pursuant to this Franchise (including, but not limited to, any investigation or payment), and no failure to act, shall constitute a waiver by either party of the other party's compliance with any term or provision of this Franchise. No course of dealing or delay by the Cities or Franchisee in exercising any right, power or remedy under this Franchise shall operate as a waiver thereof or otherwise prejudice such party's rights, powers and remedies. No single or partial exercise of (or failure to exercise) any right, power or remedy of the Cities of the Franchisee under this Franchise shall preclude any other or further exercise thereof or the exercise of any other right, power or remedy.

#### **SECTION 8.6 NO CONSEQUENTIAL OR PUNITIVE DAMAGES**

In no event shall either party hereto be liable to the other or obligated in any manner to pay to the other any special, incidental, consequential, punitive or similar damages based upon claims arising out of or in connection with the performance or non-performance of its obligations or otherwise under this Franchise, or the material inaccuracy of any representation made in this Franchise, whether such claims are based upon contract, tort, negligence, warranty or other legal theory.



## **SECTION 8.7 FORUM FOR DISPUTE RESOLUTION**

It is the express intention of the parties that all legal actions and proceedings related to this Franchise or to the Franchise Services or to any rights or any relationship between the parties arising there from shall be solely and exclusively initiated and maintained in courts of the State of California in Monterey County or the United States of America having appropriate jurisdiction.

## **SECTION 8.8 ADMINISTRATIVE REVIEW OF DISPUTES**

Either party hereto may give the other party written notice of any dispute with respect to this Franchise. Such notice shall specify a date and location for a meeting of the parties hereto at which such parties shall attempt to resolve such dispute. The Service Coordinator shall keep a record of the proceedings conducted and information presented during such meeting. In the event that such dispute cannot be resolved by the parties hereto within 30 days or seven (7) days if it involves a dispute under Section 8.2 above, the matter may be referred by either party to Legal Proceedings. In the event either party has referred a dispute to any such proceeding, the Cities may not act to terminate this Franchise for cause except at the conclusion of the meeting of the parties held pursuant to this Section.

## **SECTION 8.9 CRIMINAL ACTIVITY OF THE FRANCHISEE**

Should the Franchisee or any of its officers or directors be "found guilty" of felonious conduct relating to the Franchise Services, or other felonious conduct involving:

1. A price fixing conspiracy in connection with Franchise Services,
2. Illegal transport or disposal of hazardous or toxic materials, or
3. Bribery of public officials, the Cities reserve the right:
  - a) to unilaterally terminate this Franchise; or
  - b) exercise all other remedies available to the Cities as if Franchisee default had occurred; or
  - c) to impose such other sanctions (which may include financial sanctions or any other condition deemed appropriate short of termination) as the Cities and Franchisee shall mutually agree. Such action shall be taken after the Franchisee has been given notice and an opportunity to present evidence in mitigation. The term "found guilty" shall be deemed to include any judicial determination that the Franchisee or any of its officers, directors or employees is guilty, and any admission of guilt by the Franchisee, or any of its officers, directors, or employees including, but not limited to, the pleas of "guilty", "nolo contendere", "no contest" or "guilty of a lesser felony" entered as part of any plea bargain. Notwithstanding the foregoing, if such officers,

directors or employees are acting in their own behalf in their individual capacities as officers, directors or employees, the Franchisee shall dismiss or remove such officers, directors or employees and take all action necessary, and appropriate to remedy any breach of this Franchise.

## **ARTICLE IX TERM**

### **SECTION 9.1 TERM**

The term of this Franchise shall commence on the date of execution hereof and shall end on December 31, 2016.

## **ARTICLE X MISCELLANEOUS PROVISIONS**

### **SECTION 10.1 INDEMNIFICATION & INSURANCE**

#### **A. Indemnification of the City:**

Franchisee agrees to and shall indemnify, defend, with Counsel acceptable to the Cities, and hold harmless Cities, their officers, officials, employees, volunteers, agents and assigns (indemnitees) from and against any and all damages (whether special, general or punitive), loss, liability, fines, penalties, forfeitures, claims, demands, actions, proceedings or suits (whether administrative or judicial), in law or in equity, of every kind and description, (including, but not limited to, injury to and death of any person and damage to property, strict liability, product liability, or for contribution or indemnity claimed by third parties) arising or resulting from or in any way connected with: (i) the operation of the Franchise, its agents, employees, contractors, and/or subcontractors, in performing or failing to perform this Agreement; (ii) the failure of the Franchisee, its agents, employees, contractors and/or subcontractors to comply in all respects with applicable laws, ordinances and regulations, and/or applicable permits and licenses; (iii) the acts of Franchisee, its officers, employees, agents, contractors and/or subcontractors in performing services under this Agreement for which strict liability is imposed by law; (iv) any action taken by the Cities pursuant to Section 8.2 upon a failure to collect, transport, process or dispose of Franchise Materials, and (v) the processing, marketing, and end use of Recyclable Materials and Food Waste.

The foregoing indemnity shall apply regardless of whether such loss, liability, penalty, forfeiture, claim, demand, action, proceeding, suit, injury, death, or damage is also caused in part by any of the indemnitees' negligence.

**B. AB 939 Indemnification of the Cities:**

Franchisee agrees to and shall indemnify to the extent permissible by law, defend, with Counsel acceptable to the Cities, and hold harmless Cities, their officers, officials, employees, volunteers, agents and assigns (indemnitees) from and against any and all damage (whether special, general or punitive), loss, liability, fines, penalties, forfeitures, claims, demands, actions, proceedings or suits (whether administrative or judicial), in law or in equity, of every kind and description, (including, but not limited to, injury to and death of any person and damage to property, strict liability, or for contribution or indemnity claimed by third parties) arising or resulting from the failure of Cities to comply with the California Integrated Waste Management Act of 1989 (Division 30 of the California Public Resources Code), as amended, supplemented, superseded and replaced from time to time (AB 939).

**C. Hazardous Substances Indemnification:**

Franchisee shall indemnify, defend with counsel acceptable to the Cities, protect and hold harmless the Cities, their officers, officials, employees, agents, assigns and any successor or successors to the Cities' interest from and against all claims, damages (including but not limited to special, consequential, natural resources and punitive damages) injuries, response mediation and removal costs, losses, demands, debts, liens, liabilities, causes of action, suits, legal or administrative proceedings, interest, fines, charges, penalties attorney's fees for the adverse party and expenses (including but not limited to attorney's and expert witness fees and costs incurred in connection with defending against any of the forgoing or in enforcing this indemnity) of any kind whatsoever paid, incurred or suffered by, or asserted against, the Cities or their officers, officials, employees, agents, assigns, or contractors arising from or attributable to acts or omissions including but not limited to any repair, cleanup, disposal or detoxification, or preparation and implementation of any removal, remedial, response, closure or other plan (regardless of whether undertaken due to governmental action) concerning any hazardous substance or hazardous wastes at any place where the Franchisee transports, stores or disposes of Solid Waste pursuant to this Agreement. The foregoing indemnity is also intended to operate as an agreement pursuant to Section 107(e) of CERCLA, 42 U.S.C. Section 9607(c) and California Health and Safety Code Section 25364, to defend, insure, protect, hold harmless and indemnify the Cities from liability.

**D. Insurance:**

The Franchisee shall at all times during the Term of this Franchise, at its own cost and expense, obtain and maintain liability insurance meeting the requirements set forth in Appendix H hereto.

**SECTION 10.2 UNCONTROLLABLE CIRCUMSTANCES GENERALLY**

**A. Performance Excused:** Except as otherwise specifically provided in this Franchise, neither the Franchisee nor the Cities shall be liable to the other for any failure or delay in the performance of any obligation under this Franchise (other than any payment at

the time due and owing) to the extent such failure or delay is due to the occurrence of an Uncontrollable Circumstance.

**B. Notice. Mitigation:** The party experiencing an Uncontrollable Circumstance shall notify the other party by telecommunication or telephone and in writing, within twenty (24) hours after the party experiencing such Uncontrollable Circumstance first knew of the commencement thereof, followed within two (2) days by a written description of:

1. The Uncontrollable Circumstance and the cause thereof (to the extent known),
2. The date the Uncontrollable Circumstance began and the cause thereof, its estimated duration, the estimated time during which the performance of such party's obligations hereunder will be delayed, and
3. Potential mitigating actions which might be taken by the Franchisee or Cities. Each party shall provide written notice of the cessation of such Uncontrollable Circumstance within twenty (24) hours thereof. Whenever such act, event or condition shall occur, the party claiming to be adversely affected thereby shall, as promptly as reasonably possible, use its best efforts to eliminate the cause therefore and resume performance under this Franchise. While the delay continues, the Franchisee or Cities shall give daily notice to the other party updating the information previously submitted.

### **SECTION 10.3 LIMITED RECOURSE TO THE CITIES AND SERVICE COORDINATOR**

No recourse shall be had to the general funds or general credit of the Cities or Service Coordinator (if other than the Cities) for the payment of any amount due the Franchisee hereunder, or the performance of any obligation incurred hereunder, including any Loss-and-Expense of any nature arising from the performance or non-performance of the Cities' obligations hereunder. The sole recourse of the Franchisee for all such amounts shall be to the funds held in each City's Solid Waste Enterprise Fund. All amounts held in each Solid Waste Enterprise Fund shall be held for the uses permitted and required thereby, and no such amounts shall constitute property of the Franchisee. The Cities shall make adequate provision in the administration of each Solid Waste Enterprise Fund for the payment of any amount or the performance of any obligation which may be due hereunder.

### **SECTION 10.4 RELATIONSHIP OF THE PARTIES**

Neither party to this Franchise shall have any responsibility whatsoever with respect to services provided or contractual obligations or liabilities assumed by the other party hereto, whether accrued, absolute; contingent or otherwise, or whether due or to become due. The Franchisee is an independent contractor and Franchise holder and nothing in this Franchise shall be deemed to

constitute either party a partner, agent or legal representative of the other party or to create any fiduciary relationship between the parties.

#### **SECTION 10.5 NO DISCRIMINATION**

The Franchisee shall not discriminate nor permit discrimination by any of its officers, employees, agents and representatives against any person because of age, race, color, religion, national origin, sex, sexual orientation or physical or mental disability. The Franchisee will take all actions reasonably necessary to ensure that applicants are employed, and that employees are treated during employment, without regard to their age, race, color, religion, national origin, sex, sexual orientation or physical or mental disability. Such action shall include, without limitation, recruitment and recruitment advertising; layoff or termination; upgrading, demotion, transfer, rates of pay or other form of compensation; and selection for training, including apprenticeship. The Franchisee shall impose the non-discrimination provisions of this Section by contract on all subcontractors hired with the Cities' consent to perform work related to performance of its obligations hereunder and shall take all reasonable actions necessary to enforce such provisions. The Franchisee will post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this non-discrimination clause.

#### **SECTION 10.6 ACTIONS OF EACH CITY IN ITS GOVERNMENTAL CAPACITY**

Nothing in this Franchise shall be interpreted as limiting the rights and obligations of each City in its governmental or regulatory capacity, or as limiting the right of the Franchisee to bring any legal action against the Cities, not based on this Franchise, arising out of any act or omission of each City in its governmental or regulatory capacity.

#### **SECTION 10.7 BINDING EFFECT**

This Franchise shall bind and inure to the benefit of the parties hereto and any successor or assignee acquiring an interest hereunder consistent with the provisions hereof.

#### **SECTION 10.8 AMENDMENTS**

Neither this Franchise nor any provision hereof may be changed, modified, amended or waived except by written agreement duly executed by both parties.

#### **SECTION 10.9 NOTICE OF LITIGATION**

Each party shall deliver written notice to the other of any Legal Proceeding to which it is a party and which questions the validity or enforceability of this Franchise or any other related agreement executed by the Cities or the Franchisee or any Legal Entitlement issued in connection herewith.

## **SECTION 10.10 NOTICES**

Any notices or communications required or permitted hereunder to be given to the Cities or Cities Representative shall be in writing and shall be sufficiently given only if delivered in

person to each of the following:

City Manager  
City of Gonzales  
147-Fourth Street  
Gonzales, California  
93926

City Manager  
City of Greenfield  
215 El Camino Real  
Greenfield, California  
93927

City Manager  
City of Soledad  
248 Main Street  
Soledad, California 93960

Any notices or communications required or permitted hereunder to be given to the Franchisee shall be in writing and shall be sufficiently given if delivered in person to the Franchisee at:

Gary Parola, President  
Tri Cities Disposal and Recycling Service, Inc  
10 Ryan Ranch Road  
Monterey, CA 93940

Changes in the respective addresses to *which* such notices may be directed may be made from time to time by any party by written notice to the other party. Notices and communications given by mail hereunder shall be deemed to have been given five (5) days after the date of dispatch; all other notices shall be deemed to have been given upon receipt.

## **SECTION 10.11. FURTHER ASSURANCES**

Each party agrees to execute and deliver any instruments and to perform any acts as may be necessary or reasonably requested by the other in order to give full effect to this Franchise.

## **SECTION 10.12 APPENDICES**

Each of the appendices identified is attached hereto and incorporated herein and made a part hereof by this reference.

IN WITNESS WHEREOF, the parties hereto have executed this agreement on the dates indicated below.

**CITY OF GONZALES**

Dated: 5/2/12 By: Rene L. Mendez

City Clerk: [Signature] By: [Signature]  
City Manager

APPROVED AS TO FORM:

City Attorney: [Signature] Dated: May 7-2012

**CITY OF GREENFIELD**

Dated: April 24, 2012 By: [Signature]  
Interim City Manager

City Clerk: [Signature] By: \_\_\_\_\_

APPROVED AS TO FORM:

City Attorney: [Signature] Dated: April 24, 2012

**CITY OF SOLEDAD**

Dated: March 28, 2012 By: [Signature]  
City Manager

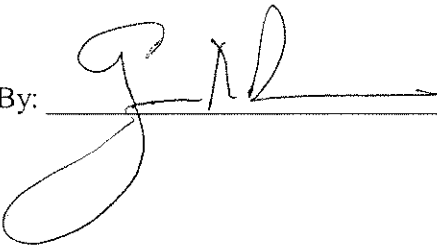
City Clerk: [Signature] By: \_\_\_\_\_

APPROVED AS TO FORM:

City Attorney: [Signature] Dated: March 28-2012

**ACCEPTED:**

Tri-Cities Disposal and Recycling Service, Inc.

Dated: 5-18-12 By: 



## **APPENDIX A**

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## **APPENDIX B**

### **IMPLEMENTATION SCHEDULE**

## **APPENDIX B IMPLEMENTATION SCHEDULE**

### **A. 1 Implementation Schedule for Revised Term**

1. Implementation of the food waste collection program in new, contractor supplied, carts shall be at the sole discretion of the Cities.

**APPENDIX C**

**SPECIFICATIONS**

**FOR**

**CONTAINERS & VEHICLES**

## APPENDIX C

### SPECIFICATIONS FOR CONTAINERS AND VEHICLES

#### C.1 COLLECTION CONTAINERS

- 1) The Franchisee shall provide industry standard bins for the storage of material from Commercial Customers, which shall be designated and constructed to be watertight and shall have fitted plastic lids. Bins shall meet all applicable federal regulations on solid waste generation safety. Bins shall be provided in sizes 1, 2, 3, 4, and 6 cubic yard capacities.
- 2) The Franchisee shall provide industry standard debris boxes to Commercial Customers, in 20, 30, and 40 cubic yard capacities. Debris boxes shall meet all applicable federal regulations.
- 3) The Franchisee shall provide wheeled containers (carts) to each Residential Customer. All containers shall be made of industry standard materials, have permanent wheels, attached lids, and a handle for easy movement. The Franchisee shall provide carts at no additional charge in the following sizes.
  - Solid Waste – 48, 64, and 96 gallon
  - Recycling – 64 and 96 gallon
  - Yard Waste – 96 gallon
  - Food Waste – To be determined.
- 4) At the direction of all Cities, the Franchisee shall continue to provide, a 64 or 96 gallon wheeled container (cart) to each resident, without additional charge, for Recycling per Appendix C. The containers (carts) shall be made of industry standard material, have permanent wheels, attached lids, and a handle for easy movement.
- 5) Carts shall be clearly labeled to instruct the acceptable material to be placed in the container in accordance with Appendix F. Carts shall be of a different color for each type of usage.
- 6) The Franchisee shall distribute the containers on a schedule determined by the Cities and the Franchisee.

The Franchisee shall maintain, repair, or replace containers as needed to maintain containers in a clean, functional, new-like condition. The Franchisee shall at no charge to the Cities or customer, replace any containers which have become unusable by reasons of normal wear and tear or damaged by the collection operation. The Franchisee shall be responsible for replacement or repair of containers which are stolen or damaged by any event not caused by the Franchisee and shall charge Customers the Container Replacement Fee designated in Appendix D.

## C.2 COLLECTION VEHICLES

### 1) General

Franchisee shall provide a fleet of industry-standard collection vehicles sufficient in number and capacity to efficiently perform the work required by the Agreement in strict accordance with its terms. The Franchisee agrees to maintain each piece of equipment used by it in the performance of this Agreement in good order and repair. Franchisee shall have available on service days sufficient backup vehicles and qualified operators to respond to complaints and emergencies.

### 2) Conversion To Alternative Fuel

In an effort to assist the Cities in meeting their sustainability objectives and reducing greenhouse gas emissions, the Franchisee shall consider the use of alternative fuels over the use of diesel fuel in the fleet as such sources become economically feasible during the term of this agreement. Franchisee shall negotiate in good faith with local distributors for such alternative fuels. Compensation for conversion to alternative fuels would be included in Service Fee Schedule.

### 3) Vehicle Identification

The Franchisee's name, phone number, and vehicle identification number must be visibly displayed on its vehicles in letters and figures no less than three inches high.

### 4) Cleaning and Maintenance

**A. General:** Franchisee shall maintain all of its properties, facilities, and equipment used in providing service under this Agreement in a safe, neat, clean and operable condition at all times, and shall keep its properties, facilities, and equipment well and uniformly painted, to the satisfaction of the Cities. Vehicles shall be maintained in such a manner that no leakage of fluids from the collected materials occurs.

**B. Cleaning:** Vehicles used in the collection shall be thoroughly washed at a minimum of once per week, and thoroughly steam cleaned on a regular basis so as to present a clean appearance and minimize odors. All vehicles shall be painted on a regular schedule to maintain a clean, professional, new-like appearance, although the Cities may require the painting of any vehicle that does not present a satisfactory appearance at any time. The vehicles shall be painted in a uniform manner; although refuse, recycling, and green waste vehicles may have different painting schemes. All graffiti shall be removed immediately. Cities may inspect vehicles at any time to determine compliance with sanitation requirements. Franchisee shall make vehicles available to the County Health Department for inspection at any frequency it requests.

**C. Maintenance:** Franchisee shall (i) inspect each vehicle daily to ensure that all equipment is operating properly. Vehicles which are not operating properly shall be taken out of service until they are repaired and do operate properly; and (ii) perform all scheduled maintenance functions in accordance with the manufacturer's specifications and schedule. Franchisee shall keep accurate records of all vehicle maintenance, recorded according to date and mileage, and shall make such records available to the Cities upon request.

**D. Repairs:** Franchisee shall repair, or arrange for the repair of, all of its vehicles and equipment, including dents, leaks, and other body damage, for which repairs are needed because of accident, breakdown or any other cause so as to maintain all equipment in a neat, safe and operable conditions. If an item of repair is covered by a warranty, Franchisee shall obtain warranty performance. Franchisee shall maintain

accurate records of repair, which shall include date/mileage, nature of repair and the signature of a maintenance supervisor that the repair has been properly performed.

**E. Inventory:** Franchisee shall furnish sufficient equipment to provide all service required under this Agreement, including backup collection vehicles. Franchisee shall furnish the Cities a written inventory of all vehicles, including collection vehicles, used in providing service, upon request. The inventory shall list all vehicles by manufacturer, Franchisee ID number, Authority ID number, date of acquisition, depreciated life, type, capacity, and decibel rating.

**F. Storage:** Franchisee shall arrange to store all vehicles and other equipment in safe and secure location(s) in accordance with Cities applicable zoning regulations.

## **5) Operation**

All vehicles must be registered with the Department of Motor Vehicles of the State of California and inspected by the California Highway Patrol at the frequency required by the state. Vehicles shall be operated in compliance with the California Vehicle Code and all applicable safety and local ordinances.

Franchisee shall not load collection vehicles in excess of the manufacturer's recommendations or limitations imposed by state or local weight restrictions on vehicles.

Franchisee shall use all reasonable means to minimize any backing of collection vehicles.

If the age of a collection vehicle reaches 15 years (Franchisee established depreciated life), the Franchisee must notify the Cities. This equipment shall be replaced within 60 days of reaching its depreciated life and old vehicles retained as back-up units shall be subject to inspection by the Cities or their designee.

## **APPENDIX D**

### **SERVICE FEE SCHEDULE**



**GARBAGE COLLECTION AND DISPOSAL RATES  
EFFECTIVE JULY 1, 2012 TO JUNE 30, 2013**

**MANDATORY ENCLOSURE FEES**

DESCRIPTION OF SERVICES	Total Service Rate
<b><u>Residential Weekly Can Service</u></b>	
1-48 gallon cart	\$ 11.61
1-65 gallon cart	\$ 15.12
1-96 gallon cart	\$ 18.64
Bulky Goods (per Pick-up)	\$ 17.72
Call back (per trip)	\$ 5.90
Overloaded can (per bag)	\$ 5.90
Extra Can or Bag Pick-up (1)	\$ 11.82
Cart Replacement	\$ 23.62
<b><u>Commercial and Multiple Dwelling Can Service</u></b>	
1 Pickup Per Week - 1-48 gallon cart	\$ 10.85
1 Pickup Per Week - 1-64 gallon cart	\$ 14.01
1 Pickup Per Week - 1-96 gallon cart	\$ 17.21
1-96 GAL CART/WEEK (Yard Waste) (3)	\$ 14.68
Long Walk Bin Service*	\$ 15.00
*For Distance greater 15' monthly additional for each 25'	
Key/Lock Charge	\$ 12.18
Call back (per trip)	\$ 5.90
Extra Can or Bag Pick-up (1)	\$ 11.82
<b><u>Commercial and Multiple Units Bin Service</u></b>	
<b><u>One Cubic Yard Containers</u></b>	
1 Pickup Per Week	\$ 78.91
2 Pickup Per Week	\$ 149.73
3 Pickup Per Week	\$ 213.62
Each Extra Pickup	\$ 20.68
Call back (per trip)	\$ 17.72
<b><u>Two Cubic Yard Containers</u></b>	
1 Pickup Per Week	\$ 113.07
2 Pickup Per Week	\$ 215.58
3 Pickup Per Week	\$ 307.96
Each Extra Pickup	\$ 29.60
Call back (per trip)	\$ 17.72
<b><u>Three Cubic Yard Containers</u></b>	
1 Pickup Per Week	\$ 160.00
2 Pickup Per Week	\$ 304.76

3 Pickup Per Week	\$ 435.53
Each Extra Pickup	\$ 41.70
Call back (per trip)	\$ 17.72

Four Cubic Yard Containers

1 Pickup Per Week	\$ 205.41
2 Pickup Per Week	\$ 390.85
3 Pickup Per Week	\$ 560.47
Each Extra Pickup	\$ 53.75
Call back (per trip)	\$ 17.72

Six Cubic Yard Containers

1 Pickup Per Week	\$ 278.77
2 Pickup Per Week	\$ 532.23
3 Pickup Per Week	\$ 761.00
Each Extra Pickup	\$ 66.40
Call back (per trip)	\$ 17.72

Contamination Charges (Based on Container size)

48 Gallon Cart	\$ 3.74
64 Gallon Cart	\$ 4.91
96 Gallon Cart	\$ 6.08
1 Cubic Yard Container	\$ 24.93
2 Cubic Yard Container	\$ 35.77
3 Cubic Yard Container	\$ 50.67
4 Cubic Yard Container	\$ 65.09
6 Cubic Yard Container	\$ 92.79

Drop Box and Compactor Service

Compactor Service

20 Cubic Yard Compactor	\$ 145.84
30 Cubic Yard Compactor	\$ 175.00

Drop Box/Roll Off Service

20 Cubic Yard Container	\$ 132.59
30 Cubic Yard Container	\$ 159.09
40 Cubic Yard Container	\$ 185.60

**GARBAGE COLLECTION AND DISPOSAL RATES  
EFFECTIVE JULY 1, 2012 TO JUNE 30, 2013**

**NO MANDATORY ENCLOSURE FEES**

<u>DESCRIPTION OF SERVICES</u>	<u>Rate</u>
<b><u>Residential Weekly Can Service</u></b>	
1-48 gallon cart	\$ 11.61
1-65 gallon cart	\$ 15.12
1-96 gallon cart	\$ 18.64
Bulky Goods (per Pick-up)	\$ 17.72
Call back (per trip)	\$ 5.90
Overloaded can (per bag)	\$ 5.90
Extra Can or Bag Pick-up (1)	\$ 11.82
Cart Replacement	\$ 23.62
<b><u>Commercial and Multipule Dwelling Can Service</u></b>	
1 Pickup Per Week - 1-48 gallon cart	\$ 10.85
1 Pickup Per Week - 1-64 gallon cart	\$ 14.01
1 Pickup Per Week - 1-96 gallon cart	\$ 17.21
1-96 GAL CART/WEEK (Yard Waste) (3)	\$ 14.68
Long Walk Bin Service*	\$ 15.00
*For Distance greater 15' monthly additional for each 25'	
Enclosure or Key/Lock Charge	\$ 12.18
Call back (per trip)	\$ 5.90
Extra Can or Bag Pick-up (1)	\$ 11.82
<b><u>Commercial and Multiple Units Bin Service</u></b>	
<b><u>One Cubic Yard Containers</u></b>	
1 Pickup Per Week	\$ 75.17
2 Pickup Per Week	\$ 142.62
3 Pickup Per Week	\$ 203.47
Each Extra Pickup	\$ 20.68
Call back (per trip)	\$ 17.72
<b><u>Two Cubic Yard Containers</u></b>	
1 Pickup Per Week	\$ 107.70
2 Pickup Per Week	\$ 205.33
3 Pickup Per Week	\$ 293.31
Each Extra Pickup	\$ 29.60
Call back (per trip)	\$ 17.72
<b><u>Three Cubic Yard Containers</u></b>	
1 Pickup Per Week	\$ 152.40
2 Pickup Per Week	\$ 290.27
3 Pickup Per Week	\$ 414.81
Each Extra Pickup	\$ 41.70

Call back (per trip)	\$ 17.72
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Four Cubic Yard Containers

1 Pickup Per Week	\$ 195.65
2 Pickup Per Week	\$ 372.26
3 Pickup Per Week	\$ 533.80
Each Extra Pickup	\$ 53.75
Call back (per trip)	\$ 17.72

Six Cubic Yard Containers

1 Pickup Per Week	\$ 278.77
2 Pickup Per Week	\$ 532.23
3 Pickup Per Week	\$ 761.00
Each Extra Pickup	\$ 66.40
Call back (per trip)	\$ 17.72

Contamination Charges (Based on Container size)

48 Gallon Cart	\$ 3.74
64 Gallon Cart	\$ 4.91
96 Gallon Cart	\$ 6.08
1 Cubic Yard Container	\$ 24.93
2 Cubic Yard Container	\$ 35.77
3 Cubic Yard Container	\$ 50.67
4 Cubic Yard Container	\$ 65.09
6 Cubic Yard Container	\$ 92.79

Drop Box and Compactor Service

Compactor Service

20 Cubic Yard Compactor	\$ 145.84
30 Cubic Yard Compactor	\$ 175.00

Drop Box/Roll Off Service

20 Cubic Yard Container	\$ 132.59
30 Cubic Yard Container	\$ 159.09
40 Cubic Yard Container	\$ 185.60

**GARBAGE COLLECTION AND DISPOSAL RATES  
EFFECTIVE UNTIL JUNE 30, 2012**

<b>DESCRIPTION OF SERVICES</b>	<b>Rate</b>
<b><u>Residential Weekly Can Service</u></b>	
1-48 gallon cart	\$ 11.11
1-65 gallon cart	\$ 14.52
1-96 gallon cart	\$ 17.93
Bulky Goods (per Pick-up)	\$ 17.18
Call back (per trip)	\$ 5.72
Overloaded can (per bag)	\$ 5.72
Extra Can or Bag Pick-up (1)	\$ 11.46
Cart Replacement	\$ 22.89
<b><u>Commercial and Multipule Dwelling Can Service</u></b>	
1 Pickup Per Week - 1-48 gallon cart	\$ 10.38
1 Pickup Per Week - 1-64 gallon cart	\$ 13.44
1 Pickup Per Week - 1-96 gallon cart	\$ 16.54
1-96 GAL CART/WEEK (Yard Waste) (3)	\$ 14.23
Enclosure,Key,Gate, Long Walk or Long Drive Charge	\$ 11.81
Call back (per trip)	\$ 5.72
Extra Can or Bag Pick-up (1)	\$ 11.46
<b><u>Commercial and Multiple Units Bin Service</u></b>	
<b><u>One Cubic Yard Containers</u></b>	
1 Pickup Per Week	\$ 72.72
2 Pickup Per Week	\$ 138.10
3 Pickup Per Week	\$ 197.08
Each Extra Pickup	\$ 20.04
Call back (per trip)	\$ 17.18
<b><u>Two Cubic Yard Containers</u></b>	
1 Pickup Per Week	\$ 104.25
2 Pickup Per Week	\$ 198.88
3 Pickup Per Week	\$ 284.16
Each Extra Pickup	\$ 28.69
Call back (per trip)	\$ 17.18
<b><u>Three Cubic Yard Containers</u></b>	
1 Pickup Per Week	\$ 147.58
2 Pickup Per Week	\$ 281.21
3 Pickup Per Week	\$ 401.93
Each Extra Pickup	\$ 40.42
Call back (per trip)	\$ 17.18

Four Cubic Yard Containers

1 Pickup Per Week	\$	189.50
2 Pickup Per Week	\$	360.68
3 Pickup Per Week	\$	517.26
Each Extra Pickup	\$	52.10
Call back (per trip)	\$	17.18

Six Cubic Yard Containers

1 Pickup Per Week	\$	270.07
2 Pickup Per Week	\$	515.74
3 Pickup Per Week	\$	737.48
Each Extra Pickup	\$	64.36
Call back (per trip)	\$	17.18

Drop Box and Compactor Service

Compactor Service

20 Cubic Yard Compactor	\$	141.36
30 Cubic Yard Compactor	\$	169.62

Drop Box/Roll Off Service

20 Cubic Yard Container	\$	128.52
30 Cubic Yard Container	\$	154.20
40 Cubic Yard Container	\$	179.90

**APPENDIX E**

**CITY FACILITY LOCATIONS**

**APPENDIX E**  
**CITY FACILITY LOCATIONS**

<u>LOCATION</u>	<u>CONTAINER SIZE</u>	<u>PICKUP DAYS</u>	
<b><u>GONZALES</u></b>			
City Hall	147 Fourth Street	2 Cy Bin	M
Police Department	109 Fourth Street	1 Cy Bin	M, W
Fire Department	323 Center Street	3 Cy Bin	M
City Hall (OCC)	147 Fourth Street	2 Cy Bin	Tu
City yard	201C Street	2 Cy Bin	F
Litter Cans	Various	---	M
City Park	Various	---	M
City Park (New)	Various	---	Tu
<b><u>GREENFIELD</u></b>			
Memorial Hall	515 El Camino Real	2 Cy Bin	M, F
Memorial Hall (OCC)	515 El Camino Real	2 Cy Bin	Tu
City Yard	920 Walnut	2 Cy Bin	W, F
City Hall	45 El Camino Real	1 Cy Bin	Th
Police Department	215 El Camino Real	1 Cy Bin	Th
Cemetery	917 Elm	1 Cy Bin	F
Litter Cans	Various	---	F
Civic Center	599 El Camino Real		
Patriot Park	1351 Oak Avenue		
<b><u>SOLEDAD</u></b>			
City Yard	1060 State	4 Cy Bin	M, Th
City Yard (OCC)	1060 State	2 Cy Bin	Tu
Police Department	109 Fourth Street	1 Cy Bin	W
Litter Cans	Various		
City Hall	248 Main Street		
Fire Dept.	519 Monterey		
Community Center	546 Walker Drive		
Water Reclamation Facility	34520 Morisoli Road		
City Parks	Various	---	Tu



**APPENDIX F**

**PUBLIC OUTREACH AND EDUCATION  
INFORMATION AND REQUIREMENTS**

## APPENDIX F

### PUBLIC OUTREACH AND EDUCATION INFORMATION AND REQUIREMENTS

**Public Education Workplan:** Franchisee shall provide the Cities with an initial Public Education Plan for the first year of service for Cities approval by July 1, 2012, in accordance with Section 4.1(H) designed to inform all current and potential Customers of new programs available under this agreement, implementation schedule and other related information necessary to assure a smooth transition to the services include hereunder.

Franchisee and Cities shall meet annually prior to the Franchise Year to develop the public education workplan for the upcoming Franchise Year. The workplan shall detail interactions with public schools, multi-dwelling units, businesses, and special events, including identification of Additional Services, for that year. Information produced herein will be made available in both English and Spanish as appropriate to the target audience. Each of the work products resulting here from shall be subject to review and approval by the Cities.

**Outreach Materials, Presentations and Tours:** Franchisee shall produce a minimum of two (2) bilingual newsletters per year. Franchisee shall develop materials, articles, and graphics for the newsletters relating to services offered or new services added, including but not limited to; food waste collection program, announcements of Annual City Cleanups, christmas tree recycling , sale of home composting bins, composting workshops, or used motor oil and filter collection. The Franchisee shall fund and arrange for a graphic designer to layout the newsletters, newsletter printing, and mailing services for distribution of the newsletter to all residents and businesses, for up to two (2) issues of each newsletter annually. The graphic designer shall be selected in consultation with the Cities.

Franchisee shall fund, produce and distribute two (2) cart hangers to inform customers of Holiday Schedule and curbside Christmas Tree pickup, and food waste collection program and/or sale of home composting bins and used motor oil and filter collection, as well as locations for Annual City Cleanups and up to one (1) other cart hanger annually if requested by the Cities. Franchisee shall distribute other cart hangers, supplied by the Cities, to the residential and commercial customers, upon request.

Franchisee shall fund and provide at least nine (9) waste reduction and recycling presentations (three (3) per City) per franchise year at schools mutually agreed upon between Franchisee and the Cities. The presentations shall contain specific age appropriate curriculum similar to RecycleRama Presentations (or equivalent) or literature from a credible publisher such as CalRecycle, the California Resource Recovery Association, or similar agency approved by the Cities.

Franchisee shall continue to provide tours of Franchisee facilities to schools and civic groups. Franchisee shall provide recycling and other waste management services for schools, multiple-dwelling customers, businesses, and special event activities. Franchisee shall retain a qualified, full-time, bi-lingual staff dedicated to public education. Franchisee staff shall work in conjunction with the Cities to perform and conduct waste assessments, outreach activities, and implment waste reduction and recycling programs in accordance with the public education workplan.

Franchisee shall fund and provide staff for community events, booths, and/or information tables at each City's annual Health and Safety Fair or similar events. Franchisee shall provide adeqate quantities of educational materials and free promotional items for each event.

Franchisee shall produce separate service brochures for Cart and Bin customers, to be updated as needed, and distribute these to all new customers, and upon request by existing customers.

Franchisee shall produce complete and accurate instructional cart and bin labels, and affix updated labels to all carts and bins in use. All labels shall be approved in advance by the Cities. Franchisee shall provide updated instructional labels on all carts and bins whenever there is a substantial change affecting items currently acceptable and/or not acceptable for recycling, yardwaste, food waste, and/or refuse collection.

Franchisee shall produce and install permanent instructional “poster type” signs, with the target audience of multiple-dwelling customers. The sign shall be placed at the central waste diversion receptacle area of all multiple-dwelling premises and shall contain universal symbols and written instructions in English and Spanish.

Franchisee shall produce and install permanent instructional “poster type” signs, with the target audience of staff of commercial customers. The sign shall be placed at the central waste diversion receptacle area of commercial Customer sites upon Customer or Cities request and shall contain universal symbols and written instructions in English and Spanish.

The Franchisee shall conduct customer subscription solicitations to residents and businesses not using Franchise services, a minimum of once per year. Solicitation plan and materials shall be submitted to the Cities for review in advance of distribution.

The Franchisee shall sponsor a full Customer survey, a minimum of every two years, or less frequently as determined by the Cities, of residences and business regarding participation rates with waste diversion services and programs.

The content of all outreach and educational information referenced in this Franchise Agreement shall be submitted to the Cities for advanced approval prior to preparation of final copy-ready master documents.

**Recycled Content:** Franchisee shall provide all printed outreach and education materials on a minimum of 30% post-consumer recycled content paper. Franchisee shall provide all promotional items made out of recycled material including but not limited to recycled plastic, metal, paper, etc.

## **APPENDIX G**

# **ROUTING & COLLECTION SYSTEM**



Source: Summary of Municipalities, 2003, PMC, 2007.

## Tri-Cities Disposal & Recycling Service Map

City of Greenfield

Wednesday Service Day

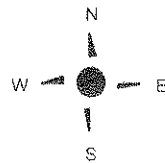
Friday Service Day





# Tri-Cities Disposal & Recycling Service Map

## City of Gonzales



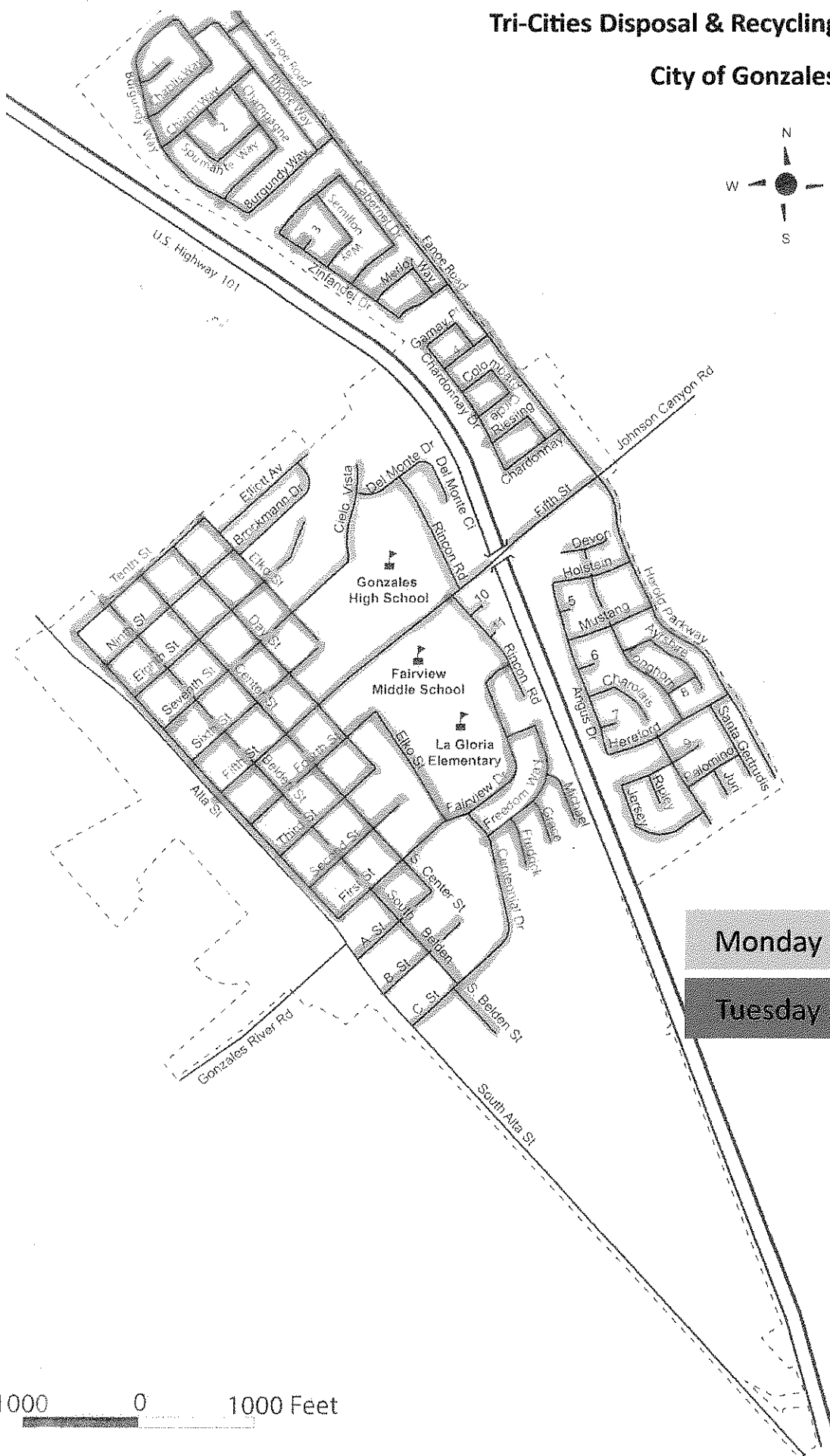
- 1-Burgundy Ct
- 2-Chianti Ct.
- 3-Zinfandel Cir
- 4-Barbera Way
- 5-Claussen Cti
- 6-Westphal Cir
- 7-Meyer Cir
- 8-Appaloosa V
- 9-Gonzalez Cir
- 10-Rincon Cir
- 11-Rincon Ct

**Monday Service Day**

**Tuesday Service Day**

1000 0 1000 Feet

-- City Limits



**APPENDIX H**  
**REQUIRED INSURANCE**



## EXHIBIT H

### INSURANCE SCOPE AND LIMITS

Franchisee shall procure and maintain for the duration of the Agreement insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by Franchisee, its agents, representatives, employees, or subcontractors. With respect to General Liability, Errors & Omissions and Pollution and/or Environmental Impairment Liability coverage should be maintained for a minimum of five (5) years after contract completion. The maintenance of claims made against any insurance required of Franchisee shall not be considered a waiver by Cities of any claim or liabilities it may have against Franchisee.

**A. Minimum Scope of Insurance:** Coverage shall be at least as broad as:

1. Insurance Services Office form number GO 0002 (Ed. 1/73) covering comprehensive General Liability and Insurance Services Office form number GO 0404 covering Broad Form Comprehensive General Liability; or Insurance Services Office Commercial General Liability coverage ("Occurrence" form CG 0001.).
2. Insurance Services Office form number CA 0001 (Ed. 1/78), covering Automobile Liability, code 1 (any auto) and endorsement CA 0025.
3. Worker's Compensation Insurance as required by the State of California and Employer's Liability Insurance.
4. Pollution and/or Environmental Impairment Liability and/or Errors & Omissions.

**B. Minimum Limits of Insurance:** Franchisee shall maintain limits no less than:

1. General Liability: \$5,000,000 combined single limit per occurrence for bodily injury, personal injury, and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.
2. Automobile Liability: \$3,000,000 combined single limit per accident for bodily injury and property damage.
3. Worker's Compensation and Employer's Liability: \$1,000,000 each accident, \$1,000,000 policy limit bodily injury or disease, \$1,000,000 each employee bodily injury by disease.
4. Pollution and/or Environmental Impairment Liability and/or Errors and Omissions: \$3,000,000 each occurrence/\$10,000,000 policy aggregate covering liability arising from the release of waste materials and/or irritants, contaminants or pollutants. Such coverage shall, if commercially available, without involvement of the Cities, automatically broaden in its form of coverage to include legislated changes in the definition of waste materials and/or irritants, contaminants or pollutants. The policy shall stipulate this insurance is primary and no other insurance carried by the Cities will be called upon to contribute to a loss suffered by Franchisee hereunder and waive subrogation against the Cities and other additional insureds.

**C. Deductible and Self-Insured Retentions:** Any deductibles or self-insured retentions must be declared to and approved in writing by the Cities. At the option of the Cities, either the Insurer shall reduce or eliminate such deductibles or self insured retentions as respects the Cities, their officers, officials, employees and volunteers; or Franchisee shall provide evidence satisfactory to the Cities guaranteeing payment of losses and related investigations, claim administration and defense expenses. Notwithstanding the foregoing, the Cities may elect not to accept any deductibles or self-insured retentions offered by Franchisee.

**D. Other Insurance Provisions:**

1. The policies are to contain, or be endorsed to contain, the following provisions:
  - a. The Cities, their officers, officials, employees and volunteers are to be covered as insureds with respect to liability arising out of automobiles owned, leased, hired or borrowed by or on behalf of Franchisee; and with respect to liability arising out of work or operations performed by or on behalf of Franchisee including materials, parts or equipment furnished in connection with such work or operations; Pollution and/or Asbestos Pollution.
  - b. Franchisee's insurance coverage shall be primary insurance as respects the Cities, their officers, officials, employees, agents, and volunteers. Any insurance or self-insurance maintained by the Cities, their officers, officials, employees, agents, or volunteers shall be excess of Franchisee's insurance and shall not contribute with it.
  - c. Each insurance policy required by this clause shall be occurrence-based, or an alternate form as approved by the Cities and shall be endorsed to state that coverage shall not be canceled by the Insurer except after thirty (30) days prior written notice has been given to the Cities.
  - d. Franchisee's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
  - e. The Automobile Liability policy shall be endorsed to delete the Pollution and/or the Asbestos exclusion and add the Motor Carrier Act endorsement (MCS-90), TL 1005, TL 1007, and/or other endorsements required by federal or state authorities.
  - f. Worker's Compensation and Employers Liability Coverage. The insurer shall agree to waive all rights of subrogation against the Cities, their officers, officials, employees, and volunteers for losses arising from work performed by the Franchisee for the Cities.
  - g. All Coverages. Each insurance policy required by this clause shall be occurrence-based or an alternate form as approved by the Cities and endorsed to state that coverage shall not be suspended, voided, canceled by any party, reduced in coverage or in limits except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the Cities.

**E. Acceptability of Insurers:** Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII, if admitted. If pollution and/or Environmental Impairment and/or errors and omissions coverages are not available from an "Admitted" insurer, a Non-Admitted insurance company may write the coverage only with the Cities' permission. A Non-Admitted company should have an A.M. Best's rating of A:X or higher.

**F. Verification of Coverage:** As provided in Article 3.10.D and Exhibit I Franchisee shall furnish the Cities with endorsements effecting coverage required by this clause. The endorsements are to be signed by a person authorized by that Insurer to bind coverage on its behalf. All endorsements are to be received and approved by the Cities before work commences. Upon request, Franchisee's insurer will provide complete copies of all required insurance policies, including endorsements affecting the coverage required by these specifications.

**G. Subcontractors:** Franchisee shall include all subcontractors as insureds under its policies or shall furnish separate certificate and endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein.

**H. Other Provisions:**

1. Any failure to comply with reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to the Cities, their officers, officials, agents, employees, and volunteers.
2. The Cities, their officers, officials, agents, employees, and volunteers shall be named as additional insureds on all policies.

A copy of all relevant insurance certificates shall be attached hereto.

**APPENDIX I**

**FORM OF PERFORMANCE BOND**



Limited Power of Attorney

Home Office: 1213 Valley Street, PO Box 9271, Seattle, WA 98109-0271, (206) 626-7200

KNOW ALL MEN BY THESE PRESENTS that CONTRACTORS BONDING AND INSURANCE COMPANY, a corporation duly organized and existing under the laws of the State of Washington, and having its principal office in Seattle, King County, Washington, for as these presents make, constitute and appoint WILL FINAN, of San Francisco, California, its true and lawful Attorney-in-Fact, with full power and authority hereby conferred in its name, place and stead, to execute, acknowledge and deliver on behalf of the Company any and all bonds and undertakings of suretyship given for any purpose, provided, however, that no Attorney-in-Fact shall be authorized to execute and deliver any bond or undertaking that shall obligate the Company for any portion of the penal sum thereof in excess of \$10,000,000, and provided, further, that no Attorney-in-Fact shall have the authority to issue a bid or proposal bond for any project where, if a contract is awarded, any bond or undertaking would be required with a penal sum in excess of \$10,000,000, and to bind the Company thereby as fully and to the same extent as if such bonds were signed by the President, sealed with the corporate seal of the Company and duly attested by its Secretary, hereby ratifying and confirming all (not the said Attorney-in-Fact) may do in the premises. Said appointment is in full force and by authority of the Board of Directors adopted by a Board of Directors of the CONTRACTORS BONDING AND INSURANCE COMPANY on September 8, 1998.

RESOLVED that the President of the Company is authorized to appoint any person as the Company's true and lawful Attorney-in-Fact with power and authority to execute and deliver on behalf of the Company any and all bonds and undertakings of suretyship given for any purpose, subject to such limits as shall be determined by the President of the Company; provided, however, that no such person shall be authorized to execute and deliver any bond or undertaking that shall obligate the Company for any portion of the penal sum thereof in excess of \$10,000,000, and any such person shall have the authority to issue a bid or proposal bond for any project where, if a contract is awarded, any bond or undertaking would be required with a penal sum in excess of \$10,000,000.

RESOLVED FURTHER that the authority of the Secretary of the Company to certify the authenticity and effectiveness of the foregoing resolution in any Limited Power of Attorney is hereby delegated to the following persons, the signature of any of the following to bind the Company with respect to the authenticity and effectiveness of the foregoing resolutions as if signed by the Secretary of the Company: Dennis Siki, Steven A. Gaines, John Piegorny, John D. Melo, Larry A. Oyes, and Wesley B. Hong.

RESOLVED FURTHER that the signature (including certification that this Power of Attorney is still in force and effect) of the President, Notary Public and person certifying authenticity and effectiveness, and the corporate and Notary seals appearing on any Limited Power of Attorney containing this and the foregoing recital as well as the Limited Power of Attorney itself and its duplication, may be by facsimile, and such Limited Power of Attorney shall be deemed as original in all aspects.

RESOLVED FURTHER that all resolutions adopted prior to today appointing the above named as Attorney-in-Fact for CONTRACTORS BONDING AND INSURANCE COMPANY are hereby reaffirmed.

IN WITNESS WHEREOF, CONTRACTORS BONDING AND INSURANCE COMPANY has caused these presents to be signed by its President and its corporate seal to be hereunto affixed this 5th day of December, 2004.

CONTRACTORS BONDING AND INSURANCE COMPANY

Signature of Steven A. Gaines, President



SEAL OF WASHINGTON - COUNTY OF KING

On this 5th day of December, 2004, personally appeared STEVEN A. GAINES, to me known to be the President of the corporation that executed the foregoing Limited Power of Attorney and a knowledgeable and disinterested person, for the uses and purposes therein recited, and on oath stated that he is authorized to execute the said Limited Power of Attorney.

BEFORE ME this 5th day of December, 2004, I have hereunto set my hand and affixed my official seal this day and year first above written.

Signature of Molly A. Hudspeth, Notary Public



I do, in witness whereof, acting under authority of the Board of Directors of CONTRACTORS BONDING AND INSURANCE COMPANY, hereby certify, as or in lieu of Certificate of the Secretary of the CONTRACTORS BONDING AND INSURANCE COMPANY, that the above and foregoing is a full, true and correct copy of the Original Power of Attorney issued by said Company, and does hereby further certify that the said Power of Attorney is still in force and effect.

Given and attested my hand at San Bruno, CA this 4th day of August, 2004

Signature of the Secretary

Form 901 (01/02) 120532

Continuation Certificate BA4636

## **APPENDIX J**

### **ESCALATION INDEX**

**APPENDIX J  
ESCALATION INDEX**

**Description:**

For the period beginning July 1, 2013, a CPI adjustment will be calculated annually for each year of the Franchise. The Franchisee and the Cities shall confer in April of each year to address the CPI adjustment. The Franchisee will calculate the adjustment based upon the previous twelve months using the February index, with rate adjustments taking effect on July 1 of each year.

Fee adjustments will be calculated by applying CPI increase to Current Rate for each service. The Current Rates to be used as of February 1, 2012, shall be the “Solid Waste and Yard Waste in Carts” rates shown in Appendix D. These revised rates will become the Current Rates for the July 1, 2012 CPI calculation. Each time the rates are modified, the revised rates become the basis for subsequent CPI adjustments.

Service Fee calculation will be subject to review by the Cities. The CPI index will be the Consumer Price Index, All Urban Consumers, for the San Francisco -Oakland – San Jose Metropolitan Area, as published by the U. S. Department of Labor, Bureau of Labor Statistics.

If the Franchisee seeks an increase in the CPI variable unit price exceeding five percent (5%), based on the criteria above, the Franchisee will provide financial information demonstrating that the variable costs have exceeded the CPI percentage. In the event the Franchisee is unable to so demonstrate, the Cities reserve the right to withhold a portion of the CPI adjustment.

**Change in the CPI Index:**

If the CPI is discontinued or revised during the Term by the United States Department of Labor, such other government index or computation with which it is replaced shall be used in order to obtain substantially the same result as would be obtained if the CPI had not been discontinued or revised.

**Formula:**

Adjusted Rate =

Current Rate x Current CPI / Prior CPI

Note: The Prior and Current CPI is the February Index.

**Example adjustment to arrive at revised total monthly service fee (unit price):**

Assumptions:

Prior CPI Index	=	180.0
Current CPI Index	=	185.0
Current Rate	=	\$8.61

Sample calculation using 32 gallon Solid Waste container rate and above assumptions:

	Current		Adjustment		Revised
Rate	\$8.61	x	185/180	=	\$8.85



## **APPENDIX K**

# **REPORTING REQUIREMENTS**

## Appendix K- Reporting Requirements

### Reporting Requirements:

The Franchisee shall comply with the following reporting requirements for the duration of the Franchise term.

- I. Prior to the initial preparation of the reports required by this Agreement Franchisee shall consult with the Cities to establish the format and data definitions for each report that best meets the cities needs.
- II. All reports shall be submitted electronically unless otherwise specified.
- III. Electronic reports shall be in a PC-based Excel, or Excel-compatible format or any other mutually agreed upon format.
- IV. Cities shall have electronic read-only access to electronic files and database from which reports are generated.
- V. Reports shall be submitted by the 25th of each month following the reporting period unless otherwise specified.
- VI. Franchisee shall provide Cities with on-request reports within five (5) working days of request.
- VII. All reports shall be in Fiscal Year (July 1 – June 30)

### A. Refuse Data -

#### **1. for Cart (Residential) Services**

##### I. Monthly

- a. total tons collected and delivered to disposal facilities

##### II. Quarterly

- a. total number of service accounts by service classification level

##### III. Upon Request

- a. by route: number of daily set-outs
- b. by route: tons collected and delivered to disposal facilities
- c. truck identification number for each daily route
- d. by route: number of service accounts by service classification level
- e. by route: number of collection containers distributed by size
- f. total number of collection containers distributed by size

#### **2. for (Bin) Commercial Services**

##### I. Monthly

- a. total tons collected and delivered to disposal facilities

##### II. Quarterly

- a. total number of service accounts by service classification level

##### III. Upon Request

- a. by route: tons collected and delivered to disposal facilities
- b. truck identification number for each daily route
- c. by route: number of service accounts by service classification level (size & frequency)
- d. by route: number of collection containers distributed by size
- e. total number of collection containers distributed by size

3. **for Cities Services (Cities Facilities / Public Containers / Cleanup Events)**
  - I. Monthly
    - a. by location: tons collected from roll-off bins and delivered to disposal facilities
    - b. number of collection containers serviced by size, location and route

**B. Yard Waste Data -**

1. **for Cart (Residential) Collection Services**
  - I. Monthly
    - a. total tons collected and delivered to disposal facilities
  - II. Quarterly
    - a. total number of service accounts by service classification level
  - III. Upon Request
    - a. by route: number of daily set-outs
    - b. by route: gross tons collected daily
    - c. truck identification number for each daily route
    - d. by route: weekly participation rates in terms of weekly set out counts
    - e. monthly participation rates based on a methodology to be agreed upon by Cities and Franchisee
    - f. total set-outs and tonnages, monthly by route and total monthly
    - g. by route: number of service accounts by service classification level
    - h. number of collection containers distributed by size and customer type (cart/bin), including home composting and worm bins
2. **for Bin (Commercial) Collection Services**
  - I. Monthly
    - a. total tons collected and delivered to disposal facilities
  - II. Quarterly
    - a. commercial cart customers (w/ yard waste) included with residential cart customer reporting
  - III. Upon Request
    - a. by route: number of service accounts by container size
    - b. by route: number of daily setouts (collected by cart collection vehicle - yard waste not offered as part of franchise bin service)
    - c. method for separate tracking of quantities from bin customers with yard waste service to be determined

**D. Recycling Data -**

1. **for Cart (Residential) Collection Services**
  - I. Monthly
    - a. total tons collected by material type and delivered to recycling facilities
  - II. Quarterly
    - a. total number of service accounts by container type
  - III. Upon Request
    - a. by route: number of daily set-outs
    - b. by route: gross tons collected daily
    - c. truck identification number for each daily route
    - d. by route: weekly participation rates in terms of weekly set out counts

- e. monthly participation rates based on a methodology to be agreed upon by Cities and Franchisee
- f. total set-outs and tonnages, by material category, monthly by route and total monthly
- g. by route: number of service accounts by container type (cart/crate)
- h. number of collection containers distributed by size and customer type (cart/bin)

**2. for Cart (Commercial) Collection Services**

- I. Monthly
  - a. total tons collected by material type and delivered to recycling facilities
- II. Upon Request
  - a. by route: number of daily setouts
  - b. by route: number of service accounts by container type & size
  - c. commercial carts collected by residential cart collection vehicle; loads mixed: method for separate tracking of residential and commercial quantities to be determined

**3. for Bin (Commercial) Collection Services**

- I. Monthly
  - a. total tons collected by material type and delivered to recycling facilities
- II. Quarterly
  - a. total number of service accounts by service classification level service
- III. Upon Request
  - a. by route: gross tons collected daily by material category/type (single stream and commingled)
  - b. truck identification number for each daily route
  - c. total tonnages, by material type, monthly by route and total monthly
  - d. by route: number of service accounts by service classification level service
  - e. number of collection containers distributed by size and customer type (cart/bin)

**4. for Cities Services / Public Recycling Containers / Cleanup Events- Collection Cities**

- I. Quarterly (for each sector listed above)
  - a. by location: tons collected by material category/type (single stream and commingled) and delivered to processing facility
  - b. number of recycling collection containers serviced by size, material type and location

**5. Processing and Marketing Services- Monthly**

- a. by material type (and grade where appropriate): monthly totals of quantities processed
- b. by material type (and grade where appropriate): monthly totals of quantities sold; specify purchaser name and location, price received per ton and total payment
- c. by material type: quantities donated or otherwise disbursed without compensation
- d. monthly quantity of processing residue and characterize (in manner defined by Cities)
- e. describe and quantify any contamination problems, reject loads, etc.
- f. method for tracking separately- by collection origin- quantities processed and sold, by material type

**E. Praises, Complaints, Missed Pickups and Resolutions - Quarterly.**

- a. summarize any praises and complaints received in such month
- b. complaints which require the payment by the Franchisee of liquidated damages pursuant to this Article.

- c. written record of all calls related to missed pickups and responses to such calls.

**F. Public Education and Information – Quarterly.**

- a. summary description of public education and information activities undertaken.
- b. distribution of individual customer literature, collection notification tags, community information and events, tours and other activities as identified in Appendix F of this Franchise
- c. describe any perceived needs for publicity or public education.

**G. Problems and Actions Taken – Quarterly**

- a. summary narrative of problems encountered with collection and processing activities and actions taken
- b. type and number of notification tags left at Customer accounts.
- c. instances of and responses to property damage or injury, poaching or scavenging, significant changes in operation, market factors.
- d. description of processed material loads rejected for sale, reason for rejection and disposition of load after rejection.

**H. Annual Report Submittals.**

Annual reports shall be submitted no later than 90 days following the end of the Franchise Year.

**I. Annual Report Contents.**

- a. summarize the numerical information contained in the monthly and/or quarterly reports.
- b. complete inventory of collection and major processing equipment including stationary, and rolling stock, collection containers by type and size.
- c. discuss public awareness activities and their impact on recycling and yard waste participation and recovered amounts.
- d. analysis of collection, processing and marketing problems or conditions (participation, set outs, contamination, market trends, etc.) and possible solutions.
- e. summarize customer complaints or comments to convey any trends or developing situations.

**J. Additional Reports.**

- a. Monthly- Overage-fees charged to all customer types for solid waste and yard waste overage collection per Section 4.1 B.2
- b. Monthly- Drop Box Charges- fees charged to all customer types for drop box services per Section 4.1 C. 3.
- c. Monthly- Bulky Goods Fees- fees charged to all customer types for the collection of Bulky Goods and excess amounts of Franchise materials.
- d. Financial reports pursuant to Section 6.3 and any additional monthly or annual reports as may be required to set forth all information required under the Act or otherwise by the Cities pertaining to the recycling and diversion of Franchise Materials which is collected and/or processed by the Franchisee. Said reports shall be in the form required by the Cities and shall categorize recycling and diversion activity in the manner required by the Cities.

**K. Operations Performance Reports**

The following reports shall be provided at the frequency specified for each. Reports submitted on special request of the Cities shall be submitted within 10 working days of the request.

<b>Report</b>	<b>Frequency</b>	<b>Source (Sect.)</b>
a. <b>Special Services</b> Total number by type of service	<b>Quarterly</b>	<b>4.1 B 4</b> 4.4 A
b. <b>Overages</b> total by customer	<b>Monthly</b>	<b>4.1 B 5</b>
<b>Report</b>	<b>Frequency</b>	<b>Source (Sect.)</b>
c. <b>Collection of Illegal Dumping</b> total tons collected/disposed; for each: date/time/hours spent/location/type of waste collected	<b>Upon Request</b>	<b>4.1 D 4</b>
d. <b>Bulky Goods Collection</b> number of pick-ups by route, by customer & non-customer; tons recycled, disposed	<b>Upon Request</b>	<b>4.1 E</b>
e. <b>Annual Clean-up</b> Total Services provided and tonnage by type	<b>Upon Request</b>	<b>4.1 F</b>
f. <b>Changes in Service Classification</b> total by route by size (cart replacement/exchange, from-to)	<b>Quarterly</b>	<b>4.1 J</b>
g. <b>Additional Services</b> total by route; total by type	<b>Upon Request</b>	<b>4.1 L</b>
h. <b>Route Books and Maps</b> start/stop points for each route; map replacement pages whenever revised	<b>Upon Commencing Service, Thereafter Upon Changing Route Or Upon Request.</b>	<b>4.2 C</b>
i. <b>Carts Repaired or Replaced</b> total by size & type	<b>Upon Request</b>	<b>4.3 B</b>
j. <b>Non-Collection Tags</b> total by route by type; log summary	<b>Quarterly</b>	<b>4.2 F</b> <b>4.5 C, E</b>
k. <b>Compost and Worm Bins</b>	<b>Quarterly</b>	
l. <b>Bin Repair or Clean</b> total	<b>Upon Request</b>	<b>4.3C 6</b>
m. <b>Collection Vehicle Changes</b> fleet add/drop, route reassignments, tare wt changes, load combinations	<b>With Each Change</b>	<b>4.7 D</b>
n. <b>Vehicle Safety Inspections</b> CHP inspection reports These reports are available at any time at maintenance yard only.	<b>Annual</b>	<b>5.1 C</b>
o. <b>Inventory of Operating Assets</b> vehicle & equipment type, capacity, location, acquisition date	<b>Upon Request</b>	<b>5.1 D</b>
p. <b>Emergency Telephone Numbers</b>	<b>With Each Change</b>	<b>6.1 D</b>

night & weekend phone numbers for senior officials

- |   |                  |                 |
|---|------------------|-----------------|
| q. <b>Financial Report</b>  | <b>Annual</b>    | <b>6.3 C</b>    |
| audited statement of gross receipts and franchise fees; svc levels            |                  |                 |
| r. <b>Billing Statement</b>   | <b>Monthly</b>   | <b>7.2 A, B</b> |
| monthly Customer Rates; customer revenues; estimates & adjustments            |                  |                 |
| s. <b>Delinquent Accounts</b>   | <b>Monthly</b>   | <b>7.3 B</b>    |
| customer name/id #; total #; total \$ due                                     |                  |                 |
| t. <b>Monthly Settlement Statement</b>  | <b>Monthly</b>   | <b>7.3 D</b>    |
| monthly reconciliation of fees payable and revenues received                  |                  |                 |
| v. <b>Recycling Sales Revenues</b>  | <b>Monthly</b>   | <b>TBD</b>      |
| by material: tons processed & sold, price paid; weighted average computations |                  |                 |
| w. <b>Collection Vehicle Distribution</b>                                     | <b>Quarterly</b> | <b>TBD</b>      |
| by vehicle type: route; # accts; svc level, svc address                       |                  |                 |

# **APPENDIX L**

## **FOOD WASTE COMPOSTING**

### **PILOT PROJECT**



## **FOOD WASTE COMPOSTING PILOT PROJECT**

Franchisee shall continue to participate in the Cities's food waste composting pilot project. Franchisee and the Cities agree to work in good faith to develop an ongoing composting project for future implementation. With the exception of the pilot project referenced above, neither Franchisee or Cities will have any service or financial obligations with respect to such a program until the terms and conditions of said program have been approved by all parties.